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Ms. Nancy Karetak-Lindell

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● (0905)

[*English*]

The Chair (Ms. Nancy Karetak-Lindell (Nunavut, Lib.)): Good morning. I'd like to start the meeting this morning, because I believe we have our fullest agenda today, with four groups.

First of all, I'd like to ask the members here if I have unanimous consent to look at our budget submission for Bill C-20. Apparently, there's a meeting of the liaison committee on Thursday, and you gave us authority to present a budget. If you could just quickly glance at it and see if we can get unanimous consent to present the budget to the liaison committee, then we can get on with our witnesses.

Mr. Gary Lunn (Saanich—Gulf Islands, CPC): I so move.

The Chair: So moved by Mr. Lunn to accept the budget and present it to the liaison committee.

Some hon. members: Agreed.

The Chair: Thank you very much.

This morning in meeting number 11, on Tuesday, November 30, pursuant to the order of reference of Tuesday, November 2, 2004, we are considering Bill C-14, an act to give effect to a land claims and self-government agreement among the Tlicho, the Government of the Northwest Territories, and the Government of Canada, to make related amendments to the Mackenzie Valley Resource Management Act, and to make consequential amendments to other acts.

This morning we have four groups presenting to the committee. We'll just go through them as listed and the members can then ask questions of any one of the witnesses they so wish.

Good morning, and welcome to all of you. Thank you for coming early. We weren't sure how easy it was going to be accessing the Hill this morning, so we asked everyone to come in early. I appreciate your cooperation. Welcome to all of you.

We'll start with the Mackenzie Valley Environmental Impact Review Board. We have Mr. Todd Burlingame, the chairman, and Mr. William Tilleman, the board counsel. Go ahead.

Mr. Todd Burlingame (Chairman, Mackenzie Valley Environmental Impact Review Board): Thank you.

Good morning. My name is Todd Burlingame, and I'm the chairman of the Mackenzie Valley Environmental Impact Review Board. With me is Dr. Bill Tilleman, alternate counsel to our board.

What I'd like to do today is say a few words to the committee regarding changes to the legislation that apply to the NWT. We offer these comments in an effort to enhance the clarity, consistency, and predictability of our administration of part V of the Mackenzie Valley Resource Management Act.

Our board does environmental impact assessments and environmental impact reviews. To give you some idea of what we do, we play a direct role in assessing world class projects, such as the Mackenzie Valley Pipeline, a $7 billion project, and diamond-mining developments in the Northwest Territories. Again, capital costs for these projects are in the order of $1 billion each. We work in tandem with the land and water boards throughout the Northwest Territories. We regularly work with first nations, governments, industry, environmental organizations, and private citizens. Legislation amending the Mackenzie Valley Resource Management Act should be mindful of this great reach reflecting the needs of the several parties, while upholding the overriding land claims agreements.

Due to the time limits, I'm going to limit my remarks to a few changes that have really improved the act, and then touch on three fundamental points that we think need to be brought to the attention of this committee.

The first positive changes are on the expansion of board coordination. These are somewhat technical aspects so I'll state them. We can respond to questions afterwards.

Expansion of board coordination is a positive change. Clarification of developments, recognizing traditional knowledge and specifically writing that out, is very positive change. Our board requires it to be included. This helps us support that role. Adding the requirement for reasons for decisions is something we normally do, but now it will be in black and white. The inclusion of conservation of land, water, and wildlife, in a couple of the sections, we view as a very positive change, and also the requirement for consultation.

What I'd like to do now is go to the three points that we would like to make that we think should be brought to your attention.

Dropping the word “adverse” as a precondition of section 126 we think is something that should be acknowledged. Clause 76 of this bill amends subsection 126(2) of the Mackenzie Valley Resource Management Act and inserts a couple of new paragraphs into that subsection. Neither of the new paragraphs includes the modifier “adverse” in front of the word “impact”. That word is in the current text of paragraph 126(2)(b) of the act.

In terms of the potential increase in our workload, this is significant. In most other environmental legislation, we've seen a trend towards being more definitive in establishing a threshold for these types of referrals. Now, “significant adverse impact”, I believe —and Dr. Tilleman can correct me—is some of the wording that's used in other environmental legislation. This change would removed the word “adverse” so that now an impact on environment is the threshold for a referral.

We appreciate that the drafters of this are responding to section 22.2.9 of the Tlicho agreement in crafting this amendment. However, we suggest that preliminary screeners should not be second-guessed, unless the decision-maker responsible for the referral is of the opinion that there is an adverse, or even a significant adverse, impact on the environment.

In an appendix to our submission, we offer some sample language, not for perfection, but to show that definitions are not hard to establish. One of the defects of the current Mackenzie Valley Resource Management Act is that the evaluation of significance is required in section 117, but it's never defined. Again, there are some grey areas there.

The second point I'd like to make, before asking Dr. Tilleman to address the third point, is that proposed new section 131.1 is required to reflect the government's status of the Tlicho government in relation to Tlicho lands. It gives the Tlicho government the authority to consult and to refer a review board environmental assessment recommendation back to our board.

● (0910)

While the review board supports the recognition of Tlicho self-government powers, we do ask that some definition of the hierarchy be established prior to us having to figure this out during an environmental assessment. We would like this hierarchy, including these relationships, to be addressed in this legislation, not later.

Now, by no means, and I'd like to be very clear here, is our board taking any issue with Tlicho government authorities. We are just asking for clarification.

With that, I'll ask Dr. Tilleman to address the third and final point of our submission. Then we'll be available to respond to questions.

Mr. William Tilleman (Board Counsel, Mackenzie Valley Environmental Impact Review Board): Thank you, Madam Chair, members of the committee. It's an honour to be here.

The Mackenzie Valley Resource Management Act is already complicated legislation. It's hard for me to understand; it took quite awhile for me to get through this. In fact, I'm sure I still don't understand it entirely.

What I thought I would do, as I try to gather my thoughts in the three minutes I have left, is suggest whether or not this is consistent with what the Government of Canada intended to do, and what the Prime Minister announced, in terms of smart regulations—which just a couple of months ago the government stated it intended to work toward.

Not only that, but on the smart regulations and this important movement, the federal level talks about, I think on page 10 of the executive summary, enabling first nations economic development. It talks about the environmental assessment process in terms of policy, not only regulation. It talks about oil and gas development in the Mackenzie Valley, and it talks about how to do it with, to use their words, “timeliness, transparency, predictability, clarity and certainty”.

With respect, I just don't think we get all the way there with this bill. As the chairman stated, one of the thresholds for determining whether or not you review, and how much you look at a project, is that you only look at the significant impacts, or the adverse impacts. If this board or any environmental assessment board were required to look at all of the impacts, or if the legislation allowed any project to be referred on the basis of mere impact, then, with respect, it appears it would almost turn it into a public inquiry.

The current legislation uses the word “adverse” as the modifier for the word “impact”. Bill C-14 has dropped that important modifier. The potential here is to cause a fair amount of uncertainty for industry, and clearly to overload this board with work when it's already quite busy. As well, in terms of certainty, it allows these referrals to be made to this board whether or not other agencies—for example, of the federal government—were doing screenings and did not find that there was a reason to refer.

In short, this legislation actually requires this board to assess “significant” impact. That word is in several parts of this legislation. That modifier is in sections 115, 117, 125, and 128, but this bill drops that modifier. It potentially will cause a lot of work...and with respect, I think it's inconsistent with the EA process, as the smart regulations had suggested Canada was moving toward.

You will see on page 10 of that document that Canada was looking for a single EA process, for a single window, for something that would speed things up, and I'm not sure this goes that far.

I understand that the drafters will come back and say that the land claims agreement did not use that word. Well, if that's true, it was also true for the Gwich'in and the Sahtu. Nevertheless, Parliament has inserted the word “adverse” as an important modifier, and with respect, I think you need to be very careful before you drop that, which this bill currently intends to do.

Finally, proposed sections 138 to 142 are quite confusing, to say the least. I'm not sure that all of those proposed sections are found in the exact wording of the Tlicho agreement. That being the case, this important committee needs to decide where those decisions are made, who needs to make them, and when they're made.

Madam Chair, those are my comments. I know we're out of time. I'll stand with Mr. Burlingame for questions as long as you want us to.

Thank you.

● (0915)

The Chair: We'll go through all the presentations and then give the committee members the choice to ask questions of any particular group.

Mr. Bill Enge, president of the North Slave Metis Alliance, please go ahead.

Mr. Bill Enge (President, North Slave Metis Alliance): Thank you, Madam Chairman.

At the outset of this presentation, I would first like to thank this committee for providing the North Slave Metis Alliance with an opportunity to inform this committee about some of the concerns and views the North Slave Metis land claim beneficiaries have with Bill C-14, the Tlicho Land Claims and Self-Government Act.

My name is Bill Enge, as Madam Chair introduced me. I am the current president of the North Slave Metis Alliance and president of a community-based Metis organization called theYellowknife Metis Nation Local 66. I have with me, as a co-presenter, Sholto Douglas, who a short three weeks ago was the president of the North Slave Metis Alliance. That said, Sholto is still in the Metis political business, as he is the current president of the community-based Metis organization calledRae-Edzo Metis Nation Local 64, located in the heart of the Tlicho land claim area.

Sholto Douglas and I started working together on achieving a land claim and self-government agreement for the North Slave Metis Alliance land claim beneficiaries nine years ago. To realize a land claim and self-government agreement for the North Slave Metis Alliance claim beneficiaries, we concluded that we needed to create a North Slave Metis regional organization that would see all of the North Slave Metis land claim beneficiaries included under the umbrella of one North Slave Metis regional organization. To that end, in 1996 we successfully founded the North Slave Metis Alliance, when the president of the community-based Yellowknife Metis Council, Clem Paul, agreed to co-found the North Slave Metis Alliance with us.

Unfortunately, Clem Paul, who became the first elected president of the North Slave Metis Alliance, unlawfully remained in the presidency; unlawfully revoked the memberships of over 100 North Slave Metis Alliance members; spearheaded several unlawful amendments to the North Slave Metis Alliance's constitution and bylaws; and oversaw the filing of an illegitimate injunction application in the Federal Court of Canada against the three principal parties to the Tlicho Land Claims and Self-Government Agreement, those being the Government of Canada, the Government of the Northwest Territories, and the Dogrib Treaty 11 Council.

The result of Clem Paul's unlawful and illegitimate actions are as follows. Firstly, Sholto Douglas and I won a six-year class action lawsuit against Clem Paul and his regime. In that regard, the Supreme Court of the Northwest Territories reinstated all of the memberships of those who'd had their memberships unlawfully revoked. The court also reinstated the North Slave Metis Alliance's original constitution and bylaws, and ordered an election be held under the auspices of the original constitution and bylaws within nine weeks of the issuance of the court order. Needless to say, the order of the Supreme Court of the Northwest Territories was carried out, as Sholto Douglas and I are here today representing the interests of the North Slave Metis Alliance land claim beneficiaries.

Secondly, the application for a Federal Court of Canada injunction against the Government of Canada, the Government of the Northwest Territories, and the Dogrib Treaty 11 Council, was dismissed.

Thirdly, Clem Paul was fired by his regime shortly after he lost the application to the Federal Court of Canada for an injunction.

Unfortunately, the North Slave Metis Alliance's new president, North Douglas, who succeeded Clem Paul, oversaw filing of another lawsuit against the Government of Canada, the Government of the Northwest Territories, and Dogrib Treaty 11 Council, with respect to the Tlicho land claims agreement. This lawsuit's primary purpose is to compel the main parties to negotiate a land claim and self-government agreement with the North Slave Metis Alliance. This lawsuit is still in effect, but has not been prosecuted.

I wish to inform this committee today that the current North Slave Metis Alliance board of directors directed me to terminate this lawsuit. I expect the North Slave Metis Alliance's legal counsel to file an order of discontinuance on this matter by the end of this week.

Clearly, the actions of a few North Slave Metis Alliance members have prevented the North Slave Metis Alliance from making any progress on its land claim and self-government aspirations. In other words, it appears that it was not because the three parties to the Tlicho land claim agreement were unwilling to include the North Slave Metis Alliance at the negotiations table, but that they could not do so as a consequence of Clem Paul's unlawful and legitimate actions, along with those of his regime.

● (0920)

Now that the unlawful and illegitimate actions of Clem Paul and his regime have been rectified, North Slave Metis Alliance members wish for their aboriginal rights to be addressed. The aboriginal rights of the North Slave Metis Alliance claim beneficiaries can be addressed at the eleventh hour through the Tlicho Land Claims and Self-Government Agreement by way of a Metis-specific adhesion to this agreement. This is not a new concept. The Fort Liard First Nation signed Treaty No. 11 by way of an adhesion back in 1922. That was a year after all the other first nations signed Treaty No. 11.

The North Slave Metis Alliance is requesting that this standing committee recommend that an adhesion clause be placed in the Tlicho land claim agreement, because the North Slave Metis Alliance is of the view that article 2.7.2 requires the North Slave Metis Alliance to take the Tlicho government to court in order for changes to be made to this agreement.

Finally, an adhesion clause would facilitate and allow the North Slave Metis Alliance to negotiate a land claim and self-government agreement under the auspices of the land claim and self-government agreement, with the parties, in a respectful and harmonious way, when the time comes for the Metis to have their aboriginal rights addressed through this agreement.

As the last comment I'd like to make with respect to my presentation and this land claim agreement, I would like to congratulate all of the parties that negotiated this agreement. The North Slave Metis Alliance and its members support the Tlicho land claim agreement. We would like to see our aboriginal counterparts achieve their rights in this country. It's been a long time coming.

We would also urge this committee to see fit to accept our recommendation to have an adhesion clause placed in this agreement so that the Metis, too, can have their aboriginal rights respected here in this country and in the Northwest Territories particularly.

Thank you very much for your time.

● (0925)

The Chair: Thank you.

Mr. Douglas has the first presentation.

Mr. Robert "Sholto" Douglas (North Slave Metis Alliance): Thank you, Madam Chair.

The North Slave Metis Alliance is authorized to represent the interests of the North Slave Metis people in land claim and self-government negotiations. The North Slave Metis people are comprised of Metis persons who are descendants of historic Metis families who settled in the North Slave region in the mid- to late 18th century. The North Slave Metis people are indigenous aboriginal people of the North Slave region, as Metis persons who are members of an aboriginal people entitled to exercise existing aboriginal and treaty rights in accordance with section 35 of the Constitution Act, 1982.

Where the North Slave Metis hold aboriginal title, the North Slave Metis have shared and jointly used, occupied, and possessed the traditional lands with other aboriginal people, including the Dogrib Nation. Since prior to the time of effective control or, in alternative, prior to the assertion of crown sovereignty over traditional lands, the North Slave Metis have continuously used, occupied, and possessed the traditional land since prior to the assertion by the crown of sovereignty over the traditional lands. The North Slave region is located within the traditional lands.

Since at least prior to effective control, the North Slave Metis have functioned as a distinct community and an aboriginal people who were and remain socially, culturally, linguistically, and preoccupationally distinctive from both other aboriginal peoples and the non-aboriginal people of the North Slave region. Specifically, the North Slave Metis developed and maintained a distinctive collective identity while living together within the traditional lands and have continuously shared a common way of life and traditional lifestyle based upon distinctive practices, customs, language, economy, and traditions that derive from their special relationship with the traditional lands.

Canada recognized that the North Slave Metis had an existing aboriginal right and aboriginal title in their traditional lands that had to be dealt with. Canada, as represented by the Treaty No. 11 Commissioners Conroy and Harris, arbitrarily and unilaterally offered North Slave Metis individuals a choice of either taking treaty or applying for Treaty No. 11 scrip under the authority of Privy Council 1172-1921.

Since the collapse of the Dene-Metis agreement in principle, Canada and the Government of the Northwest Territories have chosen to negotiate outstanding claims in the Northwest Territories on a regional basis. There are five such regions in the Northwest Territories: the North Slave region, the South Slave region, the Gwich'in, Sahtu, and Deh Cho.

In the course of the Dene-Metis agreement-in-principle negotiations and subsequently, Canada and the minister and the Government of the Northwest Territories have made commitments to aboriginal peoples in the Northwest Territories that no aboriginal people would be excluded from the comprehensive claims agreements negotiated in their regions.

In the Sahtu region, negotiations resulted in the execution of the Sahtu Dene and Metis Comprehensive Land Claim Agreement. In the Sahtu region, the negotiators on behalf of the aboriginal peoples included representatives of the Metis people of the region, and the agreement in question was signed separately by the Metis representatives of the Metis peoples of the region.

In the North Slave region, Canada and the Government of NWT began to negotiate with the Dogrib Nation regarding their claims to aboriginal title, aboriginal rights, and treaty rights in or about 1992—the Dogrib claim. The minister advised the North Slave Metis that any regional comprehensive land claim would include the Metis. We were also informed early in the process that the Dogrib claim would not affect the Metis.

On or about January 19, 1998, the North Slave Metis Alliance board of directors submitted a statement of claim on the comprehensive land claim of the North Slave Metis, a statement of claim to the Minister of DIAND in accordance with the federal government's comprehensive land claims policy. The minister in Canada accepted that statement of claim.

In summation, the North Slave Metis Alliance membership goes back to the September 1998 date. The significance of this historic date was when former president Clem Paul refused to step down as president. Clem Paul could no longer hold office since his term as president had expired as per the North Slave Metis Alliance constitution and bylaws.

● (0930)

The North Slave Metis Alliance wants to be entertained into our land claim and self-government negotiations so we can reach a final agreement on our land claims and self-government agreements and so we are afforded the same constitutional protection as the Tlicho citizens, pursuant to subsection 35(3) of the Constitution Act, 1982.

Thank you very much.

The Chair: Thank you very much, Mr. Douglas.

We'll now go to the Northwest Territories Treaty 8 Tribal Corporation. Chief Archie Catholique and Chief Peter Liske.

Chief Archie Catholique (NWT Treaty 8 Tribal Corporation): Thank you, and good morning.

I'm Chief Archie Catholique from Lutsel K'e. With me is Chief Peter Liske of the Yellowknives Dene, Dettah; Mr. Alan Pratt, one of our lawyers; and Sharon Venne, our chief negotiator.

Thanks to the members of the committee for inviting us to participate in the review of the Tlicho agreement.

We would like to bring important information to the committee. We have submitted a written brief to the clerk of the committee. Is it possible to have it included as part of the record of this meeting? We do not want to read it out.

Akaitcho Dene are neighbours of the Tlicho. A long time ago our ancestors Akaitcho and Edzo made a treaty. We reconfirmed that treaty in 2002 with the resolution of the boundary between our peoples. We have a copy of this agreement, including the map, for your committee so this can be made part of the record of this meeting. Mr. Alan Pratt will go into more detail on this agreement in the lead-up to having a very successful conclusion to a boundary overlap dispute.

We would like to make it clear that Akaitcho is here to support a mutual agreement. We made an agreement with them in November 2002 and assisted in making changes to their agreement to include Akaitcho's concerns, so we support this agreement. Saying we support the Tlicho does not mean Akaitcho wants the same thing. We have different issues within Akaitcho that will need to be addressed. I think Mr. Alan Pratt will also go into more detail on this matter.

Before I carry on further, I would just like to note that the suits we're using today were given to the Dene back in 1900. When the commissioners arrived in our territory, they brought these suits to the elders, to the chiefs, and they're used today. I've been asked to use this suit today to show I have the honour and the respect of the elders.

The elders have directed us to implement our treaty. We went through the Dene Metis process and rejected the comprehensive claim route. We went through treaty land entitlement—TLE—and rejected the process. We have tried to make a trail based on our understanding of the treaty. We are more focused on the results and the idea of coexistence. Our peace and friendship treaty directs us to live in peace and to coexist with the non-Dene. This is our objective in the negotiations. We are not interested in a surrender or an exchange of rights for an agreement. We have read Canada's statement at the United Nations that we do not need to enter into an extinguishment document in order to conclude an agreement with Canada.

The crown, in the making of the treaty in 1900, acknowledged our Dene rights to our lands, resources, and government. Further, non-Dene treaty rights have been acknowledged by the Dene and confirmed by the treaty. We agreed to share some of our territory in exchange for certain benefits from the crown. We see our treaty as an ongoing agreement that provides a relationship for everyone.

What we want in our present negotiations is to provide a clear understanding on the implementation of that treaty. We feel implementation of the negotiations should be a priority. As we negotiate, we should implement. In that way we avoid the major problems identified by other claimant groups and identified by the Auditor General as a problem. Akaitcho is not interested in repeating mistakes of previous agreements. We want to have something that works for us and for the people of Canada so everyone is clear on their rights.

Thanks for your time.

Now I'll ask Alan Pratt to make some comments, and then we can answer questions.

● (0935)

The Chair: Just for clarification, I know you referred to some documents. If members don't have them, that's because they've been presented only in English. They will be translated and distributed by Thursday.

Thank you.

Mr. Alan Pratt (Legal Counsel, NWT Treaty 8 Tribal Corporation): Madam Chairman, I do have a copy of the agreement the chief mentioned, which has not been provided to the committee as of yet. It will be covered by the comments I'll be making at the request of the chiefs. I would again repeat Chief Catholique's request that this become part of the record. I'll explain the agreement in a moment.

Chief Liske has graciously asked me to use the remaining time available to the Akaitcho Dene First Nations to speak to a few of the legal issues that are of relevance here, and it's my honour to be given this few minutes.

I'd like to repeat, as Chief Catholique mentioned, that our primary purpose here is to both congratulate and support the Tlicho nation and to ask this committee to support the passage of Bill C-14 to bring their agreement into force.

Having said that, I'd like to speak briefly about the agreement the chief mentioned, which was entered into in November of 2002, which actually led to certain changes to the Tlicho agreement, and which is therefore relevant to the bill before this committee. There was in fact litigation in the background between the Akaitcho and Tlicho nations over a boundary dispute. That litigation essentially arose because the crown—the federal crown and the Government of the Northwest Territories—had been in negotiations with the two Dene peoples, both of whom had treaties with the crown already. From the Akaitcho perspective, the negotiations with the Tlicho caused certain problems because certain rights were being conferred over an area Akaitcho wished to be covered by their agreement.

Unfortunately, litigation became necessary, but that was resolved. It was resolved by the leadership of the first nations in the fall of 2002 in a manner that I believe has resulted in a lasting resolution and has reforged a strong treaty alliance that has existed for at least 180 years, when the chiefs of the two nations made a treaty in the time of John Franklin, in the 1820s.

So that agreement was renewed, and the agreement I'm asking to be added to the record contains maps that are similar to the maps that you will see in the Tlicho agreement but with additional areas marked. The main area that is shown on this map is the Drygeese-Monfwi shared primary use area. That is an area over which the two Dene peoples have agreed they have a shared primary use.

The relevance to the bill before this committee is that the Tlicho agreement contains in section 2.7.3 a provision that enables the Tlicho government to share with aboriginal peoples rights held by Tlicho citizens, the Tlicho First Nation, or the Tlicho government under this agreement. I commend the negotiators for all parties who negotiated this agreement because after the agreement was in its supposedly final form, important amendments were made to accommodate this bilateral agreement between the two Dene nations to enable the Tlicho government to share some of its powers, including powers under the Mackenzie Valley Resource Management Act, with their neighbours the Akaitcho.

The agreement, in section 2.7.4, also anticipates the possibility that the Wekeezhii Renewable Resources Board and the Wekeezhii Land and Water Board may be given a new mandate as a result of future agreements involving other aboriginal groups, and that would include the Akaitcho people.

It's important, I believe, that we bring to the standing committee's attention the fact that the shape and the innovations—some of them, in any event—of the Tlicho agreement came as the result of this important Dene to Dene agreement, with the result that they will be sharing their authority within an important piece of this territory they both have a strong interest in.

● (0940)

If I have a couple of minutes, I'd like to close by commenting briefly on the recent decision of the Supreme Court of Canada in the Haida Nation case. That case, as I'm sure the members of this committee are aware, dealt with the requirement of the crown to consult and accommodate aboriginal peoples even in advance of an accepted claim or a judicial decision in favour of the people. However, what it also did was make it clear that the honour of the crown and the duty of the crown to deal honourably with aboriginal peoples extends beyond the conclusion of agreements and treaties. It extends to the implementation of treaties. In paragraph 17, for example, the decision states, "In all its dealings with Aboriginal peoples, from the assertion of sovereignty to the resolution of claims and the implementation of treaties, the Crown must act honourably."

If I had more time, I could read many more passages from the decision that support the general idea that the Supreme Court has now stated more clearly than ever before that, from the time of crown contact with what they call the pre-existing aboriginal sovereignty—for the first time acknowledging aboriginal sovereignty as being at the heart of the treaty process—the honour of the crown requires a certain code of conduct in all dealings with aboriginal peoples. This does not end with an agreement that brings certainty or finality to a claim that has been, in my submission, the paradigm of federal claims practice and policy. It extends through the future and after the conclusion of the treaty, with the idea, the objective of reconciliation.

I'll again read from the decision of the court. In paragraph 32, the court says, "Reconciliation is not a final legal remedy in the usual sense. Rather, it is a process flowing from rights guaranteed by s. 35 (1) of the *Constitution Act, 1982*."

I say this to suggest to this committee that when Parliament enacts legislation such as the Mackenzie Valley Resource Management Act, that legislation must now be reviewed and tested against a new code of conduct for the crown to deal honourably not only while a claim is in negotiation, but before a claim is accepted and after a treaty is made. This may require a review of all federal legislation touching upon aboriginal issues, but that's a bigger question for perhaps another day.

I will close by thanking the committee for the opportunity to make these comments and to bring to the committee's attention the important agreement made between the Tlicho and the Akaitcho that arose out of conflict and resulted in a lasting resolution of their differences.

Thank you.

The Chair: Thank you very much, Mr. Pratt.

We go to Mr. Jim Martin, the last presenter, and then we'll do a round of questions from the members.

Mr. Jim Martin (As Individual): Thank you, Madam Chair, and thank you for the invitation to appear before you today.

I've been asked to speak about how the Tlicho agreement will affect third-party interests in the area of service delivery, specifically the interests of non-aboriginal residents. I'd like to do this in the following manner.

First, I'd like to make some general comments describing the non-aboriginal population of the Tlicho communities, and then talk about the services that our present agency, the Dogrib Community Services Board, provides in the communities. Then I'd like to talk about how things could change on the effective date, the date the Tlicho agreement comes into effect. On that day, the Dogrib Community Services Board will cease to exist, and a new agency called the Tlicho Community Services Agency will be established. My focus in this presentation will be on services to third parties.

There are approximately 2,600 people living in the four Tlicho communities located northwest of Yellowknife. The largest is Rae-Edzo, with a population of about 1,800. It is 110 kilometres by road from Yellowknife, and is the only community accessible by road. The other three communities of Wha-Ti, Wekweti, and Gameti are much smaller, and are accessible only by air or by winter road.

The population in the Dogrib region is overwhelmingly Tlicho—upwards of 90%. The non-aboriginal residents are primarily service providers and their families: RCMP officers, nurses, teachers, employees of Dogrib or GNWT agencies, and small-business owners.

The majority of the non-aboriginal residents are also very transient. For example, many of the nurses who work in the communities come for terms of only a few months at a time. Teachers frequently stay between two to five years, but after five years about 90% of the teacher population has turned over.

The non-aboriginal staff who choose to stay over five years typically have married into the communities, married a resident, and their children are usually Tlicho citizens. The transient nature of most non-aboriginal staff means that for the most part they do not get involved in local affairs and politics. Those who have put down roots in the community have a stake in the success of the Tlicho agreement through their spouses and children.

In 1996, the Dogrib chiefs approached the Government of the Northwest Territories and asked it to enter into a partnership for service delivery to the Dogrib communities. The chiefs proposed a new and unique model—an agency that would integrate health, social services, and education in one organization. The result was the Dogrib Community Services Board, created in 1997. It was seen by both the GNWT and the Dogrib as a step toward self-government.

Today the board operates five schools serving more than 800 students in the Dogrib communities. It operates community health centres in each community. In addition to providing primary health care, the board also provides social services, addiction services, and mental health services.

We have a board of directors with members chosen by the communities, a staff of approximately 200 people, and an annual budget of about $23 million. The model, an integrated approach to service delivery, is unique in the NWT and, from what we can see, in many parts of the country as well.

Though the vast majority of residents are aboriginal, we provide services to all residents, Dogrib or non-Dogrib alike. These services are on par with services provided in all other rural communities in the NWT. Standards for service are established and monitored by the GNWT. Like all agencies, from time to time we receive a complaint about some aspect of our services, but in my experience we have had no complaints from non-Dogrib people about exclusion or access to services.

So how will things change with the establishment of the Tlicho government and the new Tlicho Community Services Agency, and how will these changes affect third parties? Unlike the present arrangement with the Dogrib Community Services Board, which is essentially a purchase-of-service agreement between two GNWT departments and the Dogrib leadership, the new agency will be an agreement between two governments—the GNWT and the Tlicho government—but there will be very little difference in services at the community level.

Though the Tlicho government will be an aboriginal government, through the new agency it will provide public government services to all residents of the Dogrib, just as it has in the past through the Dogrib Community Services Board. For the next ten years it will provide these services through a contractual arrangement with the GNWT. During this period, it will be able to gradually draw down services as it develops the capability to handle them. Essentially, the new agency is a GNWT agency that is in the process of becoming a Dogrib agency.

● (0945)

What happens after ten years? In terms of the interest of third parties, especially non-aboriginal residents, we believe the right and access to services will be well protected. This belief is founded on the following three realities.

First, the new agency, like the Tlicho government itself, will be an agency that reflects for the Tlicho people their inherent right to self-government, and for the Tlicho and non-aboriginal people, their rights as Canadian citizens. To put it another way, there is nothing in the Tlicho agreement that runs contrary to the Canadian Constitution or to the Canadian Charter of Rights and Freedoms. This holds true for the new agency as well, which is the child of the Tlicho agreement. Since this is essentially a legal matter, I'm sure you've already discussed it with legal counsel.

Second, in terms of maintaining the quality of services available to aboriginal and non-aboriginal residents alike, it is important to recognize the agency is not drawing down services; it is drawing down parts of service systems. Though the Tlicho will have more control and flexibility than they have at present, the standards of services and the Tlicho legislation affecting them must be consistent and on a par with services provided to other residents of the Northwest Territories. So the health care system in the Tlicho region will be part of the GNWT health care system. The Tlicho education system will have links to the territorial education system, and so on.

Third, in terms of access to services, it is important to recognize the Tlicho agreement and the intergovernmental services agreement establishing the new agency have enshrined the principle of concurrent jurisdictions. Unlike some agreements based upon a withdrawal model, the GNWT does not hand the responsibility for providing services over to the Tlicho and then withdraw. It continues to be responsible for serving all its citizens, including its Tlicho citizens, but it will not actively provide those services to residents who receive them from aboriginal governments in defined geographic areas. Instead it will work out agreements with aboriginal governments to provide services for non-aboriginal citizens. This avoids the problem of running two separate delivery systems, or for example, two different schools in a small community. It also provides a safety valve. If the aboriginal government can't provide the basic services, they have the right to call upon the public governments to provide them.

In summary, today under the Dogrib Community Services Board non-aboriginal people living in Tlicho communities are being well served. They will continue to be well served under the new Tlicho Community Services Agency. The new agency, under the Tlicho agreement, will bring real benefits to aboriginal and non-aboriginal citizens alike. As you are all aware, the Northwest Territories is going through major and rapid change. The Tlicho agreement is only the first of a number of self-government agreements coming down the road. We are helping to redefine the nature of government in the Canadian north.

We are also experiencing major industrial development in our region: three new diamond mines, a proposed gas line down the Mackenzie Valley, and exploration occurring all over the place. We know from experience that major industrial developments bring with them both benefits and an increase in health and social problems. Now more than ever, Tlicho people must have control over these services so they can be served by their own people in their own language; they can adopt new ways of healing, but include traditional ways as well; they can make decisions in their traditional ways of decision-making; and they have the flexibility to focus resources where they are needed the most.

All of our citizens, both Tlicho and non-aboriginal alike, must have access to the quality education, training, and health care services they need to take advantage of opportunities and live productive lives.

Thank you very much.

● (0950)

The Chair: Thank you, Mr. Martin, and thank you to all the witnesses.

Our practice is to start with the Conservative Party, then the Bloc—we don't have anyone from the NDP this morning—and then the government. The time allotted includes the question and the answer. We'll try to be very fair to everyone to make sure we get through the first round, and then we'll be a little more flexible in the others.

Mr. Harrison, for the Conservative Party.

Mr. Jeremy Harrison (Desnethé—Missinippi—Churchill River, CPC): Thank you, Madam Chair.

First of all I'd like to thank everybody for being here today. I know many of you had to travel a very long way to be here. I know all members of the committee appreciate your being here and putting in your take on the agreement. We much appreciate that.

For the first issue I'd like to talk about, I'd like to pick up on the comments of Mr. Burlingame, particularly regarding the removal of the word “adverse” from certain sections of the agreement. My first question would be to ask if you're aware of the rationale for the removal of the word “adverse” from those sections of the agreement.

● (0955)

Mr. Todd Burlingame: It's my understanding that it's an attempt to make the bill consistent with the land claim wording, but I'll defer to Dr. Tilleman.

Is that in fact the case?

Mr. William Tilleman: I think that's correct. But of course, as I said, if that's the case, then it was also the case with the Gwich'in and the Sahtu, and Parliament nevertheless knew it had to have that modifier in there. The reason why is that the whole process that engages this board is found in section 115, which for that purpose was not amended. Section 115, which tells everyone how this board is supposed to operate, still says:

> The process established by this Part shall be carried out in a timely and expeditious manner and shall have regard to
>
> (a) the protection of the environment from the significant adverse impacts....

It still says that. Nevertheless, a key part of their operation, which is found in section 126, has been dropped, unfortunately, and it's our position it shouldn't have been.

Mr. Jeremy Harrison: The upshot of the removal of the word “adverse” is that the section now reads “significant impact on the environment”, so that basically anything that's going to be occurring now.... Rather than having a “significant adverse impact” before it would be referred to the board, now anything with significant impact will be referred to the board—or just “an impact”.

Mr. Todd Burlingame: No, it's just “an impact”; there's no “significant” or “adverse” involved in the new proposed wording.

Mr. Jeremy Harrison: That will greatly increase your workload, I take it?

Mr. Todd Burlingame: Potentially.

Mr. Jeremy Harrison: Okay.

Just following along on that, I imagine if your workload is greatly increased, your resources to do the job are not. That, to me, would probably mean anybody making an application to the board—any prospective entrepreneur, any business looking to expand or do additional work in the area—would be looking at a significantly increased waiting time before they would have their environmental impact assessment approved. Is that correct?

Mr. Todd Burlingame: Yes, that's the potential outcome.

Mr. Jeremy Harrison: Again getting back to the additional workload, has there been any provision made for increased resources for the board?

Mr. Todd Burlingame: Not to my knowledge.

Mr. Jeremy Harrison: I find this quite concerning, that we could potentially have a situation whereby new development or new economic opportunities could be significantly delayed. I think this is a problem. Perhaps the government could address it at some point.

The second issue I'd like to pick up on is regarding the presentation by the representatives from the North Slave Metis Alliance. I particularly found interesting the addition of an additional part to the agreement. Their representatives talked about how this had been done in a previous agreement. I'm wondering whether you could further expand on that.

Mr. Bill Enge: Yes, thank you for the question.

If you get a copy of Treaty 11, you will see how Commissioner Conroy went about securing the signatures of the various first nations peoples to sign on to it. This commissioner with his entourage went throughout the Treaty 11-Mackenzie basin area in the spring and summer of 1921, but unfortunately wasn't able to conclude and obtain all of the signatures of all the first nations in that first round. Subsequently, the following year a new commissioner went about the business of Commissioner Conroy, because he had unfortunately passed away, and concluded Treaty 11.

That document can be found on the website. In fact, I have a copy of it with me. If you're interested, I can get it to you.

● (1000)

Mr. Jeremy Harrison: Have there been any discussions with the governments of the Northwest Territories and of Canada, or were there any discussions during the process of negotiation of the Tlicho agreement regarding this?

Mr. Bill Enge: Indeed there were negotiations—or talks, anyway. I can't characterize it as a negotiation.

When I helped found the North Slave Metis Alliance, I became the first secretary-treasurer of the North Slave Metis Alliance, and my co-presenter, Sholto Douglas, became the first vice-president. In the second year of the existence of the organization, very significant discussions took place between the North Slave Metis Alliance organization and the Government of Canada, the Government of the Northwest Territories, and the Dogrib Treaty 11 Council.

That being said, what I would like to do is allow Sholto to expand on this, because he was actually there when those discussions took place.

Mr. Robert "Sholto" Douglas: Thank you.

What took place was we met with three federal negotiators. There were three different processes happening in the Northwest Territories in and around the North Slave region. We met the chief federal negotiator, Jean-Yves Assiniwi, on the Dogrib claim. We met with the federal negotiator who was dealing with the specific claim with the Akaitcho tribal corporation and with the exploratory discussions that were happening at that time with the South Slave Métis Tribal Council, which is on the south side of Great Slave Lake. We came to the conclusion at that time that the best option available to the North Slave Metis would be the comprehensive claims process that was already ongoing with the Dogrib Treaty 11 Council.

In saying that, we filed a statement of claim with the Minister of Indian Affairs and Northern Development. Subsequent to that, it was entertained through discussions based on that statement of claim. We had numerous meetings starting in the middle of May 1998 here in Ottawa, and subsequent meetings with Dogrib Treaty 11 Council, with their lawyer and our lawyer, in Yellowknife in June. That resulted in a third meeting in the third week of July 1998 in Edmonton, where all three parties met. An agreement was made there—and it was very clear—by the chief federal negotiator, Jean-Yves Assiniwi, who told our lawyer and people on our side that they didn't want a group of Metis left out; that they didn't want a flag to be waved, and that any person who met the test date of 1921 was eligible to participate with the North Slave Metis Alliance.

In saying that, the table was set, and a chair was made available. Earlier my friend, Mr. Enge, elaborated that a number of Metis had their members purged; they were left out. It took us six years to get back to where we were in 1998. That's where we are today. We lost a lot of time, but we had to go through the judicial process to prove our case. It is the first ever class action to have been prosecuted successfully in the Northwest Territories at the Supreme Court.

That's where we are. Now we're back here and we're saying the only option for us now is to be able to look for the adhesion.

The Chair: Thank you very much, Mr. Harrison.

Mr. Cleary, please, from the Bloc.

[*Translation*]

Mr. Bernard Cleary (Louis-Saint-Laurent, BQ): Thank you, Madam Chair.

Thank you for coming to discuss with us about this agreement we really want to ratify, so the bill can pass as soon as possible. Your testimony is enlightening in many ways.

One thing strikes me personally. I am an aboriginal myself and I have been a negotiator for 25 years before I decided to go in politics. I am used to this kind of negotiation. What is really striking is that all the groups who appeared today told us they support the agreement. I am surprised. I have been more used to having groups appear before committees to object to proposed agreements. Your attitude is quite different.

The attitude you have is that you also want to have agreements as a group, and this is praiseworthy, fundamentally. You are also representing aboriginal peoples. Clause 35 does not deal only with aboriginals and Indians, but also with the Metis people. So, you are on the same footing as Indians. You are under the constitution and your rights are recognized. I think your approach of this issue is quite honourable.

That being said, it is obvious it makes the situation all the more sensitive. You agree that the bill should be passed, but at the same time, you are expressing wishes and telling us what you want. I think the Department of Indian Affairs and Northern Development will have to examine all of this carefully and try to find how you can benefit from this agreement. This is the department's duty. I do not think the Tlicho can settle this problem all by themselves. They took part in three way negotiations, so it is up to the three negotiating parties to make sure you benefit from this agreement.

Another issue is that what will happen after this agreement will be most important. I think it is important for both the Northwest Territories government and the federal government to make sure the agreement is implemented in a thoughtful way and gives the results the Tlicho and third parties are expecting.

Signing an agreement is fine, but it is not a very good solution if bickering takes hold of the territory. I think the real solution is knowing how all of this will be implemented and how all those interested will manage to live in harmony in one territory. I certainly hope you can live in harmony the way you said you wished to during this meeting.

As to those whose work it will be to implement this agreement, I think your group has all that is needed to understand each other and make sure everything works fine. A good agreement is very fine, but managing to implement a good agreement is even better.

This is a vision for a whole society, but what will come after that, as a matter of fact, is the day to day life within a given society. This is a vision come true, something the Tlicho wished for and negotiated as best they could, and which the governments implemented. All parties are congratulating each other, but they will now have to implement all of this.

We are not the ones who can settle this issue. Right now, we do not have the power to do it. As members of this committee, we are not able to tell people to do this or that. I do not thing it is something we are responsible for, although we can still promote an implementation phase that will benefit all parties. Concerning this, I think we will have to discuss this in committee, and the committee will have to take its own responsibilities.

It might be disappointing for you not to get the answer you would have liked to get. But this response is not an outright refusal, on the contrary. It is up to the Department of Indian Affairs and Northern Development to uphold the rules on claims. This is not our role. The Indian affairs department should get involved and make sure all parties can develop in harmony.

I wanted to emphasize this, because I think this is major point. It is even more important than getting an agreement. It can be very nice to get an agreement, but if it is not adequately implemented or if it does not work, it is of no avail. All the work that has been done is lost, and we end up, one, two, three, or four years down the road with the same kind of problem, and sometimes even worse because people did not get anything out of the agreement.

Obviously, you cannot get everything you would like. It would be too nice if you could get everything you wanted out of negotiations. It is simply not possible. You can nonetheless benefit from the agreement, find your own way to foster development, and so on.

I wanted to emphasize that point, because I think it is most important. Judging by your approach of this issue, I am convinced you will succeed. If, as you said, you support the Tlicho—and we have no reason to cast doubts about you sincerity, you will make sure they can have their own development and you will also find something in it for you.

How will that happen? The Indian affairs department will have to do its work. It has work to do on this issue. It is the one who can bring about these agreements, and let you negotiate and let you achieve a number of things. I wanted to emphasize that.

I wanted to ask you what you thought about this, but I think all of you already answered that question. We cannot go too much into the details. One thing is certain, and that is that you want to work in harmony. That is exactly what any group can wish for, the Tlicho or any other group. In the end, the Tlicho will not implement this agreement if everybody else objects. But everybody is supportive. At least, that is the feeling I have. All the better for them. We now need to make sure—

● (1010)

[*English*]

The Chair: I'll have to stop you, Mr. Cleary, and I'm sorry, you can't get any answer either, because you've used up your time.

We now have Mr. St. Amand, I believe, or Mr. Valley. I wasn't sure.

Mr. Roger Valley (Kenora, Lib.): Since my light is on, I'll start.

First of all, I'd like to thank everybody for taking the time to come here and provide us with some information. I know it's a long trip for many of you, and you have much better things to do in your private lives than come here and deal with us, but we needed your help.

Mr. Martin, you mentioned the Tlicho Community Services Agency. You said there were roughly 2,600 people—and if I get any of these numbers wrong, please correct me—being served. Rae-Edzo, I think, is the largest community, and you said there are approximately 1,800 people being served. There have to be some outlying areas where there are some people without service because of extremely small communities or isolated locations. I'm wondering what processes you have in place, or what happens, when people fall through the cracks? I was part of a community of 8,000 people, and we had to constantly try to find the gaps that were in our service delivery. I'm wondering if there's a process you have in place, or have you thought of a process where you can identify where the gaps are and adjust your agency for those?

Mr. Jim Martin: Well, I would say there are two processes in place now; there's an administrative process and there's a governance process. On the administrative process, we have staff working in all of the communities, and as issues are identified—or people who fall through the cracks, if you will—then certainly the staff bring those back to the board and we work on strategies we can develop to resolve them.

There are also governance processes. The board itself has elected people from each community, as well as the chiefs, who sit on a board, and they bring issues to the administration in that manner as well. For example, one of the most recent areas is mental health issues in the communities. Both the staff and chiefs and board members have brought issues to us about the state of mental health services in the communities. Over the past six months, the board has been developing a strategy and marshalling resources and putting increased resources into the communities to support mental health in all of those communities.

● (1015)

Mr. Roger Valley: Thank you for that.

Being from a small community, I would encourage you and say the reason people fall through the gaps is that we forget about them. It's nice to hear you have a couple of different processes in place.

You mentioned 2,600 people being served by the agency. The population is over 3,000, I believe, in the entire area?

Mr. Jim Martin: Yes.

Mr. Roger Valley: So there are some people in the outlying areas.

I believe you also mentioned that the majority of the population is Tlicho. Most of the people who are non-Tlicho are service providers.

Do you have any idea what would be the amount of non-Tlicho people living and making their full-time, year-round residency in the community for more than just a service delivery stint of two years, or five years, or one year, or months, or whatever it would be? Can you tell me how many non-Tlicho people are actually living there full-time? Or just give me an estimate.

Mr. Jim Martin: It's certainly less than a couple of hundred in all of the community.

Mr. Roger Valley: And the rest would be people who come in to provide services, the doctors, the nurses?

Mr. Jim Martin: There would only be a handful of non-Tlicho people who aren't service providers who would live full-time in the community.

Mr. Roger Valley: Okay.

Are some of those professionals involved in the...? I'm looking for the gaps in the services. Sometimes somebody from the outside can have a clearer view of what's happening than people who live there and deliver the services all the time.

Mr. Jim Martin: Yes, absolutely.

Mr. Roger Valley: Okay.

Well, it sounds like you have it well in hand. Thank you.

The Chair: Thank you very much.

I'm not sure if anyone from the Conservatives will be taking their turn.

Mr. Bellavance.

[*Translation*]

Mr. André Bellavance (Richmond—Arthabaska, BQ): Thank you, Madam Chair. I also thank all our witnesses for being here today. I want to acknowledge more particularly the Dene people. Despite their differences with the Tlicho in the past, they are here today to support the agreement and the bill. You managed to settle your differences and accept an agreement that was made with another people with whom you had differences. It is very honourable that you should be here today to mention this.

In his presentation, Chief Catholique, I believe, said the Dene people opposed the setting up of a lands and resources management plan by the federal government and that, in this agreement of the Tlicho bill, things are not that clear. You said that in the agreement you want to negotiate yourself, you would downplay this element considerably. You would make sure no such plan would be set up. I would like you to elaborate more on this.

[*English*]

Mr. Alan Pratt: The chief has asked me to thank you for the question. It's a very important question to the Tlicho. I can speak to the legal aspects of the question, but not, of course, to the political dimensions.

As I said in my comments a few minutes ago, I think the legal situation has been somewhat clarified by a number of Supreme Court decisions, including the Haida Nation. The Haida Nation decision, which is only two weeks old now, said that the crown can create regulatory systems and regimes to assist in the consultation process.

The Mackenzie Valley Resource Management Act is an example of federal legislation that tries to achieve a number of things in the north that would be done by provinces in the south. In the north, the federal government is the owner of public lands and resources. It has the legislative jurisdiction to create boards—management boards, and land and water boards. In many cases, it is the proponent before a board. It also is the treaty partner of the indigenous people in the area, and it has obligations to consult, accommodate, and act honourably.

There was one court case that the Deninu K'ue First Nation was involved in. Actually, all of the Akaitcho First Nations, including the two represented by the chiefs here today, were involved to challenge a decision of the Mackenzie Valley Land and Water Board, if I'm not mistaken, on grounds that it did not fulfill the crown's duty to consult when there was an infringement of a treaty right by a decision that was before the board.

Although the Akaitcho Dene position is to support the Tlicho, the Tlicho have negotiated hard to secure improvements to the Mackenzie Valley legislation, which are, of course, part of the bill before this committee. The Akaitcho negotiations are at an earlier stage, and the position of Akaitcho in the negotiations is that any land, water, and resource management body must respect the principles of the treaty that they made in 1900.

Monsieur Cleary talked about the fact that if you can't implement an agreement, that would be a tragedy, and what would be the point? I think the Dene are trying to secure the implementation of an agreement that they've had for 104 years. They see the inadequacies of the existing legislative regime as being part of the problems that they hope will be solved through the negotiations, which will implement their understanding of the treaty and also implement the law of Canada that has been described, I think, in a very eloquent way by the Supreme Court in its recent decision.

I think that's the legal answer. Politically, the chiefs may have something to add.

● (1020)

The Chair: Mr. Bellavance, you still have some time.

[*Translation*]

Mr. André Bellavance: I simply want to tell you I hope your agreement will be a concrete achievement very soon. I know you need a lot of patience. The Tlicho have been very patient. I hope the federal government will move quickly and will be respectful so you can come to an agreement. I also hope the issue you just talked about will not be a stumbling block. I hope you can make this work.

Mr. Martin, I know you are appearing as an individual witness. I inferred from your presentation that you support Bill C-14.

[*English*]

Mr. Jim Martin: Absolutely.

[*Translation*]

M. André Bellavance: Throughout this process that took years, did you feel non-aboriginal people were involved in the agreement and then the bill? Did you feel you were consulted? What was the consultation process like, with non-aboriginal people?

[*English*]

Mr. Jim Martin: I've lived in the Tlicho communities for over twenty years. I have worked there as a teacher and a school principal and an administrator with the community services board. The board has had a very close relationship with the Dogrib Treaty 11 Council. The chiefs sit on our board.

There's a lot of communication. They're very small communities. Certainly, the entire process with the Tlicho claim has been unique, from what I can see, in terms of the consultation process. There have been many opportunities for people to come forward and say what they feel about it. My sense of people who live in the communities and who are non-aboriginal is that people have a great deal of respect for the aboriginal leadership in those communities, and they wish very strongly that the agreement will be finalized as soon as possible.

From my own personal work with the Dogrib Community Services Board, the very best things that we have done, the most successful things that we have done, have been where we had close collaboration and working relationships with the aboriginal leadership in those communities. Our board has been very successful in some of the educational ways. Over ten years ago, we had approximately six people graduating every five years from high school. Today, we now have our own high school and we're graduating 25 to 30 young people a year. Much of that has come about through the support of the leadership in the communities.

I'm getting away from your question somewhat, but my sense is that people work together well, people see that if we're to be successful in the communities in terms of delivering health care, in terms of delivering educational programs, then the people who rightfully live in those communities are the ones who in fact need to be making the decisions. The agreement will lead to that, and the staff, the people, are very supportive of that.

● (1025)

The Chair: Thank you very much.

Mr. St. Amand, please.

Mr. Lloyd St. Amand (Brant, Lib.): I would like to echo what has been said around the table. I commend everyone for coming, for starters. Secondly, I thank you for your very cogent, clear presentations. Your positions have been crystal clear.

I have a question for Mr. Martin, and then a question for Chief Enge.

Mr. Martin, you've no doubt heard that expression, “The tyranny of the majority should not be inflicted on the minority”. I have the impression that the current situation is very copacetic, that the current leaders within the Tlicho community are not dictatorial, that they are inclusive and that they ensure that non-aboriginals are included in the consultation and, I presume, decision-making process as well. Is that a fair summary of what you've provided to us?

Mr. Jim Martin: Yes.

Mr. Lloyd St. Amand: Okay.

Of course, we operate on the basis of what-ifs. What if, at some point in the future, the current dynamic changes and the goodwill subsides a little bit? That's a possibility. Are you satisfied that, within the codified agreement itself—of course, that's why we bother to reduce things to writing, to put them into a formal agreement—any non-aboriginals in the Tlicho community will be protected under the written agreements?

Mr. Jim Martin: Yes, I am. Certainly I think the agreement represents a good step forward for governance in the Northwest Territories. Certainly, as you're aware, at the community level, you have to recognize that these are very small communities. In many ways, the government has, in the past, fractured or fragmented the governance in these communities by having band councils and hamlet councils. Often, for people who are trying to get things done with young people and so on, this has made decision-making very difficult.

Under the new Tlicho community governments, it effectively brings the decision-making together. There is a role for non-aboriginal people on those community governments, and I think that's a great improvement over what exists currently.

Mr. Lloyd St. Amand: Thank you, Chief Enge—and Chief Douglas, is it?

Mr. Robert "Sholto" Douglas: President.

Mr. Lloyd St. Amand: President. I apologize.

Thank you very much for your presentations. I enjoyed the history and your sharing with us the difficulties vis-à-vis the former president.

You made reference, I believe it was you, Chief Enge—

● (1030)

Mr. Bill Enge: President Enge.

Mr. Lloyd St. Amand: President Enge, I apologize. I believe it was you, President Enge, and not you, President Douglas, who made reference to section—

Mr. Bill Enge: Section 2.7.2, right.

Mr. Lloyd St. Amand: Could you briefly expand on that in conjunction with section 2.7.1, because I understood your presentation to mean that section 2.7.2 would essentially obligate you to have any disagreement with the Tlicho litigated in court, and I don't read those two sections in that fashion.

Do you wish to expand on your earlier comment?

Mr. Bill Enge: Certainly. Thank you for the inquiry with respect to our view on this matter.

In our view, when this agreement is passed by Parliament and it goes into effect... Of course, our rights are not going to be addressed through this agreement as of yet because of the difficulties we had getting to the negotiation table and having our rights negotiated and addressed.

So what may happen down the road—and this is one of the aspirations of the North Slave Métis Alliance, particularly the part of the organization that has the Rae-Edzo section, which is the community my counterpoint, Sholto, comes from—is they've always asserted that they would like to have Edzo, a community that's approximately 12 kilometres from Fort Rae, declared a fifth community, or a Métis-only community. The lands where Edzo is now located have been selected by the Dogrib Nation, and in order for some amendments or accommodations to be made for the aboriginal rights of the Métis.... We don't see this agreement giving us the assurance we feel is necessary to make the kinds of changes that need to be made when the Métis have their rights addressed.

Now under section 2.7.1, our reading of this is that certainly, we have an aboriginal right; we know it exists. The North Slave Métis were included in the failed Dene-Métis 1990 comprehensive land claims agreement, so there's no question that we have aboriginal rights. The question for us is how we negotiate our rights as an adhesion to this agreement after it's passed.

We know we have a right. If we would like, for example, to select some lands that the Tlicho people have already selected, in order to do that, to make those changes or those accommodations, it appears to us we'd have to go to court and explain to a judge why those lands should be provided to the Métis.

That's how we read those two provisions, and that's why we're asking for an adhesion clause to this agreement that would allow changes to be made without the North Slave Métis people having to go to court to have those changes made.

Thank you.

The Chair: Thank you, Monsieur St. Amand.

I don't have anyone else putting up their hands over in the Conservatives' section, so I have Mr. Smith, Mr. Cleary, and Ms. Barnes.

Go ahead, Mr. Smith.

Mr. David Smith (Pontiac, Lib.): Thank you very much, Madam Chair.

First of all, everybody, thank you very much for being here.

On June 28 I decided to join Parliament to try to make change. I'm a Métis from Maniwaki, Quebec, and this experience I'm living with the Tlicho file is very interesting. I see different people from different parts of the community who support and agree on a common goal. So to everyone who is here, thank you very much for being here. Personally, I have learned many things and it is very important to me.

I have a question. I find one of the advantages of being on this committee is we have the opportunity to meet with people from different segments of the file, and to discuss issues that may concern us. I find it a bit disappointing when I see empty chairs on the other side, people who say that they believe so much on a certain file and they'll be the first ones to get up and bring their concerns, but they don't come to the table to get their answers, because you people are the people with certain answers to our questions.

My first question will go to the Mackenzie Valley Environmental Impact Review Board, and it would be for, I imagine, the legal counsel. Am I correct in saying that even though the word “adverse” has been removed from some portions the board will still have the responsibility of making the determination as to whether the project will have significant adverse impact, and not the body referring the project? In other words, the assessment responsibility remains with the Mackenzie Valley Environmental Impact Review Board—am I correct in saying this?

● (1035)

Mr. Todd Burlingame: Unfortunately, sir, that's not the case. Once a referral is made to our board, we are obligated to conduct an assessment.

Mr. David Smith: But isn't your board an independent body?

Mr. Todd Burlingame: Yes. However, the legislation—and I'll defer to Dr. Tilleman on this—requires us to conduct an assessment once it is referred to us. We have no latitude in whether or not we conduct assessment once we've received a referral.

Perhaps Dr. Tilleman can provide you with more details on that.

The Chair: Mr. Tilleman.

Mr. William Tilleman: Thank you, Madam Chair.

So then the board has this in front of it and it has to determine, as you said, what they do now, because several parts of this legislation still use that word “significant”. The whole process that it's supposed to follow still uses that word “significant”, and in other places “significant adverse”. Yet in the key bulk of their work, which is where this middle level review is going to take place, it's been dropped altogether.

Not only is it problematic from a legal perspective, but I would say you should actually define the word “significant”, and you should define “adverse impact” as well. Those definitions are very easy to do. In fact, in the presentation—which we'll be happy to leave with the clerk, Madam Chair—the board has offered, not for perfection, but just to show that it isn't overly complicated, to give some definition to those words so that the board, once it does get a referral, can actually understand what are the types of impacts it should be looking at.

Surely, if you allow any referral to be made on any basis to this board, you will put the board in not only a capacity issue, but in an issue to decide what is significant. If we look around the room, for example, and someone were to change the room, one would think that if they took out the lights and the heating and air conditioning, that would be significant. But if significant was not a limiting factor, if they removed one chair and one glass, that is an impact. It's a minor impact, but it would be an impact sufficient by way of analogy to cause this board to take its jurisdiction.

Not only that, in terms of the certainty, which is a requirement and a good goal, the legislation states that when these different agencies or local governments or land claims bodies are deciding to refer, even if one of them decides that there might be an important impact, and as such it should be referred, the way this is amended it states that referrals can be made even if a preliminary screening has not been commenced, or, if it has been commenced, it hasn't been completed. So referrals can come.... Because you have several bodies that can potentially give them work, anyone who issues a licence or permit is a regulatory authority. There are also designated agencies. There are the Gwich'in, the Sahtu, and the Tlicho, and they have the ability to refer, and local governments too.

Even if one of them is looking to see if this is important enough that it should be referred, the way this is written, it doesn't matter. Before the work is done now the referrals can be made with no limiting factor of “significance”. At the end of the day, not only is it problematic, but when you consider it in terms of capacity and workload and the certainty the industry will be looking for and the economic development that's so important, you should define these words.

Again, Madam Chair, we'll offer some very brief definitions for the three or four different words we talked about. They're not perfect, but they're simply to show drafters that it's not that difficult.

The Chair: Thank you very much.

We're now in our final round. We're doing the five minutes. There is a committee coming in just after us, so we do have to give time for the other group to get the room ready for the next committee.

Mr. Cleary and then Ms. Barnes, and then we'll finish up on that.

[*Translation*]

Mr. Bernard Cleary: Madam Chair, since Chief Catholique could not finish reading his presentation during his time, I would like to get the assurance that his presentation will be appended to our proceedings so we can take it into consideration.

My last question is for Mr. Edge. What do you have in mind when you talk about an adhesion clause? Is this a complete agreement in itself or just part of an agreement? I would like you to explain more what you mean by that.

● (1040)

[*English*]

The Chair: Mr. Enge, please.

Mr. Bill Enge: Thank you for that question.

That is an excellent question, by the way, and one that I thought was going to be asked. For lack of a better definition—and I'm not a lawyer, and of course we're going to need one in order to write up the adhesion clause—it would be something akin to the notwithstanding clause in the Charter of Rights and Freedoms. Notwithstanding the agreement, it would provide us with the ability to negotiate our Métis rights and have our agreement welded onto the Tlicho Land Claim and Self-Government Agreement. So there would be specific Métis aspects to the agreement that we would arrive at, or the adhesion.

An adhesion clause, in a sense, would look something like, "notwithstanding section 2.7.2, the document permits the Métis to negotiate their aboriginal rights and have an adhesion welded onto the agreement". It would be something to that effect.

Just as an added point, I wanted to thank you for your earlier comments. I didn't get an opportunity to respond. I wanted to tell you that we do wish to be positive. We've coexisted in the North Slave region with our aboriginal counterparts, the Treaty No. 8 first nations and the Treaty No. 11 first nations, since about 1750. I think we can continue to do that, and we can continue to do it in a good way. That's why we support the aspirations of Treaty No. 8 and Treaty No. 11.

Today we're dealing with Treaty No. 11. We expect that with our good relations—and we have lots of good faith in our aboriginal counterparts—we will see our rights addressed in a good way, and we'll continue to coexist in a prosperous and good way with our aboriginal counterparts.

Thank you.

The Chair: Thank you, Mr. Cleary.

You have a couple of minutes if you wish to use it.

[*Translation*]

Mr. Bernard Cleary: No, I will let other people use my time. I often use theirs.

[*English*]

The Chair: Thank you.

Ms. Barnes, please.

Hon. Sue Barnes (London West, Lib.): Thank you very much, Madam Chair.

To all of the witnesses today, thank you for taking the time out of your schedules. I know each and every one of you has work left at home that you could also be doing, and we appreciate your attendance. I think witnesses realize that they only have a few minutes to present, but I wish to assure you that all of us, from all of the parties, take our jobs very seriously at this table. We're here because we believe in this process of helping people get to their self-government and to their rights, and of having the accommodation with not only the current boards and everything else that exists, but with surrounding neighbours.

What you have done for us today in your testimony is not only show your participation in the consultation process, but knowing that this will affect you in many ways now and in the future, you've also pointed out how the words of this agreement have life. I think of Chief Catholique's point that they're in the midst of negotiations and there'll be some things they'll look at as an example of what they'll want to utilize out of this treaty, but then there are other things they don't want to utilize.

Your legal counsel has brought out the honour of the crown, which was a case that all of us heard and paid attention to last week. We think we're going in that process.

I understand the board. You've made some points about definitions, but at this stage of the game, I think you understand that we're at the ratification process. It's not our job at this table, nor do we have the power, to go inside this agreement that has been negotiated in good faith, with honour, to change any part of that agreement. But I also understand—and I think you do also—that there are processes set up so that these things will be worked out as you need them, because we know we have to work in the best interests of the territory.

I appreciate hearing that there will be some dissolution to litigation, unfortunately, but that's not today. I'm not going to comment because of my situation as a representative of the government, but I listened.

Mr. Martin, you've given us the example of one person of a collectivity of persons who is non-aboriginal but is living in harmony in a region. You may be able to assist me in understanding one thing, and that's the economic relationship the Tlicho have forged with some of the growing industry in the Northwest Territories, in particular because you reside in Rae–Edzo.

Rae–Edzo, as I understand it, has a number of people who work in the diamond industry in the northern part of the Northwest Territories. The Tlicho, again as I understand it, have done some human resource negotiations. Are you aware of some of these, or do you know people who are involved in flying back and forth for employment purposes, up into the northern part of your territory?

● (1045)

Mr. Jim Martin: Yes, I do.

Hon. Sue Barnes: Could you expand on how the Tlicho have utilized this relationship with the growing investment in the north to their advantage?

Mr. Jim Martin: I'm not the best person to do that. Certainly it would be wiser to talk with someone from Treaty No. 11. I can tell you my perception of it and also from working as the chief executor at the board.

A lot of people are now working in the mines, and you see a great difference in the communities in terms of people having the self-esteem that comes of having regular work and well-paying work. Certainly that has been one of the benefits of the mines.

There are also downfalls to the mines, too, as we are all aware. With increased money in the communities, there also can come increased problems, and we're certainly seeing some of that as well.

The Tlicho leadership has negotiated impact and benefit agreements and participation agreements with the mines, which have given the Treaty No. 11 government significant funds. The Tlicho leadership has turned around and often funnelled large amounts of that money into the school board or into the community services board. Hundreds of thousands of dollars over the last few years have gone into post-secondary scholarships, which have been administered by the Dogrib Community Services Board.

As I mentioned a little earlier, we have increased significantly the number of high school graduates in the communities. Now, on a per capita basis, the Dogrib region has the largest number of people in post-secondary in the Northwest Territories. A lot of that has come from the willingness of the leadership to put money from the mining companies into the development of their young people.

As well, over the last couple of years the Treaty No. 11 council has taken this money and used hundreds of thousands of dollars to support an addiction strategy within the community. Again, that bodes well for the future. It certainly shows where their priorities are in terms of using the resources that are coming in from the mines.

The Chair: Thank you very much.

We're almost out of time, and I do have a few housekeeping things to take care of.

First of all, I want to thank all of the witnesses for coming this morning, especially the ones we asked to rearrange their schedules. The Mackenzie Valley Environmental ImpactReview Board and the NWT Treaty 8 Tribal Corporation were originally slotted for December 2. We appreciate your cooperation in moving your time to today so that we could get most of the witnesses done in order to deal with clause-by-clause at our next meeting.

We thank you all for your presentations, and especially for the new members, giving a bit of the history and what the positions of each of your groups are.

I do have a few items I need to remind you of. First, the deadline to submit amendments is today at 5 p.m.

Ms. Barnes.

● (1050)

Hon. Sue Barnes: Just for the government, my information at this point in time is that there are no technical amendments coming forward on this, though there will be some technical amendments on the next bill we're dealing with, and I'll talk to the critics.

The Chair: Thank you for that.

I do need to get agreement from the members, as Mr. Cleary was saying, that the submission provided by the NWT Treaty 8 Tribal Corporation in regard to Bill C-14 should be appended to today's minutes of proceedings and evidence.

Okay. I just wanted to make sure that was on record, that there was no objection to that.

I'm not sure if the review board had other submissions.

Mr. Todd Burlingame: We have a copy of our speaking notes here.

The Chair: I also wish to clarify with Mr. Smith that we do not refer to the absence of members at committee, just as in the House of Commons. That is just a reminder.

Mr. Pratt.

Mr. Alan Pratt: Madam Chairman, I'm sorry, I just want to respond to Mr. Cleary's reminder about Chief Catholique's written submission. I've given a copy of the November 2002 agreement, which I referred to, to the clerk of the standing committee. We had requested that this document also, if possible, be appended to the record of the proceedings.

The Chair: Thank you.

I gather from the reaction of members that it will be okay.

Thank you so much to everyone for accommodating us this morning.

The meeting is adjourned.

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