37th PARLIAMENT, 2nd SESSION

Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources

EVIDENCE

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CANADA

Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources

NUMBER 008 • 2nd SESSION • 37th PARLIAMENT

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[Recorded by Electronic Apparatus]

(1110)

[*English*]

The Chair (Mr. Raymond Bonin (Nickel Belt, Lib.)): Welcome, ladies and gentlemen and honoured guests.

The committee is continuing its consultation in reference to 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.

Before we introduce our special witnesses, I will share with the committee the procedure for today's meetings. We will be in public consultation until 1 o'clock. We will then start the clause-by-clause consideration. I plan to go to each clause, and members will have the opportunity to pull out any clause they wish to question, debate, or amend. The other clauses that we all agree on will be voted on today. This will start at 1 o'clock, and it should take about half an hour. We will return on Monday at 3:30 to do the amendments.

I am pleased to welcome--

Mr. Inky Mark (Dauphin—Swan River, PC): Mr. Chairman, could I ask a question about your earlier comments?

The Chair: We will discuss that at 1.

Mr. Inky Mark: I want to know why it's in camera. This is the first I've heard of it.

The Chair: It won't be in camera.

Mr. Inky Mark: Okay. Thank you.

The Chair: You will have an opportunity to decide a different path at 1 o'clock if you wish to.

I'm pleased to welcome, from the Assembly of First Nations, Matthew Coon Come, the national chief; the legal counsel, Mr. Bryan Schwartz; Mr. Rolland Pangowish; and Mr. Ken Malloway. You will have occasion to share with us your position on the panel. You're all welcome.

We are sitting together until 1 o'clock. You can take the time you want for your presentation. I won't interrupt you.

We will start with National Chief Matthew Coon Come, please.

Chief Matthew Coon Come (National Chief, Assembly of First Nations): Thank you very much, Mr. Chairman.

As you have introduced us, I would like to add that Rolland works for the Assembly of First Nations, and Ken Malloway, who is the hereditary chief of the Stó:lõ Nation is a longstanding member of our chiefs'committee on specific claims.

First of all, I want to thank the members of the standing committee for being here today so we can present you with our concerns about Bill C-6, the Specific Claims Resolution Act.

By way of a brief introduction, the Assembly of First Nations is the national organization representing first nations citizens in Canada, including our citizens living on reserve and in urban and rural areas. Every chief in Canada is entitled to be a member of the assembly, and the national chief is elected by the chiefs in Canada, who in turn are elected by their citizens.

The Assembly of First Nations is a truly representative and accountable body. It is not a dues paying organization or an interest group. There are about 80 first nations in Canada and 633 first nations communities. First nations, or Indians, are one of the three aboriginal peoples recognized in Canada's Constitution Act of 1982. The other two are the Métis and the Inuit. We share many common goals as aboriginal peoples, but as first nations we have our own unique issues because of our unique relationship and status with Canada and the Canadian state.

I do not want to take up too much time on the history of that relationship because we have an important piece of legislation in front of us. I want to allow as much time as possible for questions and answers so we can have an open and constructive dialogue.

I am more than willing to brief the standing committee, formally or informally, at any time on the nature of our relationship, our history, and the fundamental issues facing first nations and Canada.

The bill we're looking at today goes to the heart of those fundamental issues. Land is central to our identity as first nations peoples. That is not a simple platitude; it is a reality.

The land shaped the way our peoples think. It shaped our societies, our values, our languages, and our world view.

The position of the Assembly of First Nations on Bill C-6 is clear. Our position is that Bill C-6 is fundamentally flawed; it must be withdrawn and revamped through a return to a cooperative approach. First nations cannot accept it.

We agree we need legislation and a new process to deal with claims, but Bill C-6 is beyond amendments--a few amendments will not repair those fundamental problems. The chiefs in assembly at our annual general assembly passed a resolution by consensus affirming this position. On the positive side, there is already a joint task force report that provides the right way to go about this.

Contrary to a myth that is being promoted in some circles, the Assembly of First Nations is not rejecting everything. In fact, the assembly worked with Canada to set up the Interim Claims Commission, which is evidenced by the existence of a second order in council empowering the commission. First nations are not just a special interest group or a lobby group; first nations are owed fiduciary obligations by the Crown. The existing aboriginal and treaty rights of first nations are recognized and affirmed in the Constitution because of our special relationship to the Crown.

First nations have a special relationship because we were here first and facilitated the peaceful building of this country through the treaties, in which we agreed to share with the newcomers in

return for the protection of the Crown and a secure livelihood. Little did our ancestors know that we would be left destitute without access to adequate land and resources. Even the little reserves we were left with have been whittled away through questionable transactions that give rise to specific claims. Even the terms “land claim” and “specific claim” are inaccurate. Why should first nations have to claim back our own lands? To put it in terms Canadians understand, if you sell your land and the buyer doesn't pay, do you not still own your land?

(1115)

I can give you a broad outline of our key concerns with the legislation and talk about why it's fundamentally flawed. The intent of Bill C-6, supposedly, is to establish a process for the fair and just resolution of first nations specific claims. To be truly fair and just, the process must be perceived as such by the aggrieved. The defendant can't be the judge. Everyone would agree that is not justice.

Specific claims are legal liabilities arising from the government's administration of Indian lands and other assets, as well as the non-fulfillment of specific treaty provisions or statutory requirements. We have to keep this point in mind during this discussion: first nations legitimate claims are not discretionary spending; they are lawful obligations. They are legal liabilities owed by the Crown to first nations. As such they form part of the rule of law in Canada.

The first peoples of this land were once the sole inhabitants. Now reserve lands represent less than 1% of the land in this country.

Right now there is a backlog of 600 claims in the system. The pile is getting higher every day, and Canada's potential liabilities are getting higher every day. No one knows how many claims have been removed or haven't even been filed because of the perceived unfairness of the process. On the one hand, Canada says these claims are a priority, but they have only a dozen lawyers working on them. There are 87 lawyers working on the residential schools issue alone. Don't get me wrong. The more resources working on residential schools, the better. That's another area for reconciliation, where justice delayed will be justice denied. But that's another speech.

My point is that it's in our mutual interest to create a fair and efficient process for resolving first nations claims. There are legal and moral arguments. There are also pressing economic arguments. Unresolved claims create a climate of uncertainty for business, investment, and economic development. That is not good for first nations, and it's not good for Canada. Business and corporate Canada have been pushing the government to deal with these issues for years.

In recent years Canada's highest courts have been defining the fiduciary obligations of the Crown. It is clear that the government and the developers have a duty to consult first nations and in some cases obtain consent before taking actions that infringe upon their rights. The burden is even more onerous when it comes to specific claims. One need only refer to the Supreme Court of Canada Guerin decision of 1984 to see that the honour of the Crown is always at stake in such matters.

Resolving these issues is a fundamental component of reconciling first nations and Canada so that we can move forward as partners into the future. There is an existing model for a claims process that achieves this goal, and it has the support of first nations. It was also supported by the federal government. That model is the “Report of the Joint First Nations-Canada Task Force on Specific Claims Policy Reform”. The joint task force was established several years ago. Its members were first nations technicians and officials from the Department of Indian Affairs and Northern Development and the Department of Justice. The joint task force delivered its report in 1998. This work was used as a foundation to create a claims resolution process that is truly fair, independent, effective, and efficient. Where Bill C-6 fails, the joint task force succeeds. I would encourage all of you to review that report before you begin trying to amend Bill C-6.

On Tuesday Minister Nault acknowledged that the joint task force model is an ideal approach. He said the problem was with the resources required. Why, then, do we not start with the joint task force model, retain its fundamental principles, and find the necessary resources in the federal budget surplus that was referred to the other day? Why is it that this government can find necessary resources when it wants to for other issues, but not for the original inhabitants of this country? We are asking you to agree with us that this issue, justice for first nations, is one of the highest priorities of this country.

When the federal government and the Assembly of First Nations set up the joint task force, we negotiated in good faith. We left the table believing we had an agreement.

(1120)

The minister spoke about trust in his presentation. How can there be trust when, after working diligently and in good faith over many years, you reach an agreement and one party simply discards this agreement and comes back with its own version?

When Minister Nault introduced his claims legislation in the last session of Parliament as Bill C-60, the first thing we did was to compare it to the joint task force report. There is a little bit of the joint task force in there, but the key, essential elements of a fair, independent, effective, and efficient claims resolution process are not there. Without these essential elements in place, the bill will not succeed. It will make a bad situation worse. The members of the standing committee should be aware of the long-term liabilities of this bill.

The Assembly of First Nations has identified a number of key concerns. First, there is an inherent conflict of interest in the new legislation. Canada is already the judge and jury of the current process. The new legislation retains that conflict and adds new elements. The federal government retains the sole authority over appointments to the commission and tribunal and retains authority over the processing of claims. This undermines the perceived independence of the tribunal and the commission.

Appointments will be made on the recommendation of the minister, who is the same person responsible for defending the Crown against these claims. There was no attempt to incorporate a joint approval mechanism. These appointments cannot be left to the whims of whatever minister

happens to be in office. Despite claims to the contrary, consultations on appointments to the Indian Claims Commission were sporadic at best.

This is a conflict situation and creates a system that could be rife for political patronage. What happened to the merit principle that is supposed to be the standard for hiring? There are many qualified first nations individuals with no political connections who should be eligible for these positions. We should all accept the principle that any claims process must be legitimate, fair, and just, and seen to be legitimate, fair, and just by everyone involved.

Another concern is that this bill has been characterized as institutionalizing delay. Bill C-6 does not provide for any effective timelines under the commission process. The minister can simply hold off making a decision and the first nations are left waiting for a resolution process to begin.

The cap on claims that can go to the tribunal will be another step backwards. This is going to limit severely the ability of first nations to use the tribunal. How can the federal government put a cap on justice? Minister Nault was right in his presentation when he said there is no precedent for this proposed process. There really is no precedent for this travesty of justice found anywhere in the world. Where else would a country say we can't afford justice, we can't afford human rights, we can't afford to right a wrong?

First nations looking to use the tribunal have to waive federal liability over $7 million. Most claims exceed that amount, so right away the majority of first nations are excluded from the tribunal. This proposed cap also removes the incentive for effective negotiations through the commission.

One of the main problems with the current system is this very lack of any incentive to reach a negotiated settlement. Right now, there's one final option open to first nations: they can take rejected claims to the Indian Claims Commission, which uses mediation and a public inquiries process.

Once Bill C-6 is passed, the ICC will be gone; that option will be gone. First nations with claims over $7 million, which is the majority of the claims, will have no alternative but the courts. Under the current system, imperfect as it is, first nations at least have access to the commission of inquiry if their claims are rejected, regardless of the value of their claim.

This ties into another major concern with the legislation. The bill does not provide substantial financial commitment to resolve claims. A cynic would say it seems more about limiting federal liability than in settling claims.

 (1125)

I realize federal legislation has to speak to fiscal realities, but I remind you that our claims are lawful, legal obligations on the part of Canada. You cannot put a cap on justice.

As representatives of the Crown, you have responsibilities. Your dedication should be not only to responsible fiscal management, but to accept responsibility as partners in Confederation. Which will the Crown honour, the treaty or the spreadsheet?

First nations view our treaties and agreements as sacred documents that symbolize our original relationship. Our treaties are legal, morally binding documents. They allow for a peaceful settlement of Canada. They have the same status as articles of Confederation.

The definition of a specific claim in Bill C-6 is another point of contention. The definition has been narrowed. It is more restrictive than the current definition. Bill C-6 excludes claims arising from unilateral undertakings of the Crown and modern land claims agreements. It also narrows specific treaty obligations to land or other assets.

The structure and procedures for the proposed centre are also both narrow and prescriptive than the flexibility recommended by the joint task force.

Finally, the legislation calls for a review of the new claims system. This review is entirely at the discretion of the minister. This is another example of a conflict of interest being built into the system.

Those are major concerns about Bill C-6. It is inherently flawed and will not accomplish what it's set up to do. First nations and Canada can agree on one thing. We do need legislation in this area, but not this legislation. We have an opportunity to do things right. We have a plan that we agreed was workable. Let's work together to implement the joint task force model and get started on a process that really will resolve these long-standing claims.

I agree with the minister that the joint task force model would provide an important precedent in this world. But this legislation will not. In our view, this bill is contrary to principles of natural justice. Its financial limitations will not substantially improve the lives of first nations peoples. There is a better approach than creating legislation and imposing it on first nations. I've always said, if the government tries to do things for us, they will fail; if they do things with us, we all succeed.

The Government of Canada has a fiduciary duty to first nations. It's been recognized and upheld by the Supreme Court, most notably in the Guerin decision. It was clearly ruled that the highest standard of conduct must be applied in assessing the government's actions.

The fiduciary duty compels the government to act in the best interests of first nations and to consult with first nations where our rights may be affected. In this case, Canada has not fulfilled its fiduciary duty. Bill C-6 does not represent the work of the joint task force, work that was negotiated in good faith.

Bill C-6 was reintroduced in the House after we made our concerns known, after the request that it return to the cooperative development of legislation. It now falls to you, the standing committee, to carry out that fiduciary duty, and uphold the honour of the crown by withdrawing this legislation. Please don't just go through the motions and make this a hollow process.

No one wants the courts to become the only option. Courts are divisive and costly. As legislators, I am sure you do not want the court taking the lead on policy. We can make better use of our collective resources by dedicating ourselves to a constructive approach that embraces both our best interests.

First nations would rather negotiate than litigate. But we need a claims body with an independent tribunal so these negotiations are effective. If the government believes this, then withdraw this legislation. We will not need to start from square one. The work has already been done. Let's sit down and take another look at the joint task force report.

Partnership is, and always will be, the key. That's the spirit of our original relationship. It was reaffirmed in the *Gathering Strength* policy. That policy will be five years old this coming January. There's an opportunity to make that anniversary a celebration.

(1130)

We want to work on this issue. We want to move forward. We are seeking a path of reconciliation, recognition, and respect.

With that, Mr. Chairman and members of the committee, I'd like to ask our legal counsel, Bryan Schwartz, to give an executive summary of the analysis of Bill C-6.

The Chair: Thank you very much.

Please proceed, Mr. Schwartz.

Mr. Bryan Schwartz (Legal Counsel, Assembly of First Nations): Thank you, Mr. Chairman.

I've been at parliamentary committees on a number of occasions as an independent so-called expert. It's always a pleasure to be here, and I thank you for the opportunity to do so. In this case I'm working with the Assembly of First Nations.

I'll try to keep my remarks as brief as possible. You've been very patient in giving us the opportunity to present, and I'm sure you're anxious to get to questions and answers. I will not go through the entire executive summary. I'll try to put things in some overall perspective and to do so as expeditiously as possible. Of course, if I don't, every six minutes you can ask me to report on why I'm not finished.

First of all, to begin on a positive note, I hope this will end up being a U-shaped story--started well, went off the tracks, and then ended well, a story of exile and return, if you wish.

I had the privilege of being on the joint task force, and it really was a remarkably constructive and positive experience. It was an experience in which both sides attempted to understand and comprehend the concerns of the other. With regard to the task force, I hope it will be appreciated that it wasn't just a matter of the Assembly of First Nations likes it because we got everything we want. We certainly didn't get everything we want.

It emerged as a consensus report because the Assembly of First Nations was prepared to make accommodations to help the federal government with its problems. It was an exercise in joint problem solving. Comprehensive claims had to be removed from the purview of this system in order to get the joint task force report through. It was a painful concession. We did it. We had to agree that the tribunal would have only authority to give monetary awards, not to order transfers of land--a painful concession. We did it. We agreed to a fiscal framework. The idea that there would be a fiscal framework isn't something that just all of a sudden emerged or we didn't think about in the joint task force report. We actually had a detailed proposal to establish one. That process, I would respectfully submit, could have been, and still can be, a model: when there's genuine consultation and people try to work out and solve their common problems, they can.

There's a common interest in having an effective claim system. I know there's some financial pain for the federal government, but these are lawful obligations that won't go away. This is money that's owed. The consequence for communities of not paying these obligations is continued impoverishment for some of them and an inability to become self-sufficient. If the debts aren't paid now, they don't go away. They accumulate with interest. So it's in everyone's interest to try to resolve these in a reasonable framework and to put the past behind and move on in a constructive spirit.

While we're going to make many criticisms of the bill, the ultimate point isn't that we emerge at the end of the day with no bill. What we're calling for is a return to the table so that in a reasonably expeditious period of time we can get a bill that both sides can live with and that is viewed as responsible and effective from both sides.

I want to talk a bit about the idea that current fiscal realities somehow justify the departure from the model bill to what we have. With great respect, I think there's a disconnect in logic here. If after the joint task force report the federal government had a problem with that fiscal framework, we still could have used the model bill as a framework for the basic structure, criteria, and principles for the system, as the national chief says.

What is the logical correlation between how much you want to spend in a year and the basic integrity of the system? Let me go through some of the points where the system does not have integrity and invite you to consider that there is no connection between fiscal framework and this lack of integrity.

Independence: this body is not independent. Appointing people at the discretion of the federal government, having them serve short-term appointments, and then having the federal government reappoint them creates a reasonable apprehension of bias. In the legal brief I produced case law that substantiates that.

That is not the modern practice of the federal government itself. In modern land claims agreements there are dispute-settling mechanisms. In the Nunavut agreement, the Nisga'a agreement, and the Yukon agreement there are dispute settlement and arbitration and sometimes mediation, and in every case the body is appointed through a process in which the first nation and the federal government have an equal voice. The model is always joint and impartial appointment. That is the modern practice of the federal government with first nations, and in other contexts, such as international trade agreements.

(1135)

Why the departure from the federal government's own contemporary practice? If you have to go to court, and you might have to go to court to justify this, how are you, the federal government, going to justify a departure from your own contemporary practice in providing for the independence of these bodies?

The Indian Claims Commission has pointed out that there's a departure from independence in other ways. I won't detail them all in our brief, but there are, in the ICC brief, a great many points that describe how the federal government has unilateral control over the processes of and access to this body. The commission and the tribunal do not have case management control, and a court or another body, an arbitration body, has control over the way these things are processed. That, too, is a departure from independence.

What does it have to do with fiscal framework? Is anyone in the federal government actually going to suggest out loud that we don't want independence because that will help us save money? Do we want bias because it will save us money? Are they prepared to assert that proposition, and if they're not, then what is the justification for not having a credibly independent process?

That means a joint and equal voice by the Assembly of First Nations and the federal government in appointing them, a well-established, well-precedented, well-documented process. But the criteria are not the same as in the joint task force report, and they are worse than *Outstanding Business,* the official policy document in the federal government. That's not anything that was ever discussed or ever proposed in the joint task force process.

All along, the joint understanding between the federal government and first nations was current criteria, and we'll modernize them in light of Supreme Court of Canada case law--the basic criteria with some refinement in light of modern case law developments, so what was, plus something a little bit better.

All of a sudden, there's unilateral drafting. Rights of access that were in the plain language of the current federal policy were removed, and this is going to have a devastating impact on some first nations. If you're a first nation in the province of Quebec and you were promised by the Crown to have established a reserve, you cannot access the system. Unilateral undertakings to provide land are not within the purview of this system. Where are these claims going to go? Even a small claim, if there is such a thing in this regard, cannot access this system.

What's the point of setting up a system that arbitrarily denies some claims? If you want to set up a framework, a fiscal framework, and ration access so that you have an orderly process, there are ways to do that. We have one in the joint task force report. But how does that justify arbitrarily excluding some claims from the process?

Delay. A reasonable process to do a fiscal framework wouldn't give the federal government a unilateral power to delay, and it wouldn't create a system where actually first nations are financially punished for delay and the federal government is rewarded for delay. And whereas because the first choice in any situation is to assume good faith, this may be more likely by inadvertence than by design, yet that's the way it's worked out.

This is a remarkable situation when dealing with lawful obligations that ought in principle to have been paid a long time ago. Under the federal proposal, it has to be at least 20 years old before you can finally get the last dollar paid out; it's 15 years to make a claim and then 5 years to have it paid out, plus processing time. Yet we have a system in which the federal government is actually rewarded for delay.

Let me give you an example. Suppose you have a claim that's worth $8 million. You file it. But you can't file it if you want to have access to the tribunal, and if you don't have access to the tribunal, what's the incentive for the federal government to negotiate seriously?

So maybe your lawyer is willing to count on his errors and omissions insurance, and you have an intrepid band that's prepared to say, we'll knock a million dollars off to access the system. Now, you're at the cap; you're at $7 million. It takes 10 years, 15 years, to process it. Do you get interest on the money you've lost? Not a dime, because you're over the cap. You get paid in inflation-reduced dollars, and you're not compensated for your lost use of the money.

In effect, the federal government has extracted, compulsorily, an interest-free loan from a potentially impoverished first nation for as long as it wants. So where is the incentive for the federal government to negotiate seriously? Every day that goes by is another dollar, or a thousand dollars, saved for the federal government, and more pressure on the first nation to settle, because they don't have the use of the money. They don't have it in the community for economic development and self-sufficiency. They're not getting interest on it, and eventually they're going to get paid off in inflation-reduced dollars.

Would the federal government deal with any commercial party in such a way? Would it deal with any international partner in such a way? I'm not sure it was actually designed to work this way, but that's not the point. The point is to actually get beyond the current climate, which is obviously not one in which there is a positive and constructive spirit, and get back to the table and look at these problems and address them.

This is a problem that could have been solved. It could have provided that compound interest runs on the claim from the time of filing, and that costs and interest don't run against the cap.

If people sit down together and try to solve problems, they can be solved in a constructive manner. When the communication breaks down, you get these kinds of invidious situations. So with all the good faith in the world, why would anybody count on a system that rewards the federal government for more delay and punishes first nations?

The fiscal reality argument again is one that has to be looked at very carefully. I want to reiterate that the Assembly of First Nations actually provided, with the joint task force, for a fiscal framework, and if we go back to the table, we can reason together and discuss fiscal frameworks and more. But if the question is that contemporary fiscal realities somehow justify what's in this bill, I submit again that there's no connection between fiscal realities and the lack of integrity; and secondly, realities have to change, because the status quo is a disaster. Everybody agrees on that, don't they?

We have a backlog of 500 claims in this system. Every year the backlog gets bigger, not smaller. Only 14 claims that have been reported to us have been settled in the last three years. So if the current system isn't working, doesn't it have to be changed? Does that mean claims have to be claimed and processed and...? Even though in principle they ought to be, we've previously indicated that we're prepared to work with the federal government on some pacing in that regard. But to appeal to current realities when current fiscal realities are totally inadequate is clearly not satisfactory.

There are many more points I can make, and I hope I'll be able to make some of them if I have the opportunity in questions and answers, but let me make one more observation about fiscal realities.

What is the fiscal reality for a first nation that has not had compensation for the loss of its land, assets, or other rights? There's a fiscal reality there too. The federal government legitimately has to be fiscally responsible. It should be paying down its national debt. Part of fiscal integrity is paying down the part of the national debt that is its specific claims obligations, which it has not paid. But that's the federal government. What is the fiscal reality for a first nation that has lost half or two-thirds of its land base, is dealing with poverty, despair, demoralization, and is waiting and waiting, 10 years, 20 years, 30 years, to get a resolution? That is a fiscal reality that people of good faith, in the interest of fiscal integrity, ought to be dealing with.

Obviously, like any lawyer, I'd love to proceed much further. I think we'd very much like to be open and transparent. We submitted our legal opinion a long time ago.

If there are any concerns on the other side.... I know Minister Nault referred to a hypothetical other opinion with 100 counterpoints, but we haven't seen that. Ours is on the record. But if there are concerns or points you want to challenge, we'd be more than happy to address those. We'd be more than happy for independent experts outside of this organization to be invited to comment, because we're very confident that our concerns are reasonable ones.

I thank you again for your patience and your courtesy.

(1145)

The Chair: Thank you very much, both of you, for very interesting and very valuable presentations. They will assist us in our deliberations.

We will start with the first round of seven minutes, and the official opposition, by agreement of the committee, will have nine minutes. I will allow you to share your time, and I would urge the members to manage their time. If you have seven minutes and you'd like to interrupt the answer because it's taking up some of your time...I will let you manage your own minutes.

Mr. Pallister.

Mr. Brian Pallister (Portage—Lisgar, Canadian Alliance): Thank you very much, and thank you, gentlemen, for your presentation.

National Grand Chief, it is a pleasure to see you again. I want to begin by thanking you for the meetings you have been able to share with me and with my colleagues. We find your comments and your approach most constructive. I use the word in your presentation, sir, “partnership”. In our first meeting I think you will recall I made the statement that when two people always agree, it's obvious that one of them isn't thinking. The fact of the matter is that we have found points where we agree, and when we disagree we have treated each other with respect. I think that's very important here.

What I like about your approach and about your presentation today is that respectful tone you continue to take in it, in spite of your frustrations. I think that's commendable. It is not helpful that disrespect enters into a dialogue. I was disappointed in the comments the minister made, I believe on Tuesday, in respect of your organization. I felt this was not constructive or helpful, and I'm sorry about that.

My comments to you relate, in a general sense, I suppose, to that disrespect, which I think it could be argued, if it exists and if it continues, will stand in the way of the resolution of not just this issue, but also of many other issues we have to face together as partners. That has not been the tone that's been set recently.

National Grand Chief, you and I have talked, and I have had the privilege over the last number of months of speaking with a number of your members, your community leaders across Canada, about the first nations governance proposals. Of course, your concerns were many. Among them the consultation approach that was taken has been interpreted by many as disrespectful.

It raises the question, in the context of this piece of legislation, whether it's better to not be listened to at all or to be listened to and then ignored later. The reality here is that there was a partnership approach.

The red book of 1993 promised such a partnership approach. It said an independent claims body would be jointly developed and appointed. That promise was repeated subsequent to that on numerous occasions. Then a joint task force was established, which, as a model for true partnership, I think we would agree, was superior to the course we appear to be on now.

We understand that the minister has departed from that model rather significantly in this piece of legislation. You made the comment that this will make a bad situation worse. I think we could apply that to numerous other initiatives that the government is undertaking right now. I guess my question to you, sir, is this. How would you suggest that we in this committee could assist you in establishing or in re-establishing some sense of partnership with the minister so that these kinds of so-called initiatives don't take us off on side roads that are destructive to our own best interests?

(1150)

The Chair: Do you wish to respond, Chief?

Chief Matthew Coon Come: Thank you very much, Brian.

Certainly it does not help when you have a minister who, sometimes I feel, is more interested in showing a disregard for our place in this society.

We are first nations. We're one of the three groups I mentioned that are under the Constitution. We have aboriginal and treaty rights. Certain decisions have been made by the courts that recognize our aboriginal title, and we all agree that we need to go down a path of negotiation rather than litigation.

We always stand ready to meet with any government official to try to deal with the issues that are before us and to resolve the specific claims that occurred because the government did not set aside land for treaties, because the government took away the reserve lands illegally, or because the funds and other assets were administered by the government improperly. We are trying to address these so it does not become an us or them approach, so that it concentrates specifically on the issue at hand, which is that this issue will not go away.

I believe we have made every effort, we have constructively made solutions, we have compromised. We have mutually agreed upon a joint task force on how we could arrive at a solution to resolve these claims. There is a need to be able to go down a path where we can say, okay, this is what we agreed; now let's take it and move it forward.

Bringing it back to Bill C-6, we still feel it doesn't matter how many amendments you make or how many you suggest, those will be good amendments, they will be constructive, and it will add to what we have already worked on in the joint task force. We're not going to be starting all over

again. In spite of our disagreements, in spite of all the political rhetoric, we do think both would contribute towards going back to the table, through a cooperative approach. I believe we can solve these disagreements and then come back with the legislation we can all live with.

(1155)

Mr. Brian Pallister: I want to recall, Chief Coon Come, the question with respect to the independence of the body under Bill C-6 and the claim to create an independent process to address first nations-specific claims. There would have been a lot of criticism from both the commission and the tribunal that would be created that it would not be independent. Appointments would be unilateral, at the discretion of the federal government, and subject to patronage. Why is that independence issue such a concern of first nations, and how could this bill be fixed to ensure that independence?

Chief Matthew Coon Come: The intent of resolving the issues from the outset was that it had to be seen as just and fair and totally independent. That's what we understood it would be in the joint task force. When the legislation was introduced it became very clear that there would be a patronage appointment. It also departed from the normal standard of dealing with claims. The Nunavut agreement and the Yukon agreement were examples of where there was an equal voice, of where there was a joint agreement on the person who would be responsible for that. Now we see that as a departure from previous policies.

You had a dispute mechanism there. You had access to arbitration. Now we're creating a body in which the minister, who is there, I'm sure, to defend the claims that are going to be requested, is in a position to be able to say, unilaterally, “I disagree with you guys”.

We wanted to make sure it was totally independent, that we would have an equal voice. You already have a precedent for that. Why is it good enough for Nunavut but not good enough for the first nations?

Bryan, do you want to add to that?

The Chair: I'm afraid we won't have time, and I apologize, but I will say that on Tuesday I did cut off the minister. I try to keep to my time, but I'll try to allow time at the end for closing remarks in case you don't have time to complete them.

Another good trick is if a member asks you the time, you tell him what the temperature is. You can fill in the rest of your answers. You can bootleg them on the next questions.

Monsieur Loubier.

[*Translation*]

Mr. Yvan Loubier (Saint-Hyacinthe—Bagot, BQ): Thank you, Mr. Chairman.

Mr. Yvan Loubier: I will give you some time to put in your earpiece, Grand Chief.

[*English*]

The Chair: When they wanted to determine how to roll these up, they gave the responsibility to a committee to figure it out. That's what we ended up with.

(1200)

[*Translation*]

Mr. Yvan Loubier: We have trouble making ourselves understood.

[*English*]

The Chair: Everyone is complaining that the sound on the translation system is not loud enough.

It's amazing that yesterday we had videoconferencing and everything was to the second right across the country, and we can't operate some hearing assistance in our row better than this. It's embarrassing. I'm very sorry.

[*Translation*]

Mr. Yvan Loubier: Well, finally. If I didn't have a sense of humour, I might think this is a plot to take away my time, but that isn't so. That isn't the way we do things in this committee; we're very civil.

Grand Chief, I would like to welcome you to the committee along with your colleagues. I appreciated your presentation. As time goes by, I am getting a better grasp of the issue. As you

know, I was given this file in the summer. I asked to be the new spokesperson for my party on aboriginal affairs because it is a subject that is of great interest to me and has been for a long time. For nine years, I was the finance critic for my party and as a politician I felt the need for something with a more human dimension.

So I was introduced to the file this summer and I have had quite a positive experience in the committee since becoming a member. First of all there was the signature of the Peace of the Brave in Quebec with the Cree and there are the ongoing negotiations with the four Quebec Innu communities. We just came back from a tour of the Saguenay—Lac-St-Jean area and the North Shore where we heard representations both from the First Nations and Quebeckers. I'm surprised at the contrast there can be between the comments heard here and the way of looking at things, and the attitudes shown in Quebec. I'm not trying to be boastful when I say that, but I think that people in Quebec have come to the realization that when we talk about the First Nations and negotiations on an equal footing, it's not just words.

I think that a few months ago in Quebec we broke through the old reflexes resulting from 130 years under the Federal Indian Act Regime. We realized that we could not achieve anything without some common agreement on how to advance the issue and without showing mutual respect. We realized it was necessary to show respect for your prerogative as a free nation with aspirations to full sovereignty and full compensation for the prejudice it has undergone.

I must say that in my view you have been very patient. If I were in your situation, I would have lost patience a long time ago. My colleague Brian noted that you were patient and I agree with him.

I hope that the government will realize one day that it does have obligations. Even the minister showed incredible arrogance this week in dealing with you. I realized why progress was not being made as quickly as it should on the different issues here.

As for the financial issue in particular, to revert to my old reflex, don't let yourself be tripped up by the financial obligations of the federal government. As you mentioned, Mr. Schwartz, justice has no price. There is no country in the world that sets a cap on reparations when human rights are involved, for example. There is no reason why they should try this on you.

We know that as far as finances are concerned, over the next six years there will be a minimum of 70 billion dollars in accumulated federal surplus in the federal government treasury. I cannot believe that they would be unable to use a part of this money both to pay down the debt, since this is the federal government policy, and to make reparation to you. I can't believe that they are unable to find 7 million dollars for individual claims. It's a real joke for them to present things to you in this light. It's quite obnoxious.

That being said, I'd like to ask you a question. If we were to bring substantial amendments to the bill so that the appointment process were truly a bipartite one in which you participate with equal representation, both in the commission and the tribunal, and if we were to raise the 7 million dollar per claim cap—as a matter of fact I asked the minister what the purpose of this cap was since he said that claims in excess of 7 million dollars could be settled outside the

courts— if we were to recognize as well certain conflicts of interest that appear in this bill, and if we made the appropriate corrections through amendments, do you not think that this would be an improvement? Do you not think that it would be better than tearing up the bill and starting all over again? I'm asking you this question because we were thinking of certain amendments that could correct the flaws you noted this morning.

(1205)

[*English*]

Chief Matthew Coon Come: Thank you very much.

The legislation itself is so flawed and does not respect the joint task force we had agreed to, and certainly any amendments that are done I think would help us if we go back to the table. Any amendments and suggestions that have been made...we would not be starting all over again. We believe in negotiations, but if there's just a unilateral attempt by the minister to decide this is what he's going to do, that's unilateral; it does not reflect our views. It doesn't give us the opportunity to address the issues, as was intended...and all the work that has been done and all the time that was spent. But I certainly agree that even with the ones you mentioned, even if you tackle appointments, even if you were to remove the cap, even if you do away with the conflict, you haven't really dealt with the whole crux of the legislation itself because it is so flawed in itself that it is difficult to endorse it, and that's why we're asking that it be withdrawn.

Maybe I'll ask Bryan to comment on it.

Mr. Bryan Schwartz: Yes. Certainly this committee acknowledging the difficulties, making some concrete proposals for improvement, and, most importantly, urging the minister to come back to the table with us would be a genuine contribution. If the minister complied with that request, it would certainly help contribute to getting this process back on the rails.

We believe that the duty to consult is a legal duty in this case. There were broken fiduciary obligations, and when you're setting up a national system to do that, there's a legal duty to consult with the national organization. Consult doesn't mean have a chit-chat and then do your own thing. Consult means, according to the case law, that you attempt in good faith to address reasonable concerns.

There are a great many problems with the bill, but at the end of the day the Assembly of First Nations wants a bill, a good bill, because we and the federal government want a constructive outcome here. So I don't think we're in an either/or situation. Recognition of the problems, concrete proposals coming out of this committee to improve it, and a call to get back to the table could be part of ultimately achieving--

The Chair: Thank you.

Mr. Proctor, please.

Mr. Dick Proctor (Palliser, NDP): Thank you, Mr. Chair, and thank you, National Chief Coon Come and your group. Because the AFN is an umbrella group for natives across the country, I'm curious as to how your organization found out about this sharp turn the government has made. Mr. Schwartz said a minute ago there's a legal duty here, you believe, and it's not chit-chat and then they go off in a different direction.

Do you have an opportunity to meet with the minister or his senior people? Do you get together, or do you read about these things in the newspaper, that they've just abandoned the joint task force and gone off in an entirely different direction? How do you find out about these things?

Chief Matthew Coon Come: It certainly took about eighteen months for the government to respond to the joint task force that was completed in 1998, and then we felt, given the work we submitted, the compromises we made, that hopefully when we saw this legislation we'd see that it reflected the work we'd done. Consequently we were surprised that when Bill C-60 at that time, Bill C-6 now, was tabled it made no mention of the issues we had raised. We raised them in letters. We met with the minister, identifying, among other things, the contentious issue of capping, because that would exclude the larger claims from opportunities in terms of where they would go. We were concerned about the appointments and we were concerned about the conflict of interest. Certainly we were concerned about the review every three years.

So we had all these concerns that we conveyed to the minister in a letter, and we did have a meeting. He said he would show us the bill. We didn't see it, and the next thing we knew it was tabled and now we're before you.

(1210)

Mr. Dick Proctor: What do you think is the fundamental motive that the minister and/or the department has for going in this direction? Is it financial more than anything else? What's your impression about that? Perhaps we could have Bryan's impression.

Mr. Bryan Schwartz: I'll leave it to the political people to comment on the large-scale politics.

I can say, as a person who was involved at the technical level, that when there was communication, there was a willingness to actually engage in a joint problem-solving exercise and things went really well. When we stopped talking, the federal government went off and did all sorts of things that were really surprising and, with respect, wrong-headed. I don't think one has to attribute all of that to some grand design. It's what happens when people don't talk to each other.

The old Bill C-60 is now Bill C-6. I think it will be Bill C point 6 if things keep going like this. There are a great many provisions in it that came as a complete surprise. First we were consulting. Then it was, no, we're not consulting any more. We were told in the terms, the consultations are over, we're telling you, but we're giving you a preview. Then it was “surprise”.

A great many very disturbing aspects of Bill C-6--the cutback on criteria, for example--were never discussed in any serious way; we were never pre-warned of the scale and dimension of the cutback on the criteria prior to it appearing in the text. There were some minor points we were alerted to and debated, but certainly not the scale of the cutback on the criteria we saw.

Rather than going into incrimination mode, what I hope would emerge from this process is getting back to the table and communicating with an open mind and an open heart again, and then I think we can actually solve this constructively.

Mr. Dick Proctor: Yesterday, or in the last couple of days, there were a couple of presenters who indicated that certainly the $7 million cap was too low, but they did have varying figures. I think one organization suggested $10 million or $12 million. The other one suggested $25 million.

Do you think any of that is possible? I know the position of the AFN is that there should be no cap. But is there anything there that you think could be workable, or do you stick to the position that there should be no cap whatsoever in this?

Mr. Bryan Schwartz: The position of the Assembly of First Nations has consistently been that there should not be a cap on justice, and the joint task force reported to the contrary. We don't have a mandate here, as a consensus-based national organization, to agree to a cap. All I can tell you is that every problem that was addressed by the joint task force we found a solution to. So let's give it a chance. Things worked before, and if we go back to the table maybe we'll be able to find a fiscal framework that works.

Mr. Dick Proctor: Thank you.

The Chair: Mr. Mark.

Mr. Inky Mark: Thank you, Mr. Chairman, and I'd like to thank our witnesses for coming here today.

Over the last couple of days of hearing witnesses, we certainly heard the frustrations of the aboriginal community in regard to the whole process. It's almost ironic that, as I said, there's a whole bunch of bills coming down--in fact a new one will be tabled next Thursday--and there seems to be this great urgency to get them done. We know the Prime Minister has a timeline. The ironic thing about it is that he has a timeline for when he's going to leave and yet he himself expressed a great interest and concern about the aboriginal community.

We talk about respect, but how can you have respect if there's very little honesty? Until there's more honesty expressed, I think “respect” is just another word.

In terms of the process, as the grand chief has indicated, lots of precedents have already occurred over the last 20 years in terms of setting the right model to get both communities together and work out a deal. In this particular committee, the Penner model was brought before the committee, which was to have a conclusive process to have the aboriginal community sit with the standing committee, and it was rejected.

Perhaps you can start by making comments on how you feel about the rejection by this committee to have the aboriginal community involved in this so-called open process.

(1215)

The Chair: I will mention that the question is out of order, but I'll allow it because I do allow a lot of flexibility. That has been dealt with. The committee did vote on it.

Chief Matthew Coon Come: We were very disappointed. We thought a committee of this nature, fully aware that there are 600 claims, that there is a fiduciary obligation.... We were trying to do something different, because we keep doing the same thing over and over again and not going anywhere. That was the purpose of the suggestion. It was unfortunate it was rejected because they preferred the status quo. Their attitude was “That's how we operate and that's the way we're going to do things”.

If you want to solve issues, if you want to involve our first nations in real partnerships, then you have to find mechanisms and make room for them and change things from the way they

were done before. If they had worked we wouldn't be sitting where we are right now. We thought we would make a suggestion, and we were very disappointed it was rejected.

Mr. Inky Mark: Do you have any concerns, as we indicated, that the Indian Claims Commission will disappear after Bill C-6? One of the controversies, again, is that appointments are all determined by the minister and the government. In the event that the new commissioners were actually made up of the old commissioners from ICC, would you have any concerns?

Chief Matthew Coon Come: That's a technical question, and I'll ask Bryan to answer.

Mr. Bryan Schwartz: There's a very serious concern about what's going to happen to the claims that are already in the system, negotiations on some of which have already taken place or are in various states of development. We don't see the issue of transition being addressed in the current form of the bill. There's no non-derogation clause in the bill that protects existing aboriginal treaty rights or that protects claims that have already been filed within the existing system.

Now, if you made all the old commissioners the new commissioners, the question would be, what is the aggregate mandate here? This is absolutely crucial. This new body will not have the mandate the existing body has to publicly investigate and publicly report on larger claims, so we wonder what's going to happen here. Is this new/old body going to be able to have this facility with older claims but not newer claims? If you had a larger claim filed before, could you get the public investigation report, but with a new one you couldn't?

This all seems like a situation that's anomalous and inequitable. The issue of transition has to be addressed in any responsible bill that deals with this problem, and the issue of non-derogation has to be addressed as well.

Mr. Inky Mark: So at this point there are no definitive means of transition from ICC over to the new commission in relation to claims that are up with ICC.

Mr. Bryan Schwartz: The joint task force report, as with almost all issues, actually engaged in that, came up with some thoughtful ideas, but then the consultations broke off and now we don't have any satisfactory direction on that.

The Chair: Mr. Godfrey, you have seven minutes.

Mr. John Godfrey (Don Valley West, Lib.): Thank you very much, and welcome; welcome back in some cases.

I want to just state that I also was in favour of a Penner process.

First, I have a question for Mr. Schwartz, and then I have a second one for the national chief. My question for Mr. Schwartz relates to your reference to the joint task force, where you referred to the fact that the issue of the fiscal framework had been dealt with. Correct me if I'm wrong, but I assume that's under part 3, clause 43, and so on. I just want to make sure. There's a reference to something called *z* dollars; I guess *z* is the magic number.

I suppose part of the problem was that one might have guessed from what the minister was saying that this is a nice process. But are we too efficient? We would get through stuff too fast, and therefore we'd have more money going out the door faster. In a sense, your fiscal framework represents some kind of answer to that. So the question is, did you ever get into vulgar orders of magnitude of money, or is there a process by which you saw us getting to that sum of money? That's the question, and we can hold on that.

My second question is for the national chief. Our challenge politically is that we are now confronted with three possibilities: we either pass the bill as is, we reject the bill, or we amend the bill. The challenge for rejection is that with us being the humble folk we are as backbenchers, there's no guarantee at all we'll get back to the table, that we'll use the template of the task force or any of those other things, or that a change of regime a year hence will give any better guarantee either.

We're confronted with the classic observation that perfection may be the enemy of the good. If that's the case and we're really recognizing all the flaws you describe, if we were looking at amendments, from what I've heard to date--and I just want to make sure I've got the right list, even though you boys want to reject the whole thing....

The four biggies seem to be the $7 million cap first, the reduction of the eligibility criteria, number two, the validation process, number three--which was referred to specifically yesterday quite eloquently by Mr. Slavik--and then finally the whole issue of the appointment of commissioners. Of all of the things one could point to as flaws, those would be right up there.

Mr. Schwartz, and then National Chief Coon Come.

(1220)

Mr. Bryan Schwartz: For the figure *z* dollars, the idea was to have an aggregate amount of money that would be spent over a five-year period. It was recommended that an independent study be commissioned, and that would still be an excellent idea. There's conflict about what a reasonable projection is. I think the best way to do it, which we have suggested before, is to get somebody who is genuinely independent to do a projection and then pick a percentage of how many you think it is reasonable to settle within a reasonable timeframe and adjust things accordingly. I hope that answers that part of your question.

We did not have a cap on individual claims in the joint task force report. In the current model a number of people suggested amendments indicating that at the very least validation should be available for all claims regardless of the cap.

In terms of the wish list, I recognize the practical challenges you're facing. I think delay is a crucial issue in this regard, in addition to the items you mentioned. Delay was dealt with in the joint task force by permitting the party to move forward after a certain point in time and not have to go through all these hoops. There are various ways to address delays in the form of amendments. One would be removing the financial incentive for delay. Others are worth exploring, and hopefully we can get back to the table and explore those.

We still don't see the problem with the joint task force report. But if it's necessary to put in timelines, then timelines can be put in. Does the minister have to have infinity to consider a bill? What other litigation or arbitration context on the planet gives the defendant infinite discretion to determine when they will finally respond to it? Nobody has that luxury in any context I'm aware of. Does it take more than a year to respond to a claim? Should any claim be in the system more than three years before it can access the tribunal? When we go back to the table, we can discuss all that.

I keep saying that neither I nor the national chief has a mandate to negotiate on the spot here. But I can tell you that when we were at the table, every time a problem came up we were able to reach agreement with the federal government on how to resolve it.

The Chair: There are two minutes left.

Chief Matthew Coon Come: On the second part of the question, when we met with the Prime Minister regarding the First Nations Governance Act, which was part of the legislative package that was mentioned in the throne speech, he specifically said that any legislation could be amended, deleted, or withdrawn. With that we understood we had an opportunity to come before a standing committee and hopefully to push for a withdrawal. So could this committee not recommend that the bill be sent back to a joint process? Set a time limit, and then bring it back to Parliament.

The Chair: I invite the clerk to correct me if I'm wrong, but I don't think the committee has the jurisdiction to recommend that the bill be withdrawn. It can recommend that it not proceed--a play on words--or it can vote against every clause.

I'll repeat what I said yesterday. The work of the committee is not done on behalf of the minister, the cabinet, or the Prime Minister. We've been appointed by the House of Commons. The work we do was assigned to us by the Speaker of the House, and that's who we are accountable to. That's the position I take as chair of the committee.

The next round will be four minutes.

Mr. Vellacott.

(1225)

Mr. Maurice Vellacott (Saskatoon—Wanuskewin, Canadian Alliance): Chief Coon Come, I have in my hands an interesting document. I think it's propaganda that came from the department. It says “Specific Claims Resolution Act--Myths and Facts”. Ten myths are stated in English and French. In other words, some of the things that various people around this table have been making points about are not true, and then they set the record straight, supposedly. But I'm not so sure.

I want to read one of them to you. Their number five myth is:

> The federal government can endlessly delay dealing with claims under the Specific Claims Resolution Act, especially by stalling on validation decisions.
> This is not true. The federal government has no desire to see claims continue unresolved. It has endeavoured to set up this Centre in good faith, in response to First Nations' concerns of bias in the current process. The federal government will continue to negotiate in good faith under the new system, and views negotiation as the preferable means to resolving outstanding claims.
> There are no time limits on First Nations in preparing their claims. The federal government cannot reasonably be expected to decide in a specified time period whether to agree to negotiate a complex claim that has taken years to research. While the federal government must be allotted the time necessary to review claims and determine whether to enter into negotiations to resolve them, it should be noted that the Minister must, at least every six months, report to the Commission on the status of claims Canada is reviewing, the expected date of decision and, if applicable, the reasons why more time is required than previously expected.
> Once the federal government has made a decision on validation, timing of the process will be guided by the Commission and the Tribunal. In determining their rules of procedure, they may set time lines for both parties at various stages of the claims process.

Are you buying that? Is it a myth that you can't endlessly delay under Bill C-6?

Mr. Bryan Schwartz: The Government of Canada has proposed a bill that actually statutorily authorizes the minister to delay forever. It's what the bill says, that no amount of delay ever counts as rejection of the claim.

As Vice-Chief Ahenakew and Jayme Benson were explaining yesterday, under the status quo, at least when there's a lot of delay, you can argue that constitutes constructive delay. Now the bill expressively says that nothing ever constitutes constructive delay. Nothing can go forward, including a claim that's under their cap, until the minister has finished “considering” it.

There's a reference in that response to the minister doesn't desire.... We're going to have to get into motives in good faith. The fact of the matter is the backlog gets bigger and bigger. There has been no commitment to putting resources into dealing with the backlog, and there are financial rewards for delay. So whatever this minister desires, let's get away from personalities and look at how the system is created. It's one that penalizes first nations for delay, that rewards the federal government for delay, and that statutorily authorizes that delay to take place indefinitely.

Yes, you have to report every whatever month, and the report will be the same thing we had in the minister's speech: I don't have enough resources; I don't have enough lawyers. Does any defendant in any civil case in any arbitration in the world have the right to say, “You spent a lot of time preparing your statement of claim so I want forever to prepare my statement of defence”? Well, to ask the question is to answer it. No, we're not aware of any comparable situation where the defendant unilaterally controls the pace at which matters take place.

The report of the Indian Claims Commission is very strong on this point. Case management should be in the control of the commission and in the control of the tribunal. And case management should not unilaterally depend on, and this is what the ICC says, this subjective state of mind of the minister: have I finished considering things?

So our position is not a myth. There's a myth about our myths.

The Chair: Ms. Neville.

Ms. Anita Neville (Winnipeg South Centre, Lib.): Thank you very much for coming here today. I certainly enjoyed your presentation.

Grand Chief, you and I have not met before, nor have I met with Mr. Malloway, but I have met with Chief Pangowish, and certainly Mr. Schwartz was part of a delegation that met me in Winnipeg last week.

I have to say I'm a little puzzled and I need some help. When the delegation came to see me in Winnipeg last week I was very much at the beginning of my learning curve. I'm a new member of this committee and very much at the beginning of my learning curve on the bill and on the issues related to the bill. I'm not sure how far along I am, but I've certainly been in an immersion course over the last week.

When we spoke in Winnipeg last week, I was led to believe that if this bill was delayed for a few weeks...that the issues that were to be addressed were really minor technical changes. The report coming out of the joint task force was--my words--tinkered with by the bureaucrats, and with some discussion and negotiation in a few weeks the matters could be resolved.

What I'm hearing today are very substantive issues being addressed, not issues that can be dealt with in a short period of time and then going back and dealing with the technical issues.

I don't think I misunderstood what I heard last week, but I need some clarity on that.

We repeatedly heard that the commission would be unable to deal with claims over $7 million. It's clear that the cap is only on the tribunal's ability to make validity decisions and award compensation. There's no limit on compensation that's awarded through the commission and there's no obligation to use the tribunal. The commission division can facilitate negotiations on claims of any size. The exception, obviously, is when it's been referred to the tribunal. Why can't the first nations in Canada avoid the tribunal completely by going to binding arbitration by the commission? You'd get the same kind of a ruling without a cap.

So I have two questions, two thrusts.

(1230)

Mr. Bryan Schwartz: To answer them in reverse order, when has the federal government ever agreed to submit a specific claim to binding arbitration? Where in the bill does it say the federal government must agree to binding arbitration? It doesn't. You get binding arbitration if the federal government agrees. The federal government isn't going to agree; they've never agreed and they're not going to agree. If they were agreeable to impartial, third-party dispute resolution for large claims, it would be in the bill, and the place you would go would be the tribunal. You don't have the facility you currently have to get a non-binding but morally persuasive report.

Is it of any value being in front of the commission if you can't access the tribunal? Our suggestion is there's very little value at all. ADR--alternate dispute resolution--works when there's something that gives it an incentive to work. If there's a financial reward for the federal government in a delay, what is the pressure on them to get down and negotiate seriously and in good faith. The proof is in the pudding. There's no pressure right now and we have a backlog of 500 claims. This isn't speculation; this is the reality, and we know it; we know it painfully well.

In terms of the first point, I don't know if I didn't express myself with sufficient clarity when we met, and I apologize if I didn't. The discrepancy between what the federal government bill is and the joint task force report is massive; it's not the same creature. As I said in my legal opinion, if you want to say a sheepdog and a wolf are the same creature because they have four legs and bark, yes, it's the same creature, but they are very substantially different in their character.

[*Translation*]

The Chair: Mr. Loubier.

Mr. Yvan Loubier: Thank you, Mr. Chairman.

If you are saying that we should tear this bill up and throw it in the garbage because there is nothing else we can do with it, then I am willing to go along with your view since you are the specialists. But personally, as an individual, I like to see things improved and make do with the second best. So let me put the matter to you again because I imagine that things can be improved and that it would be possible to at least achieve something.

Let me come back to what Mr. Godfrey was saying. If, for example, we were to replace the appointments made by the minister to the commission division of the Canadian Centre for the Independent Resolutions of First Nations Specific Claims as well as to the tribunal division by joint appointments, would that not be an improvement? If we were to replace the various sections that give the minister complete discretion to rule on the merits of the claims and we were to give this discretion to the commission, if we were to do away with the $7 million cap and the committee were to recommend that the joint task force start working immediately on the time period for the processing of claims, on financial incentives and the settlement of disputes, would that not be an improvement in relation to the present state of affairs? I know that it is not 100% of what you are calling for but in relation to the status quo, could we not make some sort of headway? The mechanisms for settlement would be improved and the committee would recommend to the House of Commons that the joint task force—I know that this is making you impatient, Mr. Schwartz—immediately start working on settling the various issues I have mentioned.

Is there something wrong, Mr. Schwartz? Is there something bothering you about my question? No? I see.

(1235)

[*English*]

Chief Matthew Coon Come: Our position is not to throw everything in a garbage can. I think with of all the work that has been done with the joint task force, and the recommendations and the compromises, the issues were identified and need to be dealt with. Our position has always been to seek a fair, just, and impartial process. However, in regard to the areas you're talking about, it would help if we were to go back to the task force, back to the table, and we'll come back and we'll deal with it.

[*Translation*]

The Chair: Mr. Loubier, you have a minute left.

Mr. Yvan Loubier: That is fine, Mr. Chairman. I have got the answer I wanted. It is what I need to complete my work.

The Chair: Thank you.

Mr. Finlay.

[*English*]

The Chair: You have four minutes, Mr. Finlay.

Mr. John Finlay (Oxford, Lib.): Thank you, Mr. Chair. I'll do my best.

Thank you all for coming. It's been very interesting and I've learned a considerable amount myself. But I do think we're at a point here where we have to do something or do nothing.

I have a couple of questions, because my understanding from hearing the Indian Claims Commission the day before yesterday was that this type of body has been under discussion--that is, a specific claims and settlement body--with first nations since about 1946, when a joint parliamentary committee first raised the issue. In fact, if I'm right, it's been talked about all throughout the nineties, and the first nations were talking about this with us.

I understood also that the joint task force met for two years to design the role model that you have been promoting for us. It seems to me that as a country we've done a lot of talking about this already--in fact, for more than 50 years. I think some of us would ask, isn't it time we stopped talking and did something to change the status quo and see if we can't make some improvements. It won't be perfect, I understand that, but inaction is not going to help either.

Chief Matthew Coon Come: We certainly do not want to be seen as doing something just for the sake of being seen as doing something. We've sat down and reasonably expected the government to consider what we feel the solutions are, and what we heard from our constituents, in solving this issue. We came up with recommendations, we identified issues, and I believe if

this committee were to recommend to go back to the table and send it back to a joint process and reintroduce it to Parliament, we could solve those things.

But if you have a minister who unilaterally says, “I know what's best for you and I've reviewed what you said”, yet totally ignores it, then we're not going anywhere. It's a unilateral approach that does not respect our cooperation or partnership. We need legislation. We agree. We need to deal with the specific claims process, but I don't want to be seen as just trying to do something for the sake of it being seen that we're doing something about specific claims, because I believe we have the solutions. I believe we've worked very hard on the present bill itself. All first nations are saying, look, we need to go back to the table. And if you give us a time limit, I think we can do this.

Mr. John Finlay: Without being too nitpicky, Chief--because I know you've been asked to go back and there have been timelines and timelines--I don't accept your characterization of the minister at all. He probably is as aware as anybody in this country, including yourself, about first nations and their needs and what we're trying to do with first nations communities. That's a given.

He doesn't decide, unfortunately, how much money Aboriginal Affairs is spending. And you would know, sir, that that's the one department of government that has not had a cut since 1994, when we were facing a $42 billion deficit. I want to put that on the record. But he has to get the approval of the government. He is the spokesman for us in Aboriginal Affairs. And the minister was clear--

(1240)

The Chair: Mr. Proctor, four minutes.

Mr. Dick Proctor: Does anybody want to respond to what Mr. Finlay just said?

Mr. Bryan Schwartz: Yes, if I very briefly could, and then this will conclude the response I wasn't quite able to give for the question from Anita Neville.

Yes, the differences are substantial, but the analogy, as we earlier discussed, is the repatriation deal, where there were big differences in principle but all the pieces had been proposed, so if the parties got back together one more time they didn't have to draft from scratch; the pieces were out there, and you could say, take this from column A and this from column B and put the deal together quickly.

So, yes, there are substantial problems, but no, because of all the work that's been done, I believe that an intense, earnest, and sincere period of negotiation could solve this. We're not talking about years or even months necessarily. If we could get back to the table and everybody went there and rolled up their sleeves and got serious, hopefully we could come out with something fairly quickly.

In terms of whether it is better to do something than nothing, it's better to do something good than nothing. We have attempted to point out ways in which this bill actually takes away rights that currently exist.

Mr. Dick Proctor: Thank you.

I was struck on Tuesday, when we heard from the Indian Claims Commission, by the amount of time in their brief they devoted to this notion of independence. They ended that section by saying that this bill, Bill C-6, leaves it to the minister to solely decide how this review will be carried out. In our view, first nations and the centre should be integral participants with government in the design and implementation of this review.

I wonder if I could get your comments on that assertion.

Chief Matthew Coon Come: That's exactly what we were trying to do. We were trying to remind the government of their red book and their promise for an independent kind of body, and that they agreed to a cooperative approach, a real partnership, and to help design it. We felt we had done what we were asked to do and that hopefully this would be reflected in it.

Unfortunately, it does not reflect that. Certainly we didn't want legislation where everything is at the discretion of a minister; we wanted to ensure that there was a very independent body that would be seen as independent. We wanted this so that our people would feel comfortable that Canada is not the judge and the jury, so that people would feel that their issues would be duly considered. And just because their claim was over $8 million, it does not mean they're going to end up in courts. So they would find a mechanism.

We've made suggestions. Look at the legal analysis of those suggestions that were made. If you were to take all of them, you'd have legislation right now introduced in the House. I wonder if you can do that.

Mr. Dick Proctor: Thank you.

The Chair: Mr. Mark.

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

I don't believe money is the end to everything, and certainly not in this piece of legislation. I think from what I've heard over the last three days it's about process, it's about mutual respect, it's about working together. This is what the criticism of this bill is about basically.

Grand Chief, you indicated in your brief, and I'll quote, that “the Members of the Standing Committee should be aware of the long-term liabilities of this Bill”. I ask you the question, what are the long-term liabilities of this bill, if this bill proceeds as you read it?

Chief Matthew Coon Come: Fred Lazar, our leading economist, just conducted a study and said the debt to the first nations, what you owe to the first nations, is $350 billion. That's not including the interest. He was saying that $7 billion does not even cover the interest.

There are outstanding claims out there. They have no mechanism right now except to go to court. We'd prefer that there be negotiations as opposed to litigations. So there are outstanding claims that are out there that need to be dealt with, and hopefully we can have a process in which you can deal fairly, equitably, and impartially with them.

Mr. Inky Mark: Yesterday we heard comments such as, why would we go to the commission if there are no gains by going to the commission relative to the dollar value of the claim? Do you see this bill as encouraging claims to go through the court process, and that we're going to have an even bigger backlog?

(1245)

Chief Matthew Coon Come: We certainly see that there would be a backlog of specific claims. They're going to continue to grow because they have no process; you've capped it at $7 million.

Remember, this has nothing to do with money. This has to do with the debt that is owed to first nations. The specific claims occurred because of the land transactions, because of the reserve lands that were transferred illegally. We need to address these issues. Certainly putting a cap on it is very unfair. What we had recommended, and what we had argued for and presented in the task force report, is that we have solutions.

Mr. Inky Mark: How do you assure the minister then, if we remove the cap, that it doesn't just open the faucets wide open and there will be no limits? I've heard the comment that there is agreement to some kind of reasonable limitation on claims. My own perception is that the government's fear is that if they remove the cap, then there would be open, unlimited access to funds.

Chief Matthew Coon Come: When you look at the specific claims themselves, yesterday the ICC told you there were 232 claims that were resolved. There are about 600 claims out there. The average claim by the first nations is about $15 million to $18 million. So you have to find a mechanism as to how to deal with these larger claims, because they will come.

I'll let Bryan answer a little bit more clearly.

Mr. Bryan Schwartz: What we suggested in the joint task force report is a limit on the total exposure to liability of the tribunal over a five-year period, but not a cap on individual claims. If creative people want to sit down to find other solutions, I'm confident they could be found. You could limit the number of claims that the tribunal decides every year, but not put a cap on the size of the claim.

All I can say again is whenever we actually talked about a problem at the joint task force, we solved it and came up with specific legal language. I think we should have a chance to do that again. In fact, I think we have a legal right to have a chance to do that.

The Chair: Thank you.

Mr. Godfrey.

Mr. John Godfrey: I just wanted to start by saying how much I liked Mr. Loubier's approach. It was an interesting package, and I think you ought to think about this. Here's the situation: if we send it back using whatever formula is appropriate, the problem is that it gets right back to your problem, which is that it puts it back to the discretion of the minister. He may or may not choose to go that route, and you take your chances. However, if you leave the bill with us, the bill is now not his property; it's the property of the House of Commons, and we actually have some discretion.

So if you want us to do something that will not simply hoist it back so you take your luck, then you have to work with us. If I may characterize the Loubier idea as being an amendment of the existing package addressing the five big issues plus a reference to certain unresolved questions, including what would be the fiscal framework--I think you'd want to get that and a couple of other things he referred to in there--then we're retaining control and we're debating that. Indeed, we don't even need to worry about...

As I understand what we're going to be doing at one o'clock, the challenge will be to identify precisely the clauses we have to hook the amendments into. This is a precise act. If we're going to hoist them for further discussion, which is what we get to do--and I don't think it depends on the majority, which you don't want either, I can tell you--then what we will need is appropriate wording.

The first order of business is to identify the clauses we have to hoist for further consideration. The second order of business is to have the appropriate amendment on the five points or whatever, not the whole package, and a referral to the joint process as outlined by Mr. Loubier. That way we're in charge. I can't see any other strategy, and I'd be interested in your reaction.

Mr. Rolland Pangowish (Director, Treaties and Lands Unit, Assembly of First Nations): Thank you.

I was the co-chair of the joint task force process, so we have some experience in coordinating and managing these kinds of discussions to look at detailed provisions.

Your point about keeping it within control of the House is very interesting. Of course, we are then avoiding that conflict we have with the same department that created the claims and is now developing the solutions.

The problem we have is that it appears the hearings could be very short. Do we have time to enter into a... Some of the concerns first nations have expressed is that there has not been enough time to get into the details of the bill with the committee.

(1250)

Mr. John Godfrey: Let me just check with the chairman here, as this is a procedural issue. When we put off something to another day and we have not resolved how much time we're going to take for that other day in terms of dealing with the clauses that would come forward with amendments and so on...is that correct? We have not yet, by a decision of the committee, limited the time that is necessary for us to deal with amendments we would defer to another day. Is that a correct description of the situation?

The Chair: What I will suggest to the committee is that today we go clause-by-clause, and for any clause any member wishes to either question, debate, or amend, instead of asking if you agree, I'll say, shall it carry? Then instead of saying that you agree, any member may say to defer it. There will be no debate, it will be pulled out, and that will be one to be dealt with, if the committee agrees, at the next meeting.

Mr. John Godfrey: But so far we have not put any limitation on the amount of time available to debate those deferred things at the next meeting.

The Chair: We have not.

Mr. John Godfrey: So you see where we are. You see what we have to do--

The Chair: And your time is up.

Mr. John Godfrey: All right.

The Chair: We don't have time for a round, but I understand there are a few very short questions. I will allow from members three one-minute questions, and our guests will integrate the answers into their closing remarks if they choose to.

Mr. Vellacott.

Mr. Maurice Vellacott: Okay. Myth 7 says:

> The Specific Claims Resolution Act is nothing like the model legislation proposed by the First Nations/Canada Joint Task Force on Specific Claims report of November 1998.

The department is responding:

> The Specific Claims Resolution Act has incorporated almost all of the recommendations from the report of the First Nations/Canada Joint Task Force on Specific Claims. The key recommendation...

Rolland, I guess you're probably in the best position to respond to that in your general remarks later.

The Chair: Mr. Vellacott, take two minutes. No one has indicated they have a question.

Mr. Maurice Vellacott: Well, I'll slow down my speech, then.

Let's get it again. The response from the department about this “myth” is that:

> The Specific Claims Resolution Act has incorporated almost all of the recommendations from the report of the First Nations/Canada Task Force on Specific Claims. The key recommendation from the report suggested that the new claims body consists of both a Commission division to facilitate and ensure good faith negotiations through dispute resolution mechanism, and a Tribunal division to make binding decisions on the validity of grievances, compensation criteria and award compensation.

The upshot of it is that they're saying all the major stuff from JTF has been incorporated in Bill C-6, and I need a response on that.

The Chair: You have a minute and a half.

Mr. Rolland Pangowish: As our legal counsel has described, the bill is not like the joint task force report. It's apples and oranges. For instance, in the joint task force report the requirement was for one meeting of the party to take place and then the claimant is eligible to go to the tribunal. That's the ultimate necessary pressure because we've had negotiations for 30 years. There is no incentive for those negotiations to move forward, and that was the whole point, and the bill was nothing like that.

The Chair: Bryan.

Mr. Bryan Schwartz: Yes, at a very superficial structural level there are two things with the same name that were in the joint task force reports, but are they independent? Do they have the ability to move claims along? Are the criteria the same? They're not, and in our opinion we've detailed chapter and verse as to why they're fundamentally and substantially different.

By the way, so does the Indian Claims Commission. I think they use the words “crucial differences”, so it's not just us. I would suggest any reasonable observer would see very substantial differences.

The Chair: Thank you very much, everyone. I invite National Chief Matthew Coon Come to give closing remarks for five minutes.

Chief Matthew Coon Come: Thank you very much. I certainly appreciate the opportunity to try to answer some of the questions that were presented by the members of the committee; however, it's so important to stress that the present Bill C-6 as drafted is seriously flawed. I'm seeking a solution for possible amendments. We do have the amendments. Our lawyer has an analysis of what we think the changes would be, and through technical work I think this can be done in a very short time to ensure that the work goes on and we're not delaying anything.

So we feel that the present draft itself would do greater harm and does not respect the intent of a body that's independent. We seriously have problems with the capping. But having even said that, even if we were to seek amendments to deal specifically with those areas, we still have a very serious problem. We feel there's a need to go back to the table with a timeframe for whatever is needed. You guys know how long it will take for you to discuss this so we can come back, but we stand ready. We've done our homework. We know where the problems are and we have recommendations. We even have what the paragraph would look like. That has been done by our legal counsel. So we're ready to work with the committee if they so choose.

(1255)

The Chair: We wish to thank you very much. It was a very interesting meeting and much information came out. You did a good job. I'd like to thank National Chief Matthew Coon Come and his team, the legal counsel, Mr. Bryan Schwartz, Chief Rolland Pangowish, and Mr. Ken Malloway. Thank you very much for an excellent presentation.

To my colleagues, we will not suspend. We will continue. I ask you to have before you your agenda, which holds the clause-by-clause.

Mr. Maurice Vellacott: Is it possible to take a very brief pause, maybe five minutes, or something?

The Chair: If you want a five-minute pause, you know it will be 15.

Mr. Maurice Vellacott: Five--bathroom break, smoke break, whatever.

The Chair: We'll suspend for five minutes, and in five minutes I will be starting the meeting.

(1257)

(1303)

The Chair: We will now resume. I invite the departmental people to the table.

Colleagues, it's very important that I have your attention for the first few minutes at least. We have some very important procedural decisions to be made.

I will seek your permission to proceed today to clause-by-clause, going from start to finish. The way I will proceed is by asking, for example, “Shall clause 1 carry?” If you have a question, if you want to debate, or if you want to amend that clause, just say “Stand it”, and I will pull it out and put it on a separate list. We'll approve those clauses that we can, and when we do, they are deemed to have been dealt with.

I had suggested that Monday we meet to do the ones we stand. I am suggesting now that we do that on Tuesday at 3:30. It will serve many good purposes, because Monday is a bad time for travellers from far away. Monday the Governor General is giving a report.

In having it on Tuesday, I will ask you to agree, if you will, that all amendments be presented to our researchers, our clerk, by noon on Monday, and that no others be accepted after. If I obtain this from you, I can see an orderly process for Tuesday.

Can I have comments on that, please?

Should I get a mover first? Does it seem reasonable for a start? Okay. Moved by Ms. Neville and seconded by Mr. Proctor.

Mr. Vellacott, on that issue only.

(1305)

Mr. Maurice Vellacott: With respect to having the amendments in time, I think we have all ours in. There might be some late-breaking amendment from some other member from the government or opposition side here. I would think procedurally it could possibly create some problem or some complexity, but if they're French-English, they could almost be brought in right to the day of the committee, could they not? On a technical basis, is that not possible? I wouldn't be working that way myself, but I don't want to have somebody shut out if there's some crucial amendment that comes in beyond that Monday noon as you set it.

The Chair: I'll try to speed up the process. On the recommendation that I've made, I will withdraw the “by noon on Monday” part for now. Can we agree on the rest? Is that reasonable?

Do we want to go to a vote? Is anyone against this?

Okay, the process is as I said.

Now let's deal with Mr. Vellacott's suggestion. I had thrown out to the floor that amendments should be in by noon on Monday, which I'm told is a normal practice, to have a deadline. Mr. Vellacott suggested that we allow until the beginning of the meeting--

Mr. Maurice Vellacott: I was just saying, technically, they obviously have to be translated into French and English. That's a basic. It makes it more convenient for all of us if the clerk knows that we have the copy of it in advance, but if in fact somebody has French-English proper translation and wants to get some crucial amendment in on the day of the meeting, I don't know that I, as a committee member, would want to refrain from consideration of that.

The Chair: Okay. To all members, I am asking you, do you wish to put a deadline on having the amendments presented, or do you want us to leave it open? If we put in a deadline, it's binding.

Are there any comments?

One position is that we leave it with no time limit. Is that correct?

Mr. Maurice Vellacott: We've been working, and to the best of my knowledge we have all of ours in. But in this whole process of getting it to a legal draft and then getting it in for translation, and it being the weekend here...this is a tight timeframe, actually. That's my point.

If somebody had something out of the hearings today, or whatever...I don't know that much work is going to get completed by Monday noon, frankly. That's my concern. So either we have all the amendments in now, in practical effect, or I don't know that it's doable for anybody in terms of the legal draft and the translation by Monday.

The Chair: I suggest we use a time limit, but any amendments that come after it would need a majority vote for the committee to deal with them. Would this solve the problem?

Mr. Maurice Vellacott: In a sense, we'll vote on that after your amendment.

The Chair: Before starting the meeting on Tuesday, I would indicate if I had received five amendments after the deadline. You will have copies of them. I would ask, “Do you agree that we should deal with each of them?” It will be a simple majority, with no debate. We will consider each amendment. If you decide to accept or reject each in turn, I will do likewise as the chair. Or it will be left open. It's up to you.

Mr. Finlay.

Mr. John Finlay: I like the idea of a deadline, Mr. Chairman. I don't know whether making it 12 noon or 11 o'clock would help, or it must simply be in the hands of you and the clerk prior to the start of the meeting.

The Chair: The reason we're asking for a deadline is to allow the legal counsel to stack them. I'm sure we'll get a number on the same clause and the same issue. Then they will say, “If you pass this one, the other three are dealt with also”. That's why they need them before.

Mr. Mark.

(1310)

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

In what form does legal counsel require the amendments? Do they need to be translated in both English and French?

The Chair: It's better to receive them translated, let's say by noon on Monday. But it's not necessary.

Mr. Maurice Vellacott: —[*Editor's Note: Inaudible*] —if a Bloc member, or somebody with French as their native language, were to decline, then we would be deadlocked at that point.

I think the response was that it's preferable, but—

The Chair: No, when the clerk receives it by noon on Monday, she will have it translated then, if it is not translated already.

Can we push the time from noon on Monday to 5 o'clock on Monday?

Mr. Dick Proctor: What about 9 o'clock Tuesday morning?

The Chair: Well, if it's 5 o'clock or 9 o'clock, it won't make much difference. Right?

Mr. Dick Proctor: It gives people a little bit of time overnight.

The Chair: Are you able to function if we reach consensus on 9 o'clock Tuesday morning?

The Clerk of the Committee: Only if there are about ten or twelve amendments. If there are lots more, I wouldn't have sufficient time to prepare. But I think most of them are in.

The Chair: Yes.

Do we anticipate having more than ten new amendments? Most of your amendments are in. If there are more, and the researchers are not able to do their work, we will have to understand this and deal with the amendments at the committee. Fair enough? Agreed?

Mr. Maurice Vellacott: Does the research branch work on the weekends at all? Does this ever happen in an emergency situation?

The Clerk: When required.

Mr. Maurice Vellacott: When required. These people can work on the weekend, if they have to.

The Chair: If they receive enough they will find ways of having it done on the weekend. The deadline is Tuesday morning at 9.

Now we can proceed. Are there any other comments on this? It is settled.

I urge you to have the bill before you. I expect this to go fast enough. There are amendments proposed that are technical. When it is a technical amendment I want somebody to yell out “I have an amendment; it's technical”. If it means putting a period or something simple like this without debate, I will ask you to agree to do it on consensus, and then we will pass that clause. Fair enough? I'm not doing it now, but I will say “Shall clause 1 carry?” The response will be “Agreed”. I may hear on the other side “On division”. It's done then and we don't come back to it. If you don't want to have it carried today, you want it to stand, just yell out “Stand”.

[*Translation*]

How do you say “stand” in French, Mr. Loubier? It's “réserver”.

[*English*]

Are we ready to proceed? You'd better pay attention. I won't go too fast, but this is one where if you don't have your notes in front of you, before you notice it will have been finished.

Pursuant to Standing Order 75(1), consideration of clause 1 is postponed. We will do that at the end.

On clause 2--*Definitions*

The Chair: Is this a technical amendment, Mr. Finlay?

Mr. John Finlay: It's a technical amendment.

The Chair: Could you explain it to us, very briefly?

Mr. John Finlay: It concerns the French. It is that clause 2 of Bill C-6 be amended by replacing in the French version line 1 on page 2 with the following: « *partie* »; « *partie* » *Tout revendicateur*.

(1315)

The Chair: It's just a language change?

Mr. John Finlay: Yes.

(Amendment agreed to)

(Clause 2 as amended agreed to on division)

(On clause 3--*Purpose*)

Mr. Dick Proctor: Just as a technical matter on clause 3, would we not agree that “first nations” should be capitalized there? We capitalized the Crown; why don't we capitalize the “f” and the “n”, as in “First Nations”?

The Chair: Can I have a response on that from our legal counsel, on clause 3?

Mary can answer what the practice is.

Ms. Mary Hurley (Committee Researcher): It's my understanding that the practice in federal legislation, at least to date, Mr. Proctor, is not to capitalize. You'll also notice that “aboriginal” is not capitalized in federal legislation. That seems to be the practice.

Mr. Dick Proctor: Thank you.

The Chair: Shall clause 3 carry as is? I need some noise.

(Clause 3 agreed to)

(Clause 4 agreed to on division)

(Clause 5 allowed to stand)

(Clauses 6 and 7 agreed to on division)

(Clause 8 allowed to stand)

(On clause 9--*Deputy head*)

The Chair: Mr. Finlay, could you explain the technical amendment in amendment G-4?

Mr. John Finlay: Lines 45 and 46 on page 4, which read “or if the offices of Chief Executive Officer of the Centre”, should read, “offices of Chief Executive Officer and Chief Commissioner are held by”.

The Chair: So what are we doing? Are we correcting spelling mistakes or language?

Mr. John Finlay: It's “offices of Chief Executive Officer and Chief Commissioner”.

The Chair: So we're only cleaning up the language?

Mr. John Finlay: Yes.

(Amendment agreed to)

(Clause 9 as amended agreed to)

(Clauses 10 to 19 inclusive agreed to on division)

(Clause 20 allowed to stand)

(Clauses 21 and 22 agreed to on division)

(Clause 23 allowed to stand)

(Clauses 24 and 25 agreed to on division)

(Clause 26 allowed to stand)

(Clause 27 agreed to on division)

(Clause 28 allowed to stand)

(Clause 29 agreed to on division)

(Clauses 30 to 35 inclusive allowed to stand)

(Clauses 36 to 40 inclusive agreed to on division)

(Clause 41 allowed to stand)

(Clauses 42 to 44 inclusive agreed to on division)

(Clause 45 allowed to stand)

(Clauses 46 to 52 inclusive agreed to on division)

(Clause 53 allowed to stand)

(Clauses 54 and 55 agreed to on division)

(Clause 56 allowed to stand)

(Clause 57 agreed to on division)

(On clause 58--*Acting after termination of appointment*)

(1320)

The Chair: There's a technical amendment here. Could we refer to amendment G-6 in your books?

What is the change here, Mr. Finlay?

Mr. John Finlay: That clause 58 be amended by replacing, in the English version, line 10 on page 25, with the following, “so authorized is, for that purpose”.

The Chair: Okay, a language cleanup. Are we okay with that?

It is moved by Mr. Finlay that it be amended.

Mr. Maurice Vellacott: I missed a part at the beginning, sir. Is clause 58 in the book here?

The Chair: Amendment G-6. It's just a language cleanup. Okay?

Mr. Maurice Vellacott: Yes, I think so.

(Amendment agreed to)

(Clause 58 as amended agreed to)

(Clauses 59 to 61 inclusive agreed to on division)

(On clause 62--*Public hearings*)

The Chair: A technical amendment on clause 62, amendment G-7.

Mr. John Finlay: I move that clause 62 be amended by replacing line 6 on page 26 in the English version with the following: “ensure the confidentiality of a hearing if the”.

(1325)

The Chair: Adding “a” instead of “the”. It is moved by Mr. Finlay.

(Amendment agreed to)

(Clause 62 as amended agreed to)

(Clause 63 agreed to)

(Clauses 64 to 69 inclusive agreed to on division)

(On clause 70--*Written reasons and publication*)

The Chair: A technical amendment, amendment G-8.

Mr. John Finlay: I move that clause 70 of Bill C-6 be amended by replacing lines 21 and 22 on page 27 with the following:

> decisions. The Tribunal shall cause the reasons and the decisions to be published in the manner that the Tribunal.

The Chair: Instead of “them”, which was to represent this.

Mr. John Finlay: It's “the reasons and the decisions”.

(Amendment agreed to)

(Clause 70 as amended agreed to on division)

(Clause 71 allowed to stand)

(Clause 72 agreed to on division)

(Clause 73 allowed to stand)

(Clauses 74 and 75 agreed to on division)

(Clause 76 and 77 allowed to stand)

(Clauses 78 to 84 inclusive agreed to on division)

(Clause 85 agreed to)

The Chair: We will do the schedule after. We noted there is a strong possibility that a lot of your amendments are similar. I would encourage you to negotiate and try to simplify the work of our legal counsel. But at least we can see now what type of timeframe we need for Tuesday.

I want to thank you very much for your cooperation. You're a great bunch to work with, and I look forward to our meeting. We've agreed to Tuesday at 3:30. We'll decide on Tuesday if we will order food. At 3:30, who knows? We may have the work done. Thank you very much. Have a good weekend.

The meeting is adjourned.