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Ms. Nancy Karetak-Lindell

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•(1105)

[English]

The Chair (Ms. Nancy Karetak-Lindell (Nunavut, Lib.)): Good morning. I'd like to call the meeting to order.

We have some business to take care of before we get to the witnesses. We have prepared some draft budgets for you to look at for the rest of the studies we hope to do. We'd like to get those approved by the committee so that we can go to the meeting at one o'clock. We ask you to look at these three budgets. If you have any questions.... If not, can we get someone to move to approve these budgets for this committee?

Mr. Martin.

Mr. Pat Martin (Winnipeg Centre, NDP): Madam Chair, my only question would be to the clerk, on whether he feels the dollar value that he has put forward will be adequate for us to undertake the studies that we've contemplated. I notice there is no money for the committee to travel, but there's no plan for the committee to travel either. My only concern is that if this is our one opportunity to go to the Liaison Committee to ask for money to bring in witnesses, etc., then in his view is this an adequate amount of money for us to conduct our planned studies?

The Chair: The clerk feels this is adequate to do the studies we want to do. And do remember that as of April 1 the committees will be given an allotment of \$40,000, which should make it a little easier for them to carry on studies without having to go to the Liaison Committee every time.

Mr. Pat Martin: I understand that. Having heard that, Madam Chair, I would like to move that we adopt the budget as we have it tabled.

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

The Chair: Now that we have that out of the way, we'd like to welcome our witnesses here.

Thank you for coming on such short notice and for having one piece of information here in two official languages.

Pursuant to Standing Order 108, this is a study on funding of post-secondary education. In our first hour, we have before us the Assembly of First Nations, the Aboriginal Peoples Council of Toronto, the National Aboriginal Achievement Foundation, and the Ontario Native Education Counselling Association.

I'm not sure if you've decided among yourselves who will speak first or if we'll just go with the way we have the schedule right now. I have the Assembly of First Nations first on the agenda. Is that the

way you want to start? Maybe what we'll do is hear everyone first, and then we'll open it up for questions. Is that all right with everyone?

Mr. Martin.

Mr. Pat Martin: I just want to make sure we have an adequate amount of time to question the various witnesses, so I was wondering if you were going to put limits on the length of time each individual witness could speak.

The Chair: The clerk assures me that he made sure all the witnesses understood they're to be five-minute presentations so that there will be more time for the committee members to ask questions afterwards. We have to remember that we just have the one hour, and we've already gotten into that hour.

•(1110)

Mr. Pat Martin: Not to hold things up further, Madam Chair, but I would like to recommend that if we find we're running short of time in speaking to these witnesses, we can allocate more time to the witnesses and less time to the bureaucrats who are coming later. In other words, seeing that we're 15 minutes into this meeting, I wonder if we could agree now to hear these witnesses for one full hour, until 12:15, and hear the bureaucrats for 45 minutes after that. Would that be—

The Chair: Without further ado, I'd like to invite...I have Mr. Watts here, but I see a different name there.

Go ahead, Assembly of First Nations.

Mr. Richard Jock (Executive Director, Assembly of First Nations): Thank you.

We welcome the opportunity to bring forward the first nations perspective on post-secondary education. We'd like to thank you for making this opportunity possible to have the dialogue you've just highlighted.

At this point we feel it's particularly important as we move into the 21st century that first nations people be able to live and work in the knowledge-based society that is emerging and in the economy that's accompanying this. This really will require us to be adaptable, resilient, and ready to learn throughout life, yet the current circumstances continue to reveal that there are disturbing inequities between first nations people and the rest of Canada.

In the recent report of the Auditor General of Canada, she again commented that there continues to be a significant education gap between first nations people living on reserves and the Canadian population as a whole, and that the time required to close that gap has actually increased since the previous report to about 27 or 28 years. That really is a telling finding.

At this point we really need to reflect and ask ourselves how this could possibly be happening, especially in a time when there is really widespread appreciation for the need for education and training, job markets, and the requirement of job skills in a country such as Canada, which really prides itself on being in the forefront of equity and promotion of human rights.

Some of these answers really relate to the recognition of first nations jurisdiction and authority. This really must be accompanied by clear commitments to sustainability and comparability of programming so that services developed within a system also are able to be tracked and monitored, so we can track and have a distinct framework for success. We feel by working within such a framework first nations will indeed achieve the results that are needed to take that place I described earlier.

In order to prepare first nations for these requirements there are some fundamental educational changes that need to become a priority for the federal government. One of the first of these is that the Government of Canada, in our opinion, must fully accept its responsibility and commit to providing the necessary funding to enable first nations to design and deliver programs and services comparable to those that are currently delivered by other jurisdictions such as provinces and territories, and to further support first nations people in developing our own unique goals in terms of lifelong journeys.

Post-secondary education certainly provides first nations people with the opportunity to access higher learning and has produced a highly skilled, educated first nations people. Some of them, I presume, will be highlighted by my colleagues next. This has also increased employment rates, decreased social assistance dependency, provided a higher standard of living, and improved the capacity of first nations to carry out their self-government and self-sufficiency goals.

Moreover, I think it's important to make the point that welfare is more than 20 times more expensive than a university education, if you look at overall costs. Therefore, it's in the interest of all Canadians for the federal government to invest in higher education opportunities for first nations people.

As mentioned, we know there are serious problems and that the shameful conditions of first nations people continue. INAC has recently completed an overall analysis of indicators of quality of life for first nations families and communities. In applying the United Nations human development indicators in 2001, INAC found that first nations people living on-reserve placed 69th on a comparable list of countries in the same year that Canada overall was placed at the top of the list. This would place first nations on a par with Brazil in terms of human development, while Canada is consistently in the top ten.

●(1115)

There are some successes. Post-secondary education participation rates of first nations have increased dramatically throughout the 1990s, but subsequently have shown a sharp decline since the year 2001. Participation rates in that period declined from a high of 27,157 in 1998-99 to 25,075 in 2002. We feel that this is an alarming trend, especially given that recent studies by Stats Canada show that in general post-secondary education of lower-income families is decreasing and have attributed this to the rising cost of post-secondary education.

As noted by our national chief, Phil Fontaine, we have at least 10,000 first nation students on waiting lists, ready and willing to further their education and contribute to their and the Canadian economy, but they cannot access the resources they're rightfully entitled to.

Access to post-secondary education is critical to improve the quality of life for first nations individuals, families, and communities. Post-secondary education is also a fundamental building block of self-sufficiency and self-government.

It is true that we need more resources dedicated to education, but we feel we can also make better and more efficient use of the available resources. In this, first nations are best placed to identify where these needs are, because they deal directly with students.

What's really needed is more first nations input and control over the administration of the program and recognizing first nations authority in this area. Securing its sustainability with investments matched to population growth and inflation will ensure that first nations are equipped to effectively manage this post-secondary education interest and to maximize the results and benefits for all first nations peoples, regardless of residence.

The Assembly of First Nations commissioned a national review of first nations post-secondary education in the year 2000 and found there were two fundamental problems with this funding. First, there's a large unmet number of students who wish to attend post-secondary education but are deterred because of a lack of available funds. Second, the current funding is allocated and managed in such a way that it does not ensure maximum benefits to students, families, and communities. In fact there are policy disincentives to the current set-up that are very counter-effective.

INAC has not changed its policy since 1988, nor kept current with the increasing costs of higher education. Policy changes in 1988 resulted in reduced numbers of students eligible for funding and applicants being placed on waiting lists and limited access to post-secondary education by off-reserve residents. There are outdated guidelines and amounts for student living costs, tuition fees, and educational expenditures. This results in discouraged and stressed first nations peoples. Students who experience financial hardship have had to drop out or funding has had to be subsidized through other social programs.

An examination of the post-secondary education policies and programs of the federal government clearly showed a huge discrepancy between the costs to attend the education systems and the funds allocated to first nations post-secondary education students.

As the AFN has commented throughout the Canada-aboriginal peoples round-table processes, in 1996 the federal government capped funding increases for the Department of Indian Affairs core programs, which includes education at 2% a year. This clearly does not match inflation or population growth, and follow-up studies have found that the gap in overall quality of life between first nations and non-aboriginal Canadians stopped closing at this point.

At the same time, recent studies show that the number of Canadians withdrawing from the labour force will exceed those entering by the year 2015. In contrast, first nations population is young, and more than half the first nations population is under 25, therefore making our population a critical element of success of the Canadian economy in the coming years.

A further aspect that threatens to undermine the post-secondary education is taxation. The AFN has discussed this matter since April 2004 with INAC and CRA with little movement on this issue. As a result, the discussions have moved to a higher level between the national chief and the Prime Minister's Office, where there's been discussion of a strong possibility of a permanent moratorium on post-secondary education. This has been under way since December 2004.

- (1120)

We do stress that various possible solutions have been brought forward, but we feel this needs to be resolved, as this obviously removes the effectiveness of funding and creates a further barrier to educational attainment.

In conclusion, I remind the committee that it's the fundamental position of the AFN that education at all levels is an inherent aboriginal and treaty right, as recognized in the Canadian Constitution and international law. This is directly from National Chief Phil Fontaine.

The AFN is ready to work with government, and has put many ideas on the table to assure maximum benefit to students, families, and communities, and identify ways of increasing student funding so that rates of participation can get back on a positive and increasing trend. This is good for first nations and it's good for Canada.

Obviously, education is a key determinant in the quality of life of Canadians, and it will be a key determinant in the quality of life of the country. Our population is young, and will potentially be driving the country's economy in the coming years. If Canada is going to be a player in the world economy, the only solution is for the government to work with first nations and support our efforts to make sure that our citizens are equipped and educated so they can become the workforce of tomorrow. It's a simple but evident truth that more than ever, our future is Canada's future.

I have a series of documents that we will leave with the committee, which reflect our participation and positions that were provided during the Canada aboriginal round table.

Thank you.

The Chair: Thank you.

Just for the record, I want to make sure we know that was Richard Jock, CEO of the Assembly of First Nations. We had someone else on the agenda.

That was about ten minutes, so we'll have to try to cut it down and give everyone equal time before our hour is over.

Next on the agenda is the Aboriginal Peoples Council of Toronto, Mr. Roger Obonsawin, chair.

Welcome to the committee.

[*Translation*]

Mr. Roger Obonsawin (Chair, Aboriginal Peoples Council of Toronto): This document has been translated in French, but the French version has not arrived yet; you will get it later but I have copies for you in English.

[*English*]

[*Witness speaks in his native language*]

Good morning, everyone. Thank you for the opportunity to make this presentation to you at this time.

The unilateral move to terminate education as a right under the guise of a so-called social policy, by registering aboriginal students through the T4A process in respect of tuition, is both ill-advised and discriminatory.

Esteemed members, in order to place this question within the proper context I will examine with you the following points. First is the issue of the basis of the aboriginal right to education, as well as the non-taxation of those rights. The second issue is the contemporary historical context of the aboriginal treaty rights policy, beyond the affirmation of their existence in the Constitution of Canada in 1982, and the third issue is the current rationale regarding the extinguishment of those rights. And finally, I will examine the tendency to constantly utilize the Canadian justice system to rule on disagreements. And I will be brief on all of those points, Madam Chair.

First of all, let me be clear: The aboriginal right to education and to immunity from taxation does not come from section 87 of the Indian Act. This section is simply affirming the principles behind the Royal Proclamation of 1763. The proclamation recognized the fact that aboriginal peoples in North America are distinct nations with ownership over lands and resources. Treaty-making therefore was simply a process for negotiating access to those lands and resources.

One of the outcomes of successful treaty-making was guaranteed access to education to ensure that we would gain the skills and knowledge required in a country where our respective nations could coexist in peace and friendship. Aboriginal immunity from taxation was furthermore a recognition that one nation did not have the right to tax another nation as per international law.

Second, in respect to the contemporary historical context I contend that the policy of the Government of Canada is to terminate our aboriginal treaty rights and assimilate us into the body politic. This policy became very clear when the Right Honourable Jean Chrétien, then Minister of Indian Affairs, tabled the white paper in 1969. This was seen as an extinguishment policy by aboriginal leaders of the day.

While Prime Minister Trudeau agreed to withdraw the policy, the Department of Indian Affairs continued to implement it. Further evidence of the termination policy was the acceptance of the Nielsen report in November 1985 by the Mulroney government. It called for the termination of all aboriginal treaty rights. It is my understanding that the then Indian affairs minister Crombie had proposed an honest approach to dealing with Canada's fiduciary obligations to aboriginal peoples; obviously the honourable approach was rejected.

Finally, I note that taxation policy is set by the Department of Finance, not INAC or CCRA. In 1992 the ministry developed a working paper on Indian government taxation, of which I have a copy. This paper established the framework for extinguishment of aboriginal taxation rights. Canada would in effect deal with those rights as social policy rather than rights. I suggest that this is the policy direction that is now being referred to in recent correspondence from CCRA.

Esteemed members of Parliament, I suggest to you that when policies that negate or abrogate our aboriginal treaty rights are developed, the emperor has no clothes.

This brings me to my third question. Why is Canada saying that taxation exemption of the tuition of aboriginal students is not a right but a matter of social policy at this time? It is obvious that the taxation of aboriginal student tuition is not going to bring a major influx of revenues to Canada Customs and Revenue Agency. Everyone knows that closing the loopholes to Canadian companies and individuals who incorporate offshore would result in a much more significant infusion of cash than taxing aboriginal students. Simply stated, a rationale for this policy is to have students registered through T4As in order to ensure that they become part of the Canadian taxation system. These facts reinforce my concerns that Canada is attempting to get out of its historic obligations through the back door.

I therefore pose my fourth question. Why is there a tendency on the part of this government as well as previous ones to constantly use the Canadian justice system to rule on our disagreements? As an alternative it could simply implement the recommendations of the Penner report—and I am pleased to see Roberta Jamieson, who was co-chair of that report, here today.

These recommendations included the appointment of a minister of state for aboriginal-Canada relations and an aboriginal ombudsman to ensure both sides honour and respect the principles and tenets behind the agreements. Such steps, if implemented, would truly signal a new era of cooperation between Canada and aboriginal nations.

● (1125)

It has become obvious that the courts have become extremely reluctant to rule on aboriginal and treaty rights cases. I cite for example the Benoit taxation case regarding Treaty No. 8. The judges in that case placed a lot of weight on the gravity of the consequences if they ruled in favour of Treaty 8. This underlines the misconceptions Canadians have about aboriginal peoples, particularly in relation to taxation. I note that many of the misconceptions are fostered by Canada. In this instance, judges appeared to be worried about the cost to Canada if all aboriginal peoples were exempt from Canadian taxes. In fact, it was pointed out by Dr. Fred Lazar, a well-

noted economist, that Canada would be further ahead financially if this were the case.

We are treading on dangerous ground when we make false assumptions. If we continue, I simply pose one question: if Canada resiles from the spirit and principles of the treaties, does that mean that all lands and resources surrendered as a result of treaties are returned to the historic occupiers of those lands? If Canada were really serious about addressing this issue, it would not set up a joint advisory committee between CCRA and AFN, since CCRA only enforces the policy, and that committee can only look at how the policy will be enforced. It would rather set up a joint committee including INAC and the Ministry of Finance, who are really the policy-makers. That's why I ask you, what does Canada stand for?

Thank you.

● (1130)

The Chair: Thank you, Mr. Obonsawin.

The National Aboriginal Achievement Foundation is next. Ms. Roberta Jamieson, welcome.

Chief Roberta Jamieson (Chief Executive Officer, National Aboriginal Achievement Foundation): *[Witness speaks in her native language]* Bonjour, good morning.

First of all, thank you for the invitation to assist the committee with the very important study you are undertaking on the funding of post-secondary education for our people.

I'm here as the CEO of the Aboriginal Achievement Foundation, a national charity established in 1985. Among other important initiatives, we provide assistance to first nations, Métis, and Inuit students to realize their educational goals and dreams. We provide more than \$2 million in individual scholarships each year, and up until now we've awarded about \$18 million since we began that function. It's a combination of federal funds, provincial funds, private and corporate sector funds, individual funds, and bank contributions.

We are a foundation devoted to excellence in providing the educational tools necessary for aboriginal youth to achieve their brighter futures. We're in the business of supporting the conversion of potential into accomplishment, and celebrating the accomplishment, as you saw last week in the House of Commons when we introduced the recipients for the Aboriginal Achievement Awards for 2005.

You know, for my money, the Rae report issued yesterday was right on with its comments about the importance of the issue of post-secondary aboriginal students generally. What he said about Ontario applies across the country. He said:

We cannot allow another generation to grow up in the province without the strong support of higher education. If this is allowed to happen, the whole province will be worse off. If we chart a different and better course, we shall all be the beneficiaries....

When...Aboriginal students...are locked into low-paid jobs or welfare, this means a loss for the economy, a cost to society and a huge personal setback for them and their families. This is the cycle that must be broken. Education cannot do it alone, but it cannot be done without access to advanced learning.

Are we doing enough? Both from the foundation's point of view and from what I see at home at Six Nations of the Grand River Territory, the answer must be no. In my last year as chief at Six Nations, where I was chief until just a few months ago, I can tell you that on the ground we had more than 200 students who were accepted into post-secondary institutions that we simply could not fund. At the foundation now, we are not able to respond to all the applications we receive, and of those we can help, we can only supply a portion of the funds they need. Only about 17% of our applicants are fully funded to cover the shortfall they experience, the difference between the funds they put together from federal sources, student loans, part-time employment, parents, and whatever the student can muster together, and the need.

I've just been a few months with the foundation, but I can tell you that it is important today to challenge the government to contribute more money to fund our students. For my part, I will commit to raising more money from the provincial, territorial, and private sectors. I want to find funds to create the support networks and the mechanisms we need so that the investments we all make are rewarded with successful graduates, and this is especially needed in the area of health human resource workers. We are desperately in need of more health human resource professionals among aboriginal people.

The foundation has a track record of success and plenty of experience to build on.

Well, I know one of the items on your agenda is the taxation issue. For two reasons, I was surprised to hear that this controversy over taxation of first nations post-secondary students has taken on a new life. I guess I've been around too long. A few decades ago, as high school students, we became very active and organized and waged a pretty strong battle when the government of the day was talking about cutting post-secondary students. That was in the sixties. We did it again in the seventies.

• (1135)

As I recall from those days, the government restored the budget, and in the Greeyes case shortly thereafter, it agreed that, yes, according to a living theory of treaties, the one-room schoolhouse of 1867 should today be interpreted to mean post-secondary education. I thought the issue had been put to rest. I guess not.

The second reason I'm surprised we're here talking about this is that imposing a new regime of taxation is going to be seen and felt by our youths as a disincentive at the very time when we should be offering incentives and support to all first nations, Métis, and Inuit youths who have aspirations to get a post-secondary education.

Let's remember that we're still living with the legacy of residential schools, from which education was not seen as a positive. Let's remember that 70% of our youths don't even finish high school. We're dealing with a percentage of a percentage of a percentage here. In the face of all this overwhelming challenge to even get to the gate of the post-secondary institution, taxation as opposed to rewards will be seen as punitive, pure and simple.

I'd also put the taxation issue into this context. I'm always reading in the papers about Canada's skilled worker shortage and, today, doctor shortage. What answer is almost always given to the question,

“Where will the new young workers be found?” The favourite answer is more immigration. I'm a fan of immigration, but I always ask why it is that we're willing to give new incentives to new young workers to come to Canada from overseas to work. What about the tens of thousands of youths who are on reserves, in Métis communities, in Inuit villages, in urban ghettos, who have so much to offer but find themselves facing a life of permanent exclusion?

I worry about Canada's future when I think about this question. I worry about the social dynamics, frankly, of a dispossessed aboriginal population in the cities seeing others being recruited to meet a labour shortage. It's not a healthy situation for anyone.

The Minister of Finance has many tools at his disposal to deal with the taxation question. The federal government has many ways to provide incentives, honours, encouragement, and support. Many of you may be as old as I am and remember a time when Canada needed to increase its population and offered family allowance. We called it “baby bonus” at that time. Canada didn't say, “For every child you have, your taxes will go up.” We seemed to understand the value of incentives a little bit better in those days. Could we help close the gap if there was an aboriginal student graduate bonus? I think so. I recommend this idea to you.

Let me give you a couple of facts before I close about the students we're talking about. You've heard some of these facts already and I won't repeat them, except to say that there is a more than a three times greater chance that a first nations, Métis, or Inuit student will be unemployed and from a family facing chronic unemployment. It's a vicious cycle. Without education, there's more unemployment, and so it goes. We now know that even for a blue-collar job these days, a two-year diploma program is necessary. Our youths aren't keeping pace with the status quo, and we're falling further behind with the new demands.

Learning today also goes beyond tuition. It means online access to the Internet, computers, and text books that cost \$200 a shot. Many aboriginal students are single parents who cannot stay on campus in the evenings or weekends to use university facilities. At the foundation, we're often dealing with students who have health problems and disabilities, who too often lack confidence in their own abilities, and whose education preparation leaves them with a heavy burden of catching up.

Here's one more statistic to share with you from my personal experience. Last year, in my home community at Six Nations, I was pleased to see our member, Lloyd St. Amand. Only 38% of our students passed the literacy test in high school. Yes, 38%! The provincial average was 67%. So these kids are facing overwhelming challenges, and by the time they get to the doors of universities and colleges they've overcome these challenges. We must support them.

•(1140)

My message to the committee is to talk about this challenge in a non-partisan way. Surely this is an issue around which all parties can come together. Urge the government to make it a priority. Find some way to discontinue the time, money, and effort we're spending on building disincentives, and create incentives for our youth. Keep first nations, Métis, and Inuit youth up front and centre.

When we're talking about dealing with Canada's labour shortages, and frankly, about Canada's future, we can't afford to let this critical challenge drop out of our sight. Let's find ways, such as the foundation, to harness government funds with private sector funds, so we can say that no aboriginal student who wants to get an education can't make it for lack of funds.

I'm pleased to be here. I have with me our director of education at the foundation, Lorre Jensen. We track our students. We have charts. We can tell you that their success rate is second to none. I'm pleased to show you the tracking we do at the foundation, and share with you other information about our scholarship program today.

Nya-weh for the opportunity to speak with you.

The Chair: Thank you very much, Roberta.

We have one more presentation in this first hour, from the Ontario Native Education Counselling Association, Ms. Kimberly Smith-Spencer, president.

Ms. Kimberly Smith-Spencer (President, Ontario Native Education Counselling Association): Hi. I think everyone has spoken very well on the issue, and I don't want to repeat what they've said.

I'm here on behalf of all of the native counsellors in Ontario. First nations people in Canada have the fastest-growing population, with a birth rate 70% higher than that of non-native Canadians. The third national survey of first nations on reserve states that in 15 years, first nations students will represent between 25% and 50% of the entire elementary student population in several provinces and territories. In four years, the aboriginal workforce will be just shy of one million people, with young men and women under the age of 35 representing the bulk of that number. With the labour shortage in Canada, Canada should be thinking of ways to capitalize on these demographics, not adding barriers.

Finally, as the oldest culture in Canada, we should be celebrating our successes, not sitting here advocating and struggling for them.

Thank you.

The Chair: Thank you very much.

I just want to make sure we have on record that you have Lenny Carpenter here with you.

Welcome.

Ms. Kimberly Smith-Spencer: He's a journalism student.

The Chair: Thank you. We also have Dawn Maracle with the AFN. Welcome.

We'll go into our round of questions. Normally we do nine minutes, seven minutes, and seven minutes, but we might want to cut down on the first round so we can get more questions in. I'm

suggesting maybe we can do five minutes, three minutes, and three minutes. We'll be flexible and try to get everyone in the first round, and hopefully get a second round.

Mr. Harrison, please.

Mr. Jeremy Harrison (Desnethé—Mississippi—Churchill River, CPC): Thank you, Madam Chair. I agree that we should cut down our questions to make sure everybody has an opportunity to talk to our witnesses.

I'd like to thank all of our witnesses for coming. I know this was on fairly short notice, and it was a real challenge for everybody to get here. So I'd like to thank everybody for being here. I'd also like to thank Mr. Martin, who proposed that we discuss this issue today. I think it's a very worthy issue for discussion at this committee.

I'd like to first of all applaud the commitment to education shown by our witnesses here. Education is so important. I spent a good chunk of time in university—I did three university degrees—and over the course of that time I accumulated about \$60,000 in student loans, which I am paying back. I know about the debt burden faced by students, particularly by aboriginal students, many of whom don't have the same opportunities in terms of financing and resources that other students have across the country. So this is a very important issue.

On my first question, I'm not even sure if anybody can answer it, but I would appreciate even some conjecture or speculation as to why the government would have made this seemingly arbitrary decision to change the tax status of aboriginal students.

•(1145)

The Chair: Who would care to answer that?

Mr. Jock.

Mr. Richard Jock: I think the quick answer is there is no good reason, but I would like to call on Candice Metallic, who's our legal counsel, to comment on that.

Ms. Candice Metallic (Legal Counsel, Assembly of First Nations): Good morning, and thank you for the opportunity to field this question.

We have been engaged in discussions with CRA, INAC, and the Department of Finance, to a limited degree, over this very particular issue since April 2004, when we first learned of it. The answer that is repeatedly given to us... In the Greyeyes case the court actually didn't deal with whether education was a treaty right. It was a fact that was conceded by the Government of Canada. So the case proceeded on that basis.

Our question to them was why, at this point, there was a change in the position of the federal government when this was a legal position taken at an earlier time. The answer that we've been given consistently is that it was a mistake. It was made by somebody in the Attorney General's office who may not necessarily have the authority to make that decision, but subsequently they've been advised by the Department of Justice and the Department of Indian Affairs that it was a mistaken position. If it was the position at that time, it's no longer the position of Canada.

Mr. Jeremy Harrison: Would that open up the possibility of some legal action proceeding on the basis of the government's initial position in Greyeyes? Would the change in position taken by the government leave an opening for a legal action? This would take a long time, of course, if we were to proceed down the path of litigation. I'm sure that's not the path that anybody wants to go down, but would that be a possibility?

Ms. Candice Metallic: I think it would be a possibility worth exploring. Right now the Assembly of First Nations is working to resolve this issue in a non-litigious manner, but certainly if we're unable to do it in that way, we'll have to explore our other options.

Mr. Jeremy Harrison: Perhaps I can pick up on that point. Are there discussions ongoing between the AFN, specifically, and the Government of Canada to resolve this, and is there headway being made, or what are the chances for this path being successful?

The Chair: Mr. Jock.

Mr. Richard Jock: I think the point we make is that there are discussions, but we feel that this should be brought to a quick conclusion. There's really no benefit to prolonged discussion. It just seems to further create problems for our communities, a sense of alarm, etc. So we feel that it should be resolved as quickly as possible so that we can get on with the other serious elements related to this.

The Chair: I think Mr. Obonsawin wanted to give a short answer.

Mr. Roger Obonsawin: In response to your question about litigation, I would certainly advise against taking that road. We've been down that road in so many cases, and it's costing both the native people and the government a lot of money. We have been in litigation for ten years on taxation issues and there's still no sign of resolving it.

It's our last resort, but it's not the best option. Let's negotiate this. Let's sit down and do it right.

• (1150)

The Chair: Thank you.

Mr. Cleary, for the Bloc.

[*Translation*]

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

I am Bernard Cleary from the Bloc Québécois. I am an Innu from Lac-Saint-Jean. We have been talking about the lack of funding for post-secondary education and education in general for 40 years. Every Aboriginal group has been trying to convince IANC to do something for the last 40 years. Yet, a few weeks ago, at a meeting of the Public Accounts Committee on that issue I learned that we would not close the gap between us and young white students, that young Aboriginals would not get the same education before 28 years. I was stunned. I could not believe that anyone could say anything so ridiculous and I understood why the Auditor General made her comments.

However, the Department of Indian Affairs did not give any answer. They have been totally silent. We were only told that they were considering the transfer of education to our communities. They would like to transfer a system which is not working and that all

experts have failed to improve. And after that, five or six years from now, we will be told that Indians are not able to make any progress.

So I am pleased to hear your comments, once again, and particularly to see the energy level of Ms. Jamieson. We must work together at the Aboriginal level to close that gap, not in 28 years, but in four or five years at the most. It is ridiculous. Otherwise, you can imagine how many generations of young Natives we are going to lose : 28 years, this is a long, long time.

What should we do? Let them give us a match plan that will make sense rather than telling us that it will take 28 years. I think that we should, all of us—and I hope that this Committee will do it—ask Indian Affairs to come up with something more intelligent. The Department officials should go back to their drawing boards and give us a plan that will assure us that our children—and grandchildren in my case—will get what they rightly deserve.

Of course, I think that what was presented here obviously is not a final plan. But we should get that plan once for all. I think that you should help us to get one since you are the experts on these issues. If we are counting on the experts of Indian Affairs, I won't live long enough to see it. Help me at least to live long enough to see us catch up with white children. Let us work for our children. This is a responsibility that we cannot dismiss.

[*English*]

The Chair: I'm not sure if there was a question, but would you like to respond, Mr. Obonsawin?

[*Translation*]

Mr. Roger Obonsawin: Yes. We had a report from Dr. Lazar. He made a study on our behalf to determine how long it would take to bring our Native communities to the same socio-economic level as Canadians. He made comparisons with new Canadians. It takes seven years for new Canadians, with the programs geared to them, to catch up with other Canadians on a socio-economic level. In the case of Aboriginal peoples after studying progress made up to now, he came to the conclusion that they would need 100 years to close the gap considering the present trend. Come on, we have to deal with these issues. This is not the way to go about it.

• (1155)

Mr. Bernard Cleary: Could you table that document?

Mr. Roger Obonsawin: Yes, I could table that document.

[*English*]

The Chair: Mr. Jock.

Mr. Richard Jock: Thank you.

I agree with you that the answers aren't necessarily that complex. I think there are a couple of steps that could and should be taken. Number one is to take some immediate steps to deal with the backlog of students, and immediate investments in terms of post-secondary aid would help at the start of this new backlog. I think the other parts of that really relate to then also looking at the policy problems that exist with the program so we can eliminate the disincentives, eliminate situations where people receive supplementary scholarships but then their funding is taken off the INAC funding base. Those policy issues need to be addressed.

And further, the process of funding, which is really formula-based, has provided a way of allocating funds, but it's not relative to need. Therefore, we feel we've put forward a fairly solid plan. We have a pre-budget submission I will make available to you, one that includes ways to deal with some of these elements and cost estimates for doing so. But we feel there really is a way to do it.

I think long-term there are two other elements. One is that the primary and secondary school systems also need to be examined; attention needs to be paid to those. As well, the possibility we can leapfrog ahead using new technologies is really exciting, and we think it's not necessary at all to wait 28 years to catch up. We feel we can do it very quickly, given those kinds of developments.

The Chair: Thank you very much.

I think we're going to be able to do only one round of questioning at the rate we're going, so we'll have Mr. Martin and then Mr. Valley, and we'll see where we are with the clock at the end of those.

Mr. Martin, please.

Mr. Pat Martin: Thank you, Madam Chair, and thank you to all the witnesses for being here on such short notice.

I notice on the website it says that this is a study on the funding of post-secondary education. I don't know how that came about or was posted that way. In actual fact, this is a specific study about the unilateral and arbitrary change in taxation policy that is now taxing aboriginal first nations students for their tuition and living-out allowance. So I'm going to try to be very specific on this.

I thank you for the reference to Greyeyes. First of all, I want to recognize the incredible work that Kimberly Smith-Spencer and her colleagues and her students have done in tabling with me—and I've tabled it in the House—the largest single petition that I've ever received, with 11,000 names of people right across the country who are outraged and who view this arbitrary, unilateral thing as a shot across the bow of aboriginal treaty rights. It's not some innocuous policy shift, but a full frontal attack on aboriginal treaty rights.

So in terms of the reference to Greyeyes, in the government's official reaction to the petition I tabled, which we just got, they say that in 1978, in *Greyeyes v. the Queen*, the Government of Canada accepted as one of the facts prior to trial that the education assistance had been received under treaty. But then they go on to say that this was in error. They say that while treaty rights issues are the responsibility of Indian Affairs, it is the federal government's position that post-secondary education aid is provided as a matter of social policy and not as a treaty right.

I guess my question to you, the authorities in this field, is they say it is clear that there is now no treaty right that applies in these situations. Well, clear to whom? Did anyone ever ask the Assembly of First Nations, or you, as a former grand chief? Is this simply unilaterally on the government's notion that they now view educational moneys given to first nation students as a matter of social policy and not as a treaty right?

I wonder if we could take a minute for whoever wants to comment on that.

I'm outraged by this. I almost fell over when I learned that they had.... I don't mean to use up all the time, but the Minister of Indian

Affairs, the newly minted Minister of Indian Affairs, met with me personally in a one-on-one meeting, and said, "My number one main priority in what little time I have to be the Minister of Indian Affairs is to get more first nation students graduating from post-secondary education".

At the same time, his government is unilaterally putting in place this disincentive—which won't generate any revenue, because these kids will simply get tax deductions—but will forever try to make the case that we don't view education as any kind of right; it's through our benevolence as a matter of social policy that we've allowed it for a while, but we're serving notice that this could end.

If we have time, I hope I can get the reactions around the table, and I wouldn't mind, if you don't mind, starting with Kimberly Smith-Spencer, in recognition of her being the champion of this issue, as far as I'm concerned.

● (1200)

Ms. Kimberly Smith-Spencer: When we received the memo from the KPMG auditor stating that reserves needed to send T4A slips out to their students, without any consultation process, for me and for the rest of my board and the membership of all native councils, it was an outrage. We couldn't understand how they had the audacity to just automatically say, "This is a social policy now. That's it, that's all, see you later. You send out T4A slips, and we're done with it."

I don't think there was any consultation process with anyone, any native organization, whether they were national or provincial, and I think that was the outrage for us and the reason for the petition.

As far as the politics and legalities go, I can't answer to that. But for us that was incredible, for them to just automatically say this.

Mr. Pat Martin: Thank you, Kimberly.

Ms. Kimberly Smith-Spencer: You're welcome.

Mr. Pat Martin: If someone else would like to comment....

Mr. Roger Obonsawin: I'll go back to a report, which was a preliminary draft from the Department of Finance, December 11, 1992, when Paul Martin was Minister of Finance. It outlined the proposed policy that is being implemented now. There are opposition comments from the deputy minister in there in terms of the rigidity of the process.

I've never seen the final draft, but just from what I've seen and experienced, this is really the policy that's being followed. I think that has to really be looked at for all taxation issues. Students who fall into it are one of the target groups, but they're only one of many.

The Chair: Thank you.

I have to go to the next questioner because I don't think I'm going to have time to go through a second round.

Mr. Valley.

Mr. Roger Valley (Kenora, Lib.): Thank you, Chair.

I believe I have seven minutes, but I will share my time with one of my counterparts. I will be very brief.

First, thank you to the witnesses for coming.

There are a number of issues, and I'm going to be very quick. Ms. Jamieson mentioned something, and I spent this morning working on the fact that I have a lot of remote communities in my riding. What we were trying to do all morning, and for a couple of weeks now, is to put in place a program for distance education. We managed to have some funding from Industry Canada. We believe firmly that to train in the communities will help us retain our health professionals. We're working on that very quickly.

We have had a change. We've just heard some mention, and we've heard it repeatedly in the finance committee, and that is where this should be dealt with. We're glad that we have the opportunity to do it. We know INAC intervened before to make sure the CRA listened to them; they got the delay and got a second delay for a year.

We're very committed to education. We're here to talk about taxation issues, but my question is about education and how much we put into it. Do you feel there has been a change in the last year in how we look at all the issues on education or at any dealings with first nations? We've had two aboriginal round tables on education, in Winnipeg and Ottawa. Do you think there is a change? Are we moving forward, or are we simply stalled?

From what I hear, we are moving forward, but I'd like to hear from you.

• (1205)

Chief Roberta Jamieson: Thank you for the question. It is a very good question.

I'm very practical. I look at the concrete outcome. I am seeing very positive statements. I'm seeing very positive meetings. I'm waiting for the outcome.

I have 800 aboriginal students coming to Ottawa tomorrow to participate in a career fair at the Ottawa Congress Centre. They're coming from Quebec, Ontario, and Nunavut. This is one of the things the foundation does to get our young people in high school, age 13 to 18, feeling confident that they have choices, seeing various careers they can go into. Tomorrow, with the help of hip-hop and motivators and the minister, we're going to get them encouraged to go on to post-secondary education.

I'm worried, frankly, about the other message that they may be getting as we give out scholarship applications, which I'm not sure makes sense from either a rights perspective or a social policy perspective. We have 28 years. That's Mr. Cleary's point. We have 28 years. That's two generations the last time I checked. It is simply unconscionable for any of us in this country to say that we will just disregard two generations and we're not going to encourage them and support them to have access to post-secondary education. We must. We need immediate investment. Bob Rae is calling for this, and we all are. To his credit, the Prime Minister has said there will be \$100 million for health and human resources. I'm waiting to see that piece as well. There are partners out there, provincial and private sector, but the federal government has to do its part.

You're hearing from aboriginal people across the country that our people want to be part of this country, players, contributors to the economy, to the academic quarters, to Parliament, to the Senate, everywhere. But we need support, not punitive measures. That's what I would ask.

That's how I respond to your question. We're getting positive signals, but when I see on the other hand taxing, what's the message here? It's not going to generate a lot of money for Canada. It isn't—let's face it—but it may keep some of our kids at home, not going to school at all. Surely that's not the outcome that's desired by anybody.

Mr. Roger Valley: Thank you.

I have a couple of minutes left. I'd like to let Mr. St. Amand have them, please.

The Chair: Okay, very briefly.

Mr. Lloyd St. Amand (Brant, Lib.): Thank you.

I was called to another committee briefly. My absence was by no means a gesture of disrespect toward the presenters, and I'm sorry I missed the presentations.

Am I summarizing this correctly? The federal government has seen fit to change the rules in the middle of the game. Aboriginal students and their parents have counted on the rules remaining static so they could fund their post-secondary educational pursuits. Is that the nub of it, in so many words?

I was intrigued by a comment from Mr. Jock. You mentioned 10,000 first nation students on a waiting list. I don't doubt that for a second. How was that number determined, however? It's a waiting list for post-secondary education, I presume.

Mr. Richard Jock: I would say that's the best estimate. I think it's based on some of the historical information that is available. But we also feel that there does need to be a development of a better system for actually determining this on an annual basis. We think it is an important question to answer and it's important that we be able to answer it accurately every year.

It's our best estimate, and I think it's fairly solid. It may even be a bit low, but that's the best information we've been able to put together. I don't know if my other colleagues have other information.

• (1210)

Mr. Lloyd St. Amand: I'm presuming—and hoping—there's no concern then that, having heard about this statistic, otherwise inclined aboriginal students think, well, there are 10,000 people ahead of me; I ain't going to bother. Is there any concern about that?

Mr. Richard Jock: For sure there is, I think particularly off reserve. There has de facto become a set of criteria developed so that there are priorities at the community level. What this does is create a reality in which the farther you are away from your community, the farther away you are from getting funding. It's resulted in some forced choices made at community levels that I think may actually, as I say, make that number lower, because people don't actually apply or don't think there's a prospect of funding.

Chief Roberta Jamieson: Can I just give a very practical example? In Ontario right now we know we have a doctor shortage. If we were to have an equitable number of physicians in Ontario, we would have 374 aboriginal physicians. We have maybe a dozen. It costs at least \$100,000 to educate a doctor. We know how many students are going through medical school. Most of them are women, aboriginal women. Quite a number of them are single parents.

Now, that puts it at a very practical level. How on earth are we going to change the picture to get more of our students, our people, as aboriginal family physicians able to address the tragic health conditions in our own communities if this kind of disincentive is out there? Does it inhibit people? Does it make them make other choices—or not make any choices, which is what I'm more worried about? It certainly does. Surely this is not where any of us want to go.

I really commend to the committee a fact sheet put out by the Canadian Federation of Students on aboriginal post-secondary education. I commend this to the committee—March 2004. I also commend to the committee the Bob Rae report released yesterday, in your study of this issue.

The Chair: Thank you very much.

We're now at quarter after twelve, and we do have other witnesses appearing before us. We'll have to give a chance for other witnesses to get ready. I'm going to suspend the meeting for a minute or two just to get ready for the next witnesses.

We certainly thank the witnesses for coming this morning and sharing with us on this short notice. Thank you again.

We do have roughly 45 minutes to deal with the next three departments.

Thank you.

• (1214) _____ (Pause) _____

• (1219)

The Chair: We're now in the second hour of the meeting of the day. We have before us Canada Customs and Revenue Agency, Department of Finance, and Department of Indian Affairs and Northern Development.

We'll start with the Canada Customs and Revenue Agency, Mr. Wayne Adams. Please go ahead with your presentation.

• (1220)

Mr. Wayne Adams (Director General , Income Tax Rulings Directorate, Policy and Planning Branch, Canada Customs and Revenue Agency): Good afternoon, Madam Chair, and thank you for inviting me to discuss post-secondary education assistance.

As a general rule, Canadians who receive post-secondary education assistance are required to include the assistance in the calculation of their income, subject to an exemption of \$3,000. The Income Tax Act provides post-secondary students with a tuition tax credit based on their tuition fees paid for the year. The act also allows them an education tax credit of \$400 for each month the student is enrolled as a full-time student in a qualifying educational program with a designated educational institution. Those are terms that flow from the Income Tax Act. As a result of the exemption and the tax credits, combined with the basic personal exemption, most Canadian students do not have to pay income tax on the post-secondary education assistance they receive.

A status Indian student may not have to include the assistance in his or her income if it is considered an Indian's personal property situated on a reserve. In making this determination, the Indian Act provides that personal property given to Indians or to a band under a

treaty between the band and Her Majesty is always deemed to be situated on a reserve. This authority is contained in section 90 of the Indian Act, and I believe your documents have a copy of the provisions.

In the 1978 court case *Greyeyes v. the Queen*, Revenue Canada accepted, as one of the facts prior to trial, that the education assistance had been received under a treaty. For many years, Canada Revenue Agency has not required that post-secondary education assistance paid to status Indians be reported on T4A slips, based on the understanding that these amounts were received under a treaty and were therefore tax-exempt. However, this acceptance was in error.

Treaty rights issues are the responsibility of the Department of Indian and Northern Affairs, and not the CRA. We're advised by Indian and Northern Affairs that post-secondary education assistance is provided as a matter of social policy, and not as a general treaty right. The pending obligation to report post-secondary education assistance paid to status Indians on T4 slips results from this treaty rights issue. Because no general treaty right applies in these situations, the CRA has no alternative but to require the amounts in question to be declared as income.

This reporting requirement for assistance paid to status Indians will be delayed until 2006 to allow the government to work with the first nations to ensure that they are informed as to the relevant data to retain concerning the post-secondary education assistance, and to ensure they are aware of the manner to report it on T4A slips. During that time, the CRA will review whether there are appropriate connecting factors that may exist in certain situations for the post-secondary education assistance to be sufficiently connected to a reserve for the amounts to be tax-exempt when received by status Indians.

The CRA recognizes that the education of first nation students is a high priority for the first nations and the Government of Canada. We will ensure that post-secondary education assistance of a status Indian who is connected to a reserve will continue to be tax-exempt. If there is no connection to a reserve, we will ensure that students have access to all of the information about their credit entitlements, in order to offset or reduce any tax liability.

Since most Canadian students have no income tax to pay on their post-secondary education assistance, the proposed reporting requirement should not create any barriers for first nations students to complete their education.

It is important at this time to emphasize the role of the Canada Revenue Agency as administrator of the tax laws of Canada. We have a voluntary self-assessment system. Canadians are expected to comply with the tax laws, and the CRA attempts to provide Canadians with the tools to meet these obligations. These tools include technical bulletins, guides, information slips, and 1-800 numbers.

•(1225)

Generally, when the Canada Revenue Agency announces changes in its interpretation of the law, whether they emanate from a court decision or a correction of a previous incorrect position, these changes are normally prospective. By that I mean they are effective from the date of the announcement, rather than retroactive, if they are unfavourable to taxpayers.

In this case, students and band councils would have the new position explained, and we would have to work with them to resolve any questions of exemption because of connectedness to a reserve. Only after the tax situation of students in a particular situation was agreed upon could we reasonably expect the reporting process to begin.

I prefer a term like “delayed implementation” to ensure that the education process is completed in a timely way, while seeking to obtain national consistency. I have never considered the moratorium to be of an indefinite nature or permanent.

Thank you for the opportunity to summarize the CRA's involvement in the post-secondary education matter. I welcome any questions you may have. Thank you.

The Chair: We're going to leave the questions to the end, so all the presenters will have an opportunity to get their presentations on record.

The Department of Finance is next, I believe, with Annie Carrier.

Ms. Annie Carrier (Chief, First Nations Taxation Section, Intergovernmental Tax Policy, Evaluation and Research Division, Tax Policy Branch, Department of Finance): The Department of Finance does not intend to make a presentation. INAC and CRA will cover all the topics.

The Chair: Okay. Thank you. That will make it easier on our time.

We now have the Department of Indian Affairs and Northern Development, Ms. Line Paré, director general.

[*Translation*]

Ms. Line Paré (Director General, Education Branch, Department of Indian Affairs and Northern Development): Good morning, I shall make my presentation in French.

It is a pleasure to be here today to speak about the Post-Secondary Education Program of the Department of Indian Affairs and Northern Development.

Assistance was first provided to First Nations for post-secondary education beyond vocational and skilled trades in the 1960s.

In October of 1977, the Department implemented the Post-Secondary Education Assistance Program. The minimum entrance requirement to those programs of study was the completion of secondary school.

In 1983, the program was expanded to include mature students who needed to complete their secondary school courses for university entrance. It is now the university and college entrance program component of the Post-Secondary Education Program.

In 1988, DIAND announced a new post-secondary student support program to take effect in 1989. Some of the changes to the previous programming were: requirement to reside in Canada for twelve months prior to funding, the right of an applicant to appeal on the basis of a lack of budgeted program funds was revoked, the budget was restricted to only the amount identified in Main Estimates, that is to say no provision for supplementary funding, prioritization of applications was introduced in order to deal with deferrals and to place continuing students as a priority over new applicants.

In 1989-90, the Indian Studies Support Program was developed.

Let us talk now about the program.

The objective of the Post-Secondary Education Program is to support the increased participation of registered Indian and Inuit students in recognized post-secondary education programs. The program provides funding to eligible First Nation and Inuit students who are pursuing post-secondary education.

The University and College Entrance Program provides an equivalent of one year of financial support to First Nation and Inuit students to enable eligible students to attain the academic level required for entrance to the degree and diploma programs. Financial support includes funds for tuition, travel costs, and living allowances.

The Indian Studies Support Program provides funds for the development and delivery of college and university level courses for First Nations students. It also provides funds in support of the First Nations University of Canada which is located in Saskatchewan.

Almost 100 per cent of the PSI Program is now managed by First Nation and Inuit organizations. The Department, through its regional offices, provides funding to First Nations or their administering organizations which administer the program. Within the overarching government guidelines, First Nations have the flexibility to determine their own funding and selection criteria to support the program.

The program provided funding for over 25,000 students in 2002-03. The program has a budget of \$305 million for 2004-05. Of this amount, up to 12 per cent may be applied to provide ISSP funding for the development and delivery of college and university level courses for First Nation and Inuit students as well as research and development activities in First Nation and Inuit education.

The Government of Canada has undertaken to provide programming in the area of post-secondary education as a matter of social policy.

•(1230)

The review.

The government recognizes that post-secondary education is key to improving the quality of life for First Nation and Inuit individuals and communities. At the same time, the government recognizes that there is need to review the program to ensure that it better meets the needs of First Nation and Inuit students, and that it supports their increased participation and success in post-secondary education.

To this end, the government is reviewing the program in partnership with First Nations, Inuits and other stakeholders. A joint INAC/Assembly of First Nations working group has been formed with the objective of developing a renewed policy framework supported by a strong accountability framework and management regimes. Inuit representation and other stakeholders will also be part of this work.

I thank you for giving me the opportunity to speak about the Post-Secondary Education Program. I shall be pleased to answer your questions in English or in French.

Thank you.

[English]

The Chair: Thank you very much.

We will start with a question from Mr. Harrison.

Mr. Jeremy Harrison: Thank you, Madam Chair.

I'll be brief here, and the question I have is, why was this change made now? What prompted the decision to be made now? Why didn't it happen three years ago? Why didn't it happen five years ago? Why is not happening five years from now? Why now?

The Chair: Mr. Adams.

Mr. Wayne Adams: The genesis of the change would have been tied to our initiative to introduce a first nations taxation website as part of the Canada Revenue Agency—or at that time the Canada Customs and Revenue Agency—initiative for outreach. In it we had a statement that said provided you receive education assistance as a treaty right, there would be no tax implications because you would be exempt pursuant to section 90 of the Indian Act, which flows into the Income Tax Act as an exemption under any other law.

We were advised that it was the understanding of the government and Indian and Northern Affairs that there was no general treaty right that included education assistance; therefore, our website was in error. This would have happened in late 2002 or early 2003. If our rationale for exempting the amount was based on an incorrect question of law...then that would be the rationale for requiring its reporting for tax purposes.

• (1235)

Mr. Jeremy Harrison: Well, I must say I find it astounding that a website would have been the catalyst for your making this change. I really find that to be a very strange explanation, to put it mildly.

If you could, just explain that to me again. What was the catalyst on the website? What was the particular thing on the website? You mentioned there had been an interpretation of law. My understanding of the interpretation of law in the Greyeyes decision was that this had been accepted as being a treaty right. Because this showed up on the website, then CCRA decided no, we are changing our position from

the position we had taken in the Greyeyes case earlier. Is this what the explanation is?

Mr. Wayne Adams: First of all, let me clarify that I'm not blaming the website for this taking place. What I'm saying is that it was the first time that our position, which we had maintained internally, came to the attention of Indian and Northern Affairs and the Department of Justice, which would be in a position to determine what is or what isn't a treaty right.

I would repeat the commentary of an earlier witness from the first phase of this meeting. The Federal Court did not consider the issue of whether education assistance was a treaty right. What the Federal Court considered was an admission by the two parties to the litigation—Deanna Greyeyes, as well as the Government of Canada—that in her particular case her education assistance flowed from a treaty right. We accepted that.

At that time, we wouldn't have been the subject matter experts in that area. I can't explain why we accepted it, because it predated both my joining the department and anybody who I could contact and who was associated with the file doing so. But I have looked at the file and we do not have in there a letter from Indian and Northern Affairs informing us that it was a treaty right, so I can only attribute the fact that we accepted the assertion by the appellant—in this case Deanna Greyeyes—that it was a treaty right, not being in a position to be able to make that finding. But the Federal Court did not comment on the education systems and treaty rights. I believe in subsequent litigation that was at the civil level, it was in fact held in other situations that it isn't a treaty right.

I'm reasonably comfortable with the determination in law. What I probably would have difficulty explaining is the point in time when it would have been appropriate to announce this change.

Mr. Jeremy Harrison: That would have been my next question. I know Mr. Adams has said he's not entirely sure what the rationale was for the change in the position of the government on the Greyeyes position that they had initially had—that this was a treaty right—and why the decision was subsequently taken to change that position.

Ms. Line Paré: For the Department of Indian Affairs and the Government of Canada, the position in this regard has not changed. The government's position has been and continues to be that a post-secondary education program has been established as a social policy measure and not on the basis of a treaty right.

Mr. Jeremy Harrison: My understanding was that the position of the government in Greyeyes was that it was a treaty right.

Mr. Wayne Adams: I can't dispute you drawing that conclusion from an admission as part of the process leading to litigation. However, if it turns out that it is an error, I don't know that it necessarily means it can never be overturned. But I don't dispute that we made that admission.

The Chair: Thank you.

Mr. Bellavance.

[Translation]

Mr. André Bellavance (Richmond—Arthabaska, BQ): Thank you, Madam Chair.

It is rather ironic that we are talking about this issue today when the follow-up of the Canada Aboriginal Round Table has just ended. At the session on learning, First Nation participants said that they were expecting concrete results. For instance, I have here the press release from the Assembly of First Nations that reads:

...ensuring comparability with the general population in all aspects of K-12 education for First Nation students, developing First Nation education authorities to provide critical supportive infrastructure, addressing gaps and needs as they relate to early childhood education and child welfare.

This is the press release from last January 27.

My question is for Ms. Paré who represents the Department of Indian Affairs and Northern Development.

Do you really believe that this move by the Canada Customs and Revenue Agency will help meet these commitments?

● (1240)

Ms. Line Paré: I think that the excerpt from the AFN release that you just read is referring to primary and secondary education. Indian Affairs and Northern Development is working in cooperation with the Assembly of First Nations. Several working groups are implementing an education policy framework for First Nations and First Nations' education organizations that will support some 500 schools on the reserves throughout the country, to ensure that children will get a good education, that they will succeed and get a high-school diploma.

As to post-secondary education, that program has been extremely successful, it has helped many young people and it continues to help First Nation and Inuit students access post-secondary education, succeed in their studies, get their diploma and make their contribution to Canada.

Mr. André Bellavance: But have you considered the negative effects that this decision will have on families and post-secondary students?

Ms. Line Paré: The Department of Indian Affairs does not collect data on students' income as part of its data collection for the Post-Secondary Education Program. Nor does it verify if the student works during the summer or if his parents contribute to funding his education. The program was not created this way. As concerns eligibility criteria, they are not based on the financial needs of the student; funds coming from parents or summer employment are not taken into account, for instance. We do not have that data. For that reason, we are not able to tell precisely what impact a taxation measure will have on the Post-Secondary Education Program.

Perhaps my colleague, Mr. Wayne Adams, might give you some details about data concerning post-secondary students in the country as a whole.

Mr. Wayne Adams: Excuse me. Could you repeat your question?

Mr. André Bellavance: In fact, I have got the answer from the Department of Indian Affairs: I am told that they did not study the impact of that measure. What I am talking about is the economic impact on the families of post-secondary students. We turn the question around to see if you yourselves have studied its consequences.

What will be the economic consequences? We already know that many of these families are in a difficult financial situation. Yet, you

now decide to make that move. I hope that you have carefully studied the impact that the implementation of those measures will have on these people in contrast to maintaining the status quo.

[English]

Mr. Wayne Adams: It's often difficult to explain the role of a tax administrator vis-à-vis the policy departments, and I would have to admit that to examine what the economic activity or the economic result might be of a tax measure and then allow that to influence whether we administer it or not is not normally an activity we would undertake. Generally the law attempts to be as clear as possible.

There are issues of horizontal equity that I imagine are considered by Parliament when they pass tax legislation, but it wouldn't generally be the role of the Canada Revenue Agency to study that prior to determining whether they should apply it. But I would say that we did do some estimates that we provided as part of our dialogue on this issue on at what point, at what level of income, might there be the first incidence of tax, and they seem to be quite substantial, depending on whether it was an individual who was single, single with dependants, or a married individual. That's not to suggest that there wouldn't be an incidence of tax, or a clawback or recovery, of some of the benefits before that, but someone can earn some substantial gross amounts of income prior to an incidence of tax or an economic impact.

● (1245)

The Chair: We'll have to move on to the next question. Thank you, Mr. Bellavance.

I will be leaving before the whole round of questioning so I can get to the liaison committee, so Mr. Harrison will take my place.

Mr. Martin, please.

Mr. Pat Martin: I think I understand you, Mr. Adams. I'm reading from your own CRA document here, and it says:

We are advised by Indian and Northern Affairs Canada that post-secondary education assistance is provided as a matter of social policy and not as a general treaty right.

You make that statement very categorically. Then it says:

Being as no general treaty right applies in these situations, the CRA has no alternative but to require the amounts in question to be declared as income

You sound very definite and very positive about that, and you even say in your testimony that subsequent court cases have determined that the interpretation of Greyeyes was in error.

I would ask how you are so certain, when leading authorities around the country and first nations themselves are not clear that education is not a treaty right. And I would ask you to table whatever other court cases you may be talking about, because we can't find any court cases that clearly state that education is not a treaty right. So I'd ask you first, what are those court cases? if you could, just give us the names of them, and we can look them up.

Mr. Wayne Adams: They're not tax court cases. There haven't been any tax court cases on education assistance since Deanna Greyeyes.

What I was referring to was my understanding that in certain cases on whether someone has to repay student loans, or on other issues that are civil actions, because education is a treaty right for first nation purposes, the appellant hadn't been successful in discharging the obligation to repay those loans.

I will undertake to provide to the committee any references in that regard.

Mr. Pat Martin: Let me tell you how this is being viewed: it's being viewed as a shot across the bow on aboriginal and treaty rights generally; it's being viewed as an incremental erosion, a chipping away.

If section 35 doesn't clearly define what aboriginal and treaty rights are, some things have evolved to be accepted as treaty rights or aboriginal rights by—I don't know what the legal term is.... If you allow something to go ahead and proceed in a certain way, in this case for generations, it comes to be assumed that it is a fact, and an expectation is there. For one party to then unilaterally announce, "Oh, by the way, we are changing that now; it is not a right, and even though we have allowed it to be understood as a right for so long, we just consider it a matter of policy"....

I'm from a labour background and I know the doctrine of estoppel. If you give somebody two coffee breaks a day for ten years in a row, and after ten years you say "I think we're going to put you back down to one coffee break a day", even if there is no contract in place, you can't do that without negotiation. You can't unilaterally impose your will when you've allowed it to go on for so long.

CRA was under the impression that moneys given for tuition, etc., were exempt. Is that correct? Did you post that on your website?

Mr. Wayne Adams: We posted on our website that people could receive moneys pursuant to a treaty right. I don't know if that could be interpreted as Revenue Canada saying that for all first nations people they had a treaty right for education assistance.

Mr. Pat Martin: It did stand there on your website until you were corrected by the Department of Indian Affairs or the Department of Finance?

Mr. Wayne Adams: I think it was confirmation from Indian and Northern Affairs. They would be the experts on the subject matter of treaty rights.

Mr. Pat Martin: So INAC noticed this on your website and said you were in error?

Mr. Wayne Adams: Yes.

Mr. Pat Martin: So you changed it. That's what caused all of this.

I'd be interested to see what other court cases you have there.

I guess the last question I'd ask of INAC perhaps is that INAC has a fiduciary responsibility to act in the best interests of first nations and first nations people. What specific measures has INAC taken to intervene on behalf of first nations students to protect them from this policy shift? Have you taken any specific measures to recommend that we do not add this tax burden to first nations students, and to act in their best interests in this regard?

•(1250)

Ms. Line Paré: I will have to say that the Government of Canada's position has been and continues to be that post-secondary education is a matter of social policy.

Mr. Pat Martin: Why has that confused everybody until today? Why does that take every first nation across the country by surprise?

Ms. Line Paré: I would probably suggest that other first nations could speak to the committee about that. Some of the first nations have been involved for many years in the administration of the post-secondary student support program, but for the Government of Canada, even when the program was established, it was as a matter of social policy.

The Vice-Chair (Mr. Jeremy Harrison): Thank you, Mr. Martin.

We'll go to Mr. St. Amand now.

Mr. Lloyd St. Amand: For what it's worth, I've heard Ms. Carrier before. I don't know if I've heard Mr. Gingras.

But for Ms. Paré and Mr. Adams and all of you, I understand and I suspect other committee members understand that you are here explaining the particular policy positions of your respective departments, so I commend you for your appearance today, and Ms. Carrier for hers in the past, for the professional, dispassionate way in which you make presentations. When committee members wax indignant about the perceived or apparent unfairness of a particular policy, as we sometimes do, I hope the indignation, if it's directed toward yourselves, is not felt personally, because that's not the intention.

Having said that, with respect to the actual dollars that would be generated for the federal government vis-à-vis this change, am I correct that there is going to be no net gain? Is that fair to say?

Mr. Wayne Adams: I'd have to confess I don't do economic modelling, so I couldn't tell you with certainty that there would be no net gain.

I wouldn't want a native person to say, "Well, I was subject to an actual tax cost as a result of this, and Mr. Adams said in front of the committee there was no...".

I think we have some statistics on students at large and those who receive bursaries. There might be a tangible tax cost to receiving that amount, but it wouldn't be substantial. That would be outside of my area of expertise.

Mr. Lloyd St. Amand: But in my view—I would ask anyone to comment on this—whatever the net gain is would be minuscule, insignificant, in light of the desire of this committee, the minister, the Prime Minister, to move forward in a consultative consensus-building basis to work with those in first nations communities. Is that fair to say?

It seems to me it would be a significant backward step if we say we want to invest in the educational pursuits of our native young persons but not so much that we don't want to tax you for your financial assistance.

Am I missing something?

Mr. Wayne Adams: I think that, from an administrative perspective, when you have a set of tax laws and start applying them differently to one group versus another, it leads to a position that's inexplicable.

I don't mean to sound harsh or unsympathetic, but we have a taxation system that is attempting to...the objective would be to apply it consistently across the whole range of taxpayers.

While one focuses on this particular group, I don't know that all rules are stayed in the interim. I wouldn't be able to say that.

• (1255)

Mr. Lloyd St. Amand: But is there the proverbial elephant here—that there is a concern with respect to funding generally, and that if exemptions for aboriginals are no longer based on treaty rights but based on social policy it will be a slippery slope, and that some other department is going to be overwhelmed with claims or demands as a result of this change? Is that clear?

Mr. Wayne Adams: I don't think you have exemptions based on social policy. You have exemptions that are based on existing legislation.

It wouldn't be administratively justified to suspend tax laws for a particular group while the government focuses on that group for whatever reason.

The Vice-Chair (Mr. Jeremy Harrison): Okay, we're going to have to wrap it up here. Our time is.... Okay, a very quick answer.

Mr. Yves Gingras (Chief, Personal Income Tax Division, Tax Policy Branch, Employment and Education, Canada Customs and Revenue Agency): If this could be useful to you, I'd like to support the views of my colleague Mr. Adams on the fact that there is very little data to assess the impact of the inclusion of these bursaries.

Within Finance Canada, we do ongoing analysis of these issues, and we do not have that data. We have data on the situation of Canadian students in Canada. If there was a change to be contemplated, this is something that would have to be considered by our minister, who is in charge of the Income Tax Act.

But the advice we would offer him is that, because of principles of fairness, we would look at the issue broadly for all students. We would avoid looking at this issue for aboriginal students only. In that context, we could bring all of the facts to him to make a decision.

I think that those facts would include that it's not a cost issue. It would be a fairness issue for aboriginal students relative to other students.

The Vice-Chair (Mr. Jeremy Harrison): Thank you.

I'd like to thank all the participants for coming.

This meeting is adjourned.

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