37th PARLIAMENT, 2nd SESSION

Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources

EVIDENCE

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Wednesday, November 27, 2002

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Mr. John Finlay

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The Chair

Ms. Anita Neville (Winnipeg South Centre, Lib.)

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1720

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Mr. Dick Proctor

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Mr. Inky Mark

Mr. Ralph Abramson

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Ms. Anita Neville

Mr. Ralph Abramson

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Ms. Anita Neville

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- *Mr. Maurice Vellacott*
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- *Mr. Inky Mark*
- *Chief Morris Shannacappo*

1740

- *Mr. Inky Mark*
- *Chief Morris Shannacappo*
- *Mr. Inky Mark*
- *The Chair*
- *Chief Morris Shannacappo*
- *The Chair*
- *Grand Chief Francis Flett (Manitoba Keewatinowi Okimakanak Inc.)*

1745

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1755

1800

The Chair

Mr. Maurice Vellacott

Grand Chief Francis Flett

Mr. Maurice Vellacott

The Chair

Mr. Dick Proctor

Grand Chief Francis Flett

Mr. Dick Proctor

The Chair

Mr. Michael Anderson (Research Director, Manitoba Keewatinowi Okimakanak Inc.)

1805

The Chair

Mr. Dick Proctor

Grand Chief Francis Flett

The Chair

Mr. Inky Mark

Grand Chief Francis Flett

The Chair

Mr. Michael Anderson

Mr. Inky Mark

Grand Chief Francis Flett

The Chair

Ms. Nancy Karetak-Lindell (Nunavut, Lib.)

1810

Grand Chief Francis Flett

Mr. Michael Anderson

The Chair

Ms. Anita Neville

Mr. Michael Anderson

1815

The Chair

- *The Chair*
- *Mr. Jayme Benson (Specific Claims Reseacher, Federation of Saskatchewan Indian Nations)*
- *The Chair*
- *Mr. Jayme Benson*
- *The Chair*
- *Vice-Chief Greg Ahenakew (First Vice-Chief, Federation of Saskatchewan Indian Nations)*

1835

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1845

- *The Chair*
- *Mr. Maurice Vellacott*
- *Vice-Chief Greg Ahenakew*
- *Mr. Maurice Vellacott*
- *Vice-Chief Greg Ahenakew*

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- *The Chair*
- *Mr. Dick Proctor*
- *Vice-Chief Greg Ahenakew*
- *Mr. Dick Proctor*
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- *Mr. Jayme Benson*
- *The Chair*
- *Mr. Inky Mark*
- *Vice-Chief Greg Ahenakew*

1855

- *Mr. Inky Mark*
- *Vice-Chief Greg Ahenakew*
- *Mr. Inky Mark*
- *Vice-Chief Greg Ahenakew*
- *Mr. Inky Mark*

- *The Chair*
- *Vice-Chief Greg Ahenakew*
- *The Chair*
- *Ms. Anita Neville*
- *Vice-Chief Greg Ahenakew*
- *Mr. Jayme Benson*

1900

- *Ms. Anita Neville*
- *Mr. Jayme Benson*
- *Ms. Anita Neville*
- *Vice-Chief Greg Ahenakew*
- *The Chair*
- *Vice-Chief Greg Ahenakew*
- *The Chair*

1905

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- *The Chair*
- *Chief Stewart Phillip (President, Union of British Columbia Indian Chiefs)*

1915

1920

1925

- *The Chair*
- *Mr. Maurice Vellacott*
- *Chief Stewart Phillip*
- *Mr. Maurice Vellacott*
- *Chief Stewart Phillip*
- *Mr. Maurice Vellacott*

1930

- *Chief Stewart Phillip*
- *Mr. Maurice Vellacott*

- *The Chair*
- *Mr. Dick Proctor*
- *Chief Stewart Phillip*
- *Mr. Dick Proctor*
- *Chief Stewart Phillip*
- *Mr. Dick Proctor*
- *Chief Stewart Phillip*
- *Mr. Dick Proctor*
- *Chief Stewart Phillip*
- *The Chair*
- *Mr. Inky Mark*

1935

- *Chief Stewart Phillip*
- *Mr. Inky Mark*
- *Chief Stewart Phillip*
- *Mr. Inky Mark*
- *Chief Stewart Phillip*
- *The Chair*
- *Mr. John Godfrey*

1940

- *Chief Stewart Phillip*
- *Mr. John Godfrey*
- *The Chair*
- *Mr. Jerome Slavik (Barrister and Solicitor, Ackroyd, Piasta, Roth & Day LLP)*

1945

1950

- *The Chair*
- *Mr. Maurice Vellacott*
- *Mr. Jerome Slavik*
- *Mr. Maurice Vellacott*
- *Mr. Jerome Slavik*
- *Mr. Maurice Vellacott*

- *Mr. Jerome Slavik*
- *Mr. Maurice Vellacott*

1955

- *The Chair*
- *Mr. Dick Proctor*
- *Mr. Jerome Slavik*
- *Mr. Dick Proctor*
- *Mr. Jerome Slavik*
- *Mr. Dick Proctor*
- *Mr. Jerome Slavik*
- *The Chair*
- *Mr. Inky Mark*
- *Mr. Jerome Slavik*

2000

- *Mr. Inky Mark*
- *Mr. Jerome Slavik*
- *Mr. Inky Mark*
- *Mr. Jerome Slavik*
- *The Chair*
- *Mr. John Godfrey*
- *Mr. Jerome Slavik*
- *Mr. John Godfrey*
- *The Chair*
- *Mr. John Finlay*

2005

- *Mr. Jerome Slavik*
- *Mr. John Finlay*
- *Mr. Jerome Slavik*
- *The Chair*
- *Mr. Jerome Slavik*
- *The Chair*
- *Mr. Jerome Slavik*
- *The Chair*

- *Mr. Jerome Slavik*
- *The Chair*
- *Mr. Jerome Slavik*
- *The Chair*

2010

- *Mr. Jerome Slavik*
- *The Chair*
- *Dr. Dan Gottesman (Senior Research and Policy Analyst, Alliance of Tribal Nations)*
- *The Chair*
- *Mr. Ken Malloway (Councillor, Alliance of Tribal Nations)*

2015

- *The Chair*
- *Chief Mavis Erickson (Tribal Chief, Carrier Sekani Tribal Council)*
- *The Chair*
- *Chief Mavis Erickson*
- *The Chair*

2020

- *Chief Mavis Erickson*
- *The Chair*
- *Chief Mavis Erickson*
- *The Chair*
- *Dr. Dan Gottesman*
- *The Chair*
- *Mr. Maurice Vellacott*
- *Mr. Ken Malloway*
- *Mr. Maurice Vellacott*
- *Mr. Ken Malloway*
- *Mr. Maurice Vellacott*
- *Mr. Ken Malloway*
- *Mr. Maurice Vellacott*
- *Dr. Dan Gottesman*
- *The Chair*

- *Mr. Dick Proctor*
- *The Chair*
- *Mr. Dick Proctor*

2025

- *Dr. Dan Gottesman*
- *Mr. Dick Proctor*
- *Mr. Ken Malloway*
- *The Chair*
- *Mr. Inky Mark*
- *Mr. Ken Malloway*
- *Mr. Inky Mark*
- *Mr. Ken Malloway*
- *Mr. Inky Mark*
- *Mr. Ken Malloway*

2030

- *Mr. Inky Mark*
- *Mr. Ken Malloway*
- *The Chair*
- *Mr. John Godfrey*
- *Mr. Ken Malloway*
- *Mr. John Godfrey*
- *The Chair*
- *Grand Chief Edward John (First Nations Summit)*

2040

- *Ms. Lydia Hwitsum (Board Member, First Nations Summit)*
- *Mr. Gary Yabsley (Legal Counsel, First Nations Summit)*
- *Grand Chief Edward John*
- *Ms. Lydia Hwitsum*
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2045

- *The Chair*
- *Ms. Lydia Hwitsum*

- *The Chair*
- *Grand Chief Edward John*
- *The Chair*
- *Chief Mavis Erickson*

2050

- *The Chair*
- *Chief Mavis Erickson*
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- *Mr. Dick Proctor*
- *Ms. Lydia Hwitsum*
- *Mr. Dick Proctor*
- *Ms. Lydia Hwitsum*
- *Mr. Dick Proctor*
- *Grand Chief Edward John*
- *Mr. Dick Proctor*
- *Grand Chief Edward John*

2055

- *The Chair*
- *Mr. Inky Mark*
- *Grand Chief Edward John*
- *Ms. Lydia Hwitsum*
- *Mr. Inky Mark*
- *Chief Mavis Erickson*
- *Mr. Inky Mark*
- *Grand Chief Edward John*

2100

- *Mr. Gary Yabsley*
- *The Chair*
- *Mr. John Godfrey*
- *Mr. Gary Yabsley*
- *Mr. John Godfrey*
- *Mr. Gary Yabsley*
- *Grand Chief Edward John*

CANADA

Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources

NUMBER 007 • 2nd SESSION • 37th PARLIAMENT

EVIDENCE

Wednesday, November 27, 2002

[Recorded by Electronic Apparatus]

(1530)

[*English*]

The Chair (Mr. Raymond Bonin (Nickel Belt, Lib.)): We'll call the meeting to order and start immediately with our video conference. The order of the day is a consultation on Bill C-6, an act to establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims to provide for the filing, negotiation, and resolution of specific claims and to make related amendments to other acts.

We have in attendance, from the Atlantic Policy Congress of First Nation Chiefs, Mr. Peter Barlow, co-chair, and Chief Lawrence Paul, co-chair. We invite you to start immediately with a five-minute presentation, followed by questions from members. The total time is 30 minutes per presentation.

Please start.

Chief Lawrence Paul (Co-Chair, Atlantic Policy Congress of First Nation Chiefs Secretariat Inc.): On behalf of the Atlantic Policy Congress of First Nation Chiefs Secretariat Inc., we are pleased to have the opportunity to share some of our knowledge, thoughts, and concerns about the Specific Claims Resolution Act.

We understand that the honourable members of this standing committee have been given a responsibility to not only hear concerns from the public about this new law that your peers in the House of Commons are attempting to create in relation to the Specific Claims Resolution Act, but also to amend the act to address concerns raised with the provisions of the act.

For this reason we are participating in this parliamentary process, not only to share our thoughts and concerns with the Specific Claims Resolution Act, but also to offer recommendations to change critical provisions of the act. We feel we'll essentially address our concerns. Before we get into this, we want to share some information on who we are.

The Atlantic Policy Congress of First Nation Chiefs Secretariat is the chiefs' policy and advocacy organization, whose members include 34 Mi'kmaq, Malliseet, and Passamaquoddy first nation chiefs of the four Atlantic provinces and the Gaspé region in Quebec, including eastern Maine. The population of the Mi'kmaq, Malliseet, Passamaquoddy, and the Wabanaki territory is approximately 30,000 people. Of the 34 Mi'kmaq, Malliseet, and Passamaquoddy communities, 15 communities have a population of 500 people or less. Ten communities have a population between 501 and 1,000 people. Nine communities have a population of between 1,000 and 3,100 people.

Since the imposition of the specific claims policy in 1973, Atlantic first nations have submitted approximately 58 specific claims. Of the 58 specific claims within the system, 26 claims are under review, 5 claims are under negotiation, 27 claims are classified as other claims, and 10 claims have been settled. Based on preliminary statistics, we understand that approximately 23,000 acres of reserve land are unlawfully taken in our region. The current reserve land base left after these illegal undertakings is approximately 34,376.5 hectares.

We are quite distressed with the rate at which claims are being settled in the Atlantic. Of the 58 claims submitted in the Atlantic since 1973, only 10 claims have been settled. It took 30 years to settle 10 claims. At this rate, the claims in the Atlantic will not be settled for another 150 years. This is totally unacceptable. In one incident in the Atlantic with regard to a claim submitted in 1982 over the unlawful taking of 248 acres of land, an agreement was finally reached 20 years later, in November 2002.

These statistics do not include the potential number of specific claims not yet submitted to the system. According to the TARR Centre of Nova Scotia, there are potentially 35 more claims ready for submission within Nova Scotia alone, at least the same number in New Brunswick, as well as others.

We provide you these statistics because they have relevance to the burdens being imposed on our small first nations communities in particular. We have a huge stake in making sure specific claims are settled in a fair, just, and equitable manner. We have the fastest growing population in Canada and yet our land base is decreasing.

On a more positive note, we have treaties, treaty rights, aboriginal title, and aboriginal rights and such are safeguarded by section 35 of the Constitution Act of 1982. In the spirit of protecting our rights, we wish to note to the committee that the chiefs' submissions to the parliamentary standing committee are not to be constructed as meaningful consultation or as justification for infringement of the aboriginal and treaty rights of the Mi'kmaq, Malliseet, and Passamaquoddy nations.

Our position is the following. On September 18, 2002, the Atlantic Policy Congress of First Nation Chiefs passed a motion, unanimously, calling on the federal government to essentially redraft the Specific Claims Resolution Act to secure the joint task force elements of the bill.

(1535)

Atlantic chiefs also challenged the federal government to fulfill its fiduciary obligations to first nations by withdrawing the Specific Claims Resolution Act in its current form and returning to the joint process of drafting, as upheld in the joint task force model.

In 1998, after years of cooperative work, the first nations in Canada, via the Assembly of First Nations, released a joint task force report that provided a cooperative basis for a truly independent body dealing with specific claims. In fact, the ATF bill outlined a jointly appointed commission and tribunal to provide for the effective, fair, and expedient resolution of all claims within a reasonable fiscal framework.

These claims involve legal obligations arising from past federal dealings with first nations. A large backlog of over 500 claims exists. The backlog continues to grow every year, along with the federal government's liabilities.

First nations communities continue to suffer from the ongoing inability to access lands and assets that are rightfully theirs. The Government of Canada's specific claims policy is intended to resolve claims arising from breaches of the Crown's lawful obligation through negotiations. Bill C-6, known as the Specific Claims Resolution Act, does not create an independent and impartial body designed to clear up the huge backlog of claims.

The conflict of interest in having Canada sign claims against itself remains and is entrenched in legislation. It is the view of our chiefs that Canada's Specific Claims Resolution Act does not retain the basic elements of a joint task force bill. Today, Canada's Specific Claims Resolution Act will create a system that is worse. At least today the ICC exists and allows all claimants to obtain public investigations, reports, and non-binding recommendations.

(1540)

Mr. Peter Barlow (Co-Chair, Atlantic Policy Congress of First Nation Chiefs Secretariat Inc.): I'm Chief Barlow, the other co-chair of the Atlantic Policy Congress. I'll give you an overview of the issues--

The Chair: Excuse me for interrupting. Are you making a second presentation? We advised you there were five minutes for your presentation.

Mr. Peter Barlow: We are going to raise specific points that were outlined by Chief Paul.

The Chair: The purpose of your appearance is to--

Mr. Peter Barlow: If you don't want to hear what our presentation has to say on the proposed legislation, we have no problem with that.

The Chair: That's not the position I'm taking. I'm disappointed you think that's what I'm trying to do. It's not what I'm trying to do.

Colleagues, is it okay to let them go as long as they want within thirty minutes?

Some hon. members: Agreed.

The Chair: Please continue.

Mr. Peter Barlow: First, Bill C-6 has a number of departures from what was agreed upon in the 1998 joint task force report, which we feel may compromise the ability of a new body to assist in resolving claims in an expeditious, fair, and impartial manner.

Second, on the issue of conflict of interest and the minister's role in managing the ICB process, the independence of a commission or a tribunal could be undermined by the retention of unilateral federal authority over appointments and the processing of claims.

Third, appointments are to be made upon the recommendation of the very minister who is charged with defending the Crown against such claims. There is no provision for direct first nations input.

Fourth, there are no effective specific timelines provided for under the commission process. There are far too many opportunities for federal delay built into the process. This bill has been characterized as institutionalizing delay.

Fifth, Bill C-6 appears to be worse than the current process, where a commission of inquiry is available to all claims that are rejected by government, regardless of potential monetary value. Under the bill, first nations will be required to waive federal liability over $7 million to access the tribunal.

Sixth, the definition of a specific claim has been narrowed from the existing policy. Claims arising from specific treaty provisions are now to be restricted to land. It doesn't even mention our rights on the water.

Seventh, this bill does not provide for a substantial long-term financial commitment and is more about limiting federal liability than settling claims. It offers little or no hope to addressing the growing backlog on specific claims in the foreseeable future.

Eighth, the structure and procedures proposed are more narrowly described, and the flexibility recommended by the JTF would be made more inflexible by federal regulations not seen yet, under development.

Ninth, there is no provision for a joint review of the process. All is being left to the discretion of the minister.

Tenth, our first nations do not believe the bill is consistent with the high standard of conduct required of a fiduciary. You can see the Guerin decision for a definition of what a fiduciary responsibility is.

The federal government currently decides internally whether specific claims are valid or not. Compensation is determined through negotiations, with a high level of federal control over the rules being applied. The government is, from our perspective, in a conflict of interest. It is both defendant and adjudicator.

Although there have been several initiatives set up as an independent effective system to resolve these claims, the most promising one is in the joint task force report of 1998. This was a product of joint discussions between officials from the Assembly of First Nations and from the federal government. In the spirit of partnership, each side found ways to address the concerns raised by the other. The result of those discussions was a detailed and technically sound bill for a system to resolve specific claims. This JTF bill proposed to jointly appoint a commission and a tribunal that provided for the effective, fair, and expeditious resolution of all claims within a reasonable physical framework.

Under Bill C-6, the federal government retains its domination over the system. It does not create an independent and impartial body designed to clear up the huge backlog of claims. Instead, the bill enables the government to control closely the pace of settlements and decisions. Access to the tribunal is severely limited; appointments are at the unilateral discretion of Canada for short terms; and the federal government is rewarded for delaying the settlement of claims. Claims are treated as a matter of discretionary spending that must be tightly controlled, instead of legal debts or liabilities.

The conflict of interest in having Canada decide claims against itself remains and is entrenched in the legislation. In fact, Bill C-6 would create a system that is worse than the current system, which at least allows all claimants to obtain a public investigation, a report, and a non-binding recommendation on their claim from the Indian Claims Commission. Bill C-6 does not allow this independent public review for claims above the cap.

Specific problems with Bill C-6 are, first, the definition of specific claims.

(1545)

The approach of the joint task force was to build on the definition in the official federal policy statement “Outstanding Business”, 1982, with a modest expansion in light of case law over the past decades. Bill C-6 narrows the definition of claims compared even with current federal policy. It excludes, first, obligations arising under treaties or agreements that do not deal with land and assets; second, unilateral federal undertakings to provide lands or access, as in JTF; and third, claims based on laws of Canada that were originally United Kingdom statutes or royal proclamations, as in JTF.

Bill C-6 also adds a list of claims that cannot be filed. These include claims less than 15 years old; claims based on land claims agreements entered into from 1974 onwards; claims based on

an agreement listed in a schedule to the bill; claims concerning the delivery of funding of programs relating to policing, regulatory enforcement, corrections, education, health, child protection, social assistance, or similar public programs or services; claims based on an agreement that provides for another mechanism for the resolution of disputes; and claims based on aboriginal rights or title.

A second point relates to access to the tribunal. The JTF placed no limit on the size of individual claims that could be brought before the tribunal. Bill C-6 denies access to all claims over a cap, which is set out at $7 million. That amount can be lowered as well as raised. Our chiefs expect that a clear majority of claims will be worth more than the cap, federal projections to the contrary that seem to underestimate the value of claims. Today the ICC says that of 120 specific claims they have dealt with, only three were worth less than $7 million.

The Atlantic Policy Congress of First Nation Chiefs has reviewed the joint task force report of 1998 and believes the model bill in the joint task force report of 1998 shows what can and should be done in a constructive and positive spirit.

The Atlantic Policy Congress of First Nation Chiefs calls on the federal government to return to the substance and spirit of the joint task force report and resolve any remaining issues in the spirit of partnership, fairness, and justice.

New legislation needs to be created that includes a genuinely independent and effective system to resolve specific claims. We recommend to you here today to consider a more constructive approach.

First, it would ensure Canada's unpaid, lawful obligations to first nations communities are paid. The federal government would live up to its general commitment to fiscal responsibility and debt reduction. First nations communities would achieve both justice and the practical means to promote their economic and social development.

Non-first nations businesses would benefit from the increased spending and the investments from first nations. The ongoing source of dispute over the past would be removed, fostering an atmosphere for joint cooperative efforts at building a better future for all first nations.

The promises of the federal government in the red book would be fulfilled, and the government would create a legacy in this area that would benefit first nations and all Canadians and serve as a model for the international community in resolving unpaid debts to aboriginal peoples.

The Atlantic Policy Congress of First Nation Chiefs would like the Government of Canada to seize the opportunity to work together on creating a new bill aimed truly at providing a just, speedy, and fair settlement of outstanding federal legal obligations.

The Specific Claims Resolution Act will merely continue the wrong that has been committed for over a century by imposing more inappropriate systems and regimes on people. Instead, the

government should be working with first nations and concentrating on how to remedy the damage done and support first nations governmental development.

Was there meaningful consultation on this bill? The short answer is no.

We encourage this committee to engage in a meaningful discussion and consultation about what really works in terms of both strategy and priorities to achieve a mutually positive result, but mostly for the benefit of first nations peoples.

(1550)

We do not wish to spend any more time than is necessary in pointing out the flaws in Bill C-6. In our view, it is flawed due to the fact that Canada creates institutions that serve the interests of the federal government and it does little to address the real issues that could produce desired results for the purpose of achieving and enhancing first nations development.

In conclusion, clearly there are mutual interests and goals between the first nations people and the Government of Canada. A partnership approach, coupled with an intention to address other issues, such as the treaty relationship, aboriginal rights, and social and economic development, is essential. We encourage the members of this committee to think long-term.

Thank you for your time and attention. Now we'll be pleased to answer any of your questions.

The Chair: Okay, thank you very much for your presentation.

Colleagues, I thank you for your cooperation. As we all know, we asked and put in writing that it be five-minute presentations, and you agreed to allow it to go on. We have time for three, three-minute questions--and I apologize to my colleagues on the government side--and when we say three minutes, it means three minutes for the question and the answer, at which time I will be right on the second to cut off. So I hope the questions will be brief, and the answers also. That's the time we have left.

Mr. Vellacott.

Mr. Maurice Vellacott (Saskatoon—Wanuskewin, Canadian Alliance): Off the top here, I guess what rather intrigues me about this particular bill is the fact that we have a cap set so very low, based on what has been settled, some 120 claims and only three under that $7 million cap, as I understand, at least so reported by the ICC.

Do you have any conjecture or guesstimates as to why we have such a low level, when most settlements clearly exceed that level? Why do we have such a low cap on it? Do you have any speculation on that?

Mr. Peter Barlow: I believe the Government of Canada is trying to limit its liability in terms of what claims and what the value of those claims should be, thereby reducing any monetary awards that would be put forward to any first nations in terms of settling any land claims. We have a concern that the government is low-balling on this bill. What we would be looking for more appropriately would be a return of said lands back to the first nations, because we do not have an adequate land base in the Atlantic region for our first nations people.

Mr. Maurice Vellacott: So for the larger claims, then, you clearly have no other option--for many of the claims, with court costs and so on, anything that gets over $7 million.... So the only access would be to the courts, I assume. You'd have to be going that route. If in fact it's anything over $7 million, you'd have to be taking it to the courts.

Mr. Peter Barlow: The proposed legislation, as it stands, would probably have to go before the Supreme Court of Canada, where you have the Government of Canada sitting there as the person filing a claim and then deciding whether the claim is valid. That, on its own, would be something that would have to be decided by the court. We would look at an independent adjudicator, probably from the UN or something, to rule on that in terms of what is fair and right. However, under the proposed legislation as it stands now, we feel we have no other alternative but to challenge this in the Supreme Court of Canada, should it pass.

(1555)

Mr. Maurice Vellacott: The bill itself, Bill C-6, in the Supreme Court of Canada, based on fiduciary responsibility or those kinds of things...?

Mr. Peter Barlow: Yes.

Mr. Maurice Vellacott: Going along a slightly different line, you mentioned this body not following some of the JTF recommendations, along a number of lines. If in fact there were a scenario where it was jointly approved according to JTF, that's really what you're after. You want that back in the bill. You'd like something like that?

Mr. Peter Barlow: Yes, that would go back to a mutually beneficial arrangement between the first nations and the government. We don't want to be butting heads with the government continually; we want to work with the government. What has been done in the past does not work, yet we're being force-fed the same system we've had to deal with over the past 500 years. That didn't work.

The Chair: Thank you. I have to interrupt.

Mr. Proctor.

Mr. Dick Proctor (Palliser, NDP): Thank you very much, Mr. Chair, and thank you for your presentation.

In your presentation you said you were very distressed at the low rates of settling land claims in Atlantic Canada, and you indicated that at that rate it would take some 150 years to resolve the outstanding claims.

Yesterday when Minister Nault was before the committee he was arguing that the tribunal process was indeed a way to speed up the land claims settlement situation. I'm wondering whether in your review of this proposed legislation you can see any rationale for optimism along the lines the minister suggested to us yesterday.

Chief Lawrence Paul: No, I don't really see any relief. I think Bill C-6 is just going to lead to more distress for the first nations on this specific claims bill.

It's got to be bona fide. We have to have our input into this bill. First nations need to have their input. You mentioned earlier something about a cap of $7 million. That's completely ridiculous. In dealing with the bureaucracy over the last 30 years, I have seen that when a bill comes forward, of course, members of the House of Commons or particular ministers are going to promote that bill as the best thing that ever happened to the native first nations, but that's not the truth.

Even yourselves, as a committee, can see many flaws in this Bill C-6--

Mr. Dick Proctor: I think we can see many flaws, Chief, and yet at the same time we're having this marathon session today that's going on for several hours. As I understand, we're going to be looking at this bill clause by clause tomorrow. There doesn't seem to be any relief in sight in slowing down this particular legislation at all. But I take it that's what your group is

asking for, that there be major revisions made to the bill. Is that a fair summary of what you're saying?

Chief Lawrence Paul: Yes, that would be a fair summary.

The Chair: Mr. Mark.

Mr. Inky Mark (Dauphin—Swan River, PC): Thank you, Mr. Chair, and thank you for your presentation.

I have one quick question. What kind of consultation would you have expected from the minister before he put this bill together? What were your expectations?

Mr. Peter Barlow: We were hoping it would have been done region to region with the first nations leadership and the people given a chance to see what the wants and needs of first nations people are within the first nations communities. Right now our land base in many of our communities in eastern Canada is inadequate.

To give you an idea of what it is--and this is a hypothetical situation--if you take a dog and put it in a pen, the dog has lots of room in that pen. You drop another dog in that pen. There are two dogs who are going to fight to see where the dividing line is in the pen. You continually keep dropping dogs into this pen until it's overflowing. This is what the first nations communities are like now. We have so many people on small plots of land--

(1600)

Mr. Inky Mark: I don't want to interrupt you, but you are using my time--

The Chair: Order, please.

Mr. Mark has the floor.

Mr. Inky Mark: I apologize for interrupting, but as the chair said, three minutes go very fast.

When did you first learn about this bill?

Mr. Peter Barlow: Possibly about six months ago. We were operating under the assumption that there were going to be changes and the joint task force was looking at how these changes were going to come about. All of a sudden the minister throws this bill out and says this is going before the House.

Adequate consultation was not done with the first nations leadership, let alone the first nations people in our communities, whom this bill is going to affect very adversely.

Mr. Inky Mark: If you look at the bill, you know it's modelled after the joint task force bill at the end of the report. I know the contents are not the same. Rather than staying where we are right now, since, as the chief said, it took 30 years to settle 10 settlements, would you take the chance to have this bill rather than no bill?

Mr. Peter Barlow: I'd take the chance of going to court before I would put anything on the table under this bill.

Mr. Inky Mark: Thank you.

The Chair: I thank the Atlantic Policy Congress of First Nation Chiefs for their presentation.

Now we're back to Ottawa, and I welcome to the table the Algonquin Nations Secretariat, Grand Chief Carol McBride, and Peter Di Gangi, director. Welcome, and please, a five-minute presentation.

Grand Chief Carol McBride (Algonquin Nation Secretariat): Just to begin with, the notice we received said anywhere from five to ten minutes.

The Chair: We'll let you go for ten minutes--

Grand Chief Carol McBride: But I don't want to waste my time here.

The Chair: We'll let you go for ten minutes. In the meantime, we'll clarify the notice you received.

Grand Chief Carol McBride: Members of this standing committee and others, good afternoon, and thank you for giving us a chance to speak with you today. First, I want to welcome you to the homeland of the Algonquin Nation. We are meeting here on unceded Algonquin aboriginal title lands, which include the city of Ottawa.

But that story is for another day. Right now I want to speak to you about Bill C-6. The Algonquin Nation Secretariat represents the three communities of Wolf Lake, Timiskaming, and Barriere Lake. All of us have potential specific claims based on federal lawful obligations. Bill C-6 stands to have a dramatic effect on the legal interests of our communities and our prospects for settling this type of claim.

According to the existing federal policy, specific claims relate to the Crown's lawful obligations. High on that list is the obligation to manage and protect our lands and our assets for the benefit of future generations, as a fiduciary. Our member communities have to deal with very different situations, but what we all have in common is a long history of abuse at the hands of our trustee, the Government of Canada.

I would like to explain to you a bit about my home community, Timiskaming. To give you an idea of how specific claims impact on us, we only began our research in the 1990s, but it surely has been an eye-opener.

Our reserve was first surveyed in 1854 at almost 70,000 acres. Between 1875 and 1939, we lost 92% of our reserve lands in a series of re-surveys and surrenders. Almost every transaction we have looked at involved collusion between Indian agents and local settlers, or an outright breach of existing regulations and procedures, or both. Regrettably, I have to report to you that in more than one case members of Parliament were involved directly in the transactions. Today we are left with less than 10% of the land that was reserved for us, and the trust funds that were supposed to provide capital for the future have been exhausted by a century of federal mismanagement.

At Wolf Lake and Barriere Lake you would hear different stories, but with the same results. Over the past 150 years, our assets have been stripped and we are left with an empty cupboard. Our request is legitimate when we say we want Canada to live up to its lawful obligations to us. You would think we could get an accounting from our trustee.

Certainly the Minister of Indian Affairs puts a lot of emphasis on accountability for the first nations, but the department won't give us an accounting for its management of our assets. Instead, we have to research and prepare claims under the existing system, which is controlled by the same party who caused the claims in the first place.

None of this sounds very encouraging. That's why we have been seeking positive solutions by working to obtain an independent claims body that would have the authority to address the federal conflict of interest. We were encouraged when the federal Liberals promised an independent claims body in their red book in 1993. We were also encouraged by the cooperative policy work that was carried out between the federal government and the first nations through the joint task force process, which led to the JTF final report in 1998.

The result was something that was fair, transparent, and independent, but after that Canada made a decision to abandon the JTF report and the principle of cooperative policy work. Instead, it has chosen a unilateral approach that only entrenches the conflict of interest that we tried so hard to remove. In the process, the federal government also made a decision to abandon meaningful consultation. The result is Bill C-6.

In the very short time allotted, I will try to explain some of the problems you will need to consider. There are two main areas of concern. One is about the content of the bill and the other is about the process.

First and foremost, Bill C-6 will not create an independent body for resolving specific claims. The Minister of Indian Affairs will still decide whether or not to accept a claim for negotiations. There are also serious concerns about the appointment of commissioners. The defendant will still control almost every aspect of the claim's progress through the system. Really, the word “independent” should not even appear in the bill because that is a serious misrepresentation.

 (1605)

Second, Bill C-6 will not result in a system that is fair. The bill proposes to cap claims eligible for tribunal rulings at $7 million. We have reviewed our member communities' potential claims, and I can tell you that some of the most important ones could be over the cap and outside the jurisdiction of the independent tribunal. So the communities that have suffered the biggest losses will be denied an independent hearing. The federal government will remain able to judge itself on the biggest cases of theft and mismanagement. We don't believe this is fair--far from it.

Third, the bill would result in narrowing the existing policy by eliminating a number of claims that currently fit within the system. This has a special application to Quebec, where we have treaties that did not surrender land and where unilateral Crown undertakings like the Royal Proclamation of 1763 are of vital importance.

Our assessment of Bill C-6 is that it is so badly conceived and so poorly drafted that it can't be fixed by amendment. The reality is that the bill will do nothing to address the real problems that

are there. Instead it will entrench in legislation some of the worst aspects of the existing process and set us back at least 10 to 20 years. Is this the kind of legacy you want to be a part of? To be honest, it would better to keep the status quo, bad as it is.

Now to address our concerns with the process to date. You need to know that there has been no meaningful consultation on Bill C-6 or its predecessor, Bill C-61. Instead, the federal approach has been confrontational and unilateral. We find it shocking that our trustee would proceed on such a venture without even bothering to consult the beneficiaries, especially since the result will benefit the trustee to our prejudice.

Flowing from this, we have grave concerns about abuse of the legislative process. The bill stands to have a direct and negative impact on our ability to have the federal government fulfill its legal obligations to us. Yet it has been rushed to committee, and now it seems as if you are anxious to send it back to the House.

We appreciate the chance to present you with some of our concerns today, but the five to ten minutes you have allotted is not enough for us to provide you with our views on some very complex issues. More importantly, from what we understand, there are 20 or 30 other organizations and first nations that have not been given a chance to appear, even though this bill has a direct impact on their legal interests.

As a member of Parliament you have a duty to act in the public's interest and to maintain the integrity of the legislative process. You are supposed to be a check on the executive branch. With regard to a bill such as this, you have an added duty, because it stands to impact directly on the Crown's legal obligations and liabilities and also the government's fiduciary duty to us. But from what we have seen so far, it isn't clear you take those responsibilities seriously. I wrote to all of you three weeks ago urging you to allow the time that would be needed to hear the views of the first nations and let them have a chance to speak with you directly.

(1610)

Last week I had the opportunity to have a breakfast meeting with the chair of this committee and some of your staff people. I was shocked by the attitude that had been taken, that three days of hearings and only one day for those directly affected was more than enough, and that this bill wasn't important and didn't require careful study, compared to other bills.

I can assure you that this is very important to the first nations, because it affects their future and in some cases their survival. Maybe you would feel different if it was you.

The government has decided to overload the legislative agenda with a package of first nations legislation. This is no excuse to fast-track bad or prejudicial bills, but it seems to be what's happening with Bill C-6.

As committee members and members of Parliament, you can make a difference. You don't have to make the same mistake as that made in the past. I respectfully request that you do the right thing and recommend that this bill be withdrawn, and further, that the federal government

sit down once again with the first nations to develop an approach that is consistent with the JTF final report and with the principle of fairness and independence. I hope you take this position as a committee and as individual MPs in the weeks to come.

In the meantime, please consider setting aside additional time for hearings to listen to the situations of other first nations and seek the views of other parties who can provide you with an independent assessment of the bill and its implications.

Although I am here speaking on behalf of the Algonquin Nation Secretariat, I have also been asked to send you a message on behalf of the chiefs of Quebec. As we speak, the Assembly of First Nations of Quebec and Labrador are meeting in Quebec. They have considered Bill C-6 and the other bills in Minister Nault's sweep of legislation.

I have been asked by the regional chief, Ghislain Picard, to advise this committee that the Quebec chiefs have rejected all of the legislation proposed by Minister Nault, including Bill C-6. They will be forwarding you the resolution in due course.

I'd like to take this time to thank you for your time. We have included some attachments for your review, including a resolution from our council of chiefs. I would request that my presentation, with all annexes, be part of the record.

Thank you very much. *Megwetch*.

(1615)

The Chair: Thank you very much for your presentation.

We will complete the first round by allowing Mr. Finlay three minutes.

But before we do that, I take exception to it being said that I said that this is more than sufficient consultation and that this bill is not important. That's not what I said, and it's not my position.

Grand Chief Carol McBride: That's the impression you left me with.

The Chair: I shouldn't leave impressions. You should quote what I say.

Mr. Finlay, please.

Mr. John Finlay (Oxford, Lib.): Thank you, Mr. Chairman.

It's good to see you again, Grand Chief. I hope we're being properly seen across the country. We'll be right through to Vancouver before night.

You mentioned that 92% of your reservation lands in about 1890 were dwindled, frittered, stolen, and so on. I think that's a situation that a lot of first nations face, and I think that's one of the very good reasons why we want this independent claims commission to try to straighten some of those things up.

In your experience, how successful are negotiations under the current specific claims process, since there is a current process and what we're trying to do is amend it? Maybe you would give us an idea of how successful it has been, in your opinion.

Grand Chief Carol McBride: First of all, we have not been to the negotiation table as yet, but maybe I could let my technical help respond to that. He is very much informed of what is going on, and he has looked at the bill, in and out. I'll ask Peter Di Gangi at this time to give specifics, since the band has not been at the negotiation table.

Mr. Peter Di Gangi (Director, Algonquin Nation Secretariat): Thank you, Grand Chief.

To answer your question, Mr. Finlay, Timiskaming hasn't submitted any specific claims yet or gone to the negotiation table, because they're still involved in the research phase. But one of our member communities, Wolf Lake, has been involved since 1996 in trying to get a claim resolved. Starting in the fall we had to ask for recourse to the claims commission that exists today, because of a lack of success at being able to address the pertinent issues directly with the federal government. There was a need in that case to bring in a third party, because things weren't going well, just sitting down with the federal government.

Mr. John Finlay: Thank you very much.

The Chair: There are 15 seconds left, not enough for a question and answer.

Mr. Vellacott, you may take three minutes, please.

Mr. Maurice Vellacott: This has been expressed already by some of the witnesses we've had, and I think you've alluded to it as well, Carol: the issue of individuals being appointed solely by the government. I know yesterday the minister was stating the position that those order in council appointments work well, and we get very competent, capable people, so there's nothing wrong with that particular process. I'm not sure everybody else would hold that view. Do you have a concern about the orders in council, or do you think we can get good, and wonderful, and objective, and fair people, perceived to be individuals who would see and handle this whole thing fairly? Or are you concerned about patronage and those aspects?

Grand Chief Carol McBride: You have to understand, we live on what we've seen in the past, especially with us doing our research as it is. When you have people—Indian agents, members of Parliament—who have been directly involved in the taking of our lands, how can we have that trust?

Maybe you'd like to add something, Peter.

(1620)

Mr. Maurice Vellacott: I guess my question is, do you have no sense that, maybe excluding all of those people—which I guess pretty much knocks out most of us around the table and beyond—there is a possibility to have fair-minded people appointed through orders in council? You're skeptical, and I guess I have to confess I am as well. Is there a way you can draw up a job description? You want the input directly, and a direct-approval, joint process, I gather.

Grand Chief Carol McBride: Definitely; that, to me, would only be the fair and equitable way to go. We have to be involved in the process. We have to have our—

Mr. Maurice Vellacott: Is your big concern that it's going to be just simply incompetent people, that they will be too much beholden to the government because that's how they were appointed, or just that they're out of their depth? What is your biggest concern?

Grand Chief Carol McBride: It could be a combination, maybe, of all three. Right now, the way I feel--and we have facts--is it would be the second. We don't know who these people would be. They would be protecting the government, or they would be influenced by the Government of Canada.

Mr. Maurice Vellacott: Right, and they're supposed to be fair and objective, and you would have questions about that.

Grand Chief Carol McBride: That's right. And we haven't seen it, and we would like to see proof that this process would be that way. Right now, there's nothing that will say that.

Mr. Maurice Vellacott: Right; they're supposed to look at the evidence objectively and fairly, not really taking either side per se, but in a pursuit of justice and getting at the proper resolution.

The other quick question—

The Chair: The time is up.

Mr. Proctor.

Mr. Dick Proctor: Thank you very much.

Grand Chief, in your presentation you mentioned the joint task force and stressed that it needed to be fair and independent, and you were obviously disappointed that the government has chosen this unilateral process. Do you have any speculation as to why you believe they've ignored, in effect, the joint task force and gone in a totally opposite direction?

Grand Chief Carol McBride: It's probably to get away from the duties they had towards us. I believe the end result is they should have worked with the joint task force. Why do these joint committees go on, when whatever they get from them they don't use? I can't understand that. The same is the case with the royal commission report: why is it being shelved most of the time? These are processes we took part in. It seems whatever the Government of Canada doesn't want to hear they push aside. They go at it by what's more beneficial to them.

Mr. Dick Proctor: You heard me ask the last group this, and I'll do it with you. The minister says this will help speed up the process, that land claims have taken far too long; the average settlement has been five years. Do you have any confidence that that will be the case?

Grand Chief Carol McBride: I don't have any confidence right now with the way the bill is written. Maybe, Peter, you can talk on that. We haven't had the experiences yet to try to get into the process, because as I mentioned, we are at the research level.

Mr. Dick Proctor: While you're answering that, and this will be my last question, you mentioned that some of your most important claims are over $7 million. I'd just like to know how many outstanding claims you have.

Mr. Peter Di Gangi: To answer your first question, I think it's useful to look back at what was said when the existing Indian Claims Commission was established in 1990-91. At that time it was said that this commission was going to speed up the resolution of claims. That was the promise, and I think at one point Prime Minister Mulroney, in the “four pillars” speech, said they were going to settle all specific claims by the year 2000. Well, we're in 2002 now. I think the evidence clearly shows that the commission has not been able to speed up the process, because the government is still interested in avoiding and delaying. Without adequate resources dedicated to research, negotiations, and claims settlements, how can you possibly speed up the process? Without additional resources, it's impossible. How are you going to do it, except by discounting claims and eliminating them, which is part of what this bill tries to do?

In terms of the number of claims of our member communities, for Timiskaming First Nation alone you're talking about approximately 40 surrenders spanning the years between 1898 and 1939, and approximately four or five very problematic re-surveys, as well as the management of trust fund accounts and land sales. Every single one of those transactions, unfortunately, based on what we've found to date, is suspect.

(1625)

The Chair: Mr. Mark, please.

Mr. Inky Mark: Thank you, Mr. Chair, and again, thank you for being here today. I just want to go back to the ICC. The ICC was here yesterday, and they gave us a lengthy presentation. The question relates to independence. What is your evaluation of ICC at this point in time, in terms of how they do their job?

Mr. Peter Di Gangi: Given the narrow and limited mandate they've been given to work with, I think they've tried to do their best. I think the fact that they are appointed by the federal government may hamper their ability in some ways. At the same time, I have to say that we have some claims right now that are before the commission, and I really do not feel it would be appropriate for me to speak any more on that point, given the fact that we have business before the commission at this time.

Mr. Inky Mark: If your position is that we should be scrapping this—the ICC said it's probably, however small a step forward, a step forward from where we are today—what would the advantage be of scrapping it? If you were not able to make amendments that would change the tone of the bill, and then if we scrapped it, would we go backwards in terms of settlement? Or do you think we're going to go backwards regardless of whether we have the bill or not?

Grand Chief Carol McBride: Maybe you can answer. I just wanted to make a comment on that. I believe if this legislation goes through, as bad as it is, it's going to do more damage. I think if it was withdrawn, and we had the first nation and this committee maybe brought back, or if we came together in some way to work together so that we can go forward.... This is not going to be an easy process, the way it is, because there are so many first nations across the country who are not for Bill C-6, and I don't see them buying into this process. I think if it had been done jointly, with more consultation, the result would have been a lot better.

The Chair: Thank you.

Mr. Godfrey.

Mr. John Godfrey (Don Valley West, Lib.): This would be a follow-up to Mr. Mark's question. If we have three choices, that is to say, the ideal, which is the proposal of the joint task force, the current situation, and then this proposed change, and if it could be indicated that while the proposed change is far from ideal--and the minister was really the first to admit it in his own speech yesterday--but the result of bringing it through would have the two following consequences: first, that claims would be processed faster and more efficiently with less fuss; and secondly, as a result of that, there would be more pressure to produce more money quickly from the federal government above the $75 million.... If those two points were to be proven--and of course it's impossible to prove until you do it--would that, in your view at least, represent something of an advance over where we are, or is it your fear that as flawed as the current thing is, this proposal is guaranteed to be less efficient and we would have even less money flowing over the years than if we just stuck with the existing regime?

(1630)

Mr. Peter Di Gangi: The grand chief has asked me to answer that one. I think it's pretty much a guarantee that the process would be less efficient, because you basically have the minister and the Department of Indian Affairs still being able to decide whether or not a claim is valid. But you have an extra level of bureaucracy, so the claim has to be submitted to this new body first and then transmitted to government.

You could drive a Mac truck through the legislation in terms of how many opportunities there are for the minister or staff to delay. And without additional resources for Justice lawyers and specific claims analysts, I don't see how you're going to process claims more quickly.

The answer to the first part of your question is it won't be more efficient or faster. In terms of whether they'll be able to leverage more money later, that's really a hypothetical question. It's very hard to speculate on that one.

Mr. John Godfrey: This is a loaded question. If the minister were of a mind to expedite the process--and I'm just speaking about a minister, not this specific one--would this new process and procedure give a minister who had the will tools to speed up the process by making it more efficient or being able to go more frequently to Treasury Board for claims above the $75 million? If there were the political will to use the new legislation, could it in fact be more efficient?

Mr. Peter Di Gangi: If it all depends on the minister, then it's not independent.

Mr. John Godfrey: That wasn't my question. My question was, if there is political will, given the existing tools, would any minister be frustrated with the existing situation, regardless of goodwill, versus a new set of tools that with the right political will could notionally get rid of some of the institutional blocks that are clearly there?

Mr. Peter Di Gangi: Again, if it comes down to the political will of the minister of the day, you're still dealing with conflict of interest potentially and you're still dealing with something that isn't independent. I'm sorry.

Mr. John Godfrey: I was asking to make a comparison between two situations, but I guess we can't do that, so....

The Chair: You did say it was a loaded question.

Mr. John Godfrey: Of course it is.

The Chair: I want to thank the representatives of the Algonquin Nation Secretariat, Grand Chief Carol McBride and Director Peter Di Gangi, for their contribution.

We now welcome, by video conference back to Toronto, the Anishinabek Nation, Grand Council Chief Vernon Roote.

Are we ready in Toronto? The grand chief is not there.

Is the Six Nations of the Grand River in the room here ready to go right now? If you wish, we can hear from you right now. Are you present and are you prepared to present right now? We will do that and we will offer your half-hour to the Anishinabek Nation. Please come forward. We appreciate your cooperation.

We welcome to the table Chief Roberta Jamieson from the Six Nations of the Grand River.

Can we ask how long your presentation is, approximately?

Chief Roberta Jamieson (Six Nations of the Grand River): I have tried to keep within your request, knowing there will be an opportunity for questions and answers.

Bonjour. Good afternoon. *Sekoh*, in my language, and in another language spoken at Six Nations, *sge:no swa:gwego*.

I am joined by Councillor David General, who is the portfolio holder for lands at Six Nations, and Jo-Ann Greene, who is our director of lands research.

I am here so that the people of Six Nations of the Grand River territory can make their feelings, opinions, and strong opposition to Bill C-6 known to you as members of Parliament and this committee.

I ask first that a member of the committee move that our full submission be attached to the minutes and evidence so that it can be read by other first nations, by committee members at their

leisure, in French as well as English, and so that it can be read by future historians who will record the events of this era of our colonial relationship with Canada.

I want to use the first part of the five minutes--our people have been allotted five minutes--to comment on the woefully inadequate and insulting position the committee and we find ourselves in, and in the remaining 150 seconds comment on the bill itself.

In 1982 and 1983 I was an ex officio member of this committee. In those days I sat with members of all parties and heard hundreds of witnesses from every part of Canada. That committee's report, known as the Penner report, stands today as a blueprint of a house for first nations in Canada--a house for which construction has not yet begun. The comparison between the process afforded then and the process afforded now is stark and frightening. After a decade of consultation to develop jointly a claims process that can meet Canada's own standards, the government proceeded unilaterally to table the bill before you and now wants you to railroad it through the House.

We are constantly getting lectures from the minister about accountable and transparency. You have the minister's bill before you, and he again proposes to give us a high standard of democracy. This bill and this process make those lectures a very sad joke. If this bill becomes law, it will be seen for what it is--a unilateral imposition of the federal government passed over the strong objections of the very people the bill is supposed to benefit.

Well, sadly, we've come to expect this of the government. However, we have never before experienced this kind of treatment from Parliament. The legitimacy of any democratic institution depends upon the people affected by it, and the people affected by it accepting its legitimacy. I am frankly fearful about the consequences, as first nations, especially youth, say--and they say to me--“Parliament has no respect for us; why should we have respect for Parliament?”

The same question of legitimacy can be raised about the minister's proposal. Unless it is seen as a truly independent and jointly empowered mechanism, it will not be seen as legitimate by our people or indeed by Canadians.

(1635)

Bill C-6 cannot be saved by amendment, particularly at second reading. It is fatally flawed. Think how you would feel if you were first people of this land, had a claim against the government, and were offered this bill. The process lacks independence and thus credibility. The government is still the gatekeeper, with control over how much money it will spend to meet its lawful obligations in any given year.

The minister still controls the entire secret process, before he allows a claim to even get to the claims body. He also controls appointment and reappointment of members. He is not even required to provide reasons for rejection of claims. The body reports to him. The reports do not come to Parliament or to the people of Canada, and at the end of several years only the minister evaluates the process.

It's one thing for government to have used a flawed policy for all these years, but by converting policy to legislation, it now must submit to the examination of the courts, and this bill cannot pass muster. It offers to first nations substandard justice, supposedly to remedy injustice. In the guise of creating a long-awaited independent special claims body, this will in fact enhance the existing first nations' apprehension of bias about both the process and the intention of the Government of Canada to treat our people honourably.

A second consequence, if this bill becomes law, is that the federal courts will be flooded with hundreds of claims that are now in the system. Most claims, despite the minister's inaccurate projections, will not fit either the process or the limits set out in the bill. If Parliament accedes to the minister's wishes, Canada will need more federal judges and more courtrooms to hear hundreds more claims. Justice department lawyers use every technicality in the law to attempt to defeat righteous claims. What a spectacle to show the world.

Our own Six Nations claim has already been in the courts for seven years. It is a wonderful example of why the existing system doesn't work. I say to you that Bill C-6 will not fix it; indeed, it will worsen the situation. Sadly, I don't have time to tell you about the Six Nations claim. I invite you to read our submission in detail.

I would like to tell you about the toll the delay is taking, in human terms, because of the lack of settlement of this claim, and I hope somebody will ask me a question so I can. I don't know how Canada can hold its head up in the international community, if this claims tribunal is the best it can hold out to provide justice to the first peoples of this land. This does no honour to the Crown nor to Canadians, and it is a sad and tragic day that this bill is even permitted to be debated.

If there's a viable alternative, why aren't we exploring it? What happened to the royal commission report? Canadians spent $58 million on that. Why are we spending all that money? We will also spend it unnecessarily in the courts, which won't be able to handle the flood. Ultimately, if our people don't go to the streets or the courts, you'll find them in the international arena pressing their claims.

This committee will do Canada, this generation, and the next a great favour if it delays returning this bill to the House until this session of Parliament has drawn to an end. There is no other answer.

I fear my time has come to an end. I have much more to offer in detail on the bill, as well as overall substantive comments, and in response to questions I'd be very happy to offer it.

(1640)

The Chair: Thank you very much for your presentation.

Next, for a three-minute round, is Mr. Vellacott.

Mr. Maurice Vellacott: My first question will maybe give you some opportunity, Roberta, to respond to the particular Six Nations claim. I've been down to your very progressive first nations and have seen and admired some of the things that have occurred there at Six Nations.

My question is on the matter of specific timelines. What has caused your frustration on the timelines? Is there any improvement on that in Bill C-6?

Chief Roberta Jamieson: Our experience has been very poor, and, no, the bill will not correct it. In fact, it will put in the minister's hands control of all delay. Between 1974 and 1994 we filed 27 specific claims against the Crown seeking resolution. To date, only one was resolved. A further four were validated as outstanding lawful obligations and recommended for negotiation. It became quite apparent to Six Nations council then that a satisfactory resolution would not occur in the negotiations because of the approach being taken by the federal negotiators--arbitrary discount factors were introduced, a “take it or leave it” attitude, and a prerequisite for extinguishment of our children's rights to the land at issue. These were most offensive requirements that just wouldn't permit us to continue.

Canada's negotiators then said to us that if the negotiation terms and lack of creative solutions were a problem for us, there were always the courts. So Six Nations went to court. The department closed our 26 files, including the validated claims. However, the rest of them weren't rejected. That meant we were systematically prevented also from taking them to the claims process.

We have two more claims we filed in 1995, which the branch refused to review. They also took the opportunity to cut off all funding for all research to Six Nations, whether we were using it for the court case or not.

Of the 10 municipalities in our tract of land--our original tract--which is 950,000 acres, we now reside on something less than 5% of that land, about 45,000 acres. We are still waiting for an accounting 20 years later as to what happened with the rest of that land. The area municipalities are anxious that this matter be settled. It's inhibiting their development. It is causing great uncertainty for their landowners.

We've signed the Grand River Notification Agreement that says we will cooperate, we will alert one another as we plan developments, but the reality is the problems are there. They're under the surface. They're festering. They're getting worse. And they can't move forward with certainty.

As a community, we at Six Nations are 21,000 members, the largest in Canada, with incredible needs. Our submission outlines the needs in detail. I have 1,584 families waiting for housing at the current time.

(1645)

The Chair: Thank you.

Mr. Proctor.

Mr. Dick Proctor: Thank you very much, Ms. Jamieson, for a very eloquent presentation.

Assuming this thing is going to get railroaded through, as you indicated in your opening remark, what will the reaction be of Six Nations in terms of responding? Will you simply not deal with them at all, not deal with the tribunal, not deal with the independent claims commission? How do you think your group will respond?

Chief Roberta Jamieson: Well, we're in court and we'll stay there, because this offers us nothing. You've seen the cap of $7 million, from which you deduct legal and negotiation fees. This won't touch our claims, and virtually all the claims across Canada, I would suggest to you. So it's not an answer. It's not a credible process. It really doesn't offer a solution for Six Nations. What offers a solution for us is a sincere willingness to address our outstanding claims, to sit down with us, to work in partnership through a process involving a neutral person chairing the negotiations. That's what would work for Six Nations outside the court arena, and this process doesn't offer that.

Mr. Dick Proctor: As you've indicated, you've had a lot of experience here on this issue and other issues. What is your perspective as to why the government is driving this process in the manner they are, rather than going through the joint task force or following the recommendations of “Gathering Strength”, which should be renamed now, “Gathering Dust”?

Chief Roberta Jamieson: I think there is a fundamental lack of political will to deal honourably with our people. I can't say it any better or simpler. I'd rather not believe that, but I think that is what is being demonstrated over and over. I see, sadly, that the paternalism and the colonialism that I had hoped we'd put behind us when the Constitution enshrined our rights keeps rearing its ugly head.

I would hope that Canadians would have had a better opportunity to see this committee's work, to hear about this bill, to hear our voices, because I think they want our people to be dealt with fairly and justly. Canadians want that. We're making it our business to educate the public,

so they can hold their government accountable for how they're treating the first peoples of Canada.

(1650)

The Chair: Mr. Mark.

Mr. Inky Mark: Thank you, Mr. Chair.

Thank you for being here.

I feel the same way. The comment was made about being overloaded with legislation. As you know, the minister has an armful of legislation to come before this committee.

Having served on the Penner commission, could you tell this committee why you think it was a good process, which we should perhaps be following?

Chief Roberta Jamieson: It was a process that allowed representation on the committee to be appointed by first nations. It encouraged witnesses to come forward at an early stage, in a process that had credibility. It allowed members to talk at committee, and in the off-hours, to understand the evidence being presented. It allowed the opportunity to participate in the writing of the report.

It allowed so much while we travelled. It was quite a process; we went to the people. We knew we had to demonstrate to be—and be seen to be—a credible process. We knew what that meant. If it meant sitting until 1 a.m. hearing witnesses, that's what we did.

I think it just inspired a lot more confidence in the exercise all around. Remarkably, we were able to come up with a unanimous report; all parties on the committee endorsed the report. It was quite incredible, at the time.

If you're asking me at this point—at second reading—I hope this committee can do as I've suggested: delay, withdraw, and start again. But it looks as though...I hope I'm wrong.

Mr. Inky Mark: Do you believe the cap will have an opposite effect? Perhaps you could rationalize why you believe the government has put that cap on. What are they afraid of?

Chief Roberta Jamieson: It's control; it's control, pure and simple. Do I think it will discourage people? Absolutely. They'll go to court. Why spend your money trying to negotiate when you know that the top limit of what you might ultimately be rewarded would at best be $7 million—minus what you're spending on negotiation? It is a disincentive. It's a disincentive to negotiate; it's a disincentive to enter the process.

The sad part is that a lot of people don't have the money to sustain the court action. We can only guess where they will go. But they will be heard.

The Chair: Mr. Godfrey.

Mr. John Godfrey: Welcome, Ms. Jamieson. I'm delighted to see you here.

I would like you to know I was one who favoured a repeat of the Penner process. I know how much you were involved in that the first time around.

From everything you've said, I would gather that if we had to make a choice between doing this bill and doing nothing—in other words, letting it fail—you would prefer we go with the current regime, imperfect as it is, over what's proposed here. I don't want to put words in your mouth. If this is the choice.... I'll let you answer it.

My second question is quite specifically on the notion that we're narrowing the grounds for specific claims. Things that were allowed under the previous regime—flawed as it was—would not be allowed now. I guess my question goes like this: of the claims that have been settled to date, have some of them been settled on the wider grounds of the previous regime, which would now be excluded? In other words, do you know of claims settlements that have been settled but would not now meet the definition under this proposed legislation?

Chief Roberta Jamieson: Yes.

Mr. John Godfrey: Can you give us some examples?

Chief Roberta Jamieson: One of the claims we were involved in.... Our claim starts with the Haldimand Proclamation in 1784. Bill C-6 narrows the criteria; it excludes things like claims based on the laws of Canada, which were originally U.K. statutes or royal proclamations. So the bill does circumscribe it much more.

(1655)

Mr. John Godfrey: The claim you refer to was validated...?

Chief Roberta Jamieson: Under the specific claims policy then.

Mr. John Godfrey: Okay. Thank you.

Chief Roberta Jamieson: If you say the choice is between this or the status quo....

Mr. John Godfrey: Horrible choice, I admit.

Chief Roberta Jamieson: It's tragic when the first people have to take the status quo over regression, when what we all want is to move forward. That's an unconscionable choice for me to make, and I won't make it for my people because neither is acceptable.

Mr. John Godfrey: All right. Thanks.

The Chair: Mr. Finlay, two minutes.

Mr. John Finlay: Thank you, Mr. Chairman. I just want to remind my colleague and the witness that the Penner committee was a special committee doing a study. It was not a standing committee reviewing legislation, as we are. If we had been put in the position, Mr. Chairman--

Mr. John Godfrey: A point of order.

Mr. John Finlay: --of doing this before second reading, so that we might have more leeway to possibly fix the flaws--

The Chair: There's no point of order. I allow a lot of leeway. I would prefer that questions be more apt to the presentation and to the bill. We don't want to get into the debate on the other jurisdictions. But if you choose to do it, I will allow it. I'm allowing a lot of leeway here to everybody.

Mr. John Finlay: I do have a question, Mr. Chairman.

There was some complaint regarding the appointment process, Chief. I don't remember your exact words, but you said the minister was intent on maintaining control and so on. Does that suggest that the appointments to the current Indian Claims Commission have resulted in less than objective people being appointed? Are they suspect, in your view?

Chief Roberta Jamieson: Thank you for the question. I'm not here to pass judgment on the current members of the current claims process. I am here to talk about the process that the minister is putting forward. I invite you to examine some examples. Have a look at the example of a body called the Indian Commission of Ontario, which the Government of Canada created through complementary orders in council--so did the Province of Ontario--and complementary resolution by the chiefs in assembly in Ontario. That was a joint process with joint appointments, jointly funded, jointly responsible. I know because I was the commissioner of the Indian Commission of Ontario for years. That had credibility.

Look at NAFTA. The Government of Canada accepts that there can be appointments beyond the Prime Minister and the minister's reach in NAFTA. There are examples out there where appointments beyond a minister's control are perfectly acceptable. Look at New Zealand. Look at Waitangi Tribunal.

There are so many examples that will demonstrate to you that if you're going to have a process that you want people to accept has some finality in it and justice and fairness, they have to have a belief that it was created in a fair way, that they were part of it, that they were included in it. Otherwise, unless the tribunal decides in their favour, they will never accept the issue as having ever been properly addressed. And that's the risk you run, even for those people who choose to go through the process.

The Chair: Thank you.

Ms. Neville, two minutes, please, question and answer.

Ms. Anita Neville (Winnipeg South Centre, Lib.): Thank you, Chief Jamieson. First of all, I am prepared to move that your whole report be tabled, so I will do so, Mr. Chair.

The Chair: There's no need to.

Ms. Anita Neville: Okay, that's fine. I have two minutes.

I'd like to know what you find as the most odious of the concerns in the bill.

My second question is, do you not feel that the Parliament of Canada has the right to legislate as it relates to aboriginal people or first nations? I'd like to know.

Chief Roberta Jamieson: The most odious thing is that it's being marketed as an independent, effective, speedy, fair process. It is none of those things. That's the most odious, and our submission takes every one of those adjectives and deals with them. It legitimizes an institutionalized delay in a variety of circumstances. It allows the minister to delay even answering what he's going to do on a claim forever. You can't go to the tribunal unless you've exhausted all remedies. You can't exhaust the remedies unless the minister will play. He can decline to play forever. It just goes round and round.

Do I believe Parliament can legislate with respect to first peoples?

Ms. Anita Neville: First nations people.

Chief Roberta Jamieson: I believe Parliament can relate with respect to its own obligations and with respect to its own approach towards first peoples. I believe there is a time for partnership with first peoples that recognizes our rights in the Constitution, which include the right to govern our own affairs.

(1700)

Ms. Anita Neville: Thank you.

Thank you, Mr. Chair.

The Chair: Thank you very much, Chief Roberta Jamieson from the Six Nations of the Grand River, for a very productive and valuable presentation.

Colleagues, the Toronto presenters are not at the video conference table yet. If the next video conference from Manitoba will appear early, we will start that one early. The bells are for quorum in the House, so there's no need to worry about that.

We will suspend proceedings until we have a witness in either Toronto or Manitoba. Please remain in the room.

(1702)

(1709)

The Chair: We will resume proceedings. We first want to welcome to the table from the Treaty & Aboriginal Rights Research Centre of Manitoba Inc., Chief Morris Shannacappo, chairman, Rolling River First Nation, and Mr. Ralph Abramson, director.

I would first like to thank you very much for accepting to present earlier, which will give us probably 10 minutes to have supper later on for members.

For our friends in Manitoba, Grand Chief Francis Flett, we should be prepared to receive your presentation at 5:45, which in fact for you will be 15 minutes late.

Chief Morris Shannacappo and Mr. Abramson, please begin your presentation.

(1710)

Chief Morris Shannacappo (Rolling River First Nation; Chairman, Treaty & Aboriginal Rights Research Centre of Manitoba Inc.): Good afternoon. I want to first offer my thanks to Grand Chief Carol McBride for making us welcome in her traditional territory, and as well I thank the government of today.

(*Witness speaks in his native language*)

My name is Chief Morris Shannacappo. I am the chief of the Rolling River First Nation in Manitoba and chairman of the Treaty & Aboriginal Rights Research Centre of Manitoba.

Briefly, the TARR centre is responsible for the research and development of claims on behalf of our 51 Manitoba first nations membership.

More information on the centre is contained in a pamphlet attached to our written submission. Because of time constraints, my remarks will concentrate on Bill C-6.

We believe that first nations have not been allowed sufficient input into the development of Bill C-6. The substantive and joint first nations-Canada process was committed to by Canada; however, this did not happen. Bill C-6 was developed unilaterally by Canada. We also believe that insufficient time is being devoted to the standing committee hearing process to allow all first nations and other interested parties adequate time to comment on the bill. The fact that the standing committee will not travel to secure this input is also of major concern.

All that Manitoba first nations want is to have their specific claims dealt with in a timely fashion, in a process that is independent, fair, and effective. The current specific claims process has none of these characteristics. It is clear that the current process has not worked effectively to fulfill its objective, the settlement of specific claims in Canada. The outstanding backlog of claims is estimated at more than 550, which is a true testament to this.

After a review of Bill C-6, we are of the opinion that if the new process to be established is enacted, it will fulfill none of its stated objectives. It will not be independent; Canada has unilateral control of the appointment process and reappointments to the body, with no input from first nations. If appointments and reappointments are made by Canada alone, the appointees will no doubt feel accountable and responsible to Canada. Not to allow the process and other parties involved with first nations to function will affect the way the body functions and its impartiality. I think we witnessed some of this here yesterday.

It will not be transparent, effective, or efficient. The main focus of the commission stage is the development of a submission to the INAC minister. Nothing further can happen on this issue until the minister responds. There is no timeframe for the response. In fact, the bill could allow for an indefinite delay. In its presentation yesterday, the Indian Claims Commission commented on this deficiency. This will likely have the effect of increasing the number of claims in the backlog. Instead of transparency of process, key decisions will be made behind closed doors—i.e., in the minister's office.

It will not create a fair process. The definition of claim has been narrowed, precluding many issues from the process. The $7 million cap will also preclude many claims that currently can apply to the existing claims commission for a hearing, regardless of the value of the claim.

We also believe there are structural problems with the body. We do not believe that the creation of a chief executive officer position is either required or advisable. We believe that the creation of such a position would be cause of future problems of authority and jurisdiction between the CEO and the chief commissioner, thereby affecting the effectiveness and the efficiency of the body.

We also believe that Bill C-6, if enacted in its present form, will create a claims resolution process that will be even less efficient, effective, and fair than the current flawed process. We believe that Bill C-6 will represent a step backwards—a question that was asked earlier. We are of the opinion that the flaws and deficiencies of Bill C-6 are such that they cannot be corrected through a piecemeal revision process. We believe the bill should be withdrawn and that there should be a return to a joint and meaningful first nations-Canada process of specific claims policy reform, using the report from the previous productive joint process. The joint task force has a base, and we believe it is a reasonable alternative.

First nations are willing to participate in a renewed joint specific claims policy reform process. As the ones most affected by the claims process, we feel we must have substantive input into this process.

(1715)

We have the most experience working with the current claims process. We are aware of its problems and can offer viable solutions that will be fair to both first nations and Canada, and we require and request that opportunity.

Thank you.

The Chair: Mr. Vellacott, four minutes.

Mr. Maurice Vellacott: One of my questions, Morris, is with respect to first nations being required to divulge all of their evidence and lay it out, put it on the table, if you will, and waive liability when the Crown is not required to do the same. That's my understanding. Is that how it works? Is that your understanding? Maybe Mr. Abramson would respond to that.

Mr. Ralph Abramson (Director, Treaty & Aboriginal Rights Research Centre of Manitoba Inc.): Yes, that's our understanding of the process under Bill C-6. A first nation would have to lay out all its evidence. It would go to the commission. The commission would relay that evidence to the minister. The minister could delay forever without providing evidence to the contrary. It goes further than that. Nothing could happen on that issue until the minister responds--it can't go anywhere. I guess the short answer is yes, that's our understanding also.

Mr. Maurice Vellacott: This is a quasi-judicial body in a sense, with not all the strictures maybe. But is this normal? I don't know what your background is. You've obviously worked with legal people. Maybe that is your background. As a researcher, is that normal in Canadian law and

process and so on? Would Canadians regard that as a fair process, this matter of one party divulging all the evidence, laying it all out, and the other not being required to?

Mr. Ralph Abramson: I'm not a lawyer, but this subject has been discussed. It's my understanding that it is totally inappropriate and goes against the whole idea of natural justice when one party lays out its complete evidence and the other party doesn't have to. It goes beyond that, in that the other party is the one that decides whether or not the claim is accepted.

Mr. Maurice Vellacott: We're playing games, I guess. As some say, maybe the only recourse really, if this is a fairly skewed process--some would say kangaroo court--if it has such major flaws, is to go back into the regular court system. People would say, well, there's no objectivity, there's no independence, there's too much of an opportunity for the government to...the conflict of interest by way of the appointment process. They don't have strict timelines here so this could go on indefinitely. I think the lady prior said “to eternity”.

Another thing of interest is when this “review” happens a few years hence, there's no explicit provision for the involvement of first nations in that process. A lot of the testimony we've heard so far is that it is problematic, maybe worse than the old situation with the ICC. The minister himself has acknowledged yesterday that we don't know if this will work. We're optimistic. We're hopeful. It surely has to be better, we think, and then this process occurs.

If I understand, he's the only one doing the evaluation, the review. The first nations are not necessarily at all involved or explicitly so. Is that a concern for you too? That's out the other side, of course, but maybe you could respond to that.

Chief Morris Shannacappo: When we look at the whole issue of settling claims and what is the reason behind it, it's to try to upgrade ourselves through it and get on a fair and level playing field. In Manitoba there's only .04% first nations land, and you can't use that land to really try to expand on your economic development.

I myself come from a community that went through a treaty line entitlement process. We were told you can take your land and transfer it to reserve. Well, within the last five years we've purchased land, and we've been paying taxes on it, which also goes to the school board and also for my community. We still pay $600,000 for school taxes. So the school board is double-dipping to that effect. And we can't even turn our land into reserve land as of yet, which is a very big economic drawback of the past four years.

We purchased land along Highway 10, which has a traffic count of one million. When we asked to develop that land for the economic development of our community, we were told we

couldn't by the province, because it has to go through the whole federal process of turning it back to reserve.

So the land in issue has been given back, or we purchased it back again, through a process that was developed by the Canadian government that said we can purchase land for anywhere between $140 to $190 an acre. In our settlement we've been buying this land for $565 an acre because the people in the area say, “Don't sell to the Indians, hold out, as they have a lot of money from the federal government. Let's get as much as we can from them.”

(1720)

The Chair: Mr. Proctor.

Mr. Dick Proctor: Thank you, Mr. Chair.

Thank you, Chief Shannacappo. I believe it's your position that the government and the first nations should re-establish the joint task force process. Why do you think the government has gone away from the joint task force process?

Chief Morris Shannacappo: I would attribute that to getting out of Indian business. From what I've seen lately that's been developed by the federal government, it has been alleviating itself and getting away from expending more money on first nations communities. Almost every day we hear that $7 billion is being given to first nations people, but that translates to about 13¢ on the dollar once it gets to the community.

Mr. Dick Proctor: So shortly put, you feel it's mainly for monetary reasons. The government feels that by doing this they can cut costs, slow down the process, and therefore expend less money to settle outstanding land claims.

Chief Morris Shannacappo: Exactly. In the process, it also hurts our people. We're trying to advance. In my community, for instance, we have a ten-year plan. I've met with the minister of the department and shown him the plan. I was there with my youth chief in council showing accountability. I was there with my elderly ladies and my elderly men from the community.

I didn't receive even one letter from the minister saying he really appreciated meeting our community and seeing how much we wanted to advance. Because we voiced our concerns, he

chose to stand on the other side, rather than walk with me in brotherhood and try to upgrade our community's efforts, based on true consultation with the community.

Mr. Dick Proctor: Yesterday, when the minister was before our committee, he tried to play down the fact that the Assembly of First Nations was opposed to this Bill C-6, on the grounds that the AFN had opposed everything the department had ever put forward, and so this was nothing new.

Do you think this is something new? Do you think this is going away from what has been attempted over the past several decades?

Chief Morris Shannacappo: I think when you look at the initial JTF, this is something we've asked for and wanted for a long time. If I invite you out for supper when we leave here and say it's because I want to build a good working relationship with you, and then give you 35¢ and tell you to buy a McDonald's burger, and say we'll talk to you some other time, is that the kind of relationship we want to build? No, it isn't.

The fact of the matter is, the government had said there would be a joint task force, where both parties could come together, just like we did in treaty, to reach a unified solution that would benefit not only the first nations people, but Canadian citizens as well. I believe that benefit can only come from a joint task force.

The Chair: Mr. Mark.

Mr. Inky Mark: Thank you, Mr. Chair. Welcome, Chief Shannacappo and your associate.

I should say that Chief Shannacappo is actually from a reservation, a first nation community, in Dauphin--Swan River. Dauphin--Swan River has a wealth of aboriginal communities--13 of them.

It's interesting what you said about the whole business of land. I understand the entitlement issue, because a former chief worked on it and I supported him on that initiative. But what kind of assistance did you get from the minister to ensure the land you purchased was reserve land?

(1725)

Chief Morris Shannacappo: We've written letters and met with the federal department. At times, even our trustees, who are supposed to be there working for us and come from the INAC

department, have refused to come to the table, because again, they're put there by the federal government, and they don't want to squabble amongst themselves.

On the land I mentioned, we purchased three square miles that are ready for development. Our people mandated how we are going to do it. We called together the surrounding communities of Erickson, Minnedosa, and Onanole, to show them how we were going to develop it. They agreed.

We brought them to the table and told them we needed their letters of support, to continue our development. We referred to them as key players in how we developed our community, because they were in the surrounding area. We have support from all of them, but no support from the federal government.

Mr. Inky Mark: I'm actually shocked to hear that, because that whole initiative, that entitled claims initiative, is about giving you lands that you were entitled to. I find that very strange.

Anyway, I'll go back to the bill here.

In the comments the minister has made--and I'm not going to quote him--basically he said to the committee a while back that he didn't believe the costs of legal assistance for the claims should supercede the amount of the claim. Do you think this bill is going to relieve that problem? Is Bill C-6 going to relieve the problem of horrendous legal bills for the aboriginal community?

Mr. Ralph Abramson: No, I don't think so. There are a number of factors, the first factor being that the ceiling is $7 million. The second factor is that first nations will have no control over how long that takes. In fact, if you add in the $7-million ceiling and the fact that the federal government controls the process, it's really a disincentive for the federal government to act expeditiously in the matter, and the longer it takes, the more negotiating costs you're going to require. I don't think it will alleviate it, because the prospect of speedy settlement under Bill C-6 just isn't there. The prospects there are for infinite delay and infinite costs on the first nations side that will ultimately be taken off the settlement. The first nations will have no control over the legal costs. The control will be with the federal government on the amount of time it's going to take to deal with that issue.

The Chair: Ms. Neville.

Ms. Anita Neville: Thank you.

Mr. Abramson and Chief Shannacappo, we've certainly met already. We've talked about this, and I think I have some sense of your frustration and your concerns about this bill.

As to my first question, the proposed claim body legislation will provide the claimant with the option of binding arbitration if it's agreed to by both parties. This would be available at the commission. Would this not be an improvement and a step forward?

Mr. Ralph Abramson: Not really, because in order for binding arbitration to take hold, both parties have to agree.

Ms. Anita Neville: I realize that.

Mr. Ralph Abramson: First nations, in a lot of cases, wouldn't want that. But there again, the control is with Canada, because if Canada doesn't agree with binding arbitration...and frankly, why would they when they have so much control over the other parts of the process? So, no, I don't think it's something that would be beneficial.

Ms. Anita Neville: Okay.

You've both been involved in the Manitoba framework agreement, am I right, Chief?

Chief Morris Shannacappo: That's right.

Ms. Anita Neville: I'm not sure what the figure is, but I know a lot of money--$40 million to $45 million--has been spent on the consultation process. How has your community and the community of Manitoba benefited from that consultation process?

Chief Morris Shannacappo: From the framework agreement initiative, which was a process as to how we were going to derive self-government in the Manitoba area, we had people who were put in communities to question the community as to how they saw self-government working, or how they saw the initiative and the whole process running through. Within our community, that's how we came up with our 10-year plan. Even the 10-year plan itself is going

to take 20 years to administer. But what we got out of it is how the people want to see their government working.

We also answered questions in the area of sustainable economic development, and not these make-work projects that the reserves have been constantly getting, work for two to six months, or whatever, and then see it go away forever.

With our land claims, we're not purchasing land just for the sake of purchasing land. We're looking at land all over the area to see what land will work best for our people, to get our return on our investment.

We are business people today. I don't want to find more acreage so I can go and pick berries or roots on it. I want to use this land for economic development, and the FAI process that was put there, which was given 10 years, is now in its eighth year, and now two years are left and that's being shelved. That's being taken away because the government, again, is saying the process wasn't working for the people.

(1730)

Ms. Anita Neville: Is there a return on the investment in excess of $40 million, for both your community and the larger community?

Chief Morris Shannacappo: Taking what we've created within 20 years' time from our FAI or framework agreement initiative, I would like to show you one heck of an investment in a community that took the work seriously and consulted with all the people—and with all the people giving their feedback. I'm talking “on reserve”. Of course, Corbier gives us another dimension that puts another spin on it.

Ms. Anita Neville: Thank you.

Chief Morris Shannacappo: You're welcome.

The Chair: We have time for another round of three minutes.

Mr. Vellacott.

Mr. Maurice Vellacott: Chief Shannacappo, I'd like to ask, if you were in the minister's shoes and there were this other Indian claims commission such as currently exists, and it was a matter of choosing between the Indian Claims Commission and Bill C-6, which we have before us, and if as you say and as other witnesses have testified it is no improvement and in fact is a regression, a step backwards—and he's not even sure himself, he's hopeful but doesn't even know; it's a bit of mystery out there: “We'll review it in three years”. What's the point of proceeding with a new thing when it's seemingly so flawed and has all kinds of deficiencies compared even with the Indian Claims Commission we have at the present? Why would he proceed? What's his motivation? What might be his reason for doing so?

Chief Morris Shannacappo: The way I see it, the way the minister spoke yesterday when he said sometimes it's a little iffy whether it's going to work or not, is that there was already a road map set showing how JFT can work for the benefit of both parties—first nations and the current government. The JTF paved the road, saying, “This is how you're going to set up that tribunal system, and this is how it can work.” It was agreed upon by both parties. It was not that one party insisted, “This is how it's going to be” and the other party said, “This is fine; we can accept that.” Both parties agreed to it.

If I'm a chief in my community and I say to my people, “This is how it's going to work”, and then all of a sudden I find that the wheels have fallen off, I would have to tell my people “I steered you the wrong way. I beg your forgiveness. I might as well quit and you can draw in a new leader.” That would be my answer to my people.

Mr. Maurice Vellacott: Why are we proceeding with Bill C-6 when it's so flawed compared with what you'd like it to be and under JTF? Why are we doing this? Why are we putting all this time and effort into something—

Chief Morris Shannacappo: I'm not the one proceeding with Bill C-6. I'm not the one who brought it to your table and said, “Please, let's drive this bill through.” It's the current minister who did that. We're here to try to prevent this from going through—to try to go back to the table, to the original JTF concept. I'm saying this was a concept that was orated and done by two working parties on opposite sides of the table, ready to negotiate. They put together the road map. They put all the clear writing on the table in black and white. Why couldn't it be followed? That's my question. How come it couldn't be followed properly?

Yes, there is give and take in negotiation; I agree with that, and anybody can see it. But here's a process that made it to the table, that was filled with recommendations by both sides, and then all of a sudden the wheels fell off because the minister didn't like it, because of a lack or an inconsistency, or not wanting to go forward with the legal liabilities, the fiduciary obligation

Canada has in upholding the honour of the Crown, and also the honour it has to the first nations people through treaties.

(1735)

The Chair: Mr. Proctor.

Mr. Dick Proctor: Thank you.

Chief Shannacappo, for the benefit of myself and other members of the committee, could you talk to us a little about the number of outstanding claims there are in the province of Manitoba? Do you have that kind of information, and the amounts, and just some good information that would help us?

Chief Morris Shannacappo: Yes, I do. Ralph, do you want to give that?

Mr. Ralph Abramson: Right now we've been involved in the process for 20 years, and in that time there have been close to 250 issues looked at. Not every issue results in a claim. There have been 33 claims settled in Manitoba. There are quite a few sitting within specific claims branch now. The figure I have is close to 20 that are sitting within the existing claims branch now.

As far as settlements are concerned, the major settlement in Manitoba was probably the Manitoba Treaty Land Entitlement Framework Agreement that was signed in May 1997. In terms of its worth, financially it was $76 million, but the bulk of that settlement was the land that was provided to first nations. It had the prospect of adding 1.1 million acres to first nations. There are claims in the current process right now that I know exceed the $7 million cap—greatly exceed it—and claims like that would have a very difficult time under Bill C-6. That's assuming they ever get out of the commission stage, and there is no guarantee they would, given the prospects for delay.

Mr. Dick Proctor: Chief, are the people in your communities aware of what's going on, or is this pretty much at the council level? Where does this sit with...?

Chief Morris Shannacappo: With our own land issues, this past year I think we've held about six band meetings within a period of five months. We make sure that our accountability process is in there. We make sure that I don't go ahead, or my council doesn't go ahead, and make decisions unilaterally.

Sometimes it takes us a year to make a decision. That's because we want to make sure that the accountability is there. We want to make sure that our direction is taken from the people. It's not because we want to stay in office forever. We just want to do our share and move on.

Mr. Dick Proctor: Right. So what you're saying is that the people, the unelected people if you will, are involved and are aware of what's transpiring here.

Chief Morris Shannacappo: A good 80% in my community.

Mr. Dick Proctor: I can't help but notice the graphic that's on the outline, of the colonial and the native person shaking hands, and the sun rising in the background, or perhaps it's a sun setting, depending on your point of view on this. Certainly I think it speaks volumes about what you feel and what native people are telling us about what's in Bill C-6 and the ramifications that will result.

The Chair: Thank you.

Chief Morris Shannacappo: I just want to add, too, that we are currently working with the education system in our region, in our area, again, to make sure that everybody's educated on the process, that we do understand how government works, but as well how we can go back to those treaties and how we can still live side by side and work with one another.

There are only about two first nations in Manitoba with no schools, with no Indian bands....

The Chair: I have to interrupt. I apologize, but I have to follow.... I allowed it for an extra 40 seconds.

Mr. Mark.

Mr. Inky Mark: Thank you, Mr. Chair.

I know, Chief, you were here yesterday as well, listening to these proceedings. The question I ask of you is this. From what you've experienced so far and what you've heard, do you have any sense of hope that this bill will be changed to your satisfaction, or do you think this is all a case of just going through the motions?

Chief Morris Shannacappo: I've tried to use gratitude and acceptance, but I certainly can't use it on this bill. Basically that's how I was always pretty well taught and raised by my father, who was also a treaty fighter and a chief. There's absolutely no gratitude and acceptance to the current bill and how it's written. As to status quo, we may have something there, but again not much. It has to be worked from both parties. It can't be done unilaterally.

(1740)

Mr. Inky Mark: If you were to make recommendations, what would your suggestion be at this time to the committee regarding this bill?

Chief Morris Shannacappo: My recommendation would be to scrap the bill and go back to the table and go back to the recommendations that the JTF put forth.

Mr. Inky Mark: Thank you.

The Chair: I interrupted you a few seconds ago because I wanted to allow time for all sides. We do have two minutes if you want to make closing remarks.

Chief Morris Shannacappo: I just wanted to let Mr. Mark know, though he's aware of it, that in my community there are 62 reservations in Manitoba, but there are only two first nations who don't have their own school. This year we lost our trustee because of an amalgamation of boards.

We're still working with the province. We're still working with that system. We've been given a spokesperson there. We said we have no desire to go ahead and build our own school, to

segregate our own people. We have a good working relationship with surrounding communities. That's what we'd like to put forth and work with.

What does the guy from the Department of Indian Affairs tell the educators, tell the school board? He says, “Read the writing on the wall. This band is going to get their own school and they want to be separate.” That's a government official talking. We had to get up and say, “Correction. We'd like to make a point of order and be noticed here. We do not want our own school. We do not want segregation, but we want to continue the good working relationship we have with the surrounding communities.” That's the point I wanted to get across when I was interrupted.

The Chair: That is commendable. We thank you for your presentation.

From the Treaty & Aboriginal Rights Research Centre of Manitoba Inc., Chief Morris Shannacappo of Rolling River First Nation, and the director, Ralph Abramson.

Now we go back to Winnipeg by video conference with the Manitoba Keewatinowi Okimakanak Inc.

We welcome with us Grand Chief Francis Flett, and Michael Anderson, research director. We invite you to begin your presentation.

Grand Chief Francis Flett (Manitoba Keewatinowi Okimakanak Inc.): Thank you very much.

First of all, I'd like to thank the Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources for giving us the opportunity to do a presentation on the Specific Claims Resolution Act.

I have this treaty symbol in the back of me, as you can probably see. We will explain it a little bit, but I first want to get right into our presentation. I have Mike here, a technical person, who might want to answer some of the questions you have for us.

Manitoba Keewatinowi Okimakanak is an organization consisting of 27 first nations in northern Manitoba, representing 50,000 first nations people. Our resource lands take up about three-quarters of the province of Manitoba's land mass.

I'll start my presentation and go right into it. Prior to the tabling of Bill C-6 by the Minister of Indian Affairs and Northern Development on October 9, 2002, the first nations of Canada and the Government of Canada had expressed interest in establishing a dispute resolution process to resolve existing and future first nations claims against Canada.

First nations and Canada had previously agreed and recommended that a dispute and claims resolution process must be jointly arrived at through the mutual consent of first nations and Canada, and it must also be independent of perceived or actual undue influences by the Government of Canada. The Manitoba Keewatinowi Okimakanak, Inc. continues to be supportive of the objectives of establishing an independent claims body.

It is with regret that MKO must advise this committee that the mechanism proposed under Bill C-6 will neither be a joint nor an independent process. MKO represents more than 50,000 treaty first nations people, who are members of the 27 northernmost Manitoba first nations. The combined traditional territory of the MKO first nation covers almost three-quarters of the land and waters of the province of Manitoba.

The Manitoba Keewatinowi Okimakanak first nations entered into the treaties described and known as Treaty No. 4, 1874, the Qu'Appelle Treaty; Treaty No. 5, 1875-1910, the Winnipeg Treaty; Treaty No. 6, 1876, the Treaty of Fort Carlton and Pitt; and Treaty No. 10, 1906-1908.

Our forefathers, as representatives of our sovereign nations, entered into treaty negotiations with Her Majesty the Queen based on the recognition of our status as sovereign nations and as holders of aboriginal title to our ancestral lands. We agreed to negotiate upon the express undertaking that we would jointly deliberate upon certain matters of interest to her most gracious Majesty, on her part, and our forefathers on the other.

We proceeded with the treaty negotiation based on the further recognition by Her Majesty that it was necessary to obtain the consent of our forefathers to open up our lands for settlement, immigration, and trade by Her Majesty and other subjects.

(1745)

Today, the MKO organization represents itself through a depiction of the treaty medal provided by Her Majesty's treaty--the treaty medal, as you can see, is behind us--and Her Majesty's treaty commissioners as a symbol of the sacred relationship that persists between our nations and Her Majesty for as long as the sun shines, the grass grows, and the rivers flow.

Her Majesty sought the consent of our forefathers to share our ancestral lands and resources with settlers. And it remains that our consent is required before changes to the terms of our treaty will be accepted by our nations and by our people. Mutual consent is the binding principle of treaties.

The MKO first nations cannot and will not accept that Her Majesty or the Government of Canada has, or ever had, the capacity to unilaterally alter and terminate our sacred relationship through subsequent domestic legislative and constitutional enactments. Our treaties were entered into between sovereign nations and can only be modified or affected by the joint consent of the treaty signatories.

It is the position of the MKO first nations that our treaties were entered into between sovereign nations and as such are not governed according to the domestic laws of Her Majesty's realm but

in accord with the international law of treaties. The 1994 Draft United Nations Declaration on the Rights of Indigenous Peoples, and in particular article 36, provides:

> Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors, according to their original spirit and intent, and to have States honour and respect such treaties, agreements and other constructive arrangements. Conflicts and disputes which cannot otherwise be settled should be submitted to competent international bodies agreed to by all parties concerned.

Similarly, the Vienna Convention on the Law of Treaties, May 23, 1969, provides in article 26:

> Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

--and in article 27--

> A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.

Although it is now the second year of the 21st century, neither Her Majesty, the Government of Canada, nor the minister will dispute that the treaty promises and the provisions have yet to be fully implemented and that there have been frauds and abuse by officials of government, particularly related to lands, moneys, and other assets. Establishing a joint and independent process for the resolution of disputes and claims between the treaties' signatories is consistent with the terms of treaty and the promises of the treaty commissioners.

(1750)

Establishing a joint and independent process for the resolution of disputes and claims is also consistent with upholding the honour and fiduciary duty of the Crown.

On November 25, 1998, the Joint First Nations-Canada Task Force on Claims Policy Reform presented a proposal—or final draft of the legislative drafting instructions—for the independent claims body. These drafting instruments set out the consensus resulting from this joint process. By resolution, the Assembly of First Nations approved in principle the JTF drafting instructions for this proposed structure—the new federal legislation to establish an independent claims body in December 1988. The 1998 JTF instructions setting out the scope, powers, and structure of the ICB represent the results and outcome of more than 18 months of joint effort by first nations representatives, the federal Department of Indian and Northern Affairs, and Justice Canada.

The ICB that would result from implementation of the 1998 JTF drafting instructions has been endorsed in principle by the Assembly of First Nations. The MKO first nations also provided their implicit support through MKO Resolution 2000-06-03 and their explicit support through Resolution 2001-06-31.

On June 13, 2002, the Minister of Indian and Northern Affairs introduced Bill C-60, An Act to establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims to provide for the filing, negotiation and resolution of specific claims and to make related

amendments to other Acts. Bill C-60 was also known as the Specific Claims Resolution Act. The proposed legislation would establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims.

The Specific Claims Resolution Act has been re-introduced as Bill C-6. It was given first and second reading and was then referred to committee on October 9, 2002. MKO Resolution 2001-06-31 called on the Minister of Indian and Northern Affairs to ensure that the legislation establishing an independent claims body is consistent with the ICB model recommended by the Joint First Nations-Canada Task Force on specific claims.

In several important respects, Bill C-6 was not consistent with the recommendations of the Joint First Nations-Canada Task Force on specific claims, including the independence of the claims commission; the structure of the claims commission; the appointment of the commissioner and tribunal members; the effectiveness and efficiency of the claims commission; the scope of the claim to be considered; and the maximum amount of the compensation awards.

I just want to move along to say that, clearly, without provisions for the appointments and legislative review, Bill C-6, in its current form, cannot eliminate any conflict of interest on the part of the Crown. Therefore, it does not represent a mutually acceptable means by which to settle claims.

(1755)

With respect to Bill C-6 and the proposed establishment of an independent claims body, the MKO first nation recommends that in that the honour of the Crown is affected by Bill C-6, as well as the inherent, treaty, and aboriginal rights of first nations, this committee should extend the period of consideration of Bill C-6 in order to ensure that all first nations and first nations organizations are afforded the opportunity to appear before the committee. As an example, I guess we can use the treaty land entitlement committee; the opportunity should be given to them.

The committee should report and recommend that the House of Commons support the intent and objectives of the process initiated in 1997 through the Joint First Nations-Canada Task Force on Claims Policy Reform.

This committee should report and recommend that the House of Commons support the establishment of an independent claims body that would result from implementation of the November 25, 1998, proposed final draft of legislative drafting instructions for the independent claims body.

The committee should report and recommend those amendments to Bill C-6 necessary to ensure that any proposed specific claim resolution is in accord with the 1998 JTF proposed final draft legislative drafting instructions for the independent claims body.

In the event that the Minister of Indian Affairs and Northern Development and the government are unwilling to adopt the amendments reported by this committee, the committee should further

report and recommend that: (a) the government withdraw Bill C-6, and (b) the government and first nations re-establish a joint task force process.

That's our presentation and comments on the issue.

(1800)

The Chair: Colleagues, we have 17 minutes, so we'll start with a three-minute round. Is that okay?

Mr. Vellacott.

Mr. Maurice Vellacott: Yes, I'd like to thank our witness here. I appreciate the presentation, lengthy as it was. There is a lot of detail there.

Basically, is there a way to salvage Bill C-6, or should we just pitch it out and go back to doing the draft entirely along the lines of the JTF of 1998? Is it salvageable? Can you propose amendments that would take away the worst aspects of it and improve it so that it's an improvement on the Indian Claims Commission we presently have?

Grand Chief Francis Flett: I think in my statement I made it very clear that based on the treaty obligations the government has, and based on what we've said and what our presentation is—I think we've made some recommendations at the end—if this thing is going to be salvageable by first nations and the Government of Canada, I think they need to go back to the table and start negotiating. I think many of the things that have been done through the lands process with the Canadian government have been illegal, because there's no agreement that comes from the treaty indicating that the government has the sole jurisdiction to do that. I think if it's going to be salvaged, some negotiations will have to happen between the Government of Canada and first nations people.

Mr. Maurice Vellacott: Thank you.

The Chair: Mr. Proctor.

Mr. Dick Proctor: Thank you, and thanks very much, folks, for the presentation.

In your set of recommendations, your first one is that the committee should ensure that the period is extended in order that all first nations and first nations organizations have the opportunity to appear, and you note the TLE committee of Manitoba that was denied.

Do you have a guesstimate about how much longer you think we would need to extend this in order to have all the groups that wanted to appear provided with that opportunity?

Grand Chief Francis Flett: In my statement I indicated that everybody should be given an opportunity, and I'm hoping the committee will take it upon themselves to give us a timeframe in order for our people to do the proper presentations either directly or through the system we're on right now to do those. But I would clearly indicate at least another year to make sure all our communities are heard.

There are specific claims out there. There are claims of lands being taken by church groups, lands being taken by towns, and claims of lands that have been expropriated by government or by corporations. There are a lot of issues out there that need to be dealt with. Everybody needs to be given the opportunity to voice their concern as to why we're saying all of this.

Mr. Dick Proctor: Mr. Chair, is there time to provide a technical discussion of this?

The Chair: Sure.

Mr. Michael Anderson (Research Director, Manitoba Keewatinowi Okimakanak Inc.): One observation we would make as an organization is that had the bill precisely conformed with the joint drafting instructions that had been agreed to through a joint mechanism and many months of work--our assembly of 27 nations had approved it in an annual assembly, a chiefs in assembly--the consultative work that would be done would be by first nations explaining the new process to membership on a national basis, as distinct from a long consultation that's now required to examine a piece of legislation that doesn't conform with a joint process that had been agreed to previously by first nations. So there are two completely different pathways and consultative work that the committee and first nations may have engaged in. So the length--

(1805)

The Chair: Thank you.

Mr. Proctor, I'll give you an extra 45 seconds.

Mr. Dick Proctor: Very quickly, thank you very much for that additional....

The minister yesterday was suggesting that this tribunal could actually in fact speed up the very lengthy timeframes that many of these settlement claims have taken. Do you have any confidence that this would be the end result if we were to embark on accepting Bill C-6?

Grand Chief Francis Flett: Getting back to my comments, I don't really have any confidence in what's being pushed on us. We've had to deal with a lot of issues with this minister, as he is always in a conflict situation where he tries to push something on us, and of course we don't agree with it because it's done so fast. He's trying to push these things on his own without really accepting or listening to other people. I know in some cases in negotiations we've asked him to participate and he's never met with a group of our chiefs to discuss these issues. With that kind of process it doesn't work.

The Chair: Mr. Mark.

Mr. Inky Mark: Thank you, Mr. Chair.

Francis, it's good to see you come before the committee here. I have two questions. First, when did you find out about the bill, and what kind of consultation process did the minister or the department complete, or didn't complete, in your neck of the woods?

Grand Chief Francis Flett: Maybe I'll get Mike to answer that. I know we heard this process was being done by the minister, but there was never any consultation that happened in our communities as far as I know.

The Chair: Can we hear from Mike?

Mr. Michael Anderson: Yes, the Assembly of First Nations, of course, and MKO had maintained regular contact regarding the JTF process and the results of it, because it was a joint process. We were all keenly interested in its outcome and success.

We were advised that legislation was being developed by the minister's department. However, the Assembly of First Nations had advised us that they'd heard that changes were being made. It's a routine process for us, at least in my capacity as research director, to follow the progress and filing of legislation to be able to advise MKO when it has been certainly given first reading, but hopefully prior to that.

We followed the process. We were aware that it was submitted earlier this summer. We're aware that it died on the order paper and that it is expected to be re-introduced following the resumption of Parliament, and so forth.

So we've been very keenly interested in following its progress, but we have not had direct consultations with the department on the implementation of this bill.

Mr. Inky Mark: We have heard a lot about the joint task force today from our witnesses. In looking at the report, it's actually rather ironic. The first page of the report says that this task force,

> has been charged with addressing an important part of the new partnership the Government of Canada has promised will characterize its efforts to build a new relationship with First Nations. If this new relationship is to be based on mutual trust and respect, we must begin to address those things, which have created mistrust.

My question is, will Bill C-6 create more distrust or will it create more trust?

Grand Chief Francis Flett: I think it created more mistrust; that's all it has done.

The Chair: Anyone else?

Ms. Karetak-Lindell.

Ms. Nancy Karetak-Lindell (Nunavut, Lib.): I just have a very short question. I see in my notes that there's an opportunity to review the centre within three to five years if this legislation goes into effect. Is there no opportunity at all to give it a chance and to see how it works with the specific claims brought to the centre, giving you an opportunity—in that timeframe—to review whether people have given it enough opportunity to at least try to work as legislated?

(1810)

Grand Chief Francis Flett: Maybe I'll answer that question this way. I'm also going to ask Michael to give some additional comments.

I guess the thing with first nations people is that we're always put in a position where we have to compromise with someone, or with somebody else's beliefs. With the way first nations people have been treated by government over the years, there's often really not very much trust in what's going to happen—until it comes to actual negotiations of what's going to happen and until we understand what's happening.

I think Mike wants to make some additional comments.

Mr. Michael Anderson: Following that exact line, I note that the very last paragraph on page 7 of the JTF document indicates that, "the goal of the exercise is to find a *mutually acceptable means by which to settle claims*". The joint task force chose to italicize "*mutually acceptable means by which to settle claims*". So the joint aspect and the mutual agreement aspect of their work is central throughout their proposed legislation.

In terms of the precise issue of the legislative review process, we noted in the written portion of the submission that subsection 41(1) of the JTF instructions indicated that "The AFN and the Minister shall jointly undertake and complete a review of the administration of this Act", whereas subsection 76(1) of Bill C-6 states that "the Minister shall undertake and complete a review" independent of direct partnership with the Assembly of First Nations.

So the mistrust that the grand chief refers to is, basically, that all of the joint aspects the JTF had explicitly recommended as a core objective of their work have been taken out of Bill C-6. So the joint aspects, which were the specific conclusions of the joint task force, have been removed. They are no longer there. So it is no longer a joint mechanism to resolve claims.

The Chair: We have one minute left, Ms. Neville, for a question and answer. Sorry.

Ms. Anita Neville: Grand Chief Flett and Mr. Anderson, under this bill joint research will be encouraged rather than both the claimant and the government doing independent research, which would then have to be assessed against each other. Is this not advantageous? Is this not better for both parties? If so, what would you see as the role of MKO?

Mr. Michael Anderson: In terms of the research, it's an interesting question you've raised. There is a great deal of interest in joint research in environmental assessment. For example, where you have a common interest in biophysical baseline information, you agree to work together with certain experts, including traditional knowledge.

However, on a claim, you begin with a positional issue that government has conducted certain activities and first nations have filed a claim, or there's an interest in some form of breach or wrong action of the Crown. That research, by its very nature, when the documents are shared, is with prejudice to both parties. It becomes evidence in a consideration. Whether it is resolved by negotiation at the commission, adjudicated by the tribunal, or ends up being reviewed by courts, every piece of information has meaning.

That isn't to say, however, that there can't conceptually be an agreement on certain types of research, where people mutually agree that the facts are as they are stated. However, because of the nature of the claims process, it's important that those parties are clearly able to express their specific perspective and point of view on the claim--first nations on the occurrences that have affected their interests and rights and government on any defence it may wish to present on the correctness of any actions that are alleged to be a breach of treaty or other issues. Joint agreement on issues becomes less possible the more positional the original issue is.

(1815)

The Chair: Thank you very much.

We thank, in Winnipeg, the Manitoba Keewatinowi Okimakanak Inc., represented by Grand Chief Francis Flett, and research director Michael Anderson. We thank you very much for a valuable presentation.

We will suspend proceedings until 6:30, at which time we will resume. I invite the members to grab something to eat.

(1815)

(1830)

The Chair: We will resume proceedings.

Our next witness from Saskatoon is the Federation of Saskatchewan Indian Nations, Greg Ahenakew, first vice chief. I'm told that the other gentleman, Mr. Jayme Benson, is a member of the support staff .

Mr. Jayme Benson (Specific Claims Reseacher, Federation of Saskatchewan Indian Nations): I'm the specific claims researcher for the Federation of Saskatchewan Indian Nations.

The Chair: You'll be here for technical support if the vice-chief needs it.

Mr. Jayme Benson: Yes.

The Chair: Vice-Chief, we welcome you. We thank you for being with us. We ask you to begin your presentation, please.

Vice-Chief Greg Ahenakew (First Vice-Chief, Federation of Saskatchewan Indian Nations): Thank you, Mr. Chairman. Good evening to all of you, the MPs on the committee from all parties, Jayme, and the other first nations people in the room.

As the first vice-chief of the FSIN, the Federation of Saskatchewan Indian Nations, I'm speaking for the first nations in the part of Canada with the most experience in resolving claims under the federal government's present system.

Since Canada's first major settlement under the current policy, White Bear First Nation in 1986, almost half the settlement dollars provided in the specific claims settlements in the country have come to Saskatchewan first nations. Resolution of these claims has resulted in much needed economic development for these first nations.

There are still many unresolved claims in Saskatchewan because of the unique history of the government's dealing with first nations and their lands across the province. First nations in Saskatchewan have long called for an independent claims process that would remove the conflict of interest in having Canada judge claims against itself.

Under the new process, the proposed bill, this will not change, despite what Minister Nault said. You've probably heard consistently across the country that this is the case, at least in the opinion of the first nations.

Today I propose to address three specific items that cause concern for our first nations: the issue of delay in federal responses to submissions; how larger claims are to be dealt with; and the narrowing of the definition of claims, even from current policy. Others across the country are

scheduled to speak about many of the other serious concerns we have with the bill, such as appointments of the proposed body, regional representation, and procedure.

Delay in dealing with claims is a major problem for us with the current system. It explains much of the current backlog. But at present, a first nation can at least argue before the ICC, the Indian Claims Commission, that a delay by the federal government in responding to a claim counts as constructive denial and that there should therefore be a public inquiry.

Peepeekisis, one of our first nations, has, for example, had to wait 17 years for a response from Ottawa before the threat of an ICC inquiry finally elicited a rejection of the claim from the department earlier this year. An inquiry is now under way.

In contrast, Bill C-6 provides a framework that authorizes and rewards the federal government for delay. There are in fact many possibilities for intolerable and self-serving delay in this legislation. For example, no claim can proceed to ADR, supervised by the commission, or to the tribunal unless the minister has first considered it and either accepted it for negotiations or rejected it.

Bill C-60 says that no delay in responding can ever constitute constructive denial. If a first nation ever amends a claim during commission proceedings, the claim cannot proceed to the commission until the minister has considered the amendment. The government can unilaterally delay the pace at which a tribunal considers claims by unilaterally lowering the cap on the overall amount of potential awards a tribunal can issue in a given year.

The fact that interest and costs are included in this $7-million cap means that the government would be rewarded for these delays as the real value of the claim declines. Meanwhile, the first nation would be placed under great pressure to settle its claim for far less than its value.

(1835)

This issue was specifically dealt with in the JTF model bill that has been referred to probably all night, by allowing a first nation to refer a claim to the tribunal for a binding decision at any time after one meeting with the federal government. That's how you deal with delay: you have to pressure the federal government, or the minister can unilaterally delay for six-month periods with very little reason—on and on and on. In effect the government and the minister are too powerful within this bill.

I know the minister yesterday spoke about speeding up the process, about a fair process, an equitable process, a transparent process. We certainly do not believe this will be the case.

Number one, presently there are about 12 federal lawyers involved in handling all the claims across this country. As you've heard, there are close to 600 claims presently in the system. Twelve lawyers certainly can't cope. They're not going to be able to handle it. Perhaps two claims or three per year, at most....

Under the new bill there are not enough resources provided to the commission and tribunal to significantly increase the number. If you don't provide the money and human resources, you're not going to reduce the backlog; you just can't. The $7 million for the first year of operations is clearly insufficient. I don't know what the federal government spends now on its financial and human resources, but certainly $225 million over three years just isn't going to cut it. It's very difficult to see how the government will be able to move claims more expeditiously.

Larger claims is the second matter I'd like to address. We heard Mr. Vellacott yesterday talk about the Indian Claims Commission. Of 120 cases that have been settled under their guidance or recommendations, 117 have been for more than $7 million. Yet the minister maintains that $5.6 million is the average.

That certainly hasn't been the experience in Saskatchewan. Over the last three years our claims have averaged in the neighbourhood of $17 million. That is certainly going to be skewed by the Kahkewistahaw settlement of $94.6 million, but by and large our claims have been $24 million, $18 million. There are claims that are coming that are $50 million, $30 million. How are these going to be addressed by the commission?

The $75 million is key here. If they're prepared to go to cabinet and to seek funds in addition to the $75 million, that's fine. But are they going to go to Treasury Board 15 times or 20 times in a year? Treasury Board will not agree to that type of expenditure when they're having a hard time dealing with $75 million over the three-year period.

If Kahkewistahaw were settled under the new legislation, would that mean that only $140 million would then be available for the next two years or less? We need assurances that this $75 million, which is clearly insufficient, will be increased.

Our organization is on record as opposing Bill C-6. There are a number of reasons for that. To try to work in cooperation with the government, with this committee, we've stayed in this process to try to effect change to the bill—meaningful change, significant amendment—so that the process will be fair and will be expeditious and so that the government will not retain the judge and jury portion they currently hold, where the minister is, let's face it, all powerful in the system.

(1840)

I guess one of the solutions we've talked about is having no cap on validity. In other words, regardless of the size of the claim, it could be brought before the tribunal for a decision on validity.

The commission process often takes six to eight years, even prior to Canada validating a claim. It could still be that much under this present system, or we could have a lineup of two or three years for the tribunal. Because the commission is quasi-judicial, they're going to have a heck of a hard time trying to deal with 40 claims in a year, and if they're all $7 million, then that will be $280 million. Does that mean, as in the other example I used, there'll be no money left for years two and three? I don't think so, but it's always a possibility.

Bill C-6 narrows the definition of what claims are to be considered, even from what's in the current federal policy. The bill excludes obligations arising under treaties or agreements that do not deal with land and assets and from unilateral federal undertakings to provide lands or assets. This exclusion is of particular concern to Saskatchewan first nations because we have treaty-based claims that do not deal strictly with lands or assets.

One example of a claim that would be excluded under the current definition, and a claim that's been settled, is the Primrose air weapons range claim. Canada expropriated land and used a large portion of the Primrose air weapons range in Saskatchewan and Alberta for bombing purposes. First nations people were excluded from exercising their treaty rights to hunt, trap, and fish in the area. Of course, this was done without consultation. Several first nations submitted claims and went through the process, and I believe through the ICC finally. The ICC recommended that the federal government settle, and they did. One of the bands was Canoe Lake in Saskatchewan. This claim would be excluded under the current definition.

We propose a return to the wording of the JTF proposal, which modernized the definition of a specific claim given in “Outstanding Business”, in light of current case law.

Thank you.

(1845)

The Chair: Thank you very much for an excellent presentation.

We will begin a four-minute round.

Mr. Vellacott.

Mr. Maurice Vellacott: Thank you, Chief Ahenakew, for being with us by way of video conference today.

You alluded to the fact that under the current system all the claims, regardless of size, have access to the Indian Claims Commission. The commission can review those rejected claims and issue non-binding recommendations.

Bill C-6, the bill before us now, provides access to the tribunal, as we've talked about before, for claims under $7 million, but there's nothing for claims over $7 million. So the only option for those claims, when the alternate dispute resolution breaks down because there's a disagreement over fact or law, is to go to the courts. That is kind of the whole point--trying to avoid that more costly route and get away from the great amounts of money spent on lawyers and so on.

What changes do you think could be made to Bill C-6 to ensure that larger claims can be resolved? You made some reference to it, but I'd just appreciate clarification on that.

Vice-Chief Greg Ahenakew: Thank you, Mr. Vellacott.

The preferred option would be to use the approach of the JTF, which allow all claims to go to the tribunal for both validation and compensation. Now that's not possible with the cap; we can't go to the tribunal unless the claim is for under $7 million. Under the old policy, at least there was the Indian Claims Commission as the last resort, after negotiation or dispute resolution mechanisms were used up. In other words, there was somewhat of a quasi-independent commission that could consider it. The idea wasn't to have more claims with the tribunal, but to have a strong tribunal, so that more claims could be dealt with through negotiation.

Part of the problem with the current proposed bill is the cap. If there's going to be a cap in this legislation, we'd certainly like to see it much higher, to accurately reflect the current settlement value. It doesn't—$5.6 million is nowhere near the current value, particularly in Saskatchewan. Our preferred option is no cap. But if there is going to be a cap of some sort, then the tribunal has to be able to hear, for validation purposes, claims of all sizes. Otherwise, you're again going to have a commission that will concentrate on settling claims under $7 million, to show that the new process actually works—to the exclusion of the larger claims.

The Chair: You have one more question.

Mr. Maurice Vellacott: Delay is a pretty big problem in the current system. You cited some figures on the length of delays, with claims taking ten years or more, which increases the costs to first nations and to the Government of Canada. From my observance of Bill C-6, it doesn't seem to do anything to speed up the resolution of claims. In fact, it seems to enshrine somewhat of a greater delay in the legislation.

If you had your way on this bill, what changes would you make to Bill C-6 to speed up the resolution of claims and to eliminate the delay, or the possibility for delay, and the dragging of feet, and so on?

Vice-Chief Greg Ahenakew: Thank you for the question.

I again refer back to the joint task force report. It ensured the expeditious processing of claims by allowing the first nations to proceed to the tribunal at any point after one meeting with the federal government. If a first nation felt its claim wasn't being dealt with fairly, or in a timely manner, then it could risk going to the tribunal. This would force claims to be processed in a reasonable timeframe. If this approach is unacceptable, or if we can't amend the bill with respect

to delays, then another option would be to put in reasonable timeframes—such as one year, six months, 60 days—in order to move a claim forward more expeditiously. If we allow the minister to deny, with reason, a claim, or to move on a claim for six-month periods, there's really no way we can hold the government accountable. The government can delay.

(1850)

The Chair: Thank you.

Mr. Proctor.

Mr. Dick Proctor: Thank you very much, and thank you, sir, for a very thoughtful presentation.

If there were to be a cap, you indicated that it should certainly be much higher than the $7 million—and especially in Saskatchewan. Do you have a figure you'd be prepared to put out for the committee's consideration in this area?

Vice-Chief Greg Ahenakew: Thank you, Mr. Proctor.

Well, as I said, our preferred option is certainly to have no cap whatsoever. But if I could affix a number, and based on what's coming in Saskatchewan, we talked about Kahkewistahaw, with a claim of $94 million. There are several bands in the Qu'Appelle Valley—Pasqua was one of them, and Peepeekisis, and others—who have lost significant portions of their land. They have lost 18,000 acres and 20,000 acres. Kahkewistahaw, I believe, lost about 28,000 acres. There are three bands in that area that lost less land. But Kahkewistahaw set the benchmark. We're talking about $70 million or $75 million. Thunderchild was $30 million plus, and Moosomin was $30 million plus. We can go across the province; Pally hay lands was probably $60 million.

So we're talking about very substantial claims here. They are going to be these amounts. If I were to average from year one to year three, or three years' hence—which is where most of the knowledge is—I'd probably put the figure at around $40 million. This is just based on the claims coming forward and that are close to validation.

Mr. Dick Proctor: So at least five times more than what is being proposed.

I'm probably a little slower on this than some, in part because I'm just pinch-hitting for my colleague, but about the Primrose Lake air weapons range that you referred to and said it

wouldn't be eligible under Bill C-6, can you explain a little bit more why that would be the case? Also, what was the settlement for the Canoe Lake Band in that case? Or do you know that?

Vice-Chief Greg Ahenakew: I don't know the settlement value--I'll defer to Jayme when it's time--but it deals with treaty-based rights and compensating for the loss of use or the loss of the exercise of that right for so many years. You couldn't go hunting moose or caribou there, couldn't go trapping beaver, martin, and fox, couldn't exercise your traditional lifestyle, gathering. So you put a figure on this loss of your rights and loss of use of the land.

Jayme, could you answer Mr. Proctor's question about the settlement value to Canoe Lake and others?

Mr. Jayme Benson: The reason that claim would be excluded under the current definition is because it's under the current definition of claims policy that deals with the treaty obligation to hunting and fishing rights, which is under “Outstanding Business”. This was the first recommendation of the Indian Claims Commission that dealt with it after the claim was rejected.

Under the current definition of Bill C-6, it limits treaty obligations to land and assets--in other words, it excludes hunting and fishing rights like this claim. The settlement was for $12 million in 1997 to Canoe Lake.

The Chair: Thank you.

Mr. Mark.

Mr. Inky Mark: Thank you, Mr. Chair.

Welcome, and I thank both of you for being here.

Actually, a question I'd like to start with is, just what role did the Province of Saskatchewan have to play in terms of this legislation? The land base is all in the provinces, so have they had any role, in your understanding of...?

Vice-Chief Greg Ahenakew: Nothing.

(1855)

Mr. Inky Mark: None whatsoever? Do you believe they have a role to play regarding even input--to access or to consult, or to be involved in this type of legislation?

Vice-Chief Greg Ahenakew: It's federal legislation, Mr. Mark, and the province was not involved in the process. The joint task force was first nations organizations, INAC, Justice, and others--regional representation. But as you know, our situation is complicated by the Constitution Act of 1930, otherwise known as the Natural Resources Transfer Agreement. And of course the province is involved in treaty land entitlement, in providing land and other assets to first nations.

But is there a role? Of course there's a role for the province to play. At the point where a first nation will purchase land from specific claims money, where it might be provincial Crown land, or private land, or dealing with third parties, then we have provincial involvement, much like under the treaty land entitlement agreement of 1992.

Mr. Inky Mark: In the bill, in a number of places, this phrase is used, that the commission or the minster--through his direction--

shall assist the parties to resolve the issue of compensation using any appropriate dispute resolution process.

That's a phrase I don't really understand, “using any appropriate”. What's an appropriate dispute resolution process? Do you have any idea what that means?

Vice-Chief Greg Ahenakew: No. I think that's where the bill is weak. In a lot of areas, it's not very clear what the drafters mean.

Typically, an alternative dispute resolution mechanism would be with an arbitrator, hearing both sides of the argument. But I believe--and I'll check with Jayme--that both sides have to agree to any dispute resolution mechanism to be used. The federal government can obviously say, no, we don't want this alternative dispute resolution mechanism. So how can you proceed when one of the parties doesn't want to be involved? I think this could be the case in many instances, where then the last resort is the courts.

As we've often said, Minister Nault claims this is going to reduce legal costs and end all the money that consultants are making in this process. After ADR, particularly if your claim is over $7 million, you have no other option but to go to court. If you're rejected by the tribunal, you go to court.

Mr. Inky Mark: In the event that significant amendment is not made to the bill and it goes through rather quickly, what will be your next step?

The Chair: We need a 30-second response.

Vice-Chief Greg Ahenakew: Thank you. I'll give you a 10-second response.

If the bill goes through, we'll have to consider legal options. I don't know what our options are at this point legally, with a duly passed law of Canada. We will consider our options, certainly.

The Chair: Thank you very much.

Ms. Neville.

Ms. Anita Neville: Thank you very much for a thoughtful presentation.

There is a requirement in the bill for the minister to report every six months on the status of the claim under review, provide reasons for delay, and provide an expected timeframe for a decision.

Do you think this qualifies as holding the minister to a timeline?

Vice-Chief Greg Ahenakew: Thank you.

I think the bill is not very clear on what constitutes a reason. Is not having a lawyer available to assign to the claim a reason? Perhaps I'll go to Jayme on that, but it's just not clear on the reasons why the minister can do this.

Jayme, if you'd care to expand on the answer, feel free.

Mr. Jayme Benson: Clearly, under the bill it says there has to be a reason by the minister, but there's no way to force a timely response on the claim. For a band to simply get a reason that

says there aren't enough resources or they need more time, and then in six months, there are not enough resources, we need more time.... There's actually a specific clause within the bill that says no delay on the part of the federal government can ever constitute a rejection. In fact, you're putting a protection in legislation that you can delay infinitely, without the band having any recourse.

In Saskatchewan we've had claims that have gone on for 10, 15, and 17 years with no response. The only way to get a response is to argue before the Indian Claims Commission that the mere fact of delay constituted a rejection and to at least allow the band to move on to the next stage. This legislation clearly prohibits that type of argument. I think it's section 33 or something. So that is a big problem.

(1900)

Ms. Anita Neville: How would you improve it?

Mr. Jayme Benson: First, take out that section. Then obviously put in timelines, not for when you have to give a reason but for when you have to respond to the claim. The other option, of course, is to allow a band to go forward at any time once the claim is submitted.

Clearly, enforceable timelines would solve the problem of delay.

Ms. Anita Neville: Thank you.

Vice-Chief Greg Ahenakew: Thank you, Jayme.

The Chair: Thank you very much for your presentation. It was very helpful. From Saskatoon, the Federation of Saskatchewan Indian Nations, Chief Ahenakew, first vice-chief, and Mr. Jayme Benson, thank you very much for your presentation.

Vice-Chief Greg Ahenakew: Thank you, Mr. Chairman.

The Chair: Thank you.

(1905)

Vancouver, can you hear us?

A voice: Yes. Give us five minutes. We just got in.

The Chair: Okay. If you can make it quicker, that's even better.

A voice: We'll do our best.

The Chair: We'll suspend for a few minutes.

(1911)

(1913)

The Chair: We are welcoming, from Vancouver, the Union of British Columbia Indian Chiefs. We have with us Chief Stewart Phillip, president.

I'd like to thank you for accepting to present 15 minutes early. I know it may put some pressure on you, because there are always last-minute preparations, but because we lost contact with the Northwest Territories, we really appreciate that you accepted to do this.

Please proceed with your presentation. The total time we have is 30 minutes. Your presentation will be followed by questions from the members.

Chief Stewart Phillip (President, Union of British Columbia Indian Chiefs): Thank you.

Mr. Chairman, members of the standing committee, good afternoon.

My name is Stewart Phillip. I am chief of the Penticton Indian Band, which is part of the Okanagan Nation, and as well I'm president of the Union of B.C. Indian Chiefs.

The Union of B.C. Indian Chiefs undertakes specific claims research for our member native communities and other communities throughout British Columbia. In this regard, we have at the moment 83 active specific claims files.

I am here today to represent our chiefs from across B.C., who want to make known their unequivocal and total opposition to Bill C-6. In this regard, we demand the standing committee suspend further consideration of the bill and advise the Minister of Indian Affairs, Robert Nault, to withdraw it.

I further call for a return to a fair and open specific claims policy development discussion between the federal government and our first nations. It was the hope of all first nations communities in B.C. that a new bill to establish a truly independent claims body would facilitate the fair and equitable settlement of the federal government's outstanding legal obligations to first nations and deal with the huge, unacceptable backlog of claims already in the system.

Bill C-6 does not achieve this. In fact, Bill C-6 fails in every regard to measure up to the principles set out for it by Minister Nault at a June 2002 news conference announcing the introduction of the bill, when he stated that it would build a system that is faster and fairer and provide a more independent, impartial, and transparent process for settling specific claims.

Contrary to what the minister has since stated, Bill C-6 will not contribute to the building of stronger, healthier communities, nor will it deliver new tools of economic self-sufficiency to first nations or offer a better quality of life for our communities.

After examination of the proposed legislation, it is the overwhelming position of B.C. first nations that Bill C-6 will negatively impact our communities, for it creates a system for settling claims that is far worse than the existing policy. Further, it is our position that the legislation is too flawed to be amended, and under the direction of many B.C. chiefs, I call for it to be withdrawn.

There are many significant problems with Bill C-6 that have been identified by communities across B.C. The first major problem is that Bill C-6 creates and entrenches yet another conflict of interest on the part of the federal Liberal government. It does not even conform to their own accepted mechanisms of dispute resolution. Instead of establishing a joint appointment process, with first nations consultation, Bill C-6 gives the Minister of Indian Affairs sole control over appointments to the commission and tribunal, the two adjudication bodies it proposes.

It proposes that cabinet, based solely on the minister's recommendation, will make all appointments and renewals. This means the federal Liberal government will sit in judgment against itself, which we consider a blatant conflict of interest. Further, appointments are all for short terms. There is a deep concern that appointees will not be seen as impartial, as they may be worried about their performance and perhaps their own reappointment.

Once again I will say that this contradicts Minister Nault's June 2002 statement that this legislation will provide a more independent, impartial, and transparent process for settling

specific claims. A truly independent claims body can only be established if both the federal cabinet and first nations agree upon who is appointed to it.

B.C. first nations will not participate in a process that is so fundamentally flawed, biased, and unfair. If Bill C-6 passes, first nations will surely make the government fulfill its outstanding legal obligations through the courts. Increased litigation is one of the most foreseeable consequences of the proposed new bill.

(1915)

Bill C-6 does not consider fairly all of the federal government's outstanding legal obligations to first nations. Bill C-6 proposes to deny access to the tribunal for all claims that would have a potential level of compensation exceeding $7 million. There would be nowhere for larger claims to go but to the courts, since they are larger, more complex claims. Both the federal government and first nations will spend their time and money in litigation instead of negotiating reasonable and fair settlements. The cap of $7 million is an amount unilaterally determined by the federal government. The federal government will not be bound to compensate claims over $7 million.

Another significant problem with the bill is that rather than dealing with the backlog, Bill C-6 will create more delay. Delays under the existing system have created a massive, unacceptable backlog. The majority of claims in the backlog originate in B.C.; some of them have been with the Department of Justice for ten years. Of the 528 claims currently under review in this system, about 48% are B.C. claims. Of the over 200 claims currently backlogged at the Department of Justice, about 60% are B.C. claims. Though Bill C-6 purports to deal with the backlogs and delays, it proposes a system that would not only permit but actually reward the federal government's stalling. It allows the interest-free use of money in paying out compensation in inflation-reduced dollars.

If a claim reaches the cap of $7 million, the first nation will not be able to recover further compensation in the form of interest, no matter how long the claim can be delayed. There is nothing in Bill C-6 to compel the government to settle claims in a timely manner. Delaying could be indefinite. The first nation will be forced to absorb the costs of pressing the claim, in terms of interest and inflation, which might greatly exceed any compensation it could recover at a tribunal hearing, even if the first nation wins.

Unlike the federal government, the first nation would be put under great pressure to settle, as mounting costs and uncertainty would create an increasingly anxious environment that might force the first nation to settle for less than fair value. Since the specific claims are outstanding legal obligations on the part of the federal government, the pressure to settle them should rest on the federal government's shoulders, not the first nations'.

First nations want access to an independent tribunal and binding arbitration as incentives for the federal government to negotiate and settle claims. Bill C-6 limits access to the tribunal. Under the current system, first nations have the right to request an investigation and report by the Indian Claims Commission after a claim is rejected by Canada. Currently a first nation can argue before the Indian Claims Commission, for instance, that a delay by the federal government in

responding to a claim counts as constructive rejection, thereby warranting a public inquiry. The Indian Claims Commission reports are released publicly and carry the moral authority of the commission.

First nations communities in B.C. were not consulted on Bill C-6. Despite widespread opposition to Bill C-6, demonstrated in the letters we forwarded to you on B.C. bands' behalf, there's been no consultation with first nations. UBCIC, jointly with the Alliance of Tribal Nations and Treaty 8 TARR centre, together representing almost 200 bands in B.C., asked for regional hearings and didn't get them. We also made a formal request for funding for regional information sessions to inform people about the bill and make recommendations. We didn't even get a response.

Only two days of hearings have been allotted for the standing committee to hear the concerns of first nations from across Canada. UBC, representing over 80 bands, has only been given ten minutes to present at these hearings, upon very short notice. The standing committee is clearly not concerned with a meaningful consultation process with B.C. first nations about Bill C-6.

In conclusion, Bill C-6 is totally unacceptable in its present form because it will legislate narrow criteria for validating claims and will not eliminate the federal government's conflict of interest. It will enable the federal government to control the pace of settlements and decisions. First nations want all specific claims to be considered. Bill C-6 imposes a $7 million cap on compensation, which greatly limits all types of claims brought before the tribunal. Interest will be included in this cap, meaning first nations will pay for Canada's stalling of claims. Large claims will no longer be subject to the option of an independent hearing and a report from the Indian Claims Commission.

(1920)

Bill C-6 does not provide the new financial resources required to clear up the existing backlog of over 500 claims. It does not create independent, impartial institutions that will be able to expedite settlement of backlogged claims. Bill C-6 does not create incentives for the government to settle claims quickly; indeed, it actually rewards the federal government for delay.

Because Bill C-6 was rushed through second reading in an astonishing five days in the last session of Parliament, it is believed that there's little chance that substantive changes can be made by the Standing Committee on Aboriginal Affairs. Despite repeated requests by first nations, there have been no regional hearings on the bill and no opportunity created for first nations to voice their opinions about the bill.

If Bill C-6 passes, the direct result will be dramatically increased litigation costs on the part of the federal government and the possibility of increased direct action campaigns, which are not only costly but create an environment of economic and political uncertainty that will surely deter investment and stability.

Bill C-6 does not create a policy through which the federal government can fairly and speedily meet its outstanding obligations to first nations. It is too flawed to be amended. I call for the

standing committee to suspend further consideration of the bill and to advise Minister Nault to withdraw it.

Thank you.

(1925)

The Chair: Thank you very much for your presentation.

There's just one little clarification I will make, that the committee is doing the work on behalf of the House of Commons. This bill no longer belongs to the minister. It has been tabled in the House and it belongs to the Speaker. I would not want to give the impression that the work we do in the committee is work we do for the minister, for cabinet, or even for the Prime Minister. The committee is a representation of all parties and the work we do is on behalf of the House, but I respect the comment you've made in any event.

We will start a four-minute round with Mr. Vellacott. When I say four minutes, it means both questions and answers, so I hope I don't have to cut anyone off. I'm usually a little bit generous.

Mr. Maurice Vellacott: Thank you.

Thank you for being with us by video conference, Chief Stewart Phillip.

My question is a nuanced one, and you'll have to decide to what extent you want to answer. Back some years ago the government, the Liberal Party at that time, made a red book promise that an independent claims body would be jointly developed and appointed. Is this a partial meeting of that promise? Where do we bat on that one? Is it a partial commitment that's being followed through on in terms of the red book promise of some years ago?

Chief Stewart Phillip: I would characterize it as an unfulfilled promise, where there was an attempt to fulfill it through the joint task force initiative undertaken between the Government of Canada and the Assembly of First Nations. As you're probably aware, that work did go forward after a great deal of consultation and debate. There was a meeting of the minds and an actual bill was drafted. However, unfortunately, the Government of Canada backed away from that initiative and subsequently brought forth this legislative proposal. As we see it, the promise to create that type of body you describe remains outstanding.

Mr. Maurice Vellacott: My next question is with respect to the point that part of the red book promise was that it would be “an independent claims body”. How do you see appointing individuals by the minister through orders in council? Does that fulfill conditions--or could it--if these were objective, carefully sought-after people, objective-minded, balanced individuals? Would it have an independent aspect in respect to the claims body here? Is that possible?

Chief Stewart Phillip: No. The independence we were seeking...the whole essence of the joint task force initiative was that it was joint. It was undertaken by both parties, and appointments were to be made through joint consultation. This bill doesn't bring that forward. In fact, this bill brings the opposite forward, where the Government of Canada makes the appointments at its sole discretion.

Mr. Maurice Vellacott: Those appointed to the present Indian Claims Commission were appointed by similar order in council. Some of them seem like decent people. But are there reasons to suspect they were chosen for various reasons other than competence?

(1930)

Chief Stewart Phillip: I think we all appreciate the fact that the Indian Claims Commission undertook a lot of work. But its creation was a temporary measure, until such time as we were able to develop a joint process, featuring joint appointments, joint consultations, and so on and so forth. This hasn't materialized as of yet. This bill certainly doesn't provide for a joint process, which is why there's such widespread opposition to the bill across the country.

Mr. Maurice Vellacott: Thank you very much.

The Chair: Mr. Proctor.

Mr. Dick Proctor: Thank you, Mr. Chair, and thank you, Chief Phillip.

Why do you think the minister and the government are in such a rush to proceed with this bill? When we consider the delays seen with the Royal Commission on Aboriginal Peoples, for example, why the rush on Bill C-6, in your opinion?

Chief Stewart Phillip: To begin with, as you may appreciate, we're deeply concerned about the whole approach to the consultation process in regard to this bill. We are somewhat incensed at being forced to come into this studio here to make representations within a few minutes, and that opportunity being afforded to other aboriginal groups across this country....

We suspect the Prime Minister himself has certain interests in this legislative initiative, in terms of his view of his legacy with aboriginal people. I can tell you that we resent our outstanding legal obligations being part of this effort.

Mr. Dick Proctor: In the opinion of any of the bands and aboriginal leaders we've heard from, it's unlikely that this would be a positive mark for his legacy. Everybody we've heard from has opposed this. So I don't follow the rationale as to why he would want to rush this through. It may be the case, but not for legacy purposes.

Chief Stewart Phillip: I don't think anybody has ever accused the Prime Minister of having some very clear and accurate perceptions of aboriginal people since 1969. I agree with you, I haven't heard any aboriginal leader support this legislation. All aboriginal leaders, from coast to coast, reject this legislation.

Mr. Dick Proctor: Thank you.

There's much talk in the bill about ADR—alternate dispute resolution. Has the Union of B.C. Indian Chiefs ever had any ability to deal with alternate dispute resolution systems, in your experience?

Chief Stewart Phillip: The Union of B.C. Indian Chiefs has had considerable experience with respect to disputes. In terms of effective ADR mechanisms, no.

One of the concerns, of course, that we have about this legislation—in the event it goes through—is that it is certainly going to generate and precipitate disputes in British Columbia. You cannot expect our people simply to walk away from outstanding legal obligations, which they have every right to expect some compensation for.

Mr. Dick Proctor: The last question is, you've indicated that 48% of the outstanding claims are in the province of British Columbia. What do you think are the main reasons why the ICC has such a significant backlog—not necessarily just in British Columbia? Is it the fact that they don't have the resources, that there are simply too many claims being funnelled into the system? What do you think are the principal reasons for the significant backlog you've identified?

Chief Stewart Phillip: There are a number of reasons, but I believe the most significant reason is that the Department of Justice seems to represent a bottleneck for these claims. This has created the backlog. There are just simply not enough resources put into the system to be able to process these claims. As you may have noted in our presentation, one of our criticisms is that the new legislation does not provide for any significant increase to funding resources to alleviate the backlog.

The Chair: Thank you.

Mr. Mark.

Mr. Inky Mark: Thank you, Mr. Chair. And Chief Phillip, thank you for appearing before the committee.

One thing we've heard over the last several days is the consistency of the witnesses. They basically bring the same points from coast to coast, including today.

On the legacy issue involving the Prime Minister, just to prove whether there is consistent thinking between the Prime Minister and the minister, has there been any effort to lobby the Prime Minister to determine exactly what his goals are for the aboriginal community?

(1935)

Chief Stewart Phillip: That's an interesting question, when you consider 1969 when the Prime Minister brought forward his white paper on Indian policy, his consistent efforts to disregard the outstanding legal obligations to first nations people, and all of his efforts through Minister Nault. It's an interesting question.

We certainly don't agree with the Prime Minister's world view concerning what reconciliation between the Government of Canada and our people should be.

Mr. Inky Mark: The joint task force report was referred to continually through the last couple of days. I want to ask you to comment on what the minister said to the committee here at a meeting previous to today. I will quote him from his speech. He says,

> A few years ago, a joint Canada/First Nations Task Force of expert advisors looked into the claims process, building on past decades of studies to design a model claims resolution body.

And then he says, “The proposed Specific Claims Resolution Act”--which is Bill C-6--“reflects the essential elements of this ideal model, tempered by current fiscal realities”.

Would you comment on that?

Chief Stewart Phillip: We absolutely and totally reject that statement. The proposed Specific Claims Resolution Act is the exact opposite of what the joint task force report called for. You must understand that the joint task force report itself was hotly debated throughout the Assembly of First Nations. It was a very difficult exercise where there was a meeting of the minds, and we felt it represented the best possible legislation to deal with the backlog of specific claims and get on with dealing with this issue.

As we all know, it was rejected, and the minister set out on his own agenda with his suite of legislation, none of which has been positively received by first nations across this country. It's the subject of all kinds of political actions and letter campaigns, resolutions, marches, rallies, and so on.

Mr. Inky Mark: If you had your way, what kind of consultation process would you have been happy to see by the minister and by the standing committee in British Columbia?

Chief Stewart Phillip: What we're saying here, very clearly, is the Specific Claims Resolution Act is simply so flawed it must be removed; it must be withdrawn. We have to return to the same approach that was employed through the joint task force initiative. There have to be reasonable and responsible opportunities for consultation so we can jointly put together a bill that in fact is going to address the huge backlog of outstanding specific claims.

The opportunity cost of not dealing with those specific claims weighs very heavily on our first nations communities, but it also weighs very heavily on third-party interests. This bill is only going to contribute to and create an explosion of aboriginal litigation. That is our only recourse if this bill goes forward, so we're appealing to the standing committee to recommend that the bill be withdrawn and that we get back to a joint process we all would be more than willing and gladly ready to support.

The Chair: Thank you.

Mr. Godfrey.

Mr. John Godfrey: Chief Phillip, following on your last remark, we have fairly limited room to manoeuvre as the standing committee here, so if we reject this piece of legislation, as you suggest, there is no way in our power to re-establish a joint process again. That's not our job. We can only say “yea” or “nay” and live with the consequences.

If you understand, we can't force anybody to do something different. We can only accept, reject, or modify, and we're hearing that this bill is beyond modification. If it comes down to a choice between the status quo, this provisional arrangement, which has been provisional for 12 years, or whatever, and what's before us, I guess the judgment call we have to make, and which we have to hear from you, is that, imperfect though this may be, is it likely that we're going to see a speeding up and a more efficient processing of claims, on the one hand, and as a result, faster and higher payouts on the other?

If this imperfect piece of legislation would lead to that result, I could support it, because it would be an improvement. But what I want to know from you is, if that's the only choice we have, understanding that we don't have perfection--it's not our job to have perfection, unfortunately--facing that stark reality between the devil you know, so to speak, and the new piece of legislation--I won't call it devilish, but anyway, whatever--what is your advice to us?

(1940)

Chief Stewart Phillip: The truth of the matter is, obviously you've heard from us that Bill C-6 is too flawed, it's unacceptable, we're calling for it to be withdrawn, and the current system itself is equally problematic and has contributed to the backlog. That's where the joint task force initiative came from, based on the fact that the status quo at the time the undertaking moved forward was unacceptable. There was that joint effort brought forward to develop a specific claims process that would in fact deal with the backlog. That got sidetracked, and now there is an effort to railroad this piece of legislation through.

The final thing I would like to say on that is that we both know the current status quo in Ottawa is not going to remain the same much longer. There are going to be significant and fundamental changes in Ottawa, and we're hoping we're able to dovetail with that and bring forward legislation that will be fair, that will be just, and that will deal with Canada's outstanding legal obligations to first nations people in this country.

Mr. John Godfrey: Thank you.

The Chair: Thank you very much for your presentation. It was very helpful.

I'm thanking, of course, the president of the Union of British Columbia Indian Chiefs, Chief Stewart Phillip.

Chief Stewart Phillip: Thank you.

The Chair: This completes this part of our consultation. We will now move to the Northwest Territories. I think we have the satellite pointed in the right direction.

We welcome from the Northwest Territories, Mr. Jerome Slavik, barrister and solicitor, from Ackroyd, Piasta, Roth & Day LLP. We invite you to make your presentation, which will be followed by a question period. The amount of time available will depend on the length of your presentation. When I say three minutes, it means three minutes for the question and the answer. I will try not to cut you off too fast if you go on too long.

Please begin your presentation.

Mr. Jerome Slavik (Barrister and Solicitor, Ackroyd, Piasta, Roth & Day LLP): Thank you for this opportunity to address your committee.

I believe all members of the committee should have before them a letter of ours dated November 25, which sets out in more detail our particular concerns regarding Bill C-6.

Just by way of background, our firm, I believe, has the largest specific claims practice in Canada. We've settled over 25 claims and we currently have another dozen before us. We've represented over 25 first nations in these specific claims processes over the last 19 years.

The purpose of this specific claims process, which was established in 1973, was threefold. It was firstly to provide fair, secondly, expeditious, and thirdly, low-cost solutions to first nations allegations of breaches of lawful obligation by Canada in relation to first nations land, assets, and treaty entitlements. This policy and program, almost from the get-go, have been marked by inefficiency and unproductivity. In the last 30 years, less than an average of eight claims per year have been settled. As other people have noted, there is a huge backlog, and there are in my view hundreds more claims coming.

Rather than repeat the main points of other parties, I just want to talk to you briefly about the experience in Alberta.

The fundamental problem with this bill is the $7 million cap on both validation and compensation. We know there are over 30 first nations in Alberta that have claims of an estimated value of over $700 million. We are only aware of two of these that will be under $7

million. These include approximately 20 to 30 claims for agricultural benefits in Treaty 8, six to eight treaty land entitlement claims, numerous wrongful surrender claims, and a new wave of claims that will relate to wrongful use of Indian moneys.

These claims will be much worse off under Bill C-6 than they are under the current claims process. Under Bill C-6 the decision on the validation of these claims and the assessment of their compensation will lie completely within the purview of the Department of Indian Affairs and the Department of Justice. The only place they can go for impartial adjudication is into the courts, and in the courts they face defences of the statutes of limitations and laches. It was these very defences that the specific claims policy was set up to prevent being applied to historical grievances.

There were two questions asked earlier that I want to speak to. One was from Mr. Godfrey. Are first nations better off with the devil they know than this devil? For claims over $7 million, I can say unequivocally they are better off with the current dysfunctional system than with what is proposed under Bill C-6. At least under the current system they can appeal rejections to the Indian specific claims commission and get rulings from the claims commission on important issues such as compensation. Under the new bill, claims over $7 million have no place to go upon rejection but to the courthouse.

Second, this bill, unless it provides significantly more resources—and I understand that none are planned—will do nothing to remove the backlog or expedite the process.

Third, for claims over $7 million, this bill perpetuates the current problem that is fundamental to the specific claims process; namely, it violates the first principles of the rules of natural justice and administrative law, that an employer or a lawyer should not sit in judgment over claims against their clients.

I was part of the AFN-DIAND task force. I was part of that so-called panel of experts the minister referred to, and it was our clear understanding from the get-go that this new bill would give the independent claims tribunal full authority to validate claims of all sizes. Many first nations were prepared to compromise on the level of compensation the tribunal could award, but there was a complete consensus in that group that claims of all sizes should be validated.

(1945)

This tribunal shows a fundamental disregard of that essential recommendation and component coming from the AFN joint task force. Mr. Nault is just frankly wrong when he says that this bill reflects the view of the experts gathered on the AFN-DIAND task force. I sat in on every one of those meetings, and this bill looks nothing like what we recommended.

I would urge you, if you cannot make significant amendments to address these issues--and they are set out in more particularity in my letter--to ask that the bill be withdrawn and that a new joint process be established to bring a claims resolution process forward that is going to meaningfully affect the backlog.

I do want to say to you that the information you've been provided by the Department of Indian Affairs about the number of claims over and under $7 million is in my opinion inaccurate. I think, based on what we know, that at least 60% to 70% of the current and outstanding claims will be over $7 million. This bill does nothing for them. In fact, it makes their situation worse. Litigators across the country will only welcome this bill if they can get past statute of limitations and laches problems, and for first nations that can't, there will be a great increase in bitterness, in cynicism, and in mistrust of this government and its approach.

I just want to make one final, concluding point. We, in our approach to claims, firmly believe that it is in the common interest of first nations and the government of Canada to settle these claims. Not only does it get rid of points of litigation and not only does it settle historical grievances, but in our experience--and we've settled many of these claims--the benefits to first nations from settling these claims in terms of job creation, economic participation, improved housing, strengthened government, reduced federal dependency, and reduced maintenance costs have been huge. All the objectives that are set out in the throne speech and the interests behind those objectives can be met by a fair and expediting claims settlement process. This bill will not help achieve those objectives.

I'd like to hear any questions you may have at this time, and thank you for hearing me out.

(1950)

The Chair: Thank you very much for your presentation. It was a good presentation, and we'll now start a first round of questions.

Mr. Vellacott.

Mr. Maurice Vellacott: I appreciate your being with us today.

I wonder, first off, what comments do you have on the commission's ADR role and functions, and how do you view the bill's provisions on binding arbitration--if I could start with those two questions?

Mr. Jerome Slavik: For claims under $7 million I don't have that many problems with the bill. The problem is that the ADR process only applies after validation. It doesn't apply pre-validation, so that's a major problem.

Second, for most claims under $7 million, frankly, there is not a large dispute over compensation. Where you have the significant disputes over compensation are the claims over $7

million, with disputes over the principles of law that should be applied and many other areas. The tribunal has no effect on those claims.

Mr. Maurice Vellacott: In terms of the bill's provision on binding arbitration, you don't think that's a feasible, noteworthy, or good aspect of the bill?

Mr. Jerome Slavik: But it doesn't apply to claims over $7 million, and that's where the bulk of the Crown's outstanding contingent liabilities lie. Of the estimated $1.5 billion to $2 billion of contingent liabilities the government has in relation to specific claims, in our estimation, 60% to 70% if not more than that relates to claims over $7 million, over which this tribunal has no jurisdiction. That is where the fundamental problem lies.

Mr. Maurice Vellacott: Some mentioned prior to your presentation here that if there was a possibility of an unlimited figure instead of the cap...but in terms of validation, of being able to go to the tribunal for validation at least and never mind the negotiation, is that a good thing? Would that salvage something of a good aspect if we could get that instead?

Mr. Jerome Slavik: Absolutely. If you could have validation of claims of unlimited size, then I would be prepared to support this bill despite the very unhappy cap of $7 million. In the discussions of the task force, $7 million was seen as an opening ceiling, with the prospects of it rising once all parties got more faith in the tribunal. But the prerequisite now that validation and compensation can only be allowed on claims under $7 million is fatal to this bill. It will not, believe me, fix your problems. It will make them worse.

Mr. Maurice Vellacott: Thank you very much.

(1955)

The Chair: Mr. Proctor.

Mr. Dick Proctor: Thank you.

Thank you very much, Mr. Slavik. In your presentation you talked about the panel of experts, of which you were a part, and the fact that the government had so completely and thoroughly rejected those recommendations.

Could you help the committee with your rationale as to why that has transpired the way it has?

Mr. Jerome Slavik: In part, it was concerned with fiscal realities, and I understand that. But I also think, fundamentally, there were forces in the Department of Indian Affairs and the Department of Justice that did not want to lose control of management, timing, or expenditures of the specific claims process. That is why you have the clause saying that claims can only go to the tribunal once they've been rejected. That guarantees them being able to determine how many claims get to the tribunal and when.

That puts the management of their claims within their current fiscal reality, and there will be a huge delay in settlement. The average claim, to get through the Department of Indian Affairs process, takes four to six years; to get through the tribunal, it will be another two. So you're looking at six years here.

The real agenda is not to fairly expedite claims settlements; it's to manage them within the existing departmental financial and legal resources.

Mr. Dick Proctor: I just want to go back to the answer you gave to Mr. Vellacott's question. Did I hear correctly that if you could get the validation of claims sorted out, despite its warts you would be prepared to accept this bill?

Mr. Jerome Slavik: I think the fundamental flaw of this bill is that it puts a limitation on what claims it can consider for validation. If they could consider claims of all sizes for validation, that would be a significant improvement. I would prefer a higher cap of $10 million to $12 million, but that would be a fundamental improvement in this bill.

The second thing of equal importance that I would like to see changed is that claims should go to this tribunal in the first instance. They should not require departmental rejection. That delays the claims for anywhere from three to five years, if not longer.

That was never intended as part of the joint panel. Claims were to go directly there for a hearing, and the Department of Indian Affairs and the Department of Justice were then supposed to respond to those claims, not take three years to five years to consider them, delay them, and prevent them from going to the tribunal. I would ask you to read my letter on that point.

Mr. Dick Proctor: I will look at it, although it was just received a few minutes ago.

So obviously, from your last answer, you have a great deal of difficulty with the notion Mr. Nault advanced that the tribunal will speed up the process.

Mr. Jerome Slavik: This is absolutely not the case. There are no new resources, in either DIAND specific claims or DOJ, that will shorten their validation or rejection time from the current three to five years. In fact, in my experience in the last few years, it's become longer. The greater the potential risk of liability the government faces, the longer it takes. I've had claims take 8 to 10 years to be either validated or rejected.

This process is so flawed in its administration it's Kafkaesque; it's abysmal. You have no idea of the level of frustration, costs, and anger out there among first nations with this process. This bill, which I worked on for 10 years with Arcap, the joint task force, writing papers, giving speeches, is a complete betrayal of the trust that was promised in the red book, which first nations were led to believe was going to occur coming out of that joint task force. This will do nothing to bring fairness or expedite the claims process, and anyone who says that doesn't know the way it works.

The Chair: Thank you.

Mr. Mark.

Mr. Inky Mark: Thank you, Mr. Chairman, and thank you, Mr. Slavik, for being here this evening.

With 20 years of experience in this business, I'd like you to clarify one item we've been hearing about in this committee. It's that sometimes the legal fees supersede the claimant's.... Is there any truth to that?

Mr. Jerome Slavik: I'm not aware of any of those cases. But although I'm a member of the profession, I think we should try to avoid litigation, reduce legal costs, and move the benefits of these claims to the participants of the claims.

This bill gives an open door to litigators to go into court, particularly for claims over $7 million. This bill raises legal fees, extends the time, and includes way more costs from the judicial and Department of Justice side of the ledger.

You want a tribunal that has the specialized knowledge and skills to hear these claims efficiently and effectively, like the human rights tribunal, labour tribunals, energy tribunals, and other regulatory tribunals. Those are the means to most effectively reduce legal costs, reduce the role of counsel, and get quick, low-cost, expeditious judgments. That's where we were heading, but that's not where we ended up.

(2000)

Mr. Inky Mark: The reason I asked the question is that I'm just trying to figure out what impact legal fees have on this whole resolution of claims.

Mr. Jerome Slavik: They are not a significant factor, at least for our clients, in any claims I've been involved in.

Mr. Inky Mark: My suggestion would be that if legal fees were a problem, would you support taking the cap off the claims and putting a cap similar to professional fees on the lawyers? Would this help the situation?

Mr. Jerome Slavik: At the risk of incurring the wrath of my colleagues, if that's the trade-off, I would make it in a flash. If you took away that $7 million cap on claims and put it on legal fees, I would accept that in a flash. It's not going to happen, mind you. But what we need is a fair, expeditious system. Believe me, this is not going to give us one.

The Chair: Thank you, Mr. Mark.

I have requests by two speakers on the government side. We'll start with Mr. Godfrey, then Mr. Finlay, for three minutes each.

Mr. John Godfrey: Mr. Slavik, thank you for your reference to my question about whether the bill is worse than the status quo. You were pretty unequivocal about that, although I did notice a bit of an opening when you responded to Mr. Vellacott. Mr. Proctor picked up on it as well. If there were two things that we could correct here, which would maybe make the rest of it acceptable, validation being one and the other being the cap, I guess.... No?

We are on a very fast course here. I'd like to know from you, in practical terms, given your knowledge of the legislation, is it possible to express this in an amendment, so that we could work with or modify the existing legislation in a way that would at least become marginally acceptable?

By the way, we would need it tomorrow morning.

Mr. Jerome Slavik: Let me direct you to the draft of the bill, which was close to being a final draft, prepared by the AFN-DIAND joint task force. You may be able to get the wording of the draft from the Department of Justice. This last draft, which the joint task force saw, had wording with no cap on validation. It still had a limitation on validation of claims.

I'm not speaking on behalf of my clients on this point; I think they would like no cap. But I also know there were many first nations who were prepared to live with a cap on an interim basis. So language to that effect is available, Mr. Godfrey, if you can find the document from either the Department of Justice or DIAND.

Secondly, you could refer to the same bill or the same draft to allow access to the tribunal in the first instance, instead of awaiting a rejection by DIAND and the Department of Justice. In that bill, there was direct access to the tribunal. You can find that language in there as well.

I think the rest of the bill has flaws in it, but if these two conditions were changed, it would be a huge improvement. I would urge you to consider them.

Mr. John Godfrey: Thank you very much. That's very helpful.

The Chair: Mr. Finlay.

Mr. John Finlay: Thank you, Mr. Slavik. You've been most revealing and encouraging. I like your passion.

Could you tell me whether some of the other items in the bill that we haven't talked about particularly—the focus on facilitated negotiations, joint research, and a process overseen by a neutral third party—would assist in resolving claims in a more obviously fair way?


(2005)

Mr. Jerome Slavik: First of all, I favour all of those things. But I can tell you, as long as they're limited to claims under $7 million, they will have a minimal impact. Those things are all good, but they really are secondary and incidental to the fundamental problems that need to be created in this bill.

I teach courses on Crown-first nations negotiations at the band centre. I've taught and developed courses on Crown-first nations negotiations for specific claims and comprehensive claims. I have a great deal of faith in the negotiating process, probably more than either the government or my clients. We've used it effectively.

If you are proceeding with the bill on the basis that those things are helpful, it would be a poor rationale for proceeding with this bill. There are too many fundamental flaws to have those small favourable points save this bill.

Mr. John Finlay: I met last week with the first nations, and the cap was one of the major stumbling blocks. You mentioned $10 million or $12 million. You've settled a number of claims. Do you have any better estimate? Is that your best estimate? Do you have a favourite number?

Mr. Jerome Slavik: No, I don't, sir. I know that in the AFN-DIAND task force there was talk of many first nations agreeing to some kind of cap. The cap was higher than it is right now. I don't have a recommendation on a cap. I would like to see it higher.

The real issue is validation, in my opinion, sir. Once you get validation, all those other good things you were talking about, such as facilitated negotiations, can kick in. It's on the larger claims that it's most needed. If you can get validation on the larger claims, then you can kick into negotiation. Frankly, sometimes I would rather have those claims negotiated than arbitrated. But first you need them validated, and you can't get them fairly validated under this bill.

The Chair: Thank you very much.

We want to thank you, Mr. Jerome Slavik, barrister and solicitor with Ackroyd, Piasta, Roth & Day, from the Northwest Territories--oops, from Alberta.

Mr. Jerome Slavik: Mr. Chairman, I'm in the Northwest Territories--

The Chair: You're in the Northwest Territories, but you're speaking on behalf of the aboriginal communities of Alberta.

Mr. Jerome Slavik: No, sir.

The Chair: On your own?

Mr. Jerome Slavik: I just want to make clear that I am not speaking on behalf of first nations. I'm here giving my information and advice about the specific claims process after working in it for 20 years. I'm not speaking on behalf of any organization or first nation. I'm just trying to lend my knowledge and expertise to this committee.

The Chair: That is on the record now. We want to thank you very much for your knowledge and expertise. It was very helpful.

Mr. Jerome Slavik: One final comment, sir, if I may. The Blood Tribe is represented there by Mr. Randy Bottle. They have a number of large claims. They are the largest tribe in Canada. I'm hoping your committee can find time to hear from Mr. Bottle, however briefly.

The Chair: He will be appearing tomorrow.

(2010)

Mr. Jerome Slavik: Thank you.

The Chair: Now we move to a joint presentation with a video conference from Vancouver and a witness with us here. I invite to the table here in Ottawa, from the Alliance of Tribal Nations, Mr. Ken Malloway, councillor. I see that we have been joined by our friends in Vancouver. I welcome from the Carrier Sekani Tribal Council, Chief Mavis Erickson, tribal

chief, and from the Alliance of Tribal Nations, Dr. Dan Gottesman, senior research and policy analyst, and Edna Louis, director.

As you start your presentation, we would appreciate your identifying yourselves so that we can connect the person speaking with the name on the card on the table before us.

We invite you to make your presentation, which will be followed by a question period. Can you share with us the approximate length of your presentation?

Dr. Dan Gottesman (Senior Research and Policy Analyst, Alliance of Tribal Nations): I believe Councillor Malloway will be making a presentation of five or six minutes. That's what we were asked to do.

The Chair: That's perfect. Thank you very much.

You may proceed at any time. Councillor, please begin.

Mr. Ken Malloway (Councillor, Alliance of Tribal Nations): Thank you.

Mr. Chairman and members of the standing committee, my name is *Wileleq*. My English name is Ken Malloway. I'm a councillor and former chief of the Yakweakwioose Band of the Stó:lõ Nation, whose traditional territory encompasses the Fraser River valley, east of Vancouver in British Columbia.

I am appearing before you today on behalf of the Alliance of Tribal Nations, whose membership includes most of the 24 communities of the Stó:lõ Nation, as well as several more communities of the Shuswap Nation.

The Alliance of Tribal Nations was established in 1985 by the Stó:lõ, Shuswap, and Nlaka'pamux nations to support our efforts to stop the Canadian National Railway from twin-tracking its main line through the Thompson and Fraser River valleys, the location of our homes and fisheries. Through the alliance, our efforts were successful, and since then we have mandated the alliance to develop specific claims against Canada, primarily involving railway rights of way.

I am informed that the standing committee has given the Alliance of Tribal Nations only five minutes to make a presentation to you on Bill C-6. I wish to state for the record that we find this time allocation, as well as a general timeline the committee intends to follow on this bill, to be wholly inadequate and disrespectful to our nations.

The Minister of Indian Affairs failed to consult first nations on this legislation. It was rushed through second reading in the House of Commons, and now the standing committee, which is supposed to give legislation in-depth consideration, appears intent on fast-tracking its work on Bill C-6. Let me advise the members of this committee that the Alliance of Tribal Nations knows all about fast tracks--and we know when our nations are about to be railroaded!

In the few minutes we have left for our presentation, I can only raise one of many fundamental concerns that the Alliance of Tribal Nations has with Bill C-6. I will do so in a moment. However, again for the record, let me state that in the opinion of the alliance, Bill C-6 fails fundamentally to measure up to the principles set out for it by the Minister of Indian Affairs, namely that it will create a process that is independent, fair, and timely for the resolution of specific claims. It will not. In fact, it will create a process that is even worse that what we have at present.

On this point, we recommend to you the analysis done by Professor Bryan Schwartz for the chiefs' committee of claims of the Assembly of First Nations. The concerns identified by Professor Schwartz are shared by the Alliance of Tribal Nations. To date, these concerns have not been answered by the Minister of Indian Affairs or by any of his senior officials.

Now we turn to clause 26 of Bill C-6. This section sets out key policy changes intended to govern the submission of specific claims to the proposed commission. Honourable members, 44% of the specific claims submitted to Canada since 1970 have come from first nations in British Columbia. Out of the 506 claims in the current backlog awaiting action by Canada, 246, or 48%, are from first nations in B.C. Clearly, the impacts and outcomes of Bill C-6 will affect more claims from B.C. than from any other region in Canada. We ask you to give this fact special consideration.

Honourable members, in British Columbia, Indian reserves were established in three ways: by treaties in southern Vancouver Island and in the northeast of the province; by unilateral undertakings of Crown agents, such as colonial governors and Indian reserve commissioners; and lastly, pursuant to legislation that established a royal commission from 1913 to 1916, known as the McKenna-McBride commission.

Most Indian reserves in British Columbia were established by unilateral undertakings of the Crown, by Governor James Douglas from 1848 to 1865, and by Indian reserve commissioners from 1875 to 1910. Many of the specific claims from first nations in B.C. involve these unilateral Crown undertakings to set aside reserve lands.

I know firsthand from my work for the Stó:lõ Nation and the Aboriginal Council of B.C. that the Department of Justice refuses to accept specific claims based on unilateral Crown undertakings, particularly when they concern the size and location of reserve allotments and the failure to set aside reserves pursuant to instructions. The narrow position of the Department of Justice, that such unilateral undertakings do not constitute lawful obligations on the Crown, is simply wrong. It was rejected completely by the Supreme Court of Canada in the Ross River case.

In this light, when we look at subclause 26(1) of Bill C-6, we see the reflection of the Department of Justice's narrow and incorrect position in court. In subclause 26(1), their failed arguments are resurrected to limit the kinds of claims that could be filed with the proposed commission.

(2015)

Specifically, subparagraph 26(1)(a)(i) limits lawful obligations to those arising from an agreement or a treaty, and subparagraph 26(1)(a)(ii) limits lawful obligations to those arising from Canadian or colonial legislation. Lawful obligations concerning Indian lands that arise from unilateral Crown undertakings such as imperial instructions, letters patent, orders in council, instructions to Crown agents, and commitments made on the ground by Crown agents are excluded from these criteria. In short, specific claims based on unilateral Crown undertakings would be barred from being filed with the commission.

In British Columbia, an entire class of pre-Confederation claims, known as Douglas reserve claims, would be barred from the commission. Virtually all the specific claims in B.C. that concern the establishment or failure to establish Indian reserves by Indian reserve commissioners also would be barred.

The Alliance of Tribal Nations has done a summary evaluation of the specific claims from B.C. currently in the backlog, plus the 27 B.C. claims that Canada has already rejected. We believe almost 30% of these claims would be barred from being filed with the commission under the criteria set out in subclause 26(1).

For first nations in B.C., Bill C-6 is not a specific claims resolutionact; it is a specific claims extinguishment act. What the Government of Canada failed to achieve in court, it is now trying to achieve unilaterally, via clause 26 of this bill. We find this repugnant, arbitrary, unfair, and illegal. But clause 26 is only one example of the bias against first nations that the Government of Canada has built into Bill C-6. Yet again, the federal government is making up rules to maintain control of the specific claims process, to protect its interests and to limit its legal liabilities. Yet again, Canada is in breach of its fiduciary obligations to our first nations. Yet again, the honour of the Crown is being dragged through the mud.

Rather than reducing litigation and its attendant costs to the taxpayers of Canada, litigation of specific claims is certain to increase if Bill C-6 is passed and proclaimed in its present form.

In conclusion, Mr. Chairman and members of the committee, we respectfully recommend to you that the standing committee suspend further deliberations on Bill C-6 and turn to other business. Further, we ask you to recommend to the Minister of Indian Affairs that he withdraw the bill from Parliament and return to the table with first nations to produce a new bill that truly lives up to the principles of independence, fairness, and timeliness for the resolution of specific claims.

Thank you for your time and attention. I am happy to answer any questions you may have.

The Chair: Thank you very much.

Chief Mavis Erickson from the Carrier Sekani Tribal Council, if you have a presentation to make, we will certainly welcome it.

Chief Mavis Erickson (Tribal Chief, Carrier Sekani Tribal Council): I just want to ask the chairperson...the First Nations Summit task group members are here, Edward John and Lydia Hwitsum. We were going to do a joint presentation with them because of the limited time we have to appear before the standing committee. We have a very short presentation, but it emphasizes the points made in the First Nations Summit task group's presentation.

The Chair: Are you saying that you will be making a presentation, or it has been condensed?

Chief Mavis Erickson: Yes, I will.

The Chair: Please do.

(2020)

Chief Mavis Erickson: I was asking the chair if we could make it after the summit task group, whose members are here, Edward John and Lydia Hwitsum.

The Chair: They're in Vancouver and they're part of the next group. They would like to participate before or after. Why don't we extend this until 9 o'clock? They're all there now.

I'd like to be clear. One of our two last groups is the Carrier Sekani Tribal Council and the Alliance of Tribal Nations, and our next group scheduled is the First Nations Summit. Am I being told that everyone is now present of those three groups?

Chief Mavis Erickson: Yes, that's correct.

The Chair: And do all three groups agree that we do it all together and extend the time until 9:15 even? Okay?

Dr. Dan Gottesman: Mr. Chairman, I think the preferred approach of the Alliance of Tribal Nations is, since Councillor Malloway has already presented our brief, to proceed with questions, and then if the First Nations Summit and Carrier Sekani Tribal Council wish to share their presentation, to proceed in that way.

The Chair: Okay. What we'll do is have a two-minute round, if we want to leave enough time for the other group. It doesn't extend the time; it's just putting the two together.

Let's start right now with a three-minute round with Councillor Malloway.

Mr. Vellacott.

Mr. Maurice Vellacott: Mr. Malloway, I appreciate your being here.

In your view, what are some of the measures called for to ensure that the specific claims process is conducted more speedily than has been the case in the past? That's of course the intent, the supposed reason why this bill has been brought on, to speed it up. What are some of the things lacking in this bill we could put in to make the process speedier, things we could do to make it salvageable?

Mr. Ken Malloway: There's this document here, the report of the joint task force. The first thing that would happen under that would be that the commission would order a face-to-face meeting between the first nations and Canada; they'd sit down and see if there was any way they could work this out, if they could agree it was a claim, or if they could agree to negotiate. That's the first thing that would happen.

But things have changed since we made this joint report, and now there are all kinds of possibilities for delays. The minister can make a report and say that he wants to delay it, and then six months later he can make another report and delay it again. First nations have waited for years and years to try to get to the table. In my case, the submission I made in 1988 for Douglas reserve claims was supposed to get a response from the Canadian government in one year, but it took several years for it to even get rejected. Then when we resubmitted it after Delgamuukw, it took a while to get rejected again--and it's been rejected again.

Now through the Ross River case we feel we're finally going to either go back to negotiations or to litigation because we won that case.

Mr. Maurice Vellacott: You have a lot of railway land issues in B.C. that could possibly be addressed in this fashion. Is that about all we're going to be able to cover off, some of those smaller railway land claims in the province of British Columbia? Is that the sum of it?

Mr. Ken Malloway: From the presentation the minister made, I'm afraid that what he's talking about is quantity, wanting to settle as many claims as possible. Although B.C. has many, many railway claims, they also have many large claims as well. People were asking him how he would measure success; was it by the amount of money that would be spent on the claims? He said, no, it's by the number of claims. It looks as if he's going to maybe fast-track the small claims to make it look as if they're doing something but sacrifice the larger claims, and there are some very large claims in B.C.

Mr. Maurice Vellacott: So he could boast about the number of claims settled by way of this process, but all small ones, railway claims in B.C. and those kinds of things.

Mr. Ken Malloway: Yes.

Mr. Maurice Vellacott: Thank you.

Dr. Dan Gottesman: If I could, I'd like to just add something from Vancouver--

The Chair: I'm sorry. We're out of time for Mr. Vellacott.

Mr. Proctor.

Mr. Dick Proctor: I would yield some of my time to allow him to elaborate.

The Chair: Thank you, Mr. Proctor.

Carry on.

Mr. Dick Proctor: Does Vancouver want to elaborate on that point? I'm willing to give some of my time for that if you wish.

(2025)

Dr. Dan Gottesman: Yes, thank you very much.

Not all the railway claims are indeed small, and one of the issues with railway claims, as well as with many others, is the way in which the federal government proposes to award compensation. Basically, in many of these claims they are proposing straight interest for 80% of the claim settlement and compound interest on only 20%, whereas the rule of thumb, were those claims to be litigated successfully, would call for compound interest.

So there's a bit of a shell game going on with respect to the value of claims. But I think it would be wrong to assume that railway claims, because they may only involve five or ten acres here and there, would necessarily come under the $7 million cap.

Mr. Dick Proctor: Thank you.

My question is to Mr. Malloway, and thank you for being here and for your presentation.

You were probably in the room when an earlier witness suggested that if the validation of claim were altered and the $7 million cap increased, perhaps people could swallow this and accept it despite all its other warts. Is that your position, or do you think this is just so fundamentally flawed that there's no salvation possible?

Mr. Ken Malloway: Well, I'm glad Mr. Slavik finally made it clear he's not representing any first nations. He's representing his law firm, I suppose.

From all over Canada the first nations have been talking, and I don't believe just those two things would fix it; it's more than that. It's not just about the money; it's not just about the things that were mentioned there. There are many flawed aspects of this.

I listened yesterday to the discussion with the minister and the ICC, and I'm still concerned about appointments to the commission. The minister says people are already lined up waiting for jobs at the commission. Well, I bet they are; I'm sure they're well paid and that people are lining up asking for appointments. That's the concern we have, that these appointments may end up being political appointments.

To try to compare the commission and the tribunal appointments of this independent claims body with the Indian Claims Commission is just unfair. The Indian Claims Commission, while they've tried to do a good job and have often done a good job, have no teeth. They have no power to make any binding arbitration; they have no power to make any awards. But this independent claims body would. It's easy to appoint people to a toothless tiger.

The Chair: Mr. Mark.

Mr. Inky Mark: Thank you, Mr. Chair.

Councillor Malloway, welcome.

On that same note, do you see the Indian Claims Commission becoming the same people, becoming the commission in this piece of legislation?

Mr. Ken Malloway: Well, from the start chiefs have maintained they're not after a new and improved Indian Claims Commission. What they're after is an independent claims body that would be completely new, that would have joint appointments for the commissioners and for the tribunal, not just a new and improved Indian Claims Commission.

Mr. Inky Mark: I'm surprised if, even though in the Supreme Court the decision regarding the Ross River case was upheld, you really believe Bill C-6 is about extinguishing your rights. Do you think the department understands the issue about the unilateral undertakings of reserves that are made through that process?

Mr. Ken Malloway: Yes, I am concerned about that. We have many claims in British Columbia, and especially on the Douglas reserve claims. Governor Douglas laid out claims from 1849 to 1865. We're looking at the definition of claims and are concerned that those claims would not be allowed under this new process. The Supreme Court of Canada says Governor Douglas had the authority and the wherewithal to establish reserves and that even if he just

promised to make the reserves, they're reserves. We had a big win in the Supreme Court of Canada, and it's not reflected in this legislation.

Mr. Inky Mark: Concerning consultation on this bill, first I need to know when you first found out about it in British Columbia and whether any consultations took place.

Mr. Ken Malloway: We heard not too long ago that the bill was coming down. Many people were excited about it and thought it's about time and that this was really good, but when we saw it, we saw it was quite a departure from the joint task force report. We felt there would be more consultation.

As a matter of fact, I got a letter from the minister whereby the minister went around the AFN and the chiefs and started writing letters directly to the councillors of the bands, telling them they would have ample opportunity to make any amendments or changes to the bill through this committee process. But many people, as you know, have been turned away and have not had an ability to come to the committee because of time constraints. It seems this is going to be pushed through by Christmas.

(2030)

Mr. Inky Mark: You're saying the main provincial groups were not contacted at all, then. Is that what you're saying?

Mr. Ken Malloway: We had some contact that this thing was coming down and heard there were committee hearings. I think it's just being rushed through so quickly that many people haven't had ample opportunity to make proper presentations, or wanted to but were turned down.

The Chair: Thank you, Mr. Mark.

Mr. Godfrey.

Mr. John Godfrey: Mr. Malloway, I was interested in your response to Mr. Mark, and particularly, I guess, in your reaction to Mr. Slavik's points. Both he and you agree he wasn't speaking on behalf of any particular group of first nations.

Nevertheless, if you take the two points he said were really awful, if I can put it that way, starting with the whole issue of validation, would you agree that at least if you're ranking the flaws in the bill, this whole validation question would be right up at the top of the list—understanding that you would take a totally different approach to the bill and go back to the 1998 draft? Given this particular piece of legislation, is he right to rank that as the thing that triggers all sorts of problems, right at the top of the things that need to be attended to if we're going to do anything about this bill?

Mr. Ken Malloway: I think I agree somewhat that the cap is something that is most offensive to many first nations because they'll have their large claims excluded. We haven't actually come up with a number that people have agreed to on what the cap should be, and most people would prefer that there be no cap.

The other issue about validation of the claim is that people do want the commission to have the ability to validate claims no matter what the size.

Mr. John Godfrey: Thank you very much.

The Chair: Thank you very much.

This completes this part of our deliberations, so we want to thank, from the Alliance of Tribal Nations, Councillor Ken Malloway and Dr. Dan Gottesman, as well as Ms. Edna Louis. Thank you very much for your presentation.

We will continue without a break with the Carrier Sekani Tribal Council, Chief Mavis A. Erickson, tribal chief, and with the First Nations Summit, Chief Edward John, grand chief. If you have presentations, we invite you to start when you are ready.

By the way, we have 40 minutes for this presentation, so take the time you need.

Grand Chief Edward John (First Nations Summit): Thank you very much. My name is Edward John. I would like the other members who are here to introduce themselves as well.

(2040)

Ms. Lydia Hwitsum (Board Member, First Nations Summit): I'm Lydia Hwitsum of the First Nations Summit.

Mr. Gary Yabsley (Legal Counsel, First Nations Summit): I'm Gary Yabsley, legal counsel for the First Nations Summit.

Grand Chief Edward John: And with me is Mavis Erickson, Carrier Sekani tribal chief.

Mr. Chairman and members of the committee, the First Nations Summit is a large representative group of first nations involved in the treaty negotiation process in British Columbia. There are some 47 treaty negotiation tables with some 140 first nations in British Columbia, representing about 70% of the first nations peoples in British Columbia.

I'd like to start by commending Ken Malloway, who is from British Columbia, for providing some of the details on British Columbia's claim situation given the background of the number of claims that are coming out of this province into the system to be resolved. I'd like to say at the very outset that the process that is envisaged in the legislation, the commission as well as the tribunal, must not only be fair, but it must be seen to be fair in relation to all the issues that have been identified, including the definition of specific claims, and that claims should not simply be ruled out because they don't meet some narrowly defined criteria established in the legislation.

Secondly, in the validation of claims, the process allows for, as I understand it, claims to be submitted again for Canada to take a look at and to determine whether or not there are any claims. This process of setting up some independent body to review claims in this country has been a long time in the making. Of course, we were all encouraged by the fact that an independent body with a commission function and an adjudicative function was being established.

We have some recommendations. We do have a written presentation and we will submit that presentation directly, but it's a four-part presentation. We talk about the shortcomings of the current specific claims policy. We talk about how the bill proposes to address the shortcomings. We identify what we see as the shortcomings in Bill C-6, and we provide recommendations with respect to the bill. We will ensure that document is submitted to the committee for your review, but instead of going through the entire presentation, what we would like to do is just go right into the recommendations themselves, and there are seven specific recommendations.

First, on the question of the appointments to the commission and to the tribunal, and we understand the tribunal to be a quasi-judicial body, there is an underlying perception of fairness that needs to be addressed. This perception is that if someone, one body, the government in this case, has the authority to name or appoint members to the commission and members to the tribunal, then individuals who are appointed may be adverse to claims that are being submitted by first nations.

In fact, given the tenure that's established under the legislation, if there are to be reappointments, there are questions as to whether or not there may be any arbitrary decisions. Mind you, we understand of course that a tribunal once established cannot fetter its discretion under legislation as an administrative tribunal.

So the first point is with respect to the opportunity for first nations to be involved in the appointment process to both the tribunal and to the commission. That's one point.

The next point is the question regarding the delays in the process. There are examples of claims that have been in the process for some 10, 15, 20 years, and in some cases longer, that have not been validated and sit in government offices that should never be there. There is a duty owed to those first nations regarding the validation of their claims so that they can proceed with the negotiation of those claims.

Should there be any provision in the legislation to penalize the federal government for unnecessary delays in analyzing or processing specific claims? Our opinion is that if there is unnecessary delay, then there should be some form of penalty attached to that delay on the part of the federal government. So that's the second recommendation.

In the submission of claims by first nations, they are required to provide their legal analysis and opinions to the Department of Indian Affairs and the Department of Justice for their review and analysis. On the other hand, when a claim is rejected, or even accepted, first nations are not given the opportunity to review government opinions or analysis with regard to their particular claim. So our third recommendation is that there should be a quid pro quo on the exchange of all legal positions and justification for positions taken by the government.

The fourth recommendation is that the federal negotiators have the capacity not only to deal with cash as a way of compensating first nations for the loss of lands, but also have the ability to ensure that lands are part of the deal. For the most part, claims are settled by way of cash. First nations are provided cash and told to buy their own land. The issue here is the loss and continued erosion of the land base that first nations have in British Columbia.

So those are the first four recommendations that I would put forward.

I'd like to turn to my colleague here to address the other three recommendations.

Ms. Lydia Hwitsum: I'm pleased to have the opportunity to address the standing committee today. I will address the balance of the recommendations the First Nations Summit is making with regard to suggested amendments to Bill C-6.

With regard to our fifth recommendation, it is crucial, particularly in the context of treaty negotiations that are proceeding in British Columbia, that subclause 57(1) is amended to make it clear that there is no extinguishment of first nations aboriginal title where a claim relates solely to the first nations interest in reserve land.

As that clause sits at this time, it's a very serious problem in providing that if compensation is awarded by the tribunal in relation to the unlawful disposition of reserve lands, all of the rights and interests of the claimant in the lands are extinguished. Although the original unlawful disposition pertains to the first nation's interest in reserve land, the award of compensation—as it's worded now—would effectively result in extinguishment of the first nation's aboriginal title in the land. This could clearly have profound effects on first nations in B.C. who are negotiating treaties. Further to that, it's inconsistent with the position Canada has taken internationally, in rejecting extinguishment as a method of addressing our existing aboriginal title and rights.

The sixth recommendation is to delete the provisions that would deny a claim because a first nation has commenced litigation in relation to these matters, or where the matters have occurred within the past 15 years. This part of the legislation is actually more restrictive than the previous process—the process that's currently in place—in that there is neither a restriction with respect to issues before the courts nor a limitation in terms of claims that have been brought forward in the past 15 years. So the addition of this clause would not assist in moving towards agreement or reconciliation on the outstanding specific claims put forward. So this particular clause is a step backwards in terms of the potential effectiveness of the legislation.

The seventh recommendation is to eliminate the $7 million cap on claims that can be heard by the tribunal. It's prohibitive—though it does partially level the playing field, in that we have at least a window of opportunity within the $7 million. But there are a number of claims exceeding the $7 million for which there is no clearly identified recourse for first nations, other than the courts. So our recommendation is to eliminate the cap and to take their claims at their face value, as they are presented.

This is a summary of the seven recommendations that the First Nations Summit is putting forward with respect to this piece of legislation. As my colleague Edward John has indicated, we have a document we are prepared to submit, which includes these recommendations. It also addresses what we feel are the shortcomings and the potential to make amendments that would make this legislation more effective.

Thank you.

(2045)

The Chair: Thank you very much.

First of all, if you have a document that you wish to share with us, it would be crucial that you fax it to us as soon as possible, at 613-996-1962. Then we would have it first thing in the morning and could translate it for the meeting of the committee at 11 o'clock tomorrow morning, our time. Is this okay?

Ms. Lydia Hwitsum: Yes, we'll be sure to fax the document to you.

The Chair: Thank you very much for your excellent presentations.

We will now proceed to a first round of questions. We can go for five minutes.

Grand Chief Edward John: Mr. Chairman, we propose that Mavis Erickson be allowed to make her presentation, and then we can open up for questions as well.

The Chair: I apologize. Absolutely. Please carry on.

Chief Mavis Erickson: Thank you, Mr. Chairman.

My name is Mavis Erickson. I'm chief of the Carrier Sekani Tribal Council. Our council is located in the central northern interior of British Columbia, and our tribal council includes about 5,000 to 8,000 constituent members in eight bands in northern British Columbia.

We were really pressed for time on our presentation but wanted to do a presentation nevertheless, so we took the opportunity to make our presentation after the summit task group because we are clearly in support of the recommendations the summit task group has made. I would like to also add and emphasize that the Carrier Sekani Tribal Council is opposed to Bill C-6, the Specific Claims Resolution Act, and calls for a reopening of discussions with first nations to develop a cooperative joint specific claims resolution policy. This is an urgent request in light of the fact that 46% of the specific claims arise in British Columbia.

We at the CSTC would like to express the grave and deep concerns we have with regard to Bill C-6. First of all, there's been extremely short notice to the first nations to appear before the Standing Committee on Aboriginal Affairs, and there was not even enough notice for us to have a formal analysis done that could be presented in writing to the committee. In any event, the CSTC will forward a formal paper in writing to the committee within days.

The CSTC supports the First Nations Summit presentation on Bill C-6, and in addition we would like to note that there needs to be a means to appeal decisions by the tribunal. There isn't one right now, and there should be a means to appeal any decision made by the tribunal so there can be recourse and justice for first nations. Furthermore, the CSTC would like to emphasize the fact that the federal government has arbitrarily put a $7 million cap on the award for damages.

The tribunal cannot be seen as a small claims court for Indians; it should not be limited in terms of awards for damages.

This need for a cap represents both a unilateral and an arbitrary decision by the federal government. There's a cost for justice, but we don't think it's right for this piece of legislation to determine the cost beforehand, before first nations have even made it to the door.

Other than that, I would like to take the opportunity to thank you for my being able to appear before the standing committee. I would also like to say something I haven't said, that the tribunal and the commission can be a good opportunity and a good idea. We come from a very long history of oppression in this country. It certainly is a case of forward-thinking to have this put forward, but you must also recognize that first nations have to have a say and have to have some input as to what the outcome is. It's been a long time.

Thank you.

(2050)

The Chair: Thank you very much for an excellent presentation.

You mentioned that you would have a paper you would forward within days. The committee will be doing clause-by-clause tomorrow afternoon, but if you do send the paper, even after that time, we will make sure that every member of this committee receives a copy. It may assist the different parties in their debates in the House, because this is a stage of developing legislation. After we are through with the bill, we send it back to the House. There will be a debate and then another vote, and of course then it goes to the Senate, so your paper will be shared with everyone even if we don't receive it tomorrow morning. Is that okay?

Chief Mavis Erickson: Yes, thank you.

The Chair: Thank you.

We will start a three-minute round with Mr. Proctor.

Mr. Dick Proctor: Thank you very much for your presentation.

Let me start with Ms. Hwitsum. You dealt with recommendations 5, 6, and 7. I think I heard you say that you're going to be faxing your material to us forthwith. On recommendation 5, that

subclause 57(1) has to be amended, in part because it's inconsistent with international law and treaties we've signed, will you have specific wording you'll be giving to this standing committee when you fax your material in, or could you?

Ms. Lydia Hwitsum: At this point the specific wording is not included in the presentation. This is a crucial area for us, and so we'll make every effort to prepare some suggested wording to include with the fax.

Mr. Dick Proctor: I think that would be helpful. Thank you for that. To be clear, because some of the other presenters earlier today have suggested that there were problems with the $7 million cap and that it should be raised, and just so I'm understanding your position, you say “no cap”—just whatever the face value of the claim is. Is that correct?

Ms. Lydia Hwitsum: Yes, that's correct.

Mr. Dick Proctor: Okay, and—

Grand Chief Edward John: Can I just come back quickly to the first point you raised? The concern with respect to subclause 57(1) is to ensure that if there is any agreement in respect of a specific claim, it's not in relation to the aboriginal title claim that's attached to that land. If it's a loss of reserve land and it's dealing with the reserve land interest, then it should be restricted to that portion of that parcel of land, or that particular interest in the land.

Mr. Dick Proctor: Still with you, then, Chief John, if we got agreement on all of the package of seven recommendations that you and Lydia have presented—I suppose I should say “in the unlikely event that we got agreement”—would you feel that Bill C-6 could pass, with appropriate recommendations as you've outlined in these seven points?

Grand Chief Edward John: Certainly these are the key issues that were addressed by the First Nations Summit chiefs today. The presentation we have was approved late this afternoon by the chiefs, Chair, in discussion around these particular matters, and that's the reason why we were not able to present you with a copy of the proposal, although we've tried to limit it to what

were thought to be key matters and key issues. The issue of validation, of course, is still a very large concern that's not specifically addressed here in these seven points.

But in relation to the question you raise—whether or not amendments along those lines would be sufficient—if you address the cap, if you address the issue of extinguishment, address the issue of some of the administrative practices regarding the positions, the quid pro quo, address the issue of the appointments, and address the issue, although we've not specifically dealt with it, of the funds that are available for settlement in any given year, I think those become critical components of ensuring that there's a better bill and a better way of addressing specific claims.

(2055)

The Chair: Thank you very much. We're over 40 minutes, so we will continue the round with periods of four minutes.

Mr. Mark.

Mr. Inky Mark: Thank you, Mr. Chair, and I want to thank all of our witnesses for appearing before the committee.

I'm sad to hear that again it's been said there's a pressure on time, because extreme short notice.... Maybe that would be a good first question. When did you receive notification that the standing committee was going to do public hearings on Bill C-6?

Grand Chief Edward John: We heard late last week.

Ms. Lydia Hwitsum: It was the same with the Carrier Sekani Tribal Council: late last week. We tried to get time for later on, because we have eight chiefs in our tribal council, and we weren't able to get back.

Mr. Inky Mark: When did you first get the information that the bill was going to be brought back to the House in this session?

Chief Mavis Erickson: It was in late August. We took the opportunity then to write a letter requesting to appear before the standing committee. Then we just got the answer last week.

Mr. Inky Mark: As you know, there's a whole bunch of bills on aboriginal affairs coming down the pipe. I just hope the following bills are going to follow the same procedure you're experiencing with this one.

I'm going to ask you a question regarding the Indian Claims Commission. You may have heard that they appeared before the standing committee yesterday. My understanding is they think this Bill C-6 is a step forward. My question to you is, if the same people who operate the Indian Claims Commission ended up becoming the stewards of the new commission, what would your opinion be?

Grand Chief Edward John: Can I address that? The Indian Claims Commission has had close to eleven years of experience dealing with specific claims across the country, and on the issues of the administrative practices that have been established, given the limited mandate they have by order in council to review claims and to make recommendations, they're in a very good position to know, as it were, the lay of the land with respect to specific claims across the country.

Where I think they are coming from with respect to an improvement over the process they now administer would be with respect to adjudicative functions of the tribunal. If it becomes an independent tribunal with unfettered authority to make decisions, then that's an improvement over the recommendation powers that the Indian Claims Commission has now. There are questions, of course, regarding the authority of the tribunal. For instance, how limiting is the authority going to be? And the major limitations right now are, one, the $7 million cap, and secondly, that this tribunal would have the authority only to deal with cash, not to deal with land transfers, or re-transfers as the case may be, or resource transfers as the case may be again. So the question is around the limitations that may be or that will be established on the authority of the tribunal.

I'm sure my colleagues have some other comments to add.

(2100)

Mr. Gary Yabsley: Thank you, Mr. Chairman. It seems to me that two of the main objectives in this whole process are to ensure that there is a degree of impartiality and a sense of fairness in this process. Picking up from Chief John, in terms of the appointments to the tribunal, as long as those appointments are made unilaterally by the minister there cannot be total impartiality. I understand those to be objectives of Parliament as well, and I don't know if Parliament can meet its objectives using that format.

The Chair: Thank you.

Mr. Godfrey.

Mr. John Godfrey: Hello there. Nice to see you again, Chief John. I think we met on a previous video conference on the subject of children on reserve. I was chairing a committee a couple of months ago.

Grand Chief Edward John: On early childhood development.

Mr. John Godfrey: Yes.

It's been interesting to follow the testimony during the day, and there really are two schools of thought. One is that this bill is unamendable, and the status quo, as unsatisfactory as it is, is less objectionable than the bill. The second school of thought I've heard--and you've certainly been critical of both the bill and the previous regime--is that we have to recognize that the current claims commission at least has developed some expertise in the field, that there is some institutional wisdom there that we wouldn't want to lose after all of that experience, and that in fact there are a number of things that can be done, and you've listed them; you've given us a list of seven.

There's a very practical challenge, Mr. Chair, that I see, given this rapid freight train we're riding on, and I don't know whether this is a job for Mr. Yabsley or not, but unless we receive amendments that are technically compliant with the legislation, so we know where to stick them in and compare sections of the bill, we're going to have a real problem tomorrow to be able to do anything about your suggestions. I don't know--and maybe this is a question as much for Mr. Yabsley as anybody else--given the very short time you've had, whether you would be able to present the seven ideas in amendment form that would satisfy the legal drafters of the bill, so at least we could see where they would fit in under which sections. Or is it that well developed so far?

Mr. Gary Yabsley: I'm assuming what you're asking for is speed drafting, and I may be a little hard-pressed to do that overnight.

Mr. John Godfrey: Well, I know you're a remarkable fellow.

Mr. Gary Yabsley: I don't have anything in my pocket at the moment, unfortunately. I think a 12-hour timeframe might be a little tight for drafting something that made any sense, in any event.

Grand Chief Edward John: Can I just add that this really illustrates a point Ken Malloway made earlier with respect to the initiatives that had been taken between the Department of Indian Affairs and the first nations organization, the joint group that had worked to develop an initiative that was largely accepted by both.

It really makes it difficult for us now to be put in a position at the last minute to see what amendments we could propose. We have proposed some recommendations. We're not legislative drafting people, and had we been involved in some of the initial drafting, we think that we could probably have solved some of these matters. But of course we were totally and completely excluded from the process, and that is part of a major shortcoming. I think it's really not fair to us for you to be asking us at the last minute to see what we might be able to come up with in terms of drafting. I'm not suggesting for a minute that we won't try. We'll give it our best shot, provided you accept them.

Mr. John Godfrey: It's hard to guarantee that, but look, I completely understand. I've just asked you something impossible. Clearly, if we're at least going to try to improve the legislation, we have to work with something. I suspect that most of us around the table aren't drafting people either, so we're all up against it.

Thank you very much for your presentation.

(2105)

The Chair: Thank you.

Mr. Vellacott.

Mr. Maurice Vellacott: My question is, for a value for claims you feel is appropriate in terms of raising the cap, would you have some calculated averaging or whatever that...if it's just about settling the easy and small claims here under the $7 million, do you have an idea of what? I mean, maybe removing the cap would be your ideal, but if there was a cap of some sort, what might be a figure you'd use?

Mr. Gary Yabsley: The appropriate response to that would be, what is the logic for any cap? I'm not too sure where this $7 million came from. What's the logic that led to that number, and therefore what would be the logic that leads to any other number? I'm not so sure there's a logic for any cap, and if there is I'd like to hear it.

Mr. Maurice Vellacott: I do agree with you. I'm not sure what the logic of the $7 million is, or at least it's not being explained to my satisfaction.

If we're looking at encompassing or drawing into the net most of the claims you're aware of from your sphere of influence in B.C. there, would most of them be covered off by a cap of $20 million, $25 million, or $30 million? Do you have any sense of those that are coming forward these days?

Chief Mavis Erickson: I'd just like to reiterate that my answer would be that there should be no cap. For the fellow asking questions about drafting earlier, I have a good suggestion for drafting: just strike off $7 million as the cap.

Mr. Maurice Vellacott: So you're just going to leave us with that, then. Is there no other figure? The reality around this table in terms of convincing other members, members of the government side, is that there might be some kind of cap. So you're just going to leave that open-ended, and we'll make our best calculated guesses if it comes to a fallback position on that. If we remove the cap, that's one thing, but if we can't, you have no proposition on that?

Chief Mavis Erickson: No.

Mr. Gary Yabsley: Can I make a suggestion now? This may provide you with some guidance. I do a number of claims, and I have one claim now that is probably going to be around $18 million. There will be ones higher. A few years ago we did a claim outside the specific claims process for the Squamish Nation. It resulted in a settlement of $92.5 million. So the question is, do you want to go the highest level and should we cap this at $92.5 million, or will we look for a subjective number somewhere in the middle? My best understanding is that some of these claims are well past $20 million, and my only experience, as I say, is now with whether it's the Squamish one at $92.5 million or the other ones I'm dealing with now at $17 million to $18 million and on up.

Mr. Maurice Vellacott: Thank you, sir.

Is there another comment?

Grand Chief Edward John: I think any number you choose is arbitrary, unless you can come up with some way to determine what is a fair number. As to how the $7 million was arrived at, as I understand it, that is the authority the minister currently has under the specific claims policy, and I think the idea was that the same cap would be introduced for this independent tribunal. That becomes a legislative limitation on the authority of the tribunal.

The Chair: Mr. Finlay just indicated that he'd like to speak, so we'll allow him three minutes.

Mr. John Finlay: Thank you, Mr. Chairman.

Grand Chief John, didn't you do a consultation for the minister on first nations opinions or concerns about this very bill we're talking about? Yet I understood you to say that you were excluded from the process. Have I misunderstood something?

Grand Chief Edward John: No, I didn't say I was excluded from the process. I said we were excluded from the process of drafting the bill. The role I had was not to explain the bill to any first nations or aboriginal groups in this country. It was a proposal that had been put together, some of which is reflected in the bill and some of which is not. As you can well imagine, this has largely been a moving target for probably the better part of a year now, or over a year.

(2110)

Mr. John Finlay: Thank you.

The Chair: Thank you very much.

I'd like to say that you were wise to recommend that we combine the two groups. It worked very well. It was very productive. I'd like to thank, from the Carrier Sekani Tribal Council, Chief Mavis Erickson, and from the First Nations Summit, Chief Edward John, Lydia Hwitsum, and Gary Yabsley. Thank you very much for your presentation.

Colleagues, this concludes our information session for today. We will adjourn this portion and meet again at 11 o'clock tomorrow. Thank you, everyone.