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—
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Mr. Bruce Stanton

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• (0900)

[*Translation*]

The Chair (Mr. Bruce Stanton (Simcoe North, CPC)): We'll begin the meeting.

Good morning, members and guests.

[*English*]

It's a pleasure to welcome you back this week. In our orders of the day today, we are hearing from the three commissioners of the Cree-Naskapi Commission. Members will know from their briefing materials that this is part of a biannual report to Parliament.

This morning we welcome the chair, Richard Saunders, and the two commissioners, Philip Awashish and Robert Kanatewat.

It's great, gentlemen, to have you before our committee again. You certainly bring you with a history of and experience in coming before standing committees of the House. You'll know that we have approximately 10 minutes for your opening comments. Feel free to take a little extra time, if you need it, and then we'll go to questions from members.

We'll turn it over to Mr. Saunders.

Certainly, Mr. Saunders, if you'd like to add to the welcome of the commissioners who are here with you today, by all means do that.

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

First of all I would like to thank the committee for hearing us again. For new members, I will introduce my colleagues. I have with me today Commissioner Robert Kanatewat from Chisasibi on James Bay; and Philip Awashish from Mistissini in the interior of Eeyou Istchee.

These two guys are pretty modest, so I won't be on their behalf. They're both signatories to the original James Bay Agreement, and are very familiar with the entire history of negotiations leading to the Cree-Naskapi (of Quebec) Act, the agreement itself, and many of the supplementary agreements. If there's something I don't know—which is quite a lot—they certainly deal with more detailed questions around the history of what's taken place there, as well as some of the current issues.

As the chairman said, we have a relatively brief time this morning. We don't want to waste the committee's time with a lot of background that you can read in our written presentation or in the 2008 report itself. We'll be moving over that rather quickly.

There is legislation on the order paper now amending the Cree-Naskapi (of Quebec) Act. I would like to comment on that because all our reports, including the present one, have addressed the need for amendments to the act.

In preparing these reports—I think everybody has seen one, and this is the four-language edition—we hold hearings, and members of the Cree and Naskapi communities come and make presentations. They're generally pretty well thought out and detailed. So our recommendations in this report generally reflect some of what the community has said, some analysis from ourselves, and some input from government officials and others.

We have many times made recommendations for amendments to the act, including all three times that we've been here. In 1998 we were here and recommended some changes. They were contained in the report of that year. In 2007 we again made recommendations for amendments, and today we're continuing that process.

As you know, the amendments that are currently before the House are the ones the government committed to introducing in this agreement last February, which was an out of court settlement resolving some of the outstanding issues about implementation of the James Bay and Northern Quebec Agreement, signed by Minister Strahl and the Cree leadership in February 2008.

That agreement provided that two amendments would be brought forward. One was to incorporate Ouje-Bougoumou as a band under the agreement and the act. It is not listed in the act at the moment, so technically its bylaws and such are not under the authority of the act. That's a little glitch that needed to be fixed. Naturally they need to be fully recognized in every other respect as a band within the meaning of the act.

There's really not much disagreement on the part of anyone about that. It's really both a symbolic and housekeeping amendment, and we're glad to see it.

We would note, without being unduly cynical about processes, that this has been promised for the last 19 years. Finally the amendment is here. Hallelujah!

The other amendment deals essentially with the empowerment of the Cree Regional Authority, which is the regional government of the Cree Nation of Eeyou Istchee. That empowerment again is in line with recommendations from the Cree leadership and the Cree people. We certainly have no issues with that in principle, or with any of the details in the proposed legislation, certainly not in principle.

Let me say where our concerns lie. This also reflects to some extent what the Cree leadership have told us many times. Some recommendations for changes to the act—housekeeping amendments and all sorts of things—have been recommended for 19 years. We certainly recommended them when we came before this committee, and the Cree leadership has been asking for them.

What are some examples? One that Bill Namagoose, the executive director of the Grand Council of the Crees, mentioned to me not long ago was referenda.

• (0905)

The act, quite properly, requires referenda in order to approve such things as land cessions. After all the Crees have been through, if they were going to give up some land, clearly there would have to be a mandate to do it from the people.

So that's appropriate. But sometimes that results in politically impossible situations. You're all public officials who've been through lots of elections and you know a lot about voters. If the Crees want to transfer a piece of land in a community to the Cree school board to build a Cree school on, they have to have a referendum. Think about it. In your communities, how many folks would come out to vote on a referendum for the municipality to transfer a piece of land to the school board? It doesn't exactly have any political sex appeal. So meeting the quorum required for that referendum is just not going to happen. I understand from the Cree leadership that there are a number of illegal schools.

So you have that kind of thing. Examples that we've mentioned at this committee include the example of the procedure for having an election. It requires nomination, and a certain number of days from nomination to election day, and so on, and the election must be held on that day, etc. Well, the kind of scenario that could unfold would be for a community to have a death in the community and postpone the election for one day, as many communities do. Technically, somebody who lost that election could go and complain that the election was unlawful. Fortunately, we haven't had a complaint of that nature just yet, but we've had some pretty close.

There are a lot of those kinds of housekeeping amendments. They're not contentious. They don't require a year of debate. They don't require an enormous amount of preparation on the part of the legislative drafting folks. They need to be done.

Our concern is that it's taken 19 years to get Ouje-Bougoumou in front of you, and we know legislative agendas are very busy. If we, the Crees, and the Naskapi go back to Indian Affairs and say, "Look, we need all these amendments," the normal instinct of the bureaucracy will be to say, "Come on now; we can't be running to Parliament every five minutes with amendments for you. We've just been there." So 20 years from now, we'll still be worrying about

whether a school has built legally on a piece of Cree land and whether or not somebody can postpone an election for a day.

Our concern is not with what's in front of you. What's in front of you is good stuff. Our concern is that we're going to be back nagging you in a couple of years, and a few more years after that, saying, "Well, where are these other amendments?" The Crees made it known to the department that they would like to have seen some other issues brought as part of this package, and they're not here. That's our fundamental concern.

My ten minutes seem to be up. I'd like to leave some time for questions and some time for my colleagues to respond to them. As I said earlier, they're the experts.

Thank you, Mr. Chairman.

• (0910)

The Chair: Thank you, Mr. Saunders.

In fact, you have a bit more time there, but we'll go to questions and that will open the floor to both the commissioners and you to respond. We'll have a good round.

In that regard, we're going to start with a seven-minute round, beginning with the Liberal Party.

Mr. Russell, for seven minutes.

Mr. Todd Russell (Labrador, Lib.): Thank you, Mr. Chair.

Good morning to each of you, again. It's good to have you with us. I believe I noted in some of the background materials that indeed you felt that coming to the committee was of benefit in terms of moving the yardstick somewhat. We're glad to hear that, because sometimes we ourselves get a little bit frustrated with the committee process and how the legislative process works here in the House of Commons, or in Parliament generally.

You said the Crees would like to have seen other elements included in this particular amendment. Could you outline what some of those other elements could have been?

As well, as I understand it—you can correct me if I'm wrong—in the new relationship agreement signed in 2008 there seems to be two streams. There is an amendment to the Cree-Naskapi (of Quebec) Act, outlining what you've already said, some advancement in terms of governance for the Cree Regional Authority, and the inclusion of the Ouje-Bougoumou Cree as a band. There seems to be, in the new relationship, as well, a more substantive, more involved type of negotiation to a Cree government—sort of a self-government agreement, if you want to call it that.

Is it possible that while we move with these particular amendments, other types of issues will be dealt with in that more supposedly comprehensive agreement? Are there any timelines around a self-government agreement, and when we might actually see one?

Mr. Richard Saunders: I'm going to let my colleague Commissioner Awashish answer most of that question, but there's one thing you might think about.

In dealing with all of these other amendments, I think we'd all feel a lot more comfortable if government committed to getting them done and in front of us—in front of you—within 12 months, say. If Minister Strahl were to commit to doing that, I know his bureaucrats would start moving more quickly and we could get on with it.

But on the substantive question, I'd like Commissioner Awashish to answer.

Philip.

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

The Cree-Naskapi (of Quebec) Act was enacted by Parliament in 1984, so it has been in force for about 25 years. Since the commission began preparing its reports and hearing representations from representatives of the Cree-Naskapi local government, we've always had particular recommendations concerning the implementation of the act itself.

There have been certain problems in the administration of local government. There are problems in the implementation of the act itself. Therefore, since 1986, we have made certain recommendations to amend the Cree-Naskapi (of Quebec) Act to enhance local government, as well as local administration of the Cree-Naskapi communities. As outlined on page 8 of our presentation, over the past 25 years, we've outlined 38 ways the act can be amended to enhance Cree and local government.

As the chairman of our commission mentioned this morning, there is a bill before Parliament amending the act for the purposes of empowering the Cree Regional Authority with additional responsibilities and powers, so that it may be able to assume the responsibilities conferred, or transferred, to it as a result of the Agreement Concerning a New Relationship between the Government of Canada and the Cree of Eeyou Istchee.

We of course commend the government and the Cree for taking the journey together in a new relationship, and we also commend the government for the bill to empower the Cree Regional Authority, so that it can assume its new responsibilities and exercise certain powers.

However, the agreement itself, that is, the 2008 agreement between Canada and the Cree, does not speak about amending the act to enhance local Cree and local Naskapi governments and administration. Therefore, the bill before the House does not speak or deal with amending the act for the purposes of enhancing Cree and local government and administration.

The amendments that we recommend have been in our biannual reports since 1986. Our presentation to you this morning summarizes the findings from our biannual reports, as well as certain representations made to us and reports from certain investigations we conducted under the act.

Our chair has already mentioned the problem concerning the referendum provisions of the act in regard to the transfer of category IA lands, which are like reserve lands. They're not called reserves, but are simply called category IA lands. They're lands under federal jurisdiction, set aside for the exclusive use and benefit of the Cree and Naskapi peoples and communities.

There is one other particular priority for the Cree and the Naskapi governments and administration. It concerns certain impediments in the act. These impediments create problems for the Cree-Naskapi governments' decision-making process.

• (0915)

The act specifies certain quorums in order to approve certain bylaws. These bylaws could be about land zoning or band elections. So there are certain matters that the Cree and Naskapi local governments can enact certain bylaws on. These require a certain quorum by the community to be approved.

I was personally involved in the discussions and negotiations between Canada and the Cree concerning the terms and provisions of the Cree-Naskapi (of Quebec) Act. The James Bay and Northern Quebec Agreement was signed in 1975. It took nine years of discussions between the Cree and Naskapi to finally agree upon the terms and provisions of the Cree-Naskapi (of Quebec) Act.

When we were discussing the terms and provisions of the act itself, the population of the Cree communities as a whole was about 6,000 people. Today we number about 16,000. The quorums that are discussed, that are specified in the act, were adequate for the people back in 1974-75 days. The communities were small. There were small populations of people, so it was easy to achieve the quorums provided for in the act. But now with communities that are somewhere over 3,000 people, it gets very hard to achieve the quorum provisions of the act.

There's one area, in addition to the comments made by our chair, in which we feel the act should be amended. There should be amendments regarding the quorum provisions in the act. We had recommended that these quorum provisions be under the authority of the local government to establish for matters that affect our communities.

Thank you.

• (0920)

The Chair: Mr. Russell, perhaps I could just interrupt at that point.

I think we jumped into members' questions a little too prematurely. We wanted to perhaps give some time for each commissioner to have a statement, and I apologize to our witnesses for jumping into that prematurely.

Mr. Russell, we'll come back to you for the commencement of questions from members.

Thank you, Commissioner Awashish, for your statement.

Now we'll go to Commissioner Kanatewat for an opening statement, and then we'll commence with questions from members at that time.

Commissioner.

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

I would pretty well summarize what the chair had already stated. We all concur with what he has said. We were more or less inclined to answer questions from the floor at this point in time, because we did mention a few. We didn't make many statements here, except what was presented in the paper to the committee. We were more or less looking forward to their questions. In the short period of time that we have, it would be more appropriate for us to answer from that perspective.

What my colleagues have already said is more or less what we had discussed before we got here.

Thank you.

The Chair: Very good. Thank you, Commissioner.

Now we'll proceed to questions.

Mr. Russell, if you want to, you may resume.

Mr. Todd Russell: I just want to go back a bit.

Is it the sense that with this amendment now before the House, there are no provisions for the enhancement of local governance? Is it the sense that the amendments in Bill C-28, which is now before the House, do not enhance local governance?

They enhance the Cree Regional Authority from a regional perspective in terms of making bylaws and having a more regional approach to governance. It doesn't come down to the community level or the band level. Is that sort of the criticism, if I could say it in that way? You're saying that was because it wasn't a part of the new relationship agreement that was signed in 2008.

Mr. Richard Saunders: My colleagues may want to comment also, but I think it's a fact that this agreement, the new relationship agreement, was in fact an out-of-court settlement. It got rid of a lot of litigation that had been hanging around that was annoying to everybody involved. That's a good thing—working together, collaborating and so on, and not letting judges sort it all out. That's the way to go.

It dealt with the two items we mentioned, which is taking care of Ouje-Bougoumou and providing some enhanced powers for the Cree regional government. That's an appropriate thing. But most of these other concerns and recommendations about quorums, and all of those things that have come up over the years, have been issues that have come from individual communities. They may be similar in all the communities, but they've come from the communities. Addressing them is addressing the issues of local government.

A local council has to wrestle with nonsense, like when you can't get a quorum out to vote on the transfer of this piece of land to the school board. Well, you know, that stuff needs fixing.

We're happy this has happened. This is great. And the amendments that flow from this, they're great too. No question about that. We're not complaining about that at all. We're just saying that there's some other stuff to be done. We're concerned that we may be waiting as long for that to get done as we waited for this to get done. We don't want to wait that long. We don't want to have those problems dragging on and on. We don't want to come back here every couple of years on the same old stuff.

Philip, Robert, do you want to add to that?

• (0925)

Mr. Philip Awashish: The proposed bill does not enhance the local government and the local administration of the Cree and Naskapi communities. If this bill impacts local government.... It does benefit, of course, the Ouje-Bougoumou Cree, who will become a new band under the act. Therefore, they will have their local government and administration in place recognized by the act. That's a good thing. It has been one of our recommendations over the past many years to create the Ouje-Bougoumou Cree as a band. So it will be a good thing for the Cree of Ouje-Bougoumou if the bill is passed.

One way the bill affects local government, of course, is in how the regional bylaw powers of the Cree Regional Authority will impact bylaws of the Cree bands. There will be discussions between the Cree regional government and local governments concerning the relationship of their respective bylaws and powers and authority. Those are foreseen in the future because the new relationship agreement between the Cree and Naskapi contemplates Cree federal negotiations concerning a Cree Nation government. It's something that is presently under discussion.

The Chair: Go ahead. You still have three minutes, Mr. Russell.

Mr. Todd Russell: Okay.

It doesn't cover the whole gamut to solve some of the issues at the local level. Were there any specific issues from the Naskapi that weren't addressed in the new relationship agreement? It certainly doesn't seem to be reflected in this particular bill.

Mr. Richard Saunders: The new relationship agreement is between the Cree and Canada. It doesn't affect the Naskapi.

Mr. Todd Russell: Oh, yes, okay.

Mr. Richard Saunders: They certainly share with the Cree some issues around local governance at the community level, and they would like to see some of the same amendments in certain cases, but they're not affected by the Canada-Cree agreement at all.

Mr. Todd Russell: Okay. But there were some issues brought up in your reports, though.

Mr. Richard Saunders: Oh, yes.

Mr. Todd Russell: So this particular bill has no negative implications for the Naskapi communities?

Mr. Richard Saunders: Apparently not. It's no secret that before coming here we contacted both the Cree and the Naskapi leadership to make certain that, if there were issues out of our report that are critical from their perspective to be raised here, we would give them some priority during our time. The Naskapi did not raise any issues this time.

Mr. Todd Russell: Very quickly, what additional powers will the Cree Regional Authority have under this particular act? What authorities will they assume from the federal government under this particular act?

• (0930)

Mr. Richard Saunders: Philip has already mentioned one of the critical ones; that is, in their bylaw-making powers, where there's a conflict between a bylaw of the Cree Regional Authority and a bylaw of the individual first nation—which is not likely to happen often, but when it does—then the Cree Regional Authority bylaw will prevail to the extent of the conflict.

That's one that the Crees have come forward with, which I think speaks well to the idea of working together and working as a broad community. I think that's one that sort of springs to mind as critical.

Robert or Philip may wish to speak on other specific elements.

Mr. Philip Awashish: The bill before the House concerning certain amendments to the Cree-Naskapi (of Quebec) Act enables the Cree Regional Authority to receive and carry out assumed federal responsibilities as listed in the Agreement Concerning a New Relationship between the Government of Canada and the Cree of Eeyou Istchee. The bill will equip the Cree Regional Authority with bylaw-making powers similar to those of the Cree bands under the Cree-Naskapi (of Quebec) Act.

Under the bill, of course, there are certain bylaws that are contemplated. One is to regulate essential sanitation services, which includes water and sewer systems, drainage, and solid waste management. There are bylaw powers over housing and housing standards, bylaws to manage and administer moneys and other assets, and also bylaws to promote the general welfare of the Cree communities and people.

The Chair: Thank you, Commissioner.

[Translation]

Mr. Lévesque, you have seven minutes.

Mr. Yvon Lévesque (Abitibi—Baie-James—Nunavik—Eeyou, BQ): This is the first time that my speaking time has been this long, Mr. Chairman.

Good morning, Mr. Saunders, Mr. Awashish and Mr. Kanatewat. Under the 2008 agreement, Oujé-Bougoumou is recognized as coming under the James Bay agreement. Is the reserve recognized by this bill, or are you still waiting for the negotiations with Mistissini?

[English]

Mr. Richard Saunders: Thank you.

The bill itself recognizes the band as a legal entity. It doesn't resolve the issue of the actual land. What that requires is, again, a referendum on the part of the current holders of the category IA land, which is Mistissini, to approve its transfer.

That's not a problem in terms of politics or anything like that. It's more a problem in terms of getting the required turnout, meeting the quorum. That has been the issue. It's one of those many quorum issues that need to be addressed.

Philip, of course, is from Mistissini. He knows more of the history and may want to add to that.

Mr. Philip Awashish: Thank you.

In order for the land transfer to Oujé-Bougoumou to take effect, certain amendments to the James Bay and Northern Quebec

Agreement are required, amendments for lands to be set aside as category I and category II for the benefit of the Ouje-Bougoumou. Some type of amendment is required in the James Bay and Northern Quebec Agreement.

The agreement as a whole has to be amended in order to bring the Ouje-Bougoumou Cree as a party into the James Bay and Northern Quebec Agreement. Back in 1975 they were not a band, so they did not sign the James Bay and Northern Quebec Agreement. Most, if not all, of the Ouje-Bougoumou members were transferred by Indian Affairs to the Mistissini Band before 1975. When the James Bay and Northern Quebec Agreement was signed in 1975, the Ouje-Bougoumou people were members of the Mistissini Band. Their chief signed the James Bay and Northern Quebec Agreement. So technically the Ouje-Bougoumou Cree were not recognized as a separate entity and therefore were not officially a party to the James Bay and Northern Quebec Agreement.

The next step, of course, is to bring them into the agreement. That will require amendments to the agreement so that they can have their category I and II lands.

I think the act itself refers to this particular issue. The act contemplates agreements to be made between Canada, Quebec, and the Cree respecting the lands to be set aside for the use and benefit of the Ouje-Bougoumou Cree.

• (0935)

[Translation]

Mr. Yvon Lévesque: The Kawachikamach Nation came and spoke to the committee about a problem raised by the tripartite agreement between Canada, Quebec and Nunavik, under which steps are being taken to establish a regional Inuit government—we know the Naskapi are included in that. Are you involved in the Naskapi claims in this matter?

[English]

Mr. Richard Saunders: The Naskapi had raised, in previous reports, the issue with us that they were concerned about the creation of Nunavik as a public government as opposed to a first nations government, or in their case an aboriginal government. They had some concerns, because although their actual community, their category IA-N land, is not covered, a lot of their traditional territory, their category II-N lands, for example, a lot of the traditional territory where they hunt and carry on traditional activities, will be within this new public government. They, of course, are to all intents and purposes an aboriginal government, part of whose traditional territory is within the jurisdiction of a public government that is dominated entirely by the Inuit.

So they had some concerns that they wanted their rights and interests guaranteed, and they raised some of those concerns. They weren't happy at the degree of consultation that had occurred with them. They were a bit concerned that they were kind of an afterthought to an Inuit-Quebec-Canada agreement. We suggested that one of the things that might be worthwhile would be for them to come to this committee. The committee graciously asked them to come, and they raised those issues again. There hasn't been, as far as we know, any satisfactory follow-up. The issue is hanging there at the moment.

It continues to be an issue, Monsieur Lévesque, and it's unresolved at this point in time.

[Translation]

Mr. Yvon Lévesque: Is your commission concerned by this debate?

[English]

Mr. Richard Saunders: Yes. In our previous report, we made some clear recommendations. We felt that Canada had a responsibility as a signatory to the Northeastern Quebec Agreement, which is the agreement covering the Naskapi. It's a constitutional document the same as the James Bay agreement.

We felt that Canada had a responsibility to act as a fiduciary in a loose sense, not necessarily a strictly legal sense, in looking after the rights and interests of the Naskapi under their agreement. We felt they ought to be asserting some leadership role in ensuring the Naskapi were appropriately consulted.

We had contact with federal officials about that. As I say, the Naskapi First Nation appeared before this committee and raised those issues itself and still there is no resolution of that issue. Neither they nor we have any difficulty with Nunavik and the Inuit people in that region having whatever form of government they feel is appropriate and that they negotiate. We are concerned, however, that the Naskapi be satisfied at the end of the day that their rights and interests are protected.

• (0940)

[Translation]

The Chair: Thank you, Mr. Lévesque.

Ms. Crowder, you have seven minutes.

[English]

Ms. Jean Crowder (Nanaimo—Cowichan, NDP): Thank you, Mr. Chair.

I want to thank the commissioners for coming before the committee once again.

I have a couple of questions. One is that back in 2006, you had raised the issue around the fact that the Department of Indian Affairs and Northern Development had from 1987 to the present taken the position that the mandate of the commission does not extend to consideration of matters arising under the agreement. Is that still the case?

Mr. Richard Saunders: No.

Ms. Jean Crowder: So that has shifted and improved?

Mr. Richard Saunders: Yes, very much so.

Ms. Jean Crowder: That's good news, because that was a serious concern in 2006.

Mr. Richard Saunders: It was a very serious concern at the time, and it has changed. The government now takes the position that we do have a responsibility and a mandate to look into issues arising out of the agreements as well as the act.

Ms. Jean Crowder: Great.

In your overview presentation, I may be misunderstanding this, but under section (c), "Implementation of the Cree-Naskapi (of

Quebec) Act"—it seems to me a lot of the issues we're talking about are around implementation, and I think you point out there was no concurrent implementation agreement in the original piece of legislation in 1984—you've listed a whole series of things. The way I'm understanding this is that these are unresolved items with regard to implementation.

Toward the end, it says this:

...the Cree and Naskapi peoples expect the Government of Canada to find the political will and provide legislative and administrative as well as financial measures necessary for the advancement and completion of this change.

Then it goes down in a later paragraph to talk about this:

The conventional style of implementation is frequently insensitive to the actual needs and aspirations of the Cree and Naskapi peoples and has resulted in symbolic implementation that amounts to no real change in how decisions are made and in how things are done.

My understanding is that these are ongoing issues around financial, appropriate consultation, and inclusion about implementation. Is that a fair assessment?

Mr. Richard Saunders: I think it is.

Commissioner Awashish will comment, but just quickly, I would mention that when we have representations—or complaints, under the act—brought to us by individuals and communities and so on, we whip out a copy of the Cree-Naskapi (of Quebec) Act and say, "Well, it says this and this and this." One of the comments we get, and we've had it a number of times, is, "That's not the way we do things around here." And the same is true for bylaws made under the act.

The first reaction of someone from southern Canada... Let's say I held an act out in front of one of my MPPs, or my MLAs, or one of you guys, and I said, "How come this is not happening?" If you replied, "That's not how we do things", I'd be pretty mad. I'd say, "But that's how you *should* be doing them. It's the law."

But we're in a different context here. We're in a situation where the Cree and the Naskapi have had traditional and customary law for thousands of years. The Cree-Naskapi (of Quebec) Act and the bylaws made under it are supposed to be a way to give legal effect, in the Canadian legal system, to making community decisions that are approved by the community and are within the powers of the community.

If you look at the election sections of the act, most communities have made an election bylaw. When we began to look at them—because a lot of disputes are about elections—we saw that one day, along came the Cree-Naskapi (of Quebec) Act, and it was, "Oh, we have to have an election bylaw."

It was fairly obvious that some lawyer from southern Canada—with all due respect—opened up the briefcase, said, "Aha! An election bylaw", changed a few names and a few things in a few places, and there it was, there was the template.

There's nothing wrong with that. It had to be done. But the reality is that things operate a little differently in the community. It's not that there's any moral violation of the law, it's just that the technicalities are more consistent with traditional and customary law, such as postponing an election for a day if an elder dies. That's not permitted in the act. That's an example anybody can follow, but there are a lot of other similar things.

One of the things we've been pushing at for years is the need to make the law accommodate and empower the Cree way of doing things, while still being consistent with the charter and so on, to make it a tool for the communities to use, so that when the community decides to do something, then it's a legitimate decision. There's legislative capacity to give that effect and to protect it from attack from people who want to argue that the election was a day late and therefore invalid.

I think the problem very frequently is that the act doesn't sufficiently empower the communities. With all due respect, it's a great improvement over the Indian Act, but it suffers from some of the same straitjacket effect that the Indian Act has always imposed.

That's inevitable. It was written, yes, with negotiation, but it was ultimately written by people who have written for years such things as the Indian Act. There's a need to break out of that box, to make sure that traditional and customary law, to the extent possible....

We all recognize the charter, the Criminal Code, and the other instruments that we all respect and share. But within those contexts, there's a need to make this act a tool of empowerment for the Cree community so that they can get on with doing things.

I'm sorry I took a little long, Mr. Chair.

• (0945)

The Chair: There's less than a minute left. You mentioned that you wanted some time for Commissioner Awashish to answer as well.

We're just about out of time, but a brief response to Madam Crowder's question would be fine.

Mr. Philip Awashish: Thank you.

On the question of traditional law, being a Cree person myself—we call ourselves Eeyou—we are not, of course, a lawless society. We have our own laws that are enunciated through our traditions, customs, and practices. We do have our laws for elections and for other matters in the Cree community.

These traditional laws, as I like to call them, often conflict with the contemporary law, such as the Cree-Naskapi (of Quebec) Act, so there is obviously a need to amend the act to ensure conformity with traditional law, customs, and practices.

The Cree tend to view a law, at least within our own traditions, as a tool rather than a set of rules. It's a tool to facilitate decision-making processes, as well as facilitate local governments and also the Cree hunters and trappers in the north.

There are ways, of course, to enhance local government. I believe the Royal Commission on Aboriginal Peoples stated that there are three basic elements for effective local governments. One is legitimacy, the other one is resources, and the third one is powers.

On resources, there has been ongoing and still continuing discussions between the Cree and the local government authorities on financial resources, financing or funding of local governments. There are agreements that run every five years that have to be renewed every five years. Recently, this has been acceptable to the Cree. There were initially a lot of problems and issues arising in our reports concerning the funding of local governments. However, there is a new relationship between the Cree and Canada, so there are ongoing discussions to resolve matters concerning local governments, insofar as funding is concerned.

• (0950)

The Chair: Thank you, Commissioner. I'm sorry, we are well over time. If there's something you wanted to add, perhaps you can do so in the course of our next responses.

Thank you, Ms. Crowder.

We'll now go to Mr. Duncan for seven minutes.

Mr. John Duncan (Vancouver Island North, CPC): Good morning, witnesses.

You've been wrestling with this for a long time. There was a comment about the Naskapi, and I wanted to clarify. My understanding is the Naskapi have put in writing their support for this bill.

Is that your understanding as well?

Mr. Richard Saunders: My understanding from the Cree office is that they have, indeed.

Mr. John Duncan: In the new relationship document, there is an understanding, as I read it, that there are two phases. There are amendments, which we're currently looking at in Bill C-28, and then there's an agreement to negotiate a governance agreement that would include a Cree constitution and a Cree Nation government. You've certainly been talking about that phase two.

Now, the Province of Quebec is obviously jurisdictionally involved to some significant degree, so I guess my question is, how is the relationship going in terms of negotiations with Canada and Quebec, and is there any other Inuit or first nation that would be directly impacted that's outside of the current ambit?

Mr. Richard Saunders: You raised a couple of points. First of all, the concern we brought up relates directly to what you're saying. There are a couple of phases. There are the amendments that are before the House now, and then there's a second, as you say, series of discussions established by the agreement to discuss governance and a Cree constitution and things of that sort. A great many issues, hopefully, will be covered there and addressed.

Our concern isn't with those extra things. Our concern is with the housekeeping issues that have been kicking around for twenty-odd years and the fact that they're not dealt with now. They're non-contentious. They're pretty straightforward. Nobody's arguing about them. They could have been included in the package and we could have moved on and looked at future things.

Our concern is that they're going to have to wait until there's a full set of negotiations on governance issues in the broader and long-term sense. They may not be before this committee and the House for some time. We all know how long these negotiations frequently take.

Our concern is that these non-contentious housekeeping things are going to keep on festering until there's broad agreement on much longer-term issues, and that may take some time. We're not upset and angry. We're just a bit disappointed. We really would like to have seen those housekeeping things in front of you now so they could be addressed.

Are other aboriginal groups impacted? I would say no, not directly. The Inuit of Fort George, for example, as they're referred to in the agreement, have their issues addressed. They reside in Robert's community, and the issues that they have are addressed, or will be addressed. We haven't had any representations from anybody else who is raising concerns. I'm sure that we'll hear about it if there are concerns, but we haven't heard any yet.

Mr. John Duncan: Okay.

The new relationship agreement also contemplates a dispute resolution mechanism, or actually establishes a new Canada-Cree Standing Liaison Committee. I'm wondering if you can tell us the state of this, at this point in time, and whether there's been any progress within that structure.

● (0955)

Mr. Philip Awashish: The Cree-Canada liaison committee was established to discuss any outstanding issues resulting from the implementation of the James Bay and Northern Quebec Agreement and from the implementation of the new agreement between the Cree and Canada concerning a new relationship.

This is a form of a dispute resolution mechanism. It was created mainly as a means of preventing further litigation. The parties agreed, to the extent that they possibly could, to try to resolve any disputes at that level.

The agreement is a new one. It's fairly recent. It was signed in 2008. There haven't yet been, to my knowledge, any outstanding issues arising from the new agreement.

But there are outstanding issues arising from the original James Bay and Northern Quebec Agreement. One, of course, is the Ouje-Bougoumou land transfer issue. It's something that will have to be discussed, because it requires, as I said, an amendment to the original James Bay and Northern Quebec Agreement.

The Chair: You have about 20 seconds left, Mr. Duncan.

Mr. John Duncan: It's okay, then. Thank you.

The Chair: Thank you very much.

Members, we now go to the second round of five minutes.

We'll begin with Mr. Bélanger, for five minutes.

Hon. Mauril Bélanger (Ottawa—Vanier, Lib.): Thank you, Mr. Chairman.

Gentlemen, I want to make sure that I understand what these non-contentious items are. You're not referring to the list in the

submission we got from the commission dated May 5, are you? These are items one to 32, on pages 7 and 8.

Are those the non-contentious items you're referring to?

Mr. Richard Saunders: No. Those are broader than the non-contentious things.

Hon. Mauril Bélanger: I thought so.

Is there a list of these non-contentious items?

Mr. Richard Saunders: Yes. A number of them have been in our reports over a number of years. They remain there.

As we've mentioned, they do deal with things such as quorums. The quorum issue is one of the most complicated. There are different quorums required for different types of approval of different decision-making processes of the bands. Some of the quorums are very high, some of them should be. Some of them are moderately high, and you don't need a referendum at all. Some are somewhere in between. Those things need adjustment.

Things like the ability of an individual first nation to make a bylaw dealing with questions around elections are a little broader. The election bylaw process, incidentally, is the only bylaw-making process under the Cree-Naskapi (of Quebec) Act that requires departmental approval. As you know, under the Indian Act, all bylaws are subject to a review by the department and ultimately could be disallowed by the minister as an administrative decision.

Under the Cree-Naskapi (of Quebec) Act, there's only one kind of bylaw, and that's the election bylaw. That's one in which we have all these little problems.

So there are things around that. There are a number of others here, but the non-contentious issues have been brought up over and over again. They've been raised in our reports. The Cree leadership has raised them on a number of occasions.

We have a publication listing the amendments we've proposed, having pulled them together from all of our reports. We could provide that to you. If you'd like to follow through on that, we'd be pleased to do so.

Hon. Mauril Bélanger: Please.

I want to understand; when you say non-contentious, is it non-contentious among all parties, including the Government of Canada?

Mr. Richard Saunders: For the ones we're calling non-contentious, that is the case.

Hon. Mauril Bélanger: So there is basic agreement all around, yet they're not included in the piece of legislation currently before the House, Bill C-28.

● (1000)

Mr. Richard Saunders: There are some things that neither the Crees nor we find contentious, but that government has not agreed to at this point in time. There are some of those as well. I don't want to lead you down the garden path that everything is hunky-dory for every one we've come up with. It's not. There are a number. There definitely are.

Hon. Mauril Bélanger: What I'm interested in are those about which there is no disagreement whatsoever anywhere. I would like to have that, and you'll see why in a minute.

My next question, Mr. Chairman, is not for our witnesses but for the government, if I may pose it rhetorically at least, in my five minutes.

The Chair: It's your five minutes.

Hon. Mauril Bélanger: It's my five minutes, so perhaps Mr. Duncan might be listening here.

Mr. John Duncan: I might be.

Hon. Mauril Bélanger: There is, commissioners, a method for legislation to be dealt with in a much more flexible manner. It's the referral of a bill to a committee before second reading. We introduced that in previous minority governments as a way of perhaps engaging parliamentarians more actively in the crafting of legislation. After you've had second reading, which is essentially adoption in principle, if you try to introduce amendments that may be seen as broadening the scope of the bill before the committee at the time, generally the ruling is that these amendments are not acceptable because they broaden the scope.

However, if the bill is referred to a committee before second reading, such amendments can be entertained. If indeed we have a situation before us where there are one, two, three—I don't know how many—non-contentious items, as I've defined them previously, that is, and all parties agree, then perhaps this committee could consider introducing such amendments if indeed the bill were referred to it before second reading.

Mr. Richard Saunders: As we said in our presentation, appearing before this committee is frequently helpful. Here's another example of how it might be very helpful. I think we need to behave ourselves and stay within our mandate.

I would suggest that the Cree and the government could inform you very quickly on what they agree on. What they don't agree on maybe is a matter for another day. I wouldn't want to take that role myself and say, yes, there's agreement on this, but not that. I could be wrong.

That would be my answer.

Hon. Mauril Bélanger: These discussions are somewhat open for the public, and I hope that the government is listening. Perhaps we'll get a response.

[Translation]

The Chair: Thank you, Mr. Bélanger.

Mr. Rickford, you have five minutes.

[English]

Mr. Greg Rickford (Kenora, CPC): *Merci, monsieur le président.*

Welcome to the witnesses. I want to congratulate you from the outset on your perseverance and success, particularly with this government, in significantly moving this process forward.

I want to initially, very briefly, if I can, go over a couple of community-specific concerns that may not have been dealt with in

the 2008 agreement. I have a question, partly prompted by curiosity, with respect to the Waswanipi. One of their concerns was to enhance provisions related to ethical matters.

Could someone briefly describe to me a little bit more about that and whether it had to do with governance?

Mr. Richard Saunders: From time to time, there are political issues in communities, as you can imagine. There are questions from time to time about whether someone has acted appropriately in making a decision, whether the process followed was proper. Those frequently come to us.

In looking for guidance on how to resolve those matters and what sort of recommendations to make, we take into account the Cree-Naskapi (of Quebec) Act, obviously. We take into account, if it's relevant, the agreement. We take into account traditional customary law. It isn't always easy to reconcile all of those things.

One of the issues is what is a matter of ethics and what is a matter of political judgment? If a government of any political stripe makes a decision, I can get up and yell about it and say that I don't agree, and it's unethical, and it's wrong, and blah, blah, blah. If there's a code of ethics, it's helpful, because then we can separate things that really are unethical according to what's in front of us, accepted standards, and things that are just not agreed with politically. There's a big difference, as you very well know.

That's the kind of thing I think we need to get at: what are the ethical standards the community expects to see from their leadership and their employees, and so on? It helps if that's written down, because then there are fewer arguments about it later.

•(1005)

Mr. Greg Rickford: The second concern came from the Kawawachikamach community. They had a concern about their exclusion from participation in proposed talks with the Nunavik government, which to me would suggest that these larger agreements can impact nearby communities beyond simply marvelling at where you are in the process. Can you talk a little bit—again very briefly, because I have one more question I'd like to get to in this five minutes—about why they would be concerned about the impact of that agreement or being excluded from it.

Mr. Richard Saunders: They felt they were not consulted in a meaningful way, which, if you dig into it, means they saw themselves as being engaged in a fairly token way. They saw themselves as not having their rights and interests provided for in the proposed new Nunavik regional government.

As I said, their actual category IA-N land is not within that government, it's just barely outside. But their category II-N lands, and some of their traditional territory beyond that where they continue to hunt and so on, is definitely within Nunavik. Nunavik has jurisdiction, purportedly, over issues around resource use. So they're concerned about that.

Mr. Greg Rickford: I was curious on that basis, because when I was articling, I was involved in some dispute around this in that specific region, so it was interesting.

My last question goes to the second phase of this process where the federal government, and the Province of Quebec, and the Cree Nation will attempt to modernize the current governance regime vis-à-vis the self-government agreement. I just want to know what the next practical steps in this process are going to be in order to make this a successful process. Do they help to address some of the issues I had asked about from the outset?

Mr. Richard Saunders: My colleagues may want to say something about that, so again I'll try to be very quick.

It seems to me that the next steps are fine. It's the parties getting together and agreeing on an agenda, and starting to negotiate the main elements.

There's one thing that the Crees have raised with me that they're concerned about. Frequently, when you get the federal government, the provincial government, and the first nations together, they don't want to move on anything until there's tripartite agreement. They're concerned there may be issues that are within federal jurisdiction, that the feds and the Cree agree upon. They're concerned the feds may not want to move until the province is on board. Conversely, when there's something that's within provincial jurisdiction, generally speaking, that the Cree and the province agree on, if the feds are not nodding, is it going to happen?

They want to be able to assure themselves that some bilateral progress can be made, even when trilateral endorsement isn't there.

The Chair: Thank you, Commissioner.

[Translation]

Mr. Gaudet, you have five minutes.

Mr. Roger Gaudet (Montcalm, BQ): Thank you, Mr. Chairman.

Gentlemen, this is the first time I have sat on the Aboriginal Affairs Committee in six years. I'd like to know what powers your commission has.

[English]

Mr. Richard Saunders: The commission was created by the Cree-Naskapi (of Quebec) Act itself. The way it works is there's a Governor in Council appointment of commissioners based upon recommendations from the Cree Regional Authority and the Naskapi band. So there's a two-step process: recommendation by the aboriginal leadership and appointment by order in council.

The functions of the commission are spelled out in the act, but basically there are two fundamental functions.

One function is we hear what the act calls "representations", which means complaints, by anybody that someone is not carrying out their responsibilities under the act, or not doing things they should be doing, or they're doing things they shouldn't be doing, according to the act.

By extension, because the act empowers bands, in paragraph 21 (j), to act under their powers that are recognized in the agreements... There was a debate between Indian Affairs and us about whether we

look at issues arising out of the agreements. Indian Affairs is in agreement, now, that we do.

So we hear complaints. We are required, where there's a valid complaint, to investigate it and to report on our findings and recommendations to the individuals, to the band, and to the minister, and we do that. The amendments will also require us to report to the Cree Regional Authority where they're impacted or affected.

So that's one function. The other big function is that we make a report in four languages to Parliament, to the minister, who tables it in Parliament every two years.

Those are the two functions derived from the Cree-Naskapi (of Quebec) Act.

• (1010)

[Translation]

Mr. Roger Gaudet: I read in the notes that your commission has been in existence since 1984. A number of governments have been elected since that time: Liberal, Conservative, Conservative, Liberal. However, you still have 32 recommendations. Something's not quite right here.

Do the governments in power turn a deaf ear to you? Why are there still so many recommendations? Were they determined in council? Is there a reason for that?

[English]

Mr. Richard Saunders: That's a very difficult question.

The answer will be my answer. You'll have to take it for what it is.

[Translation]

Mr. Roger Gaudet: Don't look at the government; look at me.

[English]

Mr. Richard Saunders: You know, we have run into difficulties in terms of recommendations with Liberals and Conservatives. We have had good support at other times from Liberals and Conservatives. I think the constant in all of this is not the political stripe of the government of the day, with all due respect. I think our problem essentially has not been with ministers.

We have had a lot of situations, to be blunt about it, where a minister has said to us that something specific will be done when we've sat down and met with the minister, and it didn't happen. We frequently had that confirmed in writing more than once.

What we found was way back in 1986 the bureaucracy did not frequently fully agree with the minister. We've observed before that in the 20-year period, there were eleven ministers. And if you have a big department like Indian Affairs and Northern Development, it takes a minister a long time to get a good grip on the issues, the programs, all the first nation partners, to fully get into the bureaucracy and make it work.

I've been a bureaucrat. There's an attitude among some public officials that they've been there a long time, they know how to do things, they've heard all this before. It's, "Yes, Minister; yes, Minister"—as the British comedy says—and then the minister goes away.

If you're a public servant and you do not do what you're supposed to do with money, there's hell to pay, and so there should be. There's the Financial Administration Act, there's the public accounts committee, there's the Auditor General. If you fool around with money, you're going to get caught. But if you mess with policy, quite frankly, you're going to get away with it a lot of the time, because there are not appropriate accountability mechanisms for follow-up on decisions that Parliament makes, that cabinet makes, and that ministers make.

If you're a public servant, quite frankly, you're more likely to get away with not following instructions from the government than if you're dealing with money.

The Chair: Thank you, Mr. Commissioner.

Merci, Monsieur Gaudet.

Now we're going to go to Mr. Albrecht for five minutes.

Mr. Harold Albrecht (Kitchener—Conestoga, CPC): Thank you, Mr. Chair. I'm not sure I'll need all five minutes.

I want to thank you for appearing today.

On page 6 of your comments, you point out that over the past 25 years, the act "has not maintained pace nor evolved with the exercise and practice". Then, on pages 7 and 8, you list 32 different outstanding items. In the proposed amendments that are before the House now, are none of these 32 items addressed? To me, there appears to be some duplication in these 32 items, in that some would fall under some of those listed previously. Are any of them addressed in the upcoming amendments?

•(1015)

Mr. Richard Saunders: Yes. Item 20 certainly is addressed. It's the one concerning Ouje-Bougoumou.

Beyond that, I would like Philip to comment. He did some of the research on these specific items, so I think Commissioner Awashish may want to answer that more fully.

Mr. Philip Awashish: These 32 points you see on pages 8 and 9 come out of our various reports, of course, and the investigations that the commission has conducted. These are the reasons to update the act, as we say, so that it reflects the present reality and the evolving dynamics of local government and the state of aboriginal and contemporary law.

Over the years, I think we have gone beyond just simply stating these reasons for amending the act and have also suggested how that should be done. From day one, we have recommended a process, a meaningful process whereby the parties can get together to discuss reviewing the act and then discuss possible amendments to the act.

My chairman has mentioned the problem with the bureaucrats. They would say to us, "Well, we'd like to hear from the Cree and Naskapi local governments about establishing a process". We'd tell them that they make representations to the commission and that we make reports and recommendations based on what they're telling us. The report goes to the minister. It's tabled in the House in four languages. What more does the government need for it to be advised and informed of what the problems are and what should be done? But that's basically the reaction of the bureaucrats.

Mr. Harold Albrecht: Could I just follow up in relation to a few of the points that are in these 32? For example, to me, points 1, 11, and 25 are saying, if not exactly the same thing, then fairly close to the same thing. Or am I misreading your recommendations there?

Mr. Philip Awashish: Number 11?

Mr. Harold Albrecht: Yes, numbers 1, 11, and 25. My interest here is not to try to throw stones at what your recommendations are. It's in the interests of maybe collapsing some of the outstanding issues into a more manageable framework in which the government and the Cree and Naskapi nations can move forward to address some of the outstanding issues. I think it would be helpful.

Mr. Richard Saunders: Let me comment really quickly on that again. I think one of the issues here is that since the 1982 amendments to the Constitution, the recognition of aboriginal and treaty rights, and the court decisions that have flowed from that and have given some substance to it, a lot of people will come forward and say that something is a treaty right or an aboriginal right. Sometimes they're correct and sometimes they're not.

Where they are, if there's an aboriginal right of self-government, which some governments have said there is, then that right of self-government isn't really recognized anywhere. When you get down to dealing with what that means, lawyers, government officials, and others will say, "Well, what does the legislation say?" They'll get out the Cree-Naskapi act and they'll look at it, and they'll look and look and look for something that addresses that kind of issue.

So at the risk of being slightly repetitive, we have focused on that several times.

Mr. Harold Albrecht: Okay.

If I have any time left, I have just a very short—

The Chair: You're right on the edge. You can have a very short question.

Mr. Harold Albrecht: On the issue of quorum, could you identify for me what the quorum is? I don't know the act inside out. Is it a percentage, a number? How is it arrived at?

Mr. Richard Saunders: The act specifies a number of percentages, depending upon the issue being voted on. As I say, some of them are really difficult to get—

Mr. Harold Albrecht: Could you give me the number or the percentage for a land transfer to a school board, for example?

Mr. Richard Saunders: No, I couldn't. I'd have to look it up; I'm sorry.

Mr. Harold Albrecht: Thank you.

•(1020)

The Chair: Thank you, Mr. Albrecht.

Now we'll return to Ms. Crowder for five minutes.

Ms. Jean Crowder: Thanks, Mr. Chair.

I have a quick comment on the issue around referenda.

I know that in British Columbia—it may be the same in other provinces—there's a mechanism that allows the municipal governments to just post a notice. If there's enough petition from the community, they then need to go to a referendum, but otherwise, if there's not enough interest, the council can go ahead and implement it. That would seem to be a simpler solution than being forced into what can be expensive referenda for issues on which you already know there's agreement. I don't remember the legal term for it, but it's used quite frequently.

It's a bit confusing here because we're muddying the new proposed legislation, the amendments, with the commission's report. I want to touch on housing for one moment. I know that in 2006 you raised housing in your report, and it's here again in 2008. Can you say a little bit more about that? I know that housing is an issue in many communities.

Mr. Richard Saunders: I think we recognize that inadequate housing—inadequate either in number or in quality—is an issue in most aboriginal communities across Canada. The population increase in aboriginal communities across Canada is much greater than in non-aboriginal communities.

In the case of the Crees, there is a central argument they keep bringing forward. They didn't bring it this year, but they brought it in the previous report, and it's still true. The argument is that their particular population growth is greater than others across the country.

The way the department determines how many housing units you qualify for is based on a regional formula, the region meaning the region of Quebec in this case. In most aboriginal communities, although the population growth is very high, there's an outflow of folks looking for employment and other things in the cities and the towns, and they're leaving in significant numbers. Although the population in most reserves is going up, it's ameliorated somewhat by an outflow of folks leaving the community, mostly for employment reasons. The Crees, however, have a 95% retention rate for their young people—95%—so the very success of those communities, economically and educationally and otherwise, is part of the pressure that has created an increased population growth.

The Crees look at the regional formulas developed for Quebec and say, “That's great, but it isn't adequate to deal with our issues to the extent that it's adequate to deal with others”. Others will say it's not adequate for them, either, and they're right, but it's even less adequate for the Crees for that reason.

Ms. Jean Crowder: I'll come back to one of the other issues you raised in your 2008 report when you were talking about the Corbiere decision. You're indicating that:

The Cree and Naskapi local governments should review their respective by-laws respecting band elections to ensure compliance with the requirement resulting from the Corbiere decision.

Has any work at all been done on that?

Mr. Richard Saunders: We'll be following up on that in our discussions with the Crees. That's a recommendation that affects them directly, rather than the House, but we certainly follow up on that in the same way we do with you.

Ms. Jean Crowder: It's an outstanding issue for the bands. I know that in some other territories it has come down to a matter of

funding as well, because there's a need to track people down and include them and all those kinds of things, but it sounds like it's a bigger issue.

Mr. Richard Saunders: Yes, there is a funding issue around that too.

Ms. Jean Crowder: Policing has been raised in other reports as well. Has there been any change in the last couple of years, or are there still largely the same issues around policing?

Mr. Richard Saunders: Can we reply by way of a follow-up? We need to do a little homework to make sure we're accurate in our answer.

Ms. Jean Crowder: That would be fine.

Thank you, Mr. Chair.

[Translation]

The Chair: Thank you, Ms. Crowder.

Mr. Rickford, you have five minutes.

[English]

Mr. Greg Rickford: *Quelle surprise!*

Thank you, Mr. Chair.

I'll take this opportunity, Richard, to develop the line of questioning I was onto earlier.

In one of my questions about listing specific concerns, I think I mentioned Kawawachikamach and their concerns about being excluded from the Nunavik agreement. I was wondering if you could expand on that a little bit more, with an eye toward looking in a broader context.

What other first nations could be affected by this self-government process who are perhaps not currently in the agreement or what have you? Can you talk a little bit more about that? I think our time ran out there, and there was more to be said.

• (1025)

Mr. Richard Saunders: No other first nation or aboriginal groups has raised concerns with us, nor have we heard of any concerns being raised about that agreement. If there are some, I'm sure the Crees especially, and certainly we and others, would like to hear about it, but we haven't. The kind of issue that the Kawawachikamach and Naskapi had with Nunavik has not been replicated with other groups vis-à-vis this Canada-Cree agreement.

So to the best of our knowledge, we're not aware of any.

Mr. Greg Rickford: Philip, Robert, do you have any additional comments on that?

Mr. Robert Kanatewat: Not specifically. The only other aboriginals in the territory would be the Montagnais, and we haven't had any comment concerning the effects that they would presume to have. I don't think they're affected by any of that.

Mr. Greg Rickford: Have there been any discussions, be they general, just by convenience, at broader forums where nations from around the province would meet? Have there been any issues identified there—for example, by folks from Kahnawake who may be interested, or concerns about any accommodations for hunting on land contemplated by this agreement?

Mr. Robert Kanatewat: Not to our knowledge. Some of the other first nations in Canada have tried in some ways to come up into the territory, but as they found out, it's an exclusive use for the Cree, and they have sort of dropped out of pursuing the hunting purposes in the areas.

Mr. Greg Rickford: Is there now, to your knowledge, any mechanism for individuals of those communities to accommodate or to host members of other nations from the province to do traditional activities?

Mr. Robert Kanatewat: Not to my knowledge.

Mr. Philip Awashish: There are some ongoing discussions between Canada, Quebec, and first nations in Quebec. Discussions generally at the moment concern overlap claims. There are first nation claims within the territory covered by the James Bay and Northern Quebec Agreement, and the Cree have claims outside of the territory of the James Bay and Northern Quebec Agreement, so there are discussions going on between the parties concerned there.

Those are the only discussions I know of going on between the governments and first nations, but there are ongoing discussions amongst first nations themselves about other matters.

Mr. Greg Rickford: That's fine. Thanks.

The Chair: Thank you, Mr. Rickford, for your questions, and commissioners.

I will now go to Mr. Bagnell for five minutes.

Hon. Larry Bagnell (Yukon, Lib.): I just want to ask a couple of questions about process.

First of all, I'm glad you're going to give us a list of the minor amendments in a package.

In following up on Todd's giving notice to the government, I think it would be good that we accede to your request and try to get these on the agenda within the next year. If it came from the government, it would be win-win for everybody, but I'm sure you'll have the support of all the opposition parties to bring these forward quickly to try to deal with them.

Given your experience, I want to talk about generalities and process a bit. You raised a very good point. This department is a huge department. It has thousands of staff and hundreds if not thousands of issues, so it's impossible or very hard to get everything done.

I wonder whether you have any suggestions. Some of the areas that have been problematic, for instance, are implementation of land claims; modification of agreements, obviously, which you're talking about here; making the workload more realistic. I understand what you're saying about the gap between the bureaucracy and the politicians; that's another issue for all departments.

In this particular department, if we, for instance, hived off northern affairs to focus the minister more on aboriginal issues, and if we had a separate organization related to land claim implementation, would that also take some pressure off the minister to give a more realistic workload and move some of these files forward faster, sooner than 19 years?

• (1030)

Mr. Richard Saunders: We talked a little bit about that before, some years ago. There have been recommendations from all kinds of sources—the Ipperwash commission and so on—dealing with land claims.

The central problem around the land claims business is that a standard government department is part of the Political Science 101 definition of government. You make decisions. Where there are differences of opinion, somebody has the authority ultimately to make a decision. Governments are elected. They have a mandate to make decisions—within the law, certainly—and if you don't like it, you can vote for the other guy, you can write a letter to the editor, you can protest on Parliament Hill, you can do all kinds of things. But it's a legitimate function of government, in general, to make decisions within the law about contentious matters. We all know that, and that's fine.

Indian Affairs is a government department that does that. They may decide that times are tough and that the housing budget is going down a little, and people may not like it. Fine, there are all those ways to address it—come here and give you guys trouble.

When it comes to a treaty that has a treaty land entitlement, or to an aboriginal and treaty right, or to the implementation of the James Bay and Northern Quebec Agreement, those are not suitable things for making discretionary decisions. The Supreme Court has said that treaties and land claims agreements create enforceable obligations. Carrying out your duties under a contract is a different matter. It requires a different mindset from that used when exercising discretion on behalf of an elected government with a mandate to make discretionary decisions.

It seems to me that dealing with the treaties, dealing with land claims agreements—those kinds of issues—could be handled by a bureaucracy, accountable obviously to elected people but nonetheless separate, whose mindset was not administering discretionary programs but carrying out obligations—carrying them out properly, but carrying them out. It's a different thing.

The land claims are based upon claims of aboriginal title, or treaty land entitlement, or aboriginal rights more generally to use traditional territory. They're not based on thinking that unemployment insurance rates should go up, or that the benefits should be adjusted up or down, or those kinds of tough political decision that are legitimately within the discretion of government to make. They are things you can go to court to fight about and win.

Hon. Larry Bagnell: But just on that, isn't that the process that we just put through Parliament last year, to which all parties agreed, to improve the specific claims resolution process to deal faster with those abrogations of treaty provisions?

Mr. Richard Saunders: Yes, hopefully; we'll all be optimistic and say that some progress has been made on that. I hope it has. I suspect it has.

Hon. Larry Bagnell: Is my time up, Mr. Chair?

The Chair: Yes, it is. Just be brief.

Hon. Larry Bagnell: Are you saying a separate land claims implementation group would be useful?

Mr. Richard Saunders: Yes.

The Chair: Thank you, Mr. Bagnell.

Now we have Mr. Payne for five minutes, and then we'll go back to Mr. Lévesque.

Mr. Payne.

Mr. LaVar Payne (Medicine Hat, CPC): Thank you, Mr. Chairman.

I'd like to thank the witnesses for coming today. It's very interesting to hear your comments.

There are a couple of recommendations on pages 7 and 8 that you could help clarify, particularly number 13, involving accountability, and number 29, appropriate financial accountability. Could you provide your view of what this might look like?

• (1035)

Mr. Richard Saunders: What we need here is clarity. We haven't uncovered any terrible goings-on that need to be addressed. What we have discovered, though, is that there isn't clarity. If you have a responsibility, you need to know what it is exactly. You need to have some guidelines.

For example—we've had a representation that led us to consider this—suppose there's a big issue confronting a community and the chief asks how the people feel and says, let's have a referendum; what's your position on this issue? They say they want him to put a stop to that resource development.

So then the chief says, I think I have a mandate to address this. He meets with some other chiefs. Together they hire a public relations firm to oppose the resource development. Then they sign a contract... without names, this is true.

Later, somebody tells them to wait a minute, because they don't have a BCR saying they could do that. Well, the chief says, there isn't a bylaw saying I should have one, and I have a mandate from the people. Surely I can spend a few bucks fighting this development that they oppose.

It's either, no, you can't, or, yes, you can. Let's be clear on it. If you must have a BCR or a bylaw in order to spend band funds, let's say so. If a referendum will do, let's say so. I think we need clarity.

Accountability to the funding agencies is pretty clear. Accountability to the community members may not be so clear. This is not to say we think anybody is doing anything wrong; it's to say we need some clarity.

Do either of you guys want to add to this, or is that okay?

I hope that answers your question.

Mr. LaVar Payne: Yes, thank you.

I have one other question concerning item 2, recognition of the existence and continuity of traditional customs, and so on. How would that affect self-government and local customs, or would it affect them at all, in terms of provincial or federal law?

Mr. Philip Awashish: I think it is quite clear in the act itself that if there is any conflict between federal or provincial law, the act prevails. Even the bylaws enacted under the act prevail over provincial law. So if the act recognizes traditional law, customs, and practices in the exercise of local government, then obviously the bylaws or the traditions, practices, and customs would prevail over provincial law.

Mr. LaVar Payne: Could you give me some idea of what some of those customs or traditional laws might be?

Mr. Philip Awashish: Customs are centred around the values of the Cree people. One has to do with the way elections are conducted. There is a traditional way of carrying out the processes concerning elections. The chairman mentioned it earlier. Mr. Saunders mentioned that sometimes a death in the community may postpone the date of an election.

There are a lot of other matters concerning our practices. Our respect for authority is another. It's unwritten, but it's there.

• (1040)

[*Translation*]

The Chair: Mr. Lévesque, you have five minutes.

Mr. Yvon Lévesque: Thank you, Mr. Chairman.

The last time Robert appeared before a committee, it was in a room on the other side. It had suggested bringing in wild goose and preparing a meal for us. The hunting season is now open, but I don't know whether he has brought his geese or where lunch will be held. He can clarify that a little later.

All joking aside, we know that, according to the position permanently held by the government, the commission does not have the authority to study matters concerned by the agreements or to make recommendations on that subject. During a visit in 2007, the assistant deputy minister of the Department of Indian Affairs seemed to revise the government position in that regard. At the time, Jim Prentice was minister, and today it's Chuck Strahl.

Did the minister put his foot in the door and head in that direction?

[*English*]

Mr. Richard Saunders: We have always taken the position that the commission has a mandate to look into complaints arising out of the James Bay and Northern Quebec Agreement as well as the Northeastern Quebec Agreement. For many years, Indian Affairs took the position that we had jurisdiction only to look into matters arising under the act.

We noted some years ago that at the United Nations the department was making speeches claiming that Canada had a much better system of following up on complaints about implementation of treaties. They illustrated this claim by saying that the Cree-Naskapi Commission had a mandate to look into issues arising under the James Bay Agreement, to which we said, "Hey, we've been saying that for years". Suddenly, the department changed its position and said we had a mandate to look at those issues after all.

We don't know who made the decision. Whether they made it to cover up a mistake, whether they actually changed it, or whether a minister was involved, we have no idea. But for whatever reason, they made the right decision, from our point of view.

[Translation]

Mr. Yvon Lévesque: There are Cree and Algonquians in Pikogan. The Washaw Sibi Cree wanted to settle on the Bay James land. Recently, Pikogan has received permission to buy back land to add to the reserve.

Does that solve the problem of the Washaw Sibi Cree, whom we haven't seen in a long time? Are they continuing their efforts to get that land?

[English]

Mr. Richard Saunders: The Canada-Cree agreement from February of last year provides that the Cree will take responsibility for working with Washaw Sibi Eeyou to help them advance towards becoming a band. Washaw Sibi Eeyou is engaged in discussions about that. This agreement mandating the Cree Regional Authority to address part of the issue, however, does not let the federal government off the hook. They still have to resolve some of the issues that are within their jurisdiction.

We remind our friends at Indian Affairs that the responsibility for addressing this, including the cost, does not fall entirely to the Grand Council Cree Regional Authority. Indian Affairs still has an obligation to address the issues of a first nation without a land base or band status. We think that the department has a continuing role to play in resolving these issues.

I don't know if we've answered your question, but we've tried.

•(1045)

[Translation]

Mr. Yvon Lévesque: Thank you for being here. I was pleased to see you again and I hope we'll have the opportunity to see you again soon.

Thank you, Mr. Chairman.

The Chair: Thank you, sir.

[English]

Now we're going to Mr. Clarke for five minutes.

Mr. Clarke, please.

Mr. Rob Clarke (Desnethé—Missinippi—Churchill River, CPC): Thank you, Mr. Chair. I would like to thank the witnesses for coming here today.

On page 7, clause 14, you just mentioned that you have "exclusive legislative authority on all matters respecting band (Eeyou Nation)

elections". Subsequently you mentioned "incorporation of traditional law, practices and customs respecting Eeyou elections".

My home first nation right now is going through some troubled times in the electoral process, as the first nations have entered into their own band bylaw for their own elections act.

Now, I'm kind of curious here how long your terms are right now, respectively.

Mr. Richard Saunders: There's a capacity now for the individual first nation to have anything to up to four years. Some of them do. They can have a term of office of up to four years, and they generally do.

Mr. Rob Clarke: Currently through their election process, how long are they sitting for?

Mr. Richard Saunders: They sit for four years.

Mr. Rob Clarke: They sit for four years each? Okay, I see.

You mentioned earlier that you had no turmoil in the election process. It seems to be working fine right now.

Mr. Richard Saunders: That's not exactly true. A number of the representations we've had have come from people who are unhappy with an election result, as you can imagine. If there's some technicality on which the person losing the election can hang their hat, we generally hear from them.

Sometimes it's valid and sometimes it's not valid. It's in the nature of politics that the fight doesn't always end on election day. So occasionally there's that kind of thing. Overall, however, the election process in Cree country works well.

Mr. Rob Clarke: How long is the first nations election period?

Mr. Richard Saunders: We've just done a little bit of consulting with ourselves here. The election period is two months.

Mr. Rob Clarke: On clause 18, you mentioned "enablement and improvement of law enforcement", and then "development and establishment of appropriate system(s) for the administration of justice".

My background, as a first nations, has been in policing, where I was in charge of my own detachment. What steps have been made by the Eeyou Nation for the formation of a policing force, first of all?

Mr. Richard Saunders: It's a broader justice, including the policing. The issues tend to be things like a need for appropriate drafting of bylaws in the first place, with the necessary expertise to make sure the bylaw is worded in a way that it will stand up in court and can be enforced.

Secondly, there's a need, where there's a bylaw infraction, to actually have a policing ability including jurisdiction, for example, on the access roads just outside the category IA land. So there are some jurisdictional policing issues.

There's a need for appropriate prosecution of offences and the expense that's involved in that. There has been the need, over the years, for the availability and accessibility of a court system that's adequate to the job of working in a remote area. If you're in a remote part of Canada, I think we're all aware that sometimes justice is a little delayed because of accessibility.

Those continue to be issues with the Cree. There has been a lot of comment on that over the years, but the problems continue to be in that area. Also, if you have a small community, the number of police officers you need to do enforcement is a little higher per capita, because of the need for 24-hour coverage and things of that sort, than it would be in a larger community, which on some quota basis would be entitled to a greater number of police officers.

The details of each of these things have been part of our reports for a number of years. But there's a cluster of those justice issues.

• (1050)

Mr. Rob Clarke: So the Eeyou nations are looking more or less at a stand-alone police force? I understand the administrative justice and the court processes that would have to be entailed. You'd have to get your own provincial court judge to administer the statutes of provincial and federal laws.

Are you more or less looking at a peacekeeper status or as your own stand-alone policing force?

The Chair: We're just about out of time, but a brief response would be fine.

Mr. Philip Awashish: There are the local police. They're affiliated with the Quebec police. But there are continued discussions on the Cree regional police force that will be set up. Also, I believe Bill C-28, amending the Cree-Naskapi (of Quebec) Act, refers to any police that will be established between the Cree and Quebec.

There are local police, and they are autonomous, in one sense, because they are the only police force empowered to enforce local bylaws. There's also the regional Cree police force that has been under contemplation as well.

The Chair: Thank you very much, Mr. Clarke, and thank you, Commissioner.

I'll take the last spot, and then I think we're just about wrapped up.

I'd like to refer back to Mr. Bélanger's question in regard to the list of what you deem to be non-contentious items; I think you also described them as housekeeping items. If you could give us that list in the few days ahead, that would be helpful.

I have a question, though, in that same vein. On that list of items, I think you mentioned quorum and election bylaws in particular. If those items as you describe are not contentious or housekeeping, and were considered further by the House, do you anticipate that there would have to be additional consultations? What would be required to go back to the communities and seek their consent or approval to proceed with such amendments along those lines?

Mr. Richard Saunders: Most of what we've called non-contentious items have originated with the communities, and have come through the leadership. What we would do, I think, is consult very quickly with the Grand Council of the Crees and the Naskapi Nation of Kawawachikamach to ensure that we're giving you the straight goods here and that they really are non-contentious.

We would probably suggest that the Grand Council, along with the Naskapi, make the case themselves, directly to this committee, through you as chair, so that you have it from the horse's mouth.

The Chair: Could you define "very quickly"?

Mr. Richard Saunders: Okay. How about one week?

The Chair: Thank you for that.

I just want to point out to members, since the issue was raised, that in consideration of the rules in respect to amendments that quite possibly could come to a committee before second reading, any such amendments still have to be relevant to the act that's been tabled. That's point one.

Two, when committees consider that type of business prior to second reading debate, committees are afforded much broader scope in terms of what could be. For example, if those considerations came after second reading, amendments could only be considered within the scope of the bill that's already received approval or consent of the House at second reading. I just want to point that out to members so that they understand the distinction.

Finally, on that same point, of course only the House can in fact refer a bill to committee prior to second reading. So that has to be done essentially with the consent of the House.

I say all that just so that this is understood and in context. It's good reading in Marleau and Montpetit, if you want to take a look at it.

Mr. Bélanger.

• (1055)

Hon. Mauril Bélanger: On that last point, I wouldn't dare contradict the chair, but my impression is that the decision to refer a bill to a committee before second reading actually belongs to the government. Once the government has made that decision and set the track, after five hours of debate it is automatically referred to a committee. So it's not a decision of the House, but indeed of the government.

The Chair: I stand corrected. It could be a decision of the House. It could also be a decision of the government. The House has the ability to do that.

Hon. Mauril Bélanger: No, it does not. With a government bill, only the government can determine if it will be referred to a committee before second reading.

The Chair: Thank you, Mr. Bélanger.

I would like to thank very much the commissioners and the chair of the commission in attendance here today. This has been extremely helpful, especially on the eve of the committee's consideration of Bill C-28.

Unless there are other items of business, we stand adjourned. We'll see you on Thursday.

Thank you.

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