House of Commons
CANADA

# Standing Committee on Aboriginal Affairs and Northern Development

AANO • NUMBER 033 • 1st SESSION • 39th PARLIAMENT

**EVIDENCE**

## Thursday, February 1, 2007

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## Chair

**Mr. Colin Mayes**

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# Standing Committee on Aboriginal Affairs and Northern Development

**Thursday, February 1, 2007**

● (1110)

[*English*]

**The Chair (Mr. Colin Mayes (Okanagan—Shuswap, CPC)):** I open this Standing Committee on Aboriginal Affairs and Northern Development of Thursday, February 1, 2007.

Committee members, you have before you the orders of the day. Between 11 and 12 o'clock we'll have a presentation and briefing on the Annual Report of the Office of the Correctional Investigator 2005-2006. Then from 12 until one o'clock we'll have a briefing on the 2006 Report of the Cree-Naskapi Commission.

Mr. Lévesque.

[*Translation*]

**Mr. Yvon Lévesque (Abitibi—Baie-James—Nunavik—Eeyou, BQ):** Mr. Chairman, considering the timing of this meeting, we may want to consider bringing in some food while the meeting is underway. Otherwise, we will not have time for lunch before attending question period or moving on to other activities.

[*English*]

**The Chair:** What's the pleasure of the committee members? Speaking personally, I'm fine. We will get a little bit of a break between question period.

Does anybody else have a comment?

**Mr. Harold Albrecht (Kitchener—Conestoga, CPC):** Just to clarify, are we aiming for one o'clock as our adjournment time?

**The Chair:** Yes. We are behind time. I'll split the seven minutes between the two witnesses so that we have enough time.

[*Translation*]

**Mr. Yvon Lévesque:** Mr. Chairman, the same thing happens at every one of our meetings. For members whose office is in the West Block, it's not a problem. However, if you have to go to the Justice Building, the Wellington Building or the Confederation Building, you don't have time to walk over there, go to the restaurant and have lunch.

[*English*]

**The Chair:** What is the pleasure of the committee?

**Mr. Yvon Lévesque:** I propose....

**Mr. Todd Russell (Labrador, Lib.):** It's not a big decision. Can we just order a plate of sandwiches?

**The Chair:** Okay. Done.

Let's move on. The first witnesses are from the Office of the Correctional Investigator. We have Howard Sapers, correctional investigator; and Ed McIsaac, executive director.

Welcome, gentlemen, to our committee.

I'll be expecting a presentation from each of you. Try to keep it around 10 minutes, and then I'll be asking the committee members to question you on your submission and anything that they have observed out of the report.

Thank you very much.

**Mr. Howard Sapers (Correctional Investigator, Office of the Correctional Investigator):** Thank you, Mr. Chairman.

I'll be making the formal opening statements on behalf of the Office of the Correctional Investigator. My name is Howard Sapers, and I'm the correctional investigator for Canada, appointed about two and a half years ago. I'll go as quickly as I can through this, being mindful of the time.

As correctional investigator, my job is to be an independent ombudsman for federal offenders. It's also my role to review and to make recommendations on the correctional service's policies and procedures, and to ensure that areas of concern are identified and appropriately addressed. My mandate expresses important elements of the criminal justice system. The Office of the Correctional Investigator reflects Canadian values of respect for the law and for human rights and the public's expectation that correctional staff and senior managers are accountable for the administration of law and policy on the public's behalf. Good corrections, after all, equals public safety.

Today I am here to discuss one of the key issues raised in my latest annual report, and I thank you very much for the opportunity to address you. The issue I wish to focus on is the growing crisis regarding aboriginal inmates. The overrepresentation of natives in Canada's prisons and penitentiaries is well known. Nationally, aboriginal people are less than 2.7% of the Canadian population, but they constitute almost 18.5% of the total federal prison population. For women, this overrepresentation is even more dramatic. They represent 32% of women in federal penitentiaries.

Alarmingly, this huge overrepresentation has grown in recent years. While the federal inmate population in Canada actually decreased between 1996 and 2004, the number of first nations people in federal institutions increased by almost 22%. Moreover, the number of federally incarcerated first nations women increased by a staggering 72% over the same period. We estimate the overall incarceration rate of aboriginal Canadians to be 1,024 per 100,000, or almost nine times higher than that for non-aboriginals.

While the Correctional Service of Canada is not responsible for the actions of individuals, the social conditions, or the policy decisions that help shape its offender population, it is responsible for operating in compliance with the law and ensuring that all offenders are treated fairly. It is my conclusion that the Correctional Service of Canada falls short of this standard by allowing for systemic discrimination against aboriginal inmates. It's important to understand what I mean by systemic discrimination and to appreciate the issues that have been raised for many years by my office—the continued disadvantaged position of aboriginal offenders in terms of timely and safe reintegration.

Discrimination can and does occur in situations where there is no intent to treat someone unfairly. The Canadian Human Rights Commission, in their December 2003 report entitled "Protecting Their Rights", indicated that, "The defining feature of discrimination is its effect." The Canadian Human Rights Commission identified systemic discrimination as, again, "The creation, perpetuation or reinforcement of persistent patterns of inequality among disadvantaged groups. It is usually the result of seemingly neutral legislation, policies, procedures, practices or organizational structures."

My last annual report presents a detailing of the persistent pattern of disadvantaged outcomes resulting from existing policies, procedures, practices, and organizational structures. The focus of this report is about inequitable results or outcomes from current Correctional Service of Canada policies and practices. For example, inmates of first nation, Métis, and Inuit heritage face routine over-classification, resulting in their placement in minimum-security institutions at only half the rate of non-aboriginal offenders.

● (1115)

The over-classification for aboriginal women is even worse. For example, at the end of September of this year, native women made up 45% of maximum—

**Mr. Harold Albrecht:** Excuse me, Mr. Chairman, I don't have pages 6 and 7 in my material. Was it intentional that those are not here?

**Mr. Howard Sapers:** No, you should have the full set of copies.

**Mr. Marc Lemay (Abitibi—Témiscamingue, BQ):** You will have to use the French.

**Some hon. members:** Oh, oh!

● (1120)

**The Chair:** Okay, continue.

**Mr. Howard Sapers:** I'm sorry, I guess the English copy was missing a page. We'll get some additional copies made and circulated.

The over-classification for aboriginal women is even worse. For example, at the end of September native women made up 45% of maximum security federally sentenced women, 44% of the medium security population, but only 18% at minimum security. Placement in a maximum security institution and segregation limits access to rehabilitative programming and services intended to prepare inmates for their release. This over-classification is a problem because it means inmates often serve their sentences far away from their families, their communities, and the valuable support of friends and elders.

Aboriginal offenders are placed in segregation more often than non-aboriginal offenders. Aboriginal inmates are released later in their sentences than other inmates. The proportion of full parole applications resulting in reviews by the National Parole Board is much lower for aboriginal offenders.

In short, as stated by the Canadian Human Rights Commission, the general picture is one of institutionalized discrimination: that is, aboriginal people are routinely disadvantaged once they are placed into the custody of the correctional service. As a consequence, longer periods of incarceration and more statutory release as opposed to parole for aboriginal offenders contribute to less time in the community for programming and supportive intervention than for non-aboriginals. The proportion of aboriginal offenders under community supervision is significantly smaller than the proportion of non-aboriginals.

Aboriginal offenders continue to be overrepresented amongst all offenders referred for detention. Parole is more likely to be revoked for aboriginal offenders than for non-aboriginals. The rate of revocation for breach of conditions, and that means not for a criminal offence, is higher for aboriginal offenders.

Aboriginal offenders are readmitted to federal custody more frequently than non-aboriginal offenders are, and too often this cycle of unfair treatment begins again. To break this cycle, the correctional service must do a better job at preparing aboriginals while in custody and provide better support while in the community.

Correctional Service Canada's own statistics regarding correctional outcomes for offenders confirm that despite years of task force reports, internal reviews, national strategies, partnership agreements, and action plans, there has been no measurable improvement in the overall situation of aboriginal Canadians during the last 20 years. To the contrary, the gap in outcomes among aboriginal and other offenders continues to grow. Clearly, more commitment and resources are required to address this troubling trend.

In my annual report, I called upon the correctional service to act swiftly to strengthen and implement its own strategic plan for aboriginal offenders by fully adopting the following recommendations within the year: implement a security classification process that will stop sending too many aboriginal offenders into maximum security; significantly increase the number of aboriginal offenders housed at minimum security; increase timely access to culturally appropriate programs and services; significantly increase the use of unescorted temporary absences and work-release programs and significantly increase the number of aboriginals appearing before the National Parole Board at their earliest eligibility date; build capacity for and increase the use of agreements, which provide for the direct involvement of aboriginal communities in supporting conditional release; and significantly increase the number of aboriginal people working at all levels of the service.

Equitable treatment of aboriginal inmates is required by law; it is also a human rights and public safety issue. The vast majority of inmates are released back into communities across Canada. It is beneficial for everyone that these men and women return to their home communities having received fair and adequate treatment from the correctional service while incarcerated.

Let me take this opportunity to provide you with a concrete example that illustrates well the kind of challenges faced by aboriginal offenders. Over the years, my office and other observers have become increasingly concerned about over-classification of aboriginal men and women and the discriminatory use of the service's actuarial risk assessment or classification tools. These tools are psychological scales that measure risk such as recidivism, institutional adjustment, or risk of escape.

● (1125)

Concerns regarding the validity and reliability of initial classification were first expressed in 1996 by Madam Justice Louise Arbour. This scale relies on the assessment of several factors, including employment, family, social interaction, substance abuse, etc.

In May 2003 the Canadian Human Rights Commission recommended that the service introduce a new unbiased initial security classification scale by December 2004. In July 2004, professors from the University of Toronto and the University of Ottawa published an article in the *Canadian Journal of Criminology and Criminal Justice*, in which they reviewed the data used to validate the service's initial security scale.

After a careful examination, they concluded that the scale is remarkably wanting in terms of both its predictive validity and the equity of its outcome with respect to women generally, and aboriginal women in particular.

In December 2004, the corrections research branch, through the Department of Public Safety and Emergency Preparedness, conducted its own review of the service's data. Their internal report confirmed the findings of professors Webster and Doob. The corrections service developed an action plan in response to the findings on the discriminatory nature of its actuarial tools and their questionable validity. We understand that the service, unfortunately, expects to fully implement a new tool only by fiscal year 2009-10, more than six years after the Canadian Human Rights Commission found that women and aboriginal offenders were subject to systemic discrimination, and 13 years after the matter was raised by Justice Arbour.

This combination of over-classification and lack of programming best illustrates how systemic barriers can hinder offender reintegration. Aboriginal offenders are over-classified because of a poorly conceived actuarial scale. As a result, they are disproportionately and inappropriately placed in higher-security institutions that have limited or no access to core programs designed to meet their unique needs.

This scenario for the most part explains why the reintegration of aboriginal offenders is lagging so significantly behind the reintegration of others. Clearly, correctional outcomes cannot be explained by differences in criminogenic risk or need alone.

In closing, I'd like to leave you with a few facts. Four in ten federally incarcerated aboriginal offenders are 25 years old or younger. First nation youth are the fastest-growing demographic in Canada. HIV and AIDS have high prevalence amongst aboriginal people. The lack of a full range of prison-based harm reduction strategies disproportionately affects them.

Should these current trends continue, experts project that the aboriginal population in Canada's correctional institutions could reach 25% in less than 10 years. Clearly the need to do better is obvious and urgent. We must recognize nevertheless that Correctional Service Canada has implemented some very positive initiatives and programs, such as the creation of healing lodges; core aboriginal programs, including circles of change, spirit of a warrior, and the aboriginal substance abuse program; and program-based and site-specific initiatives such as pathways, traditional circles, medicine wheel programs, sentencing circles, longhouse teachings, etc., are in place.

Unfortunately, these promising programs and initiatives have not yielded the expected benefits and reversed the alarming trends that I've discussed.

Therefore, my message to the government is to give the Canada Correctional Service the resources and direction required to get the job done.

Thank you very much, and I look forward to your questions.

**The Chair:** Thank you.

To the Liberal side, who would like to start?

Madam Neville.

**Hon. Anita Neville (Winnipeg South Centre, Lib.):** I will start, thank you.

Thank you very much, Mr. Sapers, for a very powerful presentation. I think we've all had a chance to look at your report.

I guess it's quite stunning, what you're telling us. The problem has been well known for a long period of time. You cite Justice Arbour in 1996, you cite the Human Rights Commission. Correctional Service Canada is aware of the problems, both in terms of the screening techniques it uses—its testing tools—and its programming.

Why hasn't anything happened?

**Mr. Howard Sapers:** Well, I think there are a number of ways to answer the question. One way would certainly be to say there's been a lack of integration and coordination across federal government programs in relation to federal-provincial-territorial initiatives and initiatives involving first nations communities. Unfortunately, we haven't seen the coordination that I think the problem requires.

Two, there's a certain amount of organizational inertia within the Correctional Service of Canada, and a refusal to act on some key recommendations involving establishing a very senior person specifically responsible for aboriginal programming and initiatives around the executive table of the service.

There's also an incredibly complex set of sometimes competing demands placed upon the corrections service. The service is not always given the resources it needs to meet those competing demands, and they're left to try to sort out what they must do to meet those demands first in a climate that sometimes is very politicized.

So there are a number of reasons, but none of them really take away from the absolute necessity for the service not just to identify this issue as a priority but to act on it as a priority.

● (1130)

**Hon. Anita Neville:** You talk about lack of coordination; you talk about inertia, refusal to act, and competing demands. Certainly those are all part, but it strikes me that when you identify those as the roadblocks or the hurdles to go over, you're saying in very polite language that these people aren't a priority for the Correctional Service of Canada.

**Mr. Howard Sapers:** Corrections identified aboriginal programs many years ago as a priority. The frustration is that as a result of things like over-classification, you see security needs being used, rightly or wrongly, as the reason for maintaining a population at a high security level.

The highest security levels in federal penitentiaries do not give access to the kinds of core programs that have been identified, so you have the irony of having a population with high need being held in very secure settings because they have a high need, and needing access to a whole range of programs that the service only makes available at lower security levels. The fact that these individuals can't get access to the programs they need to address their high needs keeps them in higher security levels.

So it looks like they've got it upside down in terms of making sure that the high-need population, once they're identified, gain access to the intervention programs that have been designed to meet those needs.

**Hon. Anita Neville:** The high classification comes about because of inappropriate—and I would say culturally inappropriate—screening tools. Is that your understanding?

**Mr. Howard Sapers:** Our conclusion is that the initial classification tools inappropriately place aboriginal offenders in disproportionate numbers in higher security levels than necessary. You have more people at initial placement going into higher security levels and finding it harder to cascade down security levels, because once they're in the high security level, they don't get the programs they need that would assist them in going into medium- and then minimum-security settings, and then getting before the parole board for a conditional release decision that would return them to their communities.

**Hon. Anita Neville:** Do I still have time, Mr. Chair?

**The Chair:** Yes, you have two minutes.

**Hon. Anita Neville:** Have you yourself actually looked at the screening tools, gone through them, and done an analysis? Have you had independent experts do an analysis?

**Mr. Howard Sapers:** We have not done our own academic analysis of the tools. We have referred to and relied upon the external work that's been done by academics at Canadian universities, by the department's own research branch, and by the Canadian Human Rights Commission. We work with that tool all the time, and of course, of the thousands of complaints that we deal with every year in the office, many have to do with classification and access to programs, so we have a very operational familiarity with the impact of these over-classifications and the use of these actuarial tools that the service relies on.

● (1135)

**Hon. Anita Neville:** Is it your expectation that, as you indicate here, Corrections Canada will have a new model in place shortly, or will there be continuing delays?

**Mr. Howard Sapers:** I believe the service is sincere in its desire to develop a new tool and a new set of tools by fiscal year 2009-10.

**Hon. Anita Neville:** That's a long time, though.

**Mr. Howard Sapers:** I can tell you that in the past, the service on this file has missed many of its targets.

**Hon. Anita Neville:** Do they have the resources, to the best of your knowledge, to meet them? Why did they set that timeframe? Why was it not given more urgency?

**The Chair:** Briefly.

**Mr. Howard Sapers:** I believe the timeframe was determined based on what they projected as all of the steps they'll be required to take to validate a new tool, and that's subject to some debate. As far as the resources go, it is my conclusion that the service does not have the resources it needs to implement all of the priorities that have been identified.

**Hon. Anita Neville:** Meanwhile, many people's lives are being negatively affected.

**The Chair:** Mr. Lemay.

[*Translation*]

**Mr. Marc Lemay:** I'm not sure whether you have already appeared before the Committee, because in the fall, in addition to being a member of this Committee, I was also a member of the Justice Committee. That Committee was reviewing the rather extraordinary bills that the government has tabled in a bid to increase the number of inmates in our prisons. Getting certain people off the street and sending a lot more of them to prison was very much the goal. I hope I am not confusing you with someone else. I may be wrong, but it seems to me that we met someone from the Correctional Investigator's Office as part of our hearings. At the time, we were told there was a huge problem with the Aboriginal population and that it was going to continue to expand. I see now that person was right. It's quite clear.

Mr. Chairman, I want to say right off the bat that rather than studying the housing issue, we should perhaps be looking at the parole situation as it affects Aboriginal inmates. There is clearly a very serious problem. I don't know whether you agree with me or not, but I believe that, as a general rule, we are not talking about the same type of crimes. People end up in detention. In this case, we're only talking about federal penitentiaries.

If I understood you correctly, Mr. Sapers—and Mr. McIsaac can probably confirm this as well—when a judge sentences an Aboriginal Canadian to ten years in prison for assault or armed sexual assault, more often than not, that person ends up in a maximum security institution where no programming is available to him. Did I get that right?

[*English*]

**Mr. Howard Sapers:** Yes. The profile would suggest that an aboriginal offender convicted of a violent crime is much more likely to be initially placed in maximum security and held in maximum security for a longer period of time. In most of the federal maximum security institutions, there are no core programs available designed specifically to meet the cultural needs of aboriginal offenders.

[*Translation*]

**Mr. Marc Lemay:** Yes, I'm aware of that because I was a practising criminal lawyer before becoming a member of Parliament.

That is obviously a serious crime, but does it mean that an Inuit or an Aboriginal from a reserve in the North is going to end up in an environment where he is surrounded by criminals and known traffickers? In a way, that is what is happening now, particularly if the individual is in a maximum security institution.

● (1140)

[*English*]

**Mr. Howard Sapers:** The simple answer is yes.

**Mr. Ed McIsaac (Executive Director, Office of the Correctional Investigator):** The numbers have not altered significantly over the last 10 to 15 years. I will use the prairie region as an example, as it has the highest number of aboriginal citizens as well as the highest percentage of aboriginals incarcerated in our federal penitentiaries. Aboriginal inmates represent almost 43% of the federal population within that region. If you look at the maximum security population, they represent 56%. If you look at the minimum security population, where the majority of people are being released, they represent barely 30%.

So you have a significant gap there. As Mr. Sapers mentioned, the later someone is released in their sentence, the less chance they are going to have to access the programming on the street. And if they are on statutory release from a maximum security institution, then the chances are they received very little programming while inside.

[*Translation*]

**Mr. Marc Lemay:** Are there agreements between the Correctional Services of Canada and Quebec or other provinces, allowing Aboriginal inmates to serve their sentence in provincial institutions, so that they don't have to be too far from home?

In Abitibi, there is a provincial prison. For example, an inmate from the region who has to spend three years in prison will end up at Rivière-des-Prairies, near Montreal, rather than being able to serve his sentence near his family.

Do such agreements exist? I am still in shock; I'm stunned. We have to do something, because that is simply ridiculous.

[*English*]

**Mr. Howard Sapers:** There are some exchange of service agreements in place between the Correctional Service of Canada and provincial and territorial governments for the housing of inmates, but more importantly, there are two sections in the Corrections and Conditional Release Act that allow for the direct involvement of aboriginal communities in sentence administration of aboriginal offenders. Subsection 81(1) allows for such things as healing lodges —there are eight lodges around the country—and section 84 allows aboriginal communities to be involved in the supervision of aboriginal offenders released back into their communities.

The difficulty again is that while the healing lodges are very positive initiatives, they are minimum security. So if you think about the whole chain of events we've been talking about, getting into the healing lodge may be a challenge, but the healing lodges are very positive and very progressive and the law as written does permit for the use of these agreements under sections 81 and 84.

I can get you some figures in terms of the exchange of service agreements between the Government of Canada and the provincial governments. I don't have them on hand right now.

**The Chair:** Ms. Crowder.

**Ms. Jean Crowder (Nanaimo—Cowichan, NDP):** Thank you for your presentation, Mr. Sapers, and I also want to thank the committee for supporting my motion to have you come before us today.

I have a couple of specific questions.

I want to go back to your report for a second. On page 11, you talked about the Canada Correctional Service remaining in large part unfocused and fragmented, and you specifically talked about recommending in previous years that the service appoint a deputy commissioner. I just want to make sure people see these pieces, because these are important parts of a long-standing number of recommendations that your office has made over many numbers of years, and the situation does not look like it's improving.

I want to do a couple of technical pieces, as you raised sections 81 and 84, and the classification piece. I want to address the classification piece first because it sounds like there has been a change.

The department's response on page 43 of this report was that the security classification tool used by CSC was appropriate for aboriginal offenders and that the criteria used to classify offenders are contained in.... My understanding is that you are saying they have switched their position since this, because their departmental response was that the classification tool was appropriate. I'm hearing you say they are now saying they are going to review the classification tool and develop a new one.

Am I misunderstanding something?

● (1145)

**Mr. Howard Sapers:** No, you're not.

I'm going to ask Mr. McIsaac to give you more detail, but the issue of classification, particularly as addressed to aboriginal women, was responded to in previous reports and also led to the commitment to develop a new tool by the fiscal year 2009-10.

**Ms. Jean Crowder:** But it was just for women.

**Mr. Howard Sapers:** It was just for women.

The Canada Correctional Service language has changed over recent years in terms of agreeing or disagreeing with the issues of systemic barriers and differential outcomes for aboriginal offenders. Their most recent response to the report—even though the strategic plan for aboriginal offenders still lists as one of its priorities reducing the outcome gap—would seem to suggest that they have developed the program tools they need to do so. We would challenge that.

**Ms. Jean Crowder:** So they would like to reduce the gap but still use the same classification tool for men. It doesn't make sense.

**Mr. Ed McIsaac:** Well no, it doesn't, quite frankly.

The position of the service for a number of years has been that their classification tools, the tools they use to identify the reintegration potential of offenders, are not biased. The academic debate has gone on for quite some time on that matter. Mr. Sapers referred to part of it earlier.

The review that was undertaken by the Canadian Human Rights Commission in 2003-04 was specific to the tools being used for women and aboriginal women. The service's commitment to review came as a result of the recommendation from the Human Rights Commission.

We had recommended, as one of the members noted, back in 2000 that the correctional service appoint a deputy commissioner for aboriginals to bring a focus to the senior management table and to ensure that the perspectives of aboriginal concerns were reasonably addressed for all matters that the service was directing its senior management to look at and review at that point.

In conjunction with that recommendation in 2000, we had recommended that there needed to be a review, with the involvement of national aboriginal organizations—we stipulated that the review should, in fact, be independent of the correctional service—of their policies and procedures as well as of the tools they were using to identify security levels and reintegration potential.

The service has not initiated that review. Their position has been consistent—as you had indicated earlier—that their tools do not, in fact, discriminate or reflect negatively on aboriginals.

**Ms. Jean Crowder:** Despite the outcome.

This is a bit technical, so I want to talk about sections 81 and 84.

This framework on the enhanced role of aboriginal communities and corrections was approved back in March 1999, so this is not new.

**Mr. Ed McIsaac:** No.

**Ms. Jean Crowder:** When I look at the department's response to this—that's on page 44 in the English copy—they are actually saying, about section 84, that they do not constitute agreements.

When I look at the actual wording on these, there are two things. One is that section 81 is an agreement within an aboriginal community for the provision of correctional services to the aboriginal offender. Section 84 is about when an inmate applies for parole and has expressed interest in being released to the aboriginal community, and so on.

It seems, from the department's response—maybe I'm being unfair in categorizing this—that there is some lip service to this notion of having first nations, Métis, and Inuit communities do the work around community integration. When we're talking about the rate of revocation for breach of conditions being higher for aboriginal offenders, it would seem to me that those community pieces are critical.

What do you think needs to be done to make sections 81 and 84 more effectively used to support first nations, Métis, and Inuit offenders in reintegrating into the community?

● (1150)

**The Chair:** You have about half a minute, please.

**Mr. Howard Sapers:** There's a tremendous need for capacity-building within aboriginal and first nation communities. There are not necessarily deficits in those communities, but there are deficits in the way the system interacts with those communities. The need is there to strengthen the relationship between the service, other service providers, and those aboriginal communities, so those aboriginal communities can take fuller advantage of sections 81 and 84. It's a training issue, an education issue, and a resource issue.

**The Chair:** Mr. Storseth.

**Mr. Brian Storseth (Westlock—St. Paul, CPC):** Thank you, Mr. Chair.

I want to thank you, Mr. Sapers, for coming forward with a very interesting outline here.

I have three questions that I want to get some clarification on, and then I'll split my time with my colleague here.

You talk about systemic discrimination within the system. Is it because the first nations and aboriginals are not being treated equitably, or is the equitable treatment itself the problem?

**Mr. Howard Sapers:** Systemic discrimination is often an unintended outcome of a series of decisions, procedures, or policies that are in place. We have found evidence year after year that there is an identifiable group of Canadian serving offenders who seem to be disadvantaged. We measure that disadvantage by their correctional outcomes—access to programs, access to parole hearings, timely release, number of revocations, time spent in detention, time spent in segregation, etc.

We've found that the identifiable population comprises aboriginal offenders. It's not the independent or individual acts or actions of a particular person in the correctional service in the administration of a particular offender's sentence; it's the cumulative effect of all of those programs, policies, procedures, and institutional structures that seem to amplify the disadvantage that many aboriginal Canadians carry with them into the institutions, while they're in the institutions, and when they're released into the community.

**Mr. Brian Storseth:** For lack of a better term, is that because the system itself isn't culturally sensitive?

**Mr. Howard Sapers:** The best example I can give is the one I referred to in my remarks about the classification tools. We believe they are culturally inappropriate and over-classified because of the way the questions are asked and scored.

**Mr. Brian Storseth:** What are some of your suggestions on how to change that classification system?

**Mr. Ed McIsaac:** One of the first steps, which is consistent with the recommendation put forth by the office a number of years ago, is to have a great deal more consultation with the aboriginal communities and the national aboriginal organizations. From my perspective, the service approaches this matter on a rather defensive note. It has internally reviewed this and has come to its own conclusion that there is no problem with the tools and mechanisms currently in place.

But as you look over time at the number of programs that have been introduced and the number of aboriginal elders who have been involved within the institutions, at the end of the day you still see the same results. One reasonably begins to question whether or not the tools being used are reflective of the reality we should be dealing with.

At the end of the day, the idea is to release back into the community individuals who are going to safely reintegrate, and we want to do that in a timely fashion. With the setup we have now, those in the aboriginal population are being released much later in their sentences; they are much more likely to be referred for detention; and when they are released we end up with a revocation rate that is higher than in the non-aboriginal population.

It's a cycle that needs to be broken. One of the initial steps is for the service to go externally, as we recommended a number of years ago, and involve the external academic community, the aboriginal communities, and the national aboriginal organizations in a review of the policies and the decision-making process currently in place.

● (1155)

**Mr. Brian Storseth:** That's a good segue into my final question.

We talk about the eight healing lodges and the core aboriginal programs, the site-specific initiatives such as Pathways and traditional circles, and the medicine wheel program. Have these programs themselves, which are found more in the minimum sentence facilities, been successful? Has there been a marked success rate in these programs? If not, what do we need to do to increase that success rate?

**Mr. Howard Sapers:** Many of these initiatives have been evaluated, and in a way that some of the other core correctional programs haven't. They were also reviewed a couple of years ago under what was known as the effective corrections initiative. You can get a measure of their impact by looking at all of those outcomes that I've listed. So when you look at success rates, length of time, the community release rates, revocation rates, and so on, you begin to see some very hopeful evidence.

Some of the programs, however, are so new, and are being piloted and tailored to very specific sites, that in some ways it's hard to generalize. But I don't see that as any kind of criticism. I think part of the strength of culturally specific programming is recognizing that you do have some unique needs and that perhaps what works with a prairie population won't work with a northern population or a coastal population.

So as I say, many of these programs have success on the site where they are implemented, and you may not be able to generalize except in terms of tailoring unique programs to meet unique needs of correctional populations. That is the finding on which I think we have to focus.

**Mr. Brian Storseth:** So then you would suggest that these more culturally specific programs have been successful and that is the direction in which we need to continue to move.

**Mr. Howard Sapers:** I think we need to continue to explore them, and I think we need to be as rigorous as possible in finding the elements of success. Clearly, more work needs to be done there.

**Mr. Brian Storseth:** So if you had the ability to be king for a day and mould this, what would your suggestion be?

**Mr. Howard Sapers:** If I got to be king?

Do I have only 30 seconds for this as well, Mr. Chairman?

The strategic plan that has been developed by Correctional Service Canada for aboriginal offenders is a pretty good one. I guess if I were king for a day, I'd make sure that it was resourced as a priority, that we did the kind of evaluation that I was talking about, and that we made sure that the words and deeds matched each other in terms of the emphasis we were putting on culturally specific programming.

**The Chair:** It's interesting, committee members, that we're talking about the operation, really, of Correctional Service Canada and we are the Standing Committee on Aboriginal Affairs and Northern Development. To me, we should be concerned about the root of the problem, which is why are they getting to that point? What policies do we need or haven't proceeded with in the department so that aboriginals are encouraged not to get into a situation where they are going to be incarcerated? I think that's really our fundamental role as a committee, setting policy for INAC to make sure that aboriginal people have opportunities to fulfill those aspirations of life and not have to make these poor decisions.

We're talking about, really, something that the justice committee or the public safety committee would be talking about. It's important that we are *aware* of this as a committee, and I don't want to slight that.

● (1200)

**Hon. Anita Neville:** I'm not sure I agree with you, Mr. Chairman.

**The Chair:** I didn't say it wasn't important.

**Hon. Anita Neville:** No.

**The Chair:** Members, this room is not booked after 1 o'clock, if you want to run over time. I'll leave that to the discretion of the committee. I'm going to take this until 1:10, and then we'll move to the next witnesses, unless you wish to extend that at all.

Madam Karetak-Lindell.

**Ms. Nancy Karetak-Lindell (Nunavut, Lib.):** Thank you. I'm going to try to be very brief so that I can share my time with Todd.

Thank you very much for your report. I have to say, it's very sad to hear those kinds of statistics. It really makes me feel that we need to put more resources, or push for more resources, because I know there is good work being done. It's just that the numbers are overwhelming.

I have two very quick points. One is a technical point. In your presentation, you sometimes went from “first nations” to “aboriginal” quite freely. I'm not 100% sure if that includes Métis and Inuit numbers. So just be aware that there are three aboriginal groups in Canada and we can't just interchangeably say “first nations” and then go back to “aboriginal people”, because you're missing two other groups when you do that.

I'm very worried that, with the new legislation coming down the pipe with minimum sentences and making criminals out of people who I think necessarily should not be branded criminals, these numbers are going to get even worse. My understanding of the new legislation coming down is that we'll be putting more people in jail than we're trying to help. We have restorative justice initiatives that I think we need to explore more.

So is that your feeling, that these numbers will get even worse among the aboriginal population when the new legislation is put in place? I know it's not a fair question, but....

**Hon. Anita Neville:** It's an important one.

**Mr. Howard Sapers:** To the best of my knowledge, drawing on my experience, if everything else stays the same, but we create laws that necessarily incarcerate more people, I would predict that at least the same proportion of aboriginal offenders will be caught in that growth in incarceration. So if everything else stays the same, the actual numbers will grow.

There is some reason to suspect that some of the particular crimes that are being addressed by bills that are before Parliament may themselves have an impact on aboriginal offenders that is disproportionate to the rest of the community, or to non-aboriginal offenders. That's speculative—

**Ms. Nancy Karetak-Lindell:** But the trend is there.

**Mr. Howard Sapers:** —yes—because of course we don't know the final form of the law.

**Ms. Nancy Karetak-Lindell:** I think Todd wanted to ask questions as well.

**Mr. Todd Russell:** I just want to make a comment.

Certainly this is having a huge impact on us here at the committee. When you talk about systemic discrimination, then by definition it's the system and what's in the system. And that's why, when my colleague raises the whole issue around the new justice bills that are coming up, I think you need to put an aboriginal lens over it. Otherwise you're going to continue with the same type of discrimination, and not only within the correctional system. Systemic discrimination in other areas is leading to certain people being incarcerated in the first place.

That's why you need an aboriginal lens over the supposed "tough on crime", where you want to put younger people in jail for longer periods of time, or keep people in jail for longer periods of time, it's harder to get parole, it's harder to have conditional releases, and all these types of things.

From what I'm reading here, would you say that aboriginal inmates are going to have a much more difficult time accessing the programs that are supposedly there to help? It's a vicious cycle.

● (1205)

**The Chair:** Short answer, please.

**Mr. Howard Sapers:** Again, let me preface this by saying "if everything stays the same". So if we see an increased population of aboriginal offenders going into federal penitentiaries, and those offenders continue to be, in my opinion, over-classified and held at higher security levels than they need to be, then they will have increasingly delayed access to programs and they will be delayed in their return to the community and the cycle will continue.

What we are talking about here is the focus of my mandate, which is to be responsive to the concerns and the complaints of offenders and the oversight that we bring to the operations of Correctional Service Canada and pointing out systemic issues that come to our attention because of the individual complaints that we respond to as an ombudsman. Significant in those complaints are delays in access to programs and to release.

**The Chair:** That's it.

Mr. Albrecht, do you have a question?

**Mr. Harold Albrecht:** Thank you, Mr. Chair, and thank you to the witnesses for appearing today.

I think all of us around the table today agree that we want to see offenders treated fairly, and certainly I would support any initiatives to speed up any re-classification initiatives that need to be done. I would support that. But it seems to me that it goes without saying that if there are a high number of offenders, there are also a high number of victims.

One piece that's missing—I know it's not in your mandate, and it's not your particular assignment—and that we need to also consider is the needs of the victim. Are there any programs available that would help to provide counselling or care to the victim following the violence—all too often it's women and children—so that these people will not be caught in this continuing cycle of violence? Are there any programs like that available? Or are the victims ignored in this process?

**Mr. Howard Sapers:** I'm sorry, but clearly part of your question is really so far outside of my mandate and my competence that I really would hesitate to answer. I am aware of programs that do deal with victim needs, but specifically, when we look at some of the initiatives that are available under sections 81 and 84 that involve aboriginal communities, particularly under section 84, you'll often see circles brought together in terms of the supervision or the reintegration of that offender in the community. That will often involve victims along the same lines that the National Parole Board uses—a process of having circle hearings or elder-assisted hearings that may or may not involve victims. Of course, now victims are eligible to participate in, or at least attend, parole hearings.

So there are a number of opportunities for victim involvement. The Correctional Service of Canada also has a restorative justice unit and they have achieved some success there as well, but beyond that, it's really beyond my expertise to comment on specific services to victims.

**Mr. Harold Albrecht:** Thank you. I would just like to—

**The Chair:** I'll have to call that the end. It's unfortunate.

Thank you very much to the witnesses for appearing before the committee.

**Mr. Howard Sapers:** Thank you.

**Mr. Ed McIsaac:** Thank you very much.

**The Chair:** We appreciate the information, and the shocking information, and we thank you for taking the time today for this.

We'll take a few minutes so that the next delegation can come forward. Then we'll return.

● _____ (Pause) _____ ●

● (1215)

**The Chair:** Committee members, we will reconvene here.

Our second witnesses are from the Cree-Naskapi Commission. We have with us Richard Saunders, the chairman; Robert Kanatewat, commissioner; Philip Awashish, commissioner; and Brian Shawana, director general.

Thank you for your attendance at the committee. We'll proceed with the presentation and then we'll be asking questions from the various sides of the government.

**Mr. Richard Saunders (Chairman, Cree-Naskapi Commission):** Thank you very much, Mr. Chairman.

I want to thank the committee for agreeing to hear us. I think there are some worthwhile things that flow from each of our appearances at these hearings, and we very much appreciate it.

As you probably know, the Cree-Naskapi of Quebec Act, which created the commission, requires us to report every second year to Parliament on the implementation of the act. Our reports are tabled with the Minister of Indian Affairs. We ordinarily meet with the minister shortly after that. We haven't had an opportunity yet to meet Minister Prentice, but we're looking forward to that in the fairly near future.

After these reports are tabled in the House, as you know, according to the Standing Orders they are referred automatically to this committee. Whether or not we appear is a matter of discretion for the committee, and I'm very appreciative of the fact that you have decided to hear us.

That's particularly important because our reports are based upon hearings that we conduct with members of the Cree and Naskapi communities. The leaders, elders, youth, and others come to us, and they spend a fair amount of time making presentations. They know that any important points they make will end up in our reports. They're aware at the time they're doing their homework on those presentations that the information they put forward eventually will be in the hands of elected leaders, members of Parliament, as well as the minister. So they put a fair amount of time into it and they certainly anticipate that their remarks will be heard far and wide, and this is an opportunity to ensure that happens. So it's more than just a formality and we're very pleased with that.

This report, the 2006 report, is the tenth report of the Cree-Naskapi Commission. In the course of preparing those reports, we did a little bit of a look back and realized that in the twenty years since the first report, there have been ten ministers. While it isn't our job, really, to comment on when Prime Ministers appoint ministers, and when they replace them, and so on, the fact of the matter is that one of our concerns over the years has been the extent to which ministers actually direct policy.

I suppose that's true for many ministers, not merely the Minister of Indian Affairs, but if one considers that a minister has two years on average—ten ministers in twenty years, that's two years each—in which to carry out his or her mandate, and when you realize that ministers, quite properly, take fairly heavy criticism, as they do in the democratic system, for mistakes that are made by their department, and of course take credit for wise decisions that are made, the fact of the matter is that with only two years and over 600 first nations, many Inuit communities, and many Métis communities, and with the responsibility for scores of programs as well as for policy that's being developed at a time when the law on aboriginal and treaty rights is evolving quite rapidly, it may be that if one of you were the Minister of Indian Affairs, you would want a little bit more than two years in order to carry out government policy for which you're accountable. I think that's just a bit of framing, a contextual piece that we wanted to mention.

I should at this point introduce—it works quite well in terms of what I'm saying—my two colleagues. They're fairly modest people and likely won't tell you themselves, but the fact of the matter is they were both negotiators and signatories to the original James Bay agreement in 1975. They were among the treaty makers, along with Billy Diamond and many others.

The treaty makers at the time, it seems to me, had a vision of where the James Bay and Northern Quebec Agreement was going, along with the subsequent Cree-Naskapi of Quebec Act. Where is this going? What's it all about? It's not just about building dams.

From my perspective, it occurs to me that the treaty makers had in mind an ongoing, viable Cree Nation, and a viable Naskapi Nation in the case of the northeastern Quebec agreement, that could continue the traditional values, the traditional activities, and the traditional way of life, maintain the language and maintain the culture, and yet operate in the 20th and 21st century as effectively as anybody else. The agreement was seen in part as an instrument, I think, to do some of that. There are times when we must measure the results against that kind of standard.

● (1220)

The Cree-Naskapi of Quebec Act has been in force since 1984. It was a new step forward, cutting-edge legislation, and it was one of the first attempts to move from the Indian Act to a piece of legislation tailored to the needs and special circumstances of the communities involved.

We had a meeting not long ago with some of the leadership at the Six Nations, who of course have a set of issues of their own to deal with. Their basic question to my colleagues was, how did you guys arrange to get out from under the Indian Act? That's a question many first nations are asking themselves. It's easy to say, let's get rid of the Indian Act, but it's quite another matter to come up with some alternative governance institutions, structures, and laws that work.

The Cree-Naskapi of Quebec Act was an honest attempt by all parties to do this, but it was passed more than 20 years ago. The experience that's been gained, as well as the evolution of the nature of governance in the communities, has meant that some amendments are necessary. Some are small housekeeping amendments, such as the quorum that's required in order for a community to approve short- and long-term borrowing—no doubt a different quorum for any changes in land tenure, and so on.

But there are big-ticket amendments, and Commissioner Awashish will talk about them in a little more detail. There are big issues, too. Governance has evolved from the Indian Act model of a band here and a band there, with a chief and council with prescribed powers and duties. Here we're looking at a Cree Nation, which more than just a collectivity of individual communities, and a Naskapi Nation, whose character is quite different from a simple band. Appropriate tools are needed; some are legislative, and obviously some are social, political, and community tools.

One issue that I would like to talk about in a bit more detail is housing. I know that this committee has been paying particular attention to the housing issues of first nations across Canada. There is no doubt that housing is at a critical stage in the majority of first nations across this country—and the committee is more aware of that than me.

The situation is slightly different in the Cree communities, and one of the reasons is the success of those communities, subsequent to the James Bay and Northern Quebec Agreement and the North-eastern Quebec Agreement. This success has meant that economic opportunities in these communities are somewhat greater than in the average first nations community in Canada. As a result, whereas in most communities a very large proportion of young people migrate off the reserve to find employment opportunities, for education or for whatever, in the Cree communities the retention rate of young people is over 95%.

Now that's a good thing, but one cost is the demand for housing. The demand for new family units is even greater than in many other communities, which are less favoured economically. It's a reality.

We had a presentation during the course of our hearings from Chief Billy Diamond, on behalf of the Grand Council, around housing. We have not tabled it, out of respect for all committee members; the French translation is not yet complete.

Mr. Chairman, I'm not sure about committee rules, but if they permit and if you agree, we would like to send you a copy, which is very detailed, as soon as the French translation is available.

Highlights of the report include that in the 28 years from 1977, which was two years after the agreement was signed, to 2005, there was a 117% population increase. That's phenomenal, especially considering that most of those people have stayed in their communities. In actual numbers, the population was 6,727 in 1977, then 14,588 in 2005, and it's over 15,000 at the moment.

● (1225)

According to a count in 1999, there was a housing backlog of 1,403 units. Current reports are being prepared; however, the backlog is growing, not shrinking. That is cause for concern. It impacts the formation of new families. It creates social pressures that you've heard about in other situations, which apply in this case too. This needs to be addressed on an urgent basis.

The Cree proposal involves a very balanced approach, and I was profoundly impressed by Chief Diamond's presentation. He wasn't saying, you guys should go ask the government for more money. No, he was talking about a balanced approach in which—and I quoted him in the notes that have been distributed— “We have to change our attitudes and approaches to housing from 'entitlement' to 'ownership' and from 'social assistance' to 'investment.'”

What he is talking about is expecting individuals who are benefiting from the economic situation to pay according to ability. If they have employment, they pay as though they had employment. He's looking at the Cree themselves investing in housing as a community and a government. And yes, he is looking at some government funding too, but he's advocating a balanced approach. He has also indicated a willingness to sit down and work through the details of what such an agreement might entail.

There is no doubt that social housing assistance is desperately needed in many communities. I'm certainly not questioning it, nor am I questioning the need for continued government support for some of the housing activities in the Cree communities. Clearly that's needed. But to their credit, the Crees have stepped forward and said they are ready to go with a balanced approach, using their own resources as much as possible. This is a proposal that makes sense.

One final issue that arises out of our report is in relation to the Naskapi Nation of Kawawachikamach. As you know, the Naskapi Nation is in the area of Schefferville, in northeastern Quebec. They have the Northeastern Quebec Agreement as their guiding document; they are party to the Cree-Naskapi of Quebec Act and are covered by it. But they do have some unique problems that are quite different from those of the Cree. Unfortunately, one of them is in relation to the proposed development of the regional government of Nunavik in northern Quebec.

The concern is that the Crown, in right of Quebec and Canada, has failed to take into account their interests in the development of the Nunavik regional government. They argue that Indian Affairs has failed to protect their interests, to discharge its fiduciary duties, and to discharge its activities in a way that's consistent with the honour of the Crown; that they have allowed formal discussion to take place on the development of a regional government that impact their interests in their lands under the Northeastern Quebec Agreement.

Frankly, I think the governments need to sort it out. The Naskapi need to be at the table; they need to be consulted. Certainly they have no issue whatever with the Inuit of northern Quebec having their own regional government, but they insist that their interests under an agreement that they have already signed ought to be honoured, respected, and taken into account in the development of another succeeding regional government.

All we can say is that we believe the parties have to come to the table and discuss these things. Quite frankly, we wrote to the previous minister and the response was, we've appointed a federal negotiator, Mr. Donat Savoie, to look into this: talk to him. We talked to him, and he referred us to a lawyer in the Department of Justice, who basically said it was none of our business.

Well, blah, blah, blah. That's all fine and dandy, but the fact of the matter is that the Naskapi people have an issue here. Do we really want it to go to court and be another big hassle for ten years in the courts, or do we simply want to get to the table and sort it out?

So whether it's our business or not, whoever's business it is, please, come to the table and sort it out.

● (1230)

My time is limited, so I'd like to wrap it up and turn this over to my two colleagues. Commissioner Kanatewat will begin, Commissioner Awashish will finish, and then we'll try to answer questions. If there are more questions after the time has expired, we would be happy to meet any individual member who may wish to follow up on these items.

Mr. Chairman, thank you very much.

Robert.

**Mr. Robert Kanatewat (Commissioner, Cree-Naskapi Commission):** Thank you, Mr. Chairman.

As mentioned, the Cree-Naskapi Commission has been reporting for the past 20 years, and it is my pleasure to be here today. I have been a commissioner for the Cree-Naskapi Commission for the same amount of time, with the exception of one year.

What I would like to do is highlight some of the findings of the Naskapi Nation of Kawawachikamach from our recent special implementation hearings with the Cree-Naskapi leadership from February 13 to 16, 2006, for the preparation of the report.

Ladies and gentlemen, I would like to mention the Nunavik Commission. The Naskapi Nation expressed their concern in writing to the Government of Canada. They have questioned Canada's aboriginal self-government policy. The Naskapi Nation awaits a full written response to their questions, and so far Canada has not fully responded to all of the questions raised. In light of this, and following a representation complaint from the Naskapi Nation, the Cree-Naskapi Commission decided to hold an inquiry pursuant to paragraph 165(1)(b) of the Cree-Naskapi of Quebec Act.

However, representatives of the Department of Indian Affairs, by invoking section 167 of the act, refused to come to a hearing of the commission on this matter. Canada is currently asserting that the commission lacks jurisdiction to hear the representation of the Naskapi Nation. The Department of Indian Affairs and Northern Development has also responded by saying that a four-party—Inuit, Naskapi, Quebec, and Canada—process had been set up to consider the issues raised by the Naskapi Nation.

The department has also responded that it was in the process of providing detailed information to the Naskapi and DIAND, confident that this process would yield positive results. This section can be found on page 38 of our report. It is fair to say that the Naskapi Nation of Kawawachikamach has concluded that failure to appear before the commission is consistent with their view that Canada has been derelict in its duty to protect our rights and interests in the face of a sustained effort by Makivik Corporation. This section can also be found on page 38 of our report.

The commission recommended in its 2004 report...and l quote from page 48 of our report:

> The Government of Canada must adequately discharge its responsibility and undertake timely and appropriate measures in consultation with the Naskapi Nation to ensure the protection of Naskapi rights and interests in the present negotiations respecting the establishment of a Nunavik government.

The commission, as stated in the conclusion of the present report, considers that Canada has a legal obligation to act in the best interests of the Naskapi Nation. In this matter the commission intends to pursue the Naskapi representation and report on it, despite Canada's position.

In terms of other Naskapi community issues, earlier our chairman mentioned housing. We have reported that the housing allocations for 2007-08 and beyond for the Naskapi community are not yet known due in part to the housing allocation process of the CMHC. This can be found on page 39 of the report.

With regard to policing, the Naskapi Nation has stated that there is a cost-sharing dispute in the cost of police services delivery in the province of Quebec.

In closing, l would like to quickly quote the Cree-Naskapi Commission recommendations for the Naskapi Nation. This can be found on page 52 of our report:

> The Government of Canada, Naskapi Nation of Kawawachikamach and other parties concerned should forthwith settle the mandate of the Naskapi-Inuit-Canada-Quebec Working Group which should commence to address the concerns of the Naskapi Nation respecting the current negotiations on the establishment of the Nunavik Government.

● (1235)

> The Government of Canada should settle its cost-sharing dispute with Quebec over the costs of providing policing service to the Naskapi Nation of Kawawachikamach.
>
> The Government of Canada and the Naskapi Nation of Kawawachikamach should settle the issue of the housing allocation process of the CMHC and determine the present and future housing needs of the Naskapi.

I wish to thank the honourable committee members for this opportunity to bring forward the concerns of the Naskapi Nation of Kawawachikamach.

Thank you.

**The Chair:** Mr. Awashish.

**Mr. Philip Awashish (Commissioner, Cree-Naskapi Commission):** Thank you.

Mr. Chairman, members of the committee, thank you for this opportunity to speak on our report of 2006.

I wish to speak on a particular aspect of our recommendations from our 2006 report. This particular recommendation is also something that came out of our past reports. In other words, in many of our past reports—this is our tenth report—we have recommended again and again that the parties concerned, that is, the Government of Canada and the Cree-Naskapi government, review the Cree-Naskapi of Quebec Act, establish a process for reviewing that act, and determine certain ways and provisions for amending the act.

Our chairman has already given you a brief background on the act itself, but it all starts, of course, from the modern-day treaties. For the recognition and the protection of their rights and interests, the Cree and Naskapi nations negotiated their respective modern-day treaties, the James Bay and Northern Quebec Agreement of 1975 and the Northeastern Quebec Agreement of 1978.

The Cree and Naskapi nations view these agreements or treaties as reaffirmations of their rights. These treaties establish a framework for meaningful and positive relations with the Government of Canada and the Government of Quebec, as well as with contemporary society.

Pursuant to section 9 of the James Bay and Northern Quebec Agreement and section 7 of the Northeastern Quebec Agreement respectively, the Government of Canada undertook to recommend to Parliament special legislation concerning local government for the James Bay Cree on category 1A lands and suitable legislation concerning local government for the Naskapi of Quebec on category 1A-N lands.

The special legislation contemplated by these agreements, which became the Cree-Naskapi of Quebec Act, was passed by the House of Commons on June 8, 1984. This special legislation provides for an orderly and efficient system of Cree and Naskapi local government, for the administration, management and control of their community lands.

Except for the purposes of determining which of the Cree and Naskapi beneficiaries are “Indians” within the meaning of the Indian Act, the Cree-Naskapi of Quebec Act replaces the Indian Act, which does not apply to the Cree and Naskapi First Nations, nor does the Indian Act apply on or in respect to their community lands.

The representatives of the Cree and Naskapi parties and the Government of Canada arrived at a shared understanding as to the implications and impact of the Cree-Naskapi of Quebec Act, in the statement of understanding of 1984, best summarized as follows:

> The Cree-Naskapi (of Quebec) Act is the cornerstone of the achievement of the full potential of the James Bay and Northern Quebec and Northeastern Quebec Agreements. The new structures which were created by the Agreements were meant to interface with properly constituted local governments. The Cree-Naskapi (of Quebec) Act is also the basis upon which the relationship with the Federal Government will be redefined. By way of the new Cree-Naskapi (of Quebec) Act, the Cree and Naskapi will be able to go beyond the restrictions inherent in the Indian Act and thereby assume full control in the administration of their communities and management of category 1A-N and 1A lands.

● (1240)

The implementation of the Cree-Naskapi of Quebec Act must enable and facilitate the development and the evolution of Cree and Naskapi local government by taking into account the social, economic, and political realities and conditions prevailing from time to time in the Cree and Naskapi first nations. Hence, the proper implementation of the act bears exceptional significance and tremendous consequences on the aspirations and goals of the Cree and Naskapi first nations as self-governing peoples.

As our chairman mentioned, this act has been enforced now for about 23 years. The meaning and practice of local self-government has evolved and been redefined over the past 23 years in a manner consistent with the aspirations, goals, and political will of the Cree and Naskapi first nations. The Cree and Naskapi people are using their governments to meet needs such as housing, economic development, traditional pursuits, policing, administration of justice, education, health, delivery and administration of programs and services, community development, environmental protection, and political representation to conduct government-to-government relations.

The full potential of local self-government, with its dynamic and evolving nature, has not yet been realized or achieved by the Cree and Naskapi first nations because, as one principal constraint, the Cree-Naskapi of Quebec Act, after 23 years, remains an inflexible, rigid, and unchanging instrument. However, I may mention that the treaties themselves, the modern-day agreements, have been amended from time to time. The James Bay and Northern Quebec Agreement has been amended 18 times.

However, for the past 23 years, the Cree-Naskapi of Quebec Act has not maintained pace or evolved with the exercise and practice of the Cree-Naskapi local government and the state of aboriginal and contemporary law. In fact, certain existing provisions and terms, and the absence of essential provisions, of the Cree-Naskapi of Quebec Act constitute serious obstacles and constraints for the Cree and Naskapi local government and administration.

The past and present reports, discussion papers, and lessons learned from investigations of the Cree-Naskapi Commission result in conclusions, findings,and recommendations respecting the review and revision of the Cree-Naskapi of Quebec Act to achieve various objectives, such as updating the act so that it reflects the present reality and evolving dynamics of the Cree-Naskapi local government and the state of aboriginal contemporary law.

We prepared this presentation for the committee, and on pages 4 and 5 we've outlined the various reasons for amending the act. I imagine this particular document is available to the members to read, so they can read for themselves the various reasons for amending the act and updating it so that it conforms with the present state of law as well as with the aspirations of the Cree and Naskapi peoples.

I'd like to conclude that the trust and fiduciary responsibilities and obligations of the Government of Canada must be exercised, on a government to government basis, for enhancement of Cree and Naskapi local government. One way of doing that, of course, is for the Government of Canada to undertake a serious exercise and process in reviewing the Cree-Naskapi of Quebec Act and seeking possible amendments to enhance further the exercise of local government by the Cree and Naskapi peoples.

Thank you.

● (1245)

**The Chair:** Committee members, I allowed longer presentations because I think the information contained in these presentations is of more importance to us than the questions.

Now I'll turn it over for five minutes to Mr. Russell on the Liberal side.

**Mr. Todd Russell:** Good afternoon. I want to thank you for appearing before the committee. My name is Todd Russell. I come from Labrador, and I represent the riding of Labrador.

Certainly this is not an uncomplicated matter that you're bringing before the committee in terms of the report. Your report basically says you want a process. You want the Government of Canada and the Government of Quebec to engage with the Naskapi and Cree nations to amend the Cree–Naskapi of Quebec Act. Is that right? That's the overall recommendation.

As I understand it—and I may be corrected—you have asked for this in earlier reports. Is that right?

**Mr. Richard Saunders:** That's correct.

**Mr. Todd Russell:** What rationale has been given by either the Quebec government or the federal government to not engage in negotiations to amend the act?

**Mr. Philip Awashish:** First of all, I would have to clarify two distinct processes that the Cree–Naskapi Commission has recommended. One process involves the Cree–Naskapi leadership and the federal government reviewing the Cree–Naskapi of Quebec Act itself and determining possible amendments to the act. Another process that the commission has recommended and is in a process of doing is to review the treaties themselves, those being the James Bay and Northern Quebec Agreement and the Northeastern Quebec Agreement, in which the Quebec government would be involved, as well as Canada, because the two governments are parties to the treaties.

Our contention is that since the act itself evolves from the treaties, the treaties themselves have to be reviewed and amended to recognize, in particular, the existence and continuity of Cree–Naskapi traditional law. One of the problems has been that the act itself is silent on the existence and continuity of the *ayoowkwx* traditional law. We have found that when we are up north talking about the Cree–Naskapi of Quebec Act, people tell us that's not the way things are done up there. That simply means, of course, that they have their own ways of doing things. They have their own laws. When that happens, of course, then the tendency is to simply ignore existing law, contemporary law.

● (1250)

**Mr. Richard Saunders:** I might add just one comment to that as an example, because I'm sure members are wondering, “The act isn't the way you do things? What are you talking about?”

Take a thing as simple as, say, the election provisions. The election provisions say you're going to post a notice and there's going to be so many days between the notice and the election, etc. If an elder dies in a community, they're going to move the election one day. That's technically illegal. We need to deal with those kinds of things, with something as simple as that.

**Mr. Todd Russell:** Okay, but getting back to my question, why are you not receiving cooperation in moving either of those processes forward? Why hasn't the federal government or the Quebec government engaged with the Cree and Naskapi nations to address some of these matters? What is the major holdup, whether it's based on the treaties or whether it's based on the act in terms of revisions and amendments?

**Mr. Philip Awashish:** The federal government's reasoning is that they want to take the approach of looking at Cree and Naskapi governance in a global and comprehensive manner. Rather than simply looking at the act itself, they want to look at the exercise of the inherent right of governance globally.

They spoke of their own policy regarding negotiating the exercise of the right of self-government. They want to look at this whole process of first nation governance globally and comprehensively, rather than restricting it to looking simply at the act itself.

**The Chair:** Thank you.

Mr. Lévesque.

[*Translation*]

**Mr. Yvon Lévesque:** Gentlemen, thank you very much for being with us today. I will ask you all my questions at once, because we don't have much time.

I was present for discussions regarding the territories. I regularly make my rounds, and we are aware of the fact that you are asking for housing in certain places. In fact, there isn't enough room on the available land. For example, funding is needed to expand the available space, so that additional housing can be built.

As regards the letters you sent to the Minister with respect to the negotiations you referred to in your statement, unfortunately, we have not received a copy of them. We would very much like to know what you are asking for, as well as the Minister's response in that regard.

There is an additional point of interest to me. I would like to be given an explanation with respect to your territory—for example, Kawawachikamach, which is located on land now recognized as being part of Nunavik. Which land is currently yours and which land are you claiming? The Innu from the South, who attended a meeting with you, also live in that region. In fact, if I'm not mistaken, you had a meeting in August with representatives from Nunavik with respect to divvying up the land. Could you tell us a little bit about the outcome of that meeting?

Finally, are the Inuit and the Naskapi still talking about how the land will be divvied up?

I had asked Chief Jimmy James Einich, the Chief of the Kawawachikamach, who has since been replaced by Philip Awashish, for a report, but I never received any. However, we do know that a meeting or forum is scheduled to take place in Nunavik in the week of February 15. I have heard that an agreement in principle will probably be signed with the Government of Nunavik. I would also like to hear your comments on that.

● (1255)

[*English*]

**Mr. Richard Saunders:** Thank you, Mr. Lévesque, for those questions. They're very helpful, and there are a number of them.

In order to be quick, we can provide letters to the minister concerning these discussions back and forth. Our office will provide the exchange of letters between us, the minster, Donat Savoie, and others around that issue. We'd be happy to do that.

The Naskapi territory essentially is very similar to the Cree territory in that there's a category 1 type of territory that is reserve-like in nature. There is also some category 2 land, that being a substantial piece to the north and somewhat west of the Naskapi main community, which is outside of Schefferville.

To my knowledge, they have no desire to increase either of those blocks of territory. Their concern is that as the Nunavik proposed agreement stands right now, the Nunavik government would cover that territory entirely. It talks about respecting some of their rights, but the fact of the matter is that their rights are prescribed in the Northeastern Quebec Agreement. They would like to see some explicit undertaking in which, first of all, they would be consulted about what takes place there. Secondly, the Nunavik regional government as proposed would be a public government similar to that of Nunavut, Ontario, or any other public government.

Their issues are that, by and large in the territory as described right now, they would be a minority with special rights, subject to a public government. That would be less effective for them than having their own government in their own territory, without any overlapping jurisdiction.

You probably could benefit by hearing it straight from them if you want to go into more detail. I know they'd be happy to speak with you or with anyone who wants to hear it. I can give you that overview, but it's always best to hear directly from the people with the issue than it is from some third party. But it's definitely an issue.

Insofar as this meeting on the 15th is concerned, of course we're interested in what's taking place there, and in whether or not this agreement in principle is in fact going to be signed at that time. Of course, we're interested and we'll follow up on your information and certainly see what's happening.

On housing, I agree. With the chairman's approval, as soon as we have the French translation, we will present this report in detail. If you want the existing copy today, *en anglais*, I'd be more than happy to give it to you. Out of respect, though, we wanted to have both the French and the English. That ought to provide the kind of detail that I think you are asking for.

**The Chair:** Madam Crowder.

**Ms. Jean Crowder:** I want to thank the commissioners for coming before the committee today. When reports are presented to the minister and the House of Commons, I think it's really important that the committee has an opportunity to take a further look at them.

I have a lot of questions, but because I have only a couple of minutes I'm going to focus on two pieces in your report. One is on page 12 in the English version. You talk about the fact that the Department of Indian and Northern Affairs, from 1986 to the present time, has taken the position that the mandate of the commission does not extend to consideration of matters arising under the agreements. So I'd like you to address that piece.

I know you've talked about the inherent right to self-government, but that seems to be a fundamental underpinning of what's at stake here. On page 42 you recommend that section 9 and section 7 be amended to provide for full and explicit recognition of inherent right. You go on to say you're concerned that Canada's current recognition of inherent right is merely a policy as to how the government of the day chooses to interpret section 35.

Just for context, I come from British Columbia, where many treaties are under negotiation. One of the fundamental pieces in British Columbia is recognition of the inherent right to self-government. So it's distressing to hear that treaties and an act have been in place for so many years, yet you're still having a discussion about trying to have that inherent right to self-government recognized.

I wonder if you could provide some advice to others who are negotiating treaties at this point, where there doesn't appear to be recognition of the ability of the commission to deal with matters arising out of the agreement, and there's an inability to get governments to actually agree to the inherent right to self-government.

● (1300)

**Mr. Richard Saunders:** There are really two questions there. I'll deal with the mandate and very briefly with the inherent right, but Philip has done more work on that and I'll ask him to respond.

On the mandate, Indian Affairs has always taken the position—and as you can see on page 12, it continues to take the position—that we have no jurisdiction to discuss issues arising out of the James Bay agreement and the Northeastern Quebec Agreement. We've taken the position that the act itself, which creates the commission and describes our duties, also describes the duties of band councils. It says, among other things, in paragraph 21(j), that the objects of a band are “to exercise the powers and carry out the duties conferred or imposed on the band...by the Agreements.” I think it speaks for itself.

They continue to say we don't have jurisdiction, and then they move to the position of saying we don't have explicit legislative jurisdiction. They outlined that again in their presentation in February 2006, yet at the same time they spoke to the United Nations and kind of bragged about what they'd been doing, saying the first of the modern treaties—the James Bay and Northern Quebec Agreement—provided for a monitoring mechanism, namely the Cree-Naskapi Commission.

We pointed that out to Michel Blondin, the director of the James Bay implementation office, who said, well, that's a joke; I'm going to have to kill somebody, that's all.

The next day, this thing disappeared from their website.

What we didn't tell him was that they left some more material on the website, called “The Hybrid Process”, which said the following: Part XII of the Cree-Naskapi (of Quebec) Act provided for the creation of the Cree-Naskapi Commission to privately investigate complaints arising from the James Bay and Northern Quebec Agreement, the Northeastern Quebec Agreement or the Cree-Naskapi (of Quebec) Act....

So we're not going to argue with them any more. We don't take them seriously. They don't take themselves seriously, obviously, so we're just moving on. If lawyers want to go and argue somewhere in the corner, let them.

On the inherent right, one of our concerns is that the Government of Canada has consistently said that they "think" that section 35, aboriginal and treaty rights, includes the inherent right to self-government. Some provinces do not think so; some others don't think so.

That "thinking" is a policy: the government thinks. That's a policy. There's no law or no Supreme Court interpretation that says the inherent right is part of section 35. Section 35 doesn't say so, the Supreme Court hasn't said so, and there's no federal legislation saying so. If it's just a policy, it may be a great policy but it's kind of fragile. Policy changes, as we know, and quite properly in most cases. But if this is so important, it should be legislated.

Philip, do you want to add anything to that quickly?

**Mr. Philip Awashish:** Quickly, yes.

The James Bay and Northern Quebec Agreement was signed in 1975 and the Northeastern Quebec Agreement was signed in 1978. So both of these agreements came into force before the Constitution Act of 1982.

What we end up with is a position taken by the Cree and Naskapi nations that their treaties of 1975 and 1978 are protected under section 35 of the Constitution. They consider their treaty rights protected under section 35. They consider their treaty right includes their right to govern themselves. But of course the courts haven't ruled on this question. It's simply a matter of positions taken or interpretations taken by the first nations peoples and the policy that the federal government has followed regarding self-government.

The Quebec government, interestingly, has not recognized the inherent right. The Quebec government simply says that first nations people have a right to govern themselves on lands allocated to them by legislation. So they don't refer to these rights as inherent, and they subject them to the legislation of Quebec.

● (1305)

**The Chair:** Mr. Albrecht, do you have any questions?

**Mr. Harold Albrecht:** Yes, thank you, Mr. Chair.

I want to follow up on the central statement on your second page, Mr. Saunders, where you highlighted Chief Billy Diamond's comment about changing attitudes and approaches to housing from entitlement to ownership, and so on. I understood you to say that you can't share any details, and I respect that, but can you give us a bird's-eye view on what kind of allocation there might be between the various levels of government and individual ownership?

**Mr. Richard Saunders:** I think what Chief Diamond is saying... and again, he's a better spokesman for himself than I am, obviously. My understanding of what he's saying is that rather than coming to government and saying we should be given money for 100% of our necessary housing costs, he's saying we should be given a fair deal, a fair formula that makes sense, that takes into account that 95% of our young people are remaining in their Cree communities, and not some national formula that says half of them are moving to Toronto.

In addition to that, he's saying we should look at a blended formula, and sit down and negotiate a formula. So you have the federal cash, you also have some Cree cash from the Cree government, and you also factor in an ownership factor based upon the need and the ability of the individual or family to participate in ownership of their property.

**Mr. Harold Albrecht:** So there'd be a range of percentages and a case-by-case scenario.

**Mr. Richard Saunders:** Yes, and I think he's looking for an overall formula that would recognize three-party responsibility for this, not just the federal government unilaterally.

**Mr. Harold Albrecht:** I'd certainly applaud the initiative in that direction. I think it's the way to go in terms of increasing the individual ownership percentage of the people who have that kind of housing.

Secondly, to Mr. Kanatewat, regarding the inquiry that was called and the department refusing to come to the hearing of the commission, could you tell us when that was? What are the timelines there?

I don't want exact dates, but are we talking three months ago, three years ago, or...?

**Mr. Richard Saunders:** It was last year. We can provide you with the exact dates, if necessary.

**Mr. Harold Albrecht:** Last year, so the spring or summer of 2006.

**Mr. Richard Saunders:** It was the summer of 2006.

**Mr. Harold Albrecht:** That's all, Mr. Chair.

**The Chair:** Okay.

**Mr. Harold Albrecht:** I'm sorry, I have another commitment and I have to leave. But before I do, I might as well just get it on the record again, Mr. Chair, that in terms of the committee giving due diligence to a hearing like this, I do think we need to allocate more time in future.

**The Chair:** All right.

First of all, I want to thank the witnesses for the information. The committee will take it under advisement. If there's anything coming forward with regard to your concerns for the opportunity to sit down and negotiate with the department, then that will be forwarded by a committee member.

The other thing is that we appreciate and thank you for the offer of that report on housing. We likely will be starting on our housing study in the near future.

Thank you very much for your time. It was very informative.

To committee members, would you like to have lunch brought in for these meetings?

The answer is yes? Then it shall be.

We're adjourned.

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**Publié en conformité de l'autorité du Président de la Chambre des communes**

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