



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Aboriginal Affairs and Northern Development

AANO • NUMBER 004 • 1st SESSION • 41st PARLIAMENT

EVIDENCE

Tuesday, October 4, 2011

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Chair

Mr. Chris Warkentin

Standing Committee on Aboriginal Affairs and Northern Development

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•(1105)

[English]

The Chair (Mr. Chris Warkentin (Peace River, CPC)): Committee members, I am going to call to order the fourth meeting of the Standing Committee on Aboriginal Affairs and Northern Development.

Committee members, you do have before you the first report that was put together by the steering committee, the subcommittee. There is also a calendar attached to it. This was the proposed agenda for the next couple of weeks, at least. Committee members, hopefully you've had an opportunity to either review this or speak to your representative on the subcommittee.

Can we have consensus to adopt this as the first report of the subcommittee of this committee?

Ms. Linda Duncan (Edmonton—Strathcona, NDP): I have a question, Chair.

I was talking to the parliamentary secretary yesterday. There has been a suggestion that we may not be able to handle all of the national leaders of aboriginal organizations in one day. This says that they will all come in on one day. So while we agreed that they come in, I am not sure that we agreed on how we were going to do it or who was going to come.

The Chair: Okay, and that is noted.

Ms. Linda Duncan: That is point three.

The Chair: I think there was still some discussion that was happening, so I want to let committee members know that we are going to move to a subcommittee on Thursday, if we have time, to try to resolve that, as well as some additional requests for appearing at the committee. For the most part, if there is anything that can be addressed on Thursday—many of you have concerns—please let's move that to Thursday.

Today we need to pass this before we can even hear from our witnesses today.

Ms. Linda Duncan: Okay. I am fine with that, as long as it is recognized that this is not all we discussed in the subcommittee. In the subcommittee I understood that we came to agreement that... there are a couple of things that aren't here yet. One thing is the report on land management that has been tabled and was referred to us. The topic came up, but I wasn't aware that it was being tabled and referred to us. That has to be pretty high in our order of things, since it is referred to us, so I think that should be added in there somewhere.

The Chair: As long as that doesn't need to be dealt with until Thursday...

Ms. Linda Duncan: Okay, this is not the full first report. That is what is troubling me.

We also discussed a number of other matters, including the minister coming in on the supplementary (B) estimates and the budget, and we should slot those in the timeline. I recognize that what is here is correct, but it is only half of what we discussed and agreed to in the subcommittee. I will agree to it on condition that the rest of what we raised is going to come out in a report from Thursday.

The Chair: I get a sense that you are looking for the second report that may be established on Thursday.

Ms. Linda Duncan: This is not all that was discussed and agreed to in the subcommittee meeting. That's all I am saying. It's half of it. I don't disagree with what's here. It's just that this is only half of what I understood we agreed to.

The Chair: We can resolve that on Thursday. I'm getting that sense.

Mr. Rickford.

Mr. Greg Rickford (Kenora, CPC): Further to that, and in support of it, I think the exercise right now is just for us to be able to have a process to accept the witnesses we have for today's report. We have some time left over. I think we could discuss that as the committee of the whole, and then there is a subcommittee allocation on Thursday, but I would take your point on that basis.

The Chair: Ms. Bennett.

Hon. Carolyn Bennett (St. Paul's, Lib.): Yes, I agree with Mr. Rickford that in terms of the invitations for the Tuesday we are back, it won't be possible for the subcommittee to deliberate on that on Thursday and then bring it back to the committee to agree. Somehow this afternoon we have given the clerk some advice as to who is invited for the Tuesday we're back.

The Chair: If the committee has a desire for that, I see no reason we couldn't put some time at the tail end of this meeting. If we get to our witnesses expeditiously, maybe we will allocate some time at the tail end of this meeting to do just that.

Ms. Linda Duncan: I am fine with that, Mr. Chair, so long as the minutes show that this does not reflect the full discussion and agreement at the last subcommittee meeting.

The Chair: The transcript will be better than minutes in that it will have everything you said on the record permanently.

Is there consensus to adopt the first report?

Some hon. members: Agreed.

The Chair: That is passed.

Committee members, we do have witnesses today who will be bringing forward briefings with regard to the specific land claims. If our witnesses would proceed to the table, that would be fantastic.

We have representation from the Specific Claims Branch, and that is Ms. Dupont. Ms. Green is with the research and policy directorate of Specifics Claims Branch, and Ms. Dunlop is with the negotiation directorate, Specific Claims Branch, as well.

Ms. Anik Dupont (Director General, Specific Claims Branch, Department of Indian Affairs and Northern Development): Ms. Dunlop was not able to join us this morning.

The Chair: Okay. Mr. McNeil, you are here on behalf of whom?

Mr. Kevin McNeil (Senior Counsel, Specific Claims Section, Department of Justice): I am with the Department of Justice.

The Chair: Wonderful, and there you are on my list. Welcome.

Witnesses, we would like to invite you to give testimony of approximately 10 minutes. We don't want to limit your testimony; what we want today is to better understand the specific issues of specific claims.

I will now leave it open for you to begin introductory comments and your immediate testimony, and then I know there will be quite a number of questions coming at you.

Have you determined who will begin?

• (1110)

Ms. Anik Dupont: I will be the spokesperson.

The Chair: Please, proceed.

Ms. Anik Dupont: Thank you, Mr. Chair, and good morning.

As you mentioned, I am accompanied this morning by my colleagues Kathy Green, who is our director of research and policy, and Mr. Kevin McNeil, who is senior counsel, specific claims legal services, at the Department of Justice.

I would like to thank the committee for this opportunity to speak about the work that has been done, and that is being done, to address first nations' specific claims.

Since June 2007, the specific claims process has undergone a fundamental reform, the results of which have yielded significant results: an independent adjudicative body has been established; the backlog of claims and assessment phase of the process will have been addressed in a few weeks; 68 claims, valued at more than \$1 billion, have been resolved through negotiated agreements, and 247 claims are currently in negotiation.

But let me start at the beginning.

A specific claim is a claim made by first nations against the federal government relating to the non-fulfilment of an historic treaty or the mismanagement of first nations land or other assets.

[Translation]

The specific claims policy, which was first published in 1982, establishes an alternative dispute resolution option that first nations

may engage on a voluntary basis to resolve these grievances. The primary objective of the policy is to discharge outstanding lawful obligations that arise from such claims through negotiated settlements.

[English]

In 2006, the final report of the Standing Senate Committee on Aboriginal Peoples included a special study on the federal specific claims process. The report, entitled *Negotiation or Confrontation: It's Canada's Choice*, concluded that the specific claims process was defective and that first nations perceived a conflict of interest given that the government both judges and compensates claims made against it.

The committee recommended that an independent body be established with the authority to resolve specific claims, that a dedicated fund be established for the payment of specific claims settlements, and internal government procedures for the assessment and negotiation of claims be improved.

[Translation]

In response to the Senate Standing Committee Report, in June 2007, the Prime Minister announced "Justice at Last: Specific Claims Action Plan" aimed at reforming the specific claims process.

[English]

The action plan was built on four independent pillars: impartiality and fairness, faster processing, greater transparency, and better access to mediation. All four pillars have been implemented, and the success of the process reform even now is clearly evident.

The cornerstone of "Justice at Last" is the Specific Claims Tribunal, an independent adjudicative body that was established in 2008 pursuant to the Specific Claims Tribunal Act, which legislation was developed jointly with the Assembly of First Nations. The tribunal has the authority to make binding decisions in respect of the validity of a claim and to award compensation, to a maximum of \$150 million per claim. The tribunal became operational on June 1, 2011; five claims are currently filed at the tribunal.

[Translation]

A particularly troubling criticism of the specific claims process was the prolonged period of time necessary to assess and negotiate claims. Prior to "Justice at Last" the average time taken to settle a claim was over 13 years. Consequently, a backlog of hundreds of unresolved claims had accumulated by 2007.

[English]

The Specific Claims Tribunal Act provides for a three-year timeframe for the assessment and negotiation of the claims. If either timeframe is not met, a first nation may refer its claim to the tribunal for adjudication.

More efficient internal processes have been implemented to ensure a timely response to claims submissions and greater discipline in the processing of claims. Specifically, the research and assessment phase of the process has been improved by adopting a minimum standard for claims, to effectively communicate requirements and avoid delays associated with seeking clarification and additional information from first nations.

[Translation]

Special efforts have been made to settle small value claims, or claims under \$3 million—which represent nearly half of all backlog claims and new claims—more quickly. The valuation of these claims is now completed earlier to assist in facilitating expedited settlements.

• (1115)

Changes to improve negotiation and settlement processes have also been implemented including earlier financial mandating for negotiations; increased human and financial resources; clarification of roles; the “bundling” of claims; and ongoing monitoring of negotiations to reduce inactive tables.

[English]

When “Justice at Last” was announced there were approximately 630 claims in assessment and 123 claims in negotiations. I'm proud to announce to you today that the assessment backlog has been completely resolved, and since 2007, 68 claims valued at \$1.1 billion have been settled through the negotiated agreements.

First nations had expressed concerns that this slow pace of resolution of specific claims reflected a lack of budgetary capacity to pay out compensation once a settlement had been reached. In response to these concerns, dedicated funding of \$250 million per year for 10 years is available to compensate first nations achieving settlement agreements through negotiations with Canada and to satisfy awards made by the Specific Claims Tribunal. Additionally, the Minister of Aboriginal Affairs and Northern Development can access the fiscal framework, if it is necessary, to draw down on these resources in excess of the annual forecasted amount.

Mediation is an excellent and cost-effective tool, and it is recognized that this tool should be used more often in stalled claim negotiations.

[Translation]

A mediation services unit has been established the function of which is to ensure the availability of independent mediation services as jointly requested by Canada and first nations during the negotiation of claim settlements. The mediation services unit is establishing four regionally-based rosters of independent mediators from which mediators may be engaged through a standing offer. The rosters are being developed through a request for proposal process advertised through the government's public electronic tendering service.

[English]

The evaluation, performance measurement, and review branch of Aboriginal Affairs and Northern Development Canada undertook a formative evaluation of the action plan earlier this year. The purpose of the evaluation was to obtain an independent and neutral

perspective on how well the action plan is achieving its expected results, supporting the achievements of departmental objectives with respect to the resolution of specific claims, and identifying opportunities to improve the design and implementation of the action plan. The evaluation report is available on the departmental website.

The independent evaluators found that the four pillars of the action plan represent the most appropriate and efficient process to achieve the action plan's expected result.

[Translation]

The four pillars of the action plan appear to be appropriate to address what were seen as shortcomings of the process.

[English]

The dedicated fund combined with the reporting measures that the specific claims branch has established have increased transparency in relation to financial resources invested by the federal government to settle these claims.

[Translation]

The revised internal procedures are expediting the claim settlement process and some efforts have been made to tailor the process to the nature of the claims.

[English]

Changes resulting from the action plan could be expected to enhance the ability of the federal government and first nations to settle specific claims, which in turn could promote greater social and economic development.

[Translation]

What is clear from these findings is that Canada's action plan is working; it is achieving results and first nations are benefiting.

[English]

In the coming months an internal audit of specific claims negotiation costs will take place the next fiscal year, as well as a summative evaluation of the “Justice at Last” specific claims action plan. The Minister of Aboriginal Affairs and Northern Development will be making a complete report to cabinet on the implementation of the action plan.

Finally, a legislative review of the Specific Claims Tribunal Act will be undertaken in 2013-14 to assist the government in gauging the success of the legislation and the tribunal.

Thank you very much for this time. I welcome the opportunity to answer any and all of your questions.

The Chair: Thank you, Ms. Dupont.

Did Ms. Green or Mr. McNeil have presentations as well? No. Okay.

Ms. Duncan, we will begin with you.

Committee members, when you are looking to be recognized on the speaking list, please make sure our clerk sees your indication of the desire to be on the list and we'll make sure you get on it.

Ms. Duncan, the floor is yours for seven minutes.

• (1120)

Ms. Linda Duncan: Thanks, Mr. Chair.

Thank you for appearing on short notice, and thank you for the briefing you provided to Monsieur Genest-Jourdain and me this summer.

I have a couple of questions. For clarification, as you are aware, we raised the questions with you this summer when I received a number of concerns from first nations that were in this process. They felt there was now a policy of the government to end the negotiations on the specific claims and in fact force the nations to have to go to the specific claims tribunals. I wonder if you could clarify for the committee what is the current policy and position of the government on the specific claims. The three-year time period, of course, was imposed, as well as the creation of the specific claims tribunal, as I understand, to ensure transparency in this claims process.

Secondly, the commission was created to spur the government. There was a concern that the government had been dragging its heels on these claims, so the first nations were given standing to refer a case to the tribunal if within the three-year time period they did not feel their claim was resolved. The concern that's been raised with me by a number of first nations is that the government is now interpreting that legislation to be that at the end of three years, if you don't have a deal, you go to the commission. I'm wondering if you could clarify the current policy and interpretation of that statute by the Government of Canada.

Ms. Anik Dupont: Thank you.

The three-year timeframe, as I mentioned, was established to mirror what the Specific Claims Tribunal Act sets out, which is a faster processing of specific claims. So at the negotiation table we are governing ourselves to try to reach a settlement with the first nations within that three-year timeframe.

The discussion over the summer, which came out, was that at the end of the three years we walk away from the table. The choice for the first nations rests with them if they wish to bring their claims to the tribunal. We just try to get them resolved within the three-year timeframe.

Ms. Linda Duncan: If I could follow up, you're saying that the view of the government is that at the end of the three years you walk away from the table and it's the first nations' opportunity to go to the commission?

Ms. Anik Dupont: No, it's actually to the contrary. Maybe I didn't express myself properly.

When we sit down at the negotiating table we work within the three-year timeframe to achieve a settlement by three years. If we feel during the process that we are in a situation—every table is managed differently—where we're ready to present the first nation with an offer, then we do so. Some of the negotiations may carry on beyond the three years because we may not have the information we need to conclude the settlement. We do not walk away from the table, but our work and the operational framework that we operate under is made so that we reach a settlement by year three.

Ms. Linda Duncan: So that's your interpretation of the legislation.

A number of more recent concerns have been raised with me. As much as the first nations appreciate the legislation and the formation of the commission, which is now in effect, concerns are being raised about the limited resources available to the commission. I wonder if any of you could speak to that.

In tribunals such as energy boards and so forth, they usually have a large staff of experts, lawyers, and so forth. I wonder if you could elaborate more on what kinds of resources are available full time to the commission in hearing and reviewing the cases that come before them.

Ms. Anik Dupont: I assume you're speaking about the tribunal. The tribunal is a department on its own. It was created so that it has its own resources and it has structured itself accordingly. I can't make any comment or analysis as to how the resources are applied or organized within. You'd have to ask it to explain how it is set up and if the level of resourcing is adequate or not.

• (1125)

Ms. Linda Duncan: But did the department not allot the budget to the commission, or is the commission given its money and it can assign it as it sees fit?

Ms. Anik Dupont: The tribunal is totally independent from the department and is set up under the FAA as a department.

Ms. Linda Duncan: Mr. Chair, I'm wondering, maybe we were remiss in our request, but I think it would be very useful for us to hear from the commission itself if these questions can't be asked.

My understanding is that there is a limit on the specific claims process and the claims that can go before the commission. That is \$150 million per claim. Is that correct? Any claim over that simply goes before the cabinet, and it's not necessarily...or it isn't a transparent process. Are there any discussions within the department about coming up with a parallel kind of process for claims over \$150 million?

Ms. Anik Dupont: The process for claims over \$150 million is a cabinet process.

The Chair: You have one minute left.

Ms. Linda Duncan: I'm interested in this mediation unit. Is the mediation unit only now being set up?

Ms. Anik Dupont: The mediation unit has been created for some time. The process was to establish a roster of independent mediators, so it's simply the whole mechanical process of doing that, developing the criteria and posting the call for submissions.

That's now being finalized. It takes some time to go through that process.

But first nations still have access to mediators, even though the rosters are not quite complete. Any table that required mediation was able to obtain it. We have some of the tables that have mediators at the same time as this process is being finalized.

The Chair: Thank you.

Mr. Payne, for seven minutes.

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

My question is to the witnesses, through you, Mr. Chair. First of all, I would like to thank the witnesses for attending today. It's a really important opportunity for us, in particular our team here on this side, to appreciate what is going on.

We've actually sort of narrowed things down to four themes, and I want to touch on those four themes that I think my colleagues and I will address in this process. One is the framework, the second is the tabling of the offer, and then on the negotiations and what happens after that.

My first question is the following. Why has Canada adopted the three-year operational framework for negotiation of specific claim agreements?

Ms. Anik Dupont: I guess the reason why we adopted it was that we were mirroring our process with that of the act. The act says that if after three years the minister has not responded as to whether he accepts or not the claims for negotiation, or if we haven't reached an agreement by year three, it allows the first nation to go to the tribunal.

Our goal is, and always has been, the route of negotiations and settlements, so we want to position the negotiations in a way in which we achieve settlement or make as much progress as we can toward settlement that will allow us to get to a negotiated settlement, rather than having the first nation leave the table and go to the tribunal.

Mr. LaVar Payne: It is my understanding, of course, that the first nations asked for a faster process to resolve those, and that was announced in our action plan in 2007. That was certainly to speed up the claims process in order to provide justice for these first nations claimants, and certainly for all Canadians.

Moving on, then, I guess one of the other things I wanted to touch on is the Specific Claims Tribunal Act of October 2008 that was developed jointly with the Assembly of First Nations. Is that correct?

Ms. Anik Dupont: That is correct.

Mr. LaVar Payne: The act does include three-year timeframes for negotiating. I think that's what you stated earlier.

Ms. Anik Dupont: Yes, that is correct.

Mr. LaVar Payne: Thank you.

I guess in this whole process we want to make sure that, first of all, the first nations were aware of the changes to the specific claims process. Could you expound on what happened in that process?

• (1130)

Ms. Anik Dupont: There were several key communications with the first nations with regard to the new process or the action plan. Of course, there was a mass communications announcement that was made with the action plan, and when the legislation came into force we also sent letters to each and every first nation that had claims both under assessment and in the negotiation process, to advise them of the coming into force of the act, as well as to send a copy of the act and additional information to assist them to understand what this meant for them.

Mr. LaVar Payne: Okay. I just want to make sure I understand it. The new approach to the claims was announced by the Prime Minister in June of 2007—

Ms. Anik Dupont: Yes, that's correct.

Mr. LaVar Payne: —at a press conference, and of course the Chief of the Assembly of First Nations and representatives were in attendance at the event, showing their support and agreeing with that process.

Ms. Anik Dupont: Yes, that's correct.

Mr. LaVar Payne: As you indicated, there was a broad information campaign.

Ms. Anik Dupont: Yes.

Mr. LaVar Payne: And this indicated that there was also a letter sent to each of the first nations.

Ms. Anik Dupont: Yes.

Mr. LaVar Payne: What kinds of responses did you get, or did you get responses, from those letters that you sent to first nations?

Ms. Anik Dupont: No, not necessarily. There were letters that basically informed the first nations about the coming into force of the act and also indicated to them that, in accordance with the act, their claim had been filed with the minister as of October 16.

So because we had all these claims and assessments and all these claims and negotiations, we had to activate the provisions of the act. That's why the first nations received a letter stating that their claims had been deemed to be filed in accordance with the act on October 16, 2008.

Mr. LaVar Payne: So in terms of the information campaign, obviously, the Government of Canada, the first nations, and a broader stakeholder, Canadians in total...were they advised in this process as well?

Ms. Anik Dupont: Yes, we had general mail-outs that were made to a variety of groups.

Also, the department has an entire section of the website that is devoted to the specific claims process, where we post and communicate a lot of the information that is available. There's also a reporting centre that is available on the website where anyone, the public and first nations, can go in and seek information with regard to specific claims and produce reports of the information we have.

Mr. LaVar Payne: I just want to make sure I have this right. In the fall of 2008, Canada notified all first nations with specific claims in the federal system about the act coming into force and their individual claims?

Ms. Anik Dupont: Yes, that's correct.

Mr. LaVar Payne: How much time do I have?

The Chair: You have one minute.

Mr. LaVar Payne: One minute.

In your briefing I noted there were times where it took up to 13 years in this process. My recollection is that at the time, Minister Prentice, I believe, indicated that this was not satisfactory and that we needed to make improvements to this whole process to settle these claims, because 13 years is just not acceptable. Is that correct?

Ms. Anik Dupont: Yes, that's correct.

Mr. LaVar Payne: All right. Thank you.

The Chair: Ms. Bennett had to step out for a bit, so we're going to go to the next questioner on the list, and that's Mr. Wilks, for seven minutes.

Mr. David Wilks (Kootenay—Columbia, CPC): Thank you, Chair.

Thank you for coming today. It's nice to see you here.

I specifically just want to talk about the offer, and arguably it's probably one of the more important parts of the negotiation. But in terms of the offer, do first nations agree to negotiate with Canada? And are first nations consulted before a settlement offer is made?

Ms. Anik Dupont: When the minister accepts the claim for negotiations, a letter is sent to the first nation, which explains what is the basis on which we agreed to negotiate. Following this, the first nation has to confirm its agreement with a band council resolution to the department stating that it agrees with the terms of the letter and that it wishes to commence negotiations.

Sometimes through studies or other work that we look at, we value what the claim is, what the components of the claim are. So either the studies or the work at the table are done—sometimes jointly, sometimes by the first nation—to inform and develop what we believe is the value of the claim. That work is all done jointly with the first nation.

Then once the negotiators have an idea of what the value of the claim is, the negotiator has to seek a mandate to be able to present the first nation with an offer.

So the first nations have a general idea of where we're going and what we're going to be looking at by way of compensation. The negotiator comes in, develops the mandate, seeks approval for it, and then goes back to the first nation and presents a written offer to the first nation explaining how we arrived at this offer.

• (1135)

Mr. David Wilks: To clarify, the joint research and discussions take place with both parties?

Ms. Anik Dupont: Yes. Sometimes the first nation may wish to do their own research, and sometimes we do it jointly. It's all worked out. Each and every table is different, for a variety of different reasons.

Mr. David Wilks: Thank you.

Does the negotiation process end once the offer is tabled?

Ms. Anik Dupont: Not necessarily. Once the offer is tabled, the first nation has to respond as to whether it will be accepting the offer or putting it to their members for a ratification vote.

There's still work to be done once that is done. We have to be looking at developing the settlement agreement. In certain cases, where the first nation may decide they want to be looking at land, there's work to be done to identify land selection areas. So that work still needs to be done. And there's also the whole side for the first nations to develop the trust where the funds will be transferred once the settlement is obtained.

There's work that continues while the negotiators are seeking their mandate after the offer has been presented.

Mr. David Wilks: To clarify with regard to the settlement agreement, first nations members must vote it in its entirety. Is that correct?

Ms. Anik Dupont: Yes, they vote on the settlement agreement and the trust agreement as well.

Mr. David Wilks: Although this was brought up by Ms. Duncan, to further understand with regard to the tribunal, I want you to explain a bit about what happens if first nations reject a federal offer.

Ms. Anik Dupont: If the first nations reject the federal offer, it's their option to go to the tribunal to seek a decision on the validity and compensation of their claim, and they have access to the courts as well. It doesn't preclude them from taking either of those two avenues.

Mr. David Wilks: With regard to either the tribunal or the court, is there one before the other?

Ms. Anik Dupont: No, it's up to the first nation as to what they want. But if a decision is rendered at the tribunal, it's a final decision and it can't be pursued.

Mr. Kevin McNeil: It's one or the other. If they decide to go with the tribunal, the decision is made by the tribunal and that's the end of the matter. They cannot proceed with the same matter before the courts.

Mr. David Wilks: So to clarify, then, if they go to the tribunal—and this is what I'm trying to get at—could they deem that the court is a higher decision body and go to the court to have it overruled?

Mr. Kevin McNeil: If they go to the tribunal, there is access to the courts through a judicial review. It's a judicial review to the Federal Court of Appeal. Then from there, if they wish, they could pursue it to the Supreme Court of Canada. There is access to the courts from the tribunal, but the mechanism is through judicial review.

Mr. David Wilks: Thank you very much.

I have nothing further, Mr. Chair.

The Chair: Thank you.

[Translation]

Mr. Genest-Jourdain, you have five minutes.

Mr. Jonathan Genest-Jourdain (Manicouagan, NDP): Ms. Dupont, during our last discussion, we briefly addressed the concept of a motion for advanced costs.

• (1140)

By advanced costs, I mean the amounts offered to communities related to expertise and to acquire the services of a legal representative.

Is it possible to examine this issue a little more closely?

Ms. Anik Dupont: With regard to research and negotiation, the department provides funding to first nations to help them during the process. With regard to the negotiating table, naturally, funding is available to first nations. Every negotiating table develops a work plan that will direct the work that will be done at that table over the three years of negotiation. The first nation requests funding from the department.

When a specific claim is settled, the department not only pays out the claim, but it also reimburses the costs incurred by the first nation during the negotiation process.

Mr. Jonathan Genest-Jourdain: Will amounts be allocated to the first nations with regard to the tribunal that will be created or that is already operational?

Also, what qualities must the legal representative possess? Does he or she have to be a member of the bar of a specific province? Does he or she have to be a member of a specific professional body?

Ms. Anik Dupont: Yes, the first nation must be represented by a member of the bar. Funding is available through the department for first nations that wish to file their claim with the tribunal.

Mr. Jonathan Genest-Jourdain: Is the assessment of funding available based on the percentage?

Ms. Anik Dupont: No. It is based on demand. The department applies certain criteria to requests for funding. Some costs are covered. It is a process similar to the one used when first nations submit a request for funding during the negotiation process. Some criteria must be met. The same approach is used here.

Mr. Jonathan Genest-Jourdain: Was this specified in the letter that you sent to communities? Was it indicated at that time that the services of a lawyer could be required? If not, are these merely internal rules that you use in your offices?

Ms. Anik Dupont: These are tribunal rules on how first nations must be represented. The tribunal issued rules of conduct that are posted on its Internet site. First nations can go to the site to see how the process works, find out how to file their claims and determine who is entitled to file a claim.

Mr. Jonathan Genest-Jourdain: Subsection 25(1) states: "A First Nation or person to whom notice under subsection 22(1) is provided..."

When it says "person", does that mean that every member of a specific community will be informed when this type of hearing is held? It is important to note that, as individuals, community members could have specific interests.

Ms. Anik Dupont: I do not know to which document you are referring. Are you referring to the act?

Mr. Jonathan Genest-Jourdain: Yes, of course.

Ms. Anik Dupont: The manner in which scheduled cases or hearings are announced depends on the tribunal rules. It is up to the tribunal, which establishes its procedure according to the cases it is dealing with, to determine who must be informed. The tribunal rules would have to be verified to determine how it works.

Mr. Jonathan Genest-Jourdain: So it is on a case-by-case basis. It is possible that each member of the community could be informed.

Ms. Anik Dupont: I admit that I do not know the tribunal's rules off by heart. I do not know whether the rules address this particular issue but, with regard to the tribunal's procedures, I believe that it has prescribed rules of conduct. However, the tribunal can decide to modify those rules for certain reasons. The question would have to be directed to the tribunal.

Mr. Jonathan Genest-Jourdain: Very good. I will turn over the remainder of my time.

[English]

Ms. Linda Duncan: Mr. Chairman, I have a question.

The Chair: You have half a minute.

Ms. Linda Duncan: I have a follow-up question for the representative from Justice, Mr. McNeil.

I remain confused about the solution of the government that if there is no settlement within three years, the matter goes to the commission. There's nothing in the statute, and in fact the statute says the opposite. I'd appreciate hearing from Justice about where the department is coming up with this—that if in three years you don't have a settlement, it goes automatically to the commission.

The Chair: I think you've been set up, only in that you have no time to answer what looks to be an exhaustive question. If you can give a short answer, maybe we can come back to this on Ms. Duncan's next round of questioning.

• (1145)

Mr. Kevin McNeil: I could add nothing more than Ms. Dupont has already said this morning on that. The statute, as you said, does not require that they go to the tribunal. They work within that three-year timeframe to try to achieve a settlement.

Ms. Linda Duncan: What three-year timeframe? Where in the law is the three-year timeframe?

The Chair: It looks like there are additional questions, but Ms. Duncan will probably defer those to her next round.

Mr. Boughen.

Mr. Ray Boughen (Palliser, CPC): Thank you, Mr. Chair.

I thank the witnesses for taking time out of their busy day to meet with us.

As we continue to look at the settlement offers, the first question I have for the panel is, will Canada be tabling settlement offers at all negotiation tables on October 16, 2011?

Ms. Anik Dupont: Thank you.

No, we will not be tabling offers at all tables as of October 16, 2011.

Mr. Ray Boughen: Are you currently working with first nations people to conclude settlements within the three-year timeframe, if at all possible?

Ms. Anik Dupont: Yes.

Mr. Ray Boughen: So negotiations are ongoing.

Ms. Anik Dupont: Negotiations are ongoing. When we believe we are at a time at the table when we're ready to table an offer, we will be doing so.

Mr. Ray Boughen: Of course, the goal for all of us is to conclude a fair settlement for the benefit of first nations and for all Canadians. As we think on that and move forward...and I know that negotiations are confidential and you may not be able to answer this, but how many negotiation tables are affected in terms of the three-year time period?

Ms. Anik Dupont: Roughly around 80 tables will reach the three-year mark on October 16, 2011.

Mr. Ray Boughen: Do you have any notion at this stage of the game of how many tables may be left to negotiate?

Ms. Anik Dupont: In total we have over 270 ongoing negotiations, which include those 80 tables. Only 80 of them will reach the three-year mark on October 16.

Mr. Ray Boughen: Thank you.

Is it true that in October 2011 Canada will revoke all previous settlements offered in light of the third anniversary of the legislation?

Ms. Anik Dupont: No, we will not be revoking any offers that we have made at the tables.

Mr. Ray Boughen: Are we looking at any specific timeframe in terms of completing the rest of the negotiations?

Ms. Anik Dupont: Each claim has a three-year timeframe, and as I indicated, as we move through the process each one is looked at within that three-year timeframe.

In 2008 all the ones that were already in negotiation were deemed to start negotiations in 2008, and now all these claims are coming to fruition on October 16, but since that time we've been accepting claims for the past three years that are also on that same track. The three-year timeframe is October 16, and every other week or month has another claim that will be coming to a three-year timeframe.

Mr. Ray Boughen: How many tables would be negotiated? At any one time there's more than one claim being negotiated, I would assume?

Ms. Anik Dupont: Most of our tables now in negotiation are in active discussion. We've accepted some recently where we're waiting for responses from the first nation.

Mr. Ray Boughen: Okay. Thank you.

Thanks, Mr. Chair.

The Chair: You're finished.

Mr. Bevington, for five minutes.

Mr. Dennis Bevington (Western Arctic, NDP): Thank you, Mr. Chair.

I want to get back to my colleague's point. At the beginning of the three-year process for many of these claims, was what was going to happen after three years clearly laid out, that the government would be referring these to it?

• (1150)

Ms. Anik Dupont: We cannot refer any claim to the tribunal. It is always the first nation's choice to leave the specific claims process and go to the tribunal. They have four different areas where they can do that. Three years after their claim has been filed with the minister, if they haven't received a response they can bring their claim to the tribunal for a decision.

If after three years of negotiations where we have not reached a settlement, the first nation can leave the specific claims process, the negotiation process, and go to the tribunal. If during the three years of negotiations both parties agree that we cannot come to a negotiated agreement, they can ask the minister to bring their file to the tribunal, or in the case where the minister has not accepted the claim to negotiate, the first nation can bring their claim to the tribunal.

The government cannot activate the act. It is always the first nation's decision to bring the file to the tribunal.

Mr. Dennis Bevington: So with the 80 cases that would be in a position to go to the tribunal on October 16, have you any indication of the desire of the first nations involved with those 80 cases to take them to a tribunal?

Ms. Anik Dupont: They don't tell us what their plans are. We're trying to reach a settlement. If they avail themselves of that offer...

Mr. Dennis Bevington: And if they don't avail themselves of that option?

Ms. Anik Dupont: We continue towards the settlement.

Mr. Dennis Bevington: So you continue to negotiate.

Ms. Anik Dupont: Absolutely.

Mr. Dennis Bevington: Okay. I'm glad we understand that: the first nations have a right to continue the process for as long as they see fit.

Ms. Anik Dupont: Well, it's not necessarily for as long as they see fit, though. We have to understand that the negotiations are being managed, and the reason why there was reform was that the first nations thought we were taking too long at the negotiating table to reach a settlement. This whole process was set into place to try to ensure that the negotiations are more structured and focused, to get the first nation in front of a settlement sooner rather than later. That is why we've done all these reforms, so—

Mr. Dennis Bevington: You have 80 claims that are ending the three-year period, so by now you must realize that these are complex and difficult negotiations.

Ms. Anik Dupont: Yes.

Mr. Dennis Bevington: Is this three-year term appropriate? Is it something that by going to a tribunal and losing the right to continue negotiations...? You've obviously seen that many of these claims must be very difficult to negotiate.

Ms. Anik Dupont: Some of them are difficult to negotiate. As well, a lot of it is getting the parties used to the idea of doing this in a more effective way: getting the mindset around that idea that we can achieve these settlements sooner rather than later and that we need to focus our efforts more.

In some cases, yes, they are complex. Three years might be challenging, but that's not an impossibility, and as I said, our focus is always on negotiations, so we work with the first nation to try to achieve those settlements. If we go beyond the three—

Mr. Dennis Bevington: That sounds very good, but the government also has the ability not to negotiate and to force something to a tribunal. That's quite obviously the case as well. You control the pace of negotiation as much as the first nations do.

Ms. Anik Dupont: Well, it's a joint effort, the negotiations. As I said, our focus is to work towards the settlement, and negotiation is always our preference. It's not to force the files over to the tribunal. That would totally go against what we were trying to achieve. We would end up causing yet another backlog at the tribunal, which is what we want to avoid.

Mr. Dennis Bevington: Okay.

Have many claims have gone to the tribunal?

Ms. Anik Dupont: There have been five to date.

Mr. Dennis Bevington: Five to date? Can you give us an idea of where they fit in comparison to the settlement that was being negotiated prior to those claims? Was there an offer on the table from the federal government in those five claims when the band went to the tribunal? Were they able to achieve more through the tribunal or less? What are the results of those five claims?

The Chair: Mr. Bevington, your time is up, but we'll give them an opportunity for just a short answer, if that's possible.

• (1155)

Ms. Anik Dupont: As I indicated, some of the claims at the tribunal have not necessarily left negotiations to go there. They're claims that either have not been accepted by the department...so they never made it to the negotiation process at all.

Mr. Dennis Bevington: But they were—

The Chair: Thank you.

Mr. Bevington, if you have a follow-up question, I think we'll have time.

Mr. Clarke, for five minutes.

Mr. Rob Clarke (Desnethé—Mississippi—Churchill River, CPC): Thank you, Mr. Chair.

I'd like to thank the witnesses for coming in on such short notice and for trying to be as well prepared as they can be with this information. Having sat on the committee when we first brought forward this process, I saw the backlog that was taking place. I have quite a few questions here, but I'll try to get into that later in the course of my questioning.

First, how does the department decide to end the negotiations?

Ms. Anik Dupont: Do you mean to conclude negotiations or...?

Mr. Rob Clarke: Yes.

Ms. Anik Dupont: Well, in the course of the negotiations, once we've established that we have an understanding of what the claim looks like and how we're going to be compensating, and once we put a value to what the claim is, we come in to get a mandate to settle these claims.

Then, once an offer is made to the first nation and they make the decision whether or not to accept the claim, if they accept it we finalize. They may have a ratification vote, depending; there are thresholds for ratification. If the first nation votes in favour and they agree to the settlement and to the trust, we seek approval to ratify the agreement. Then we make payment to the first nation.

Mr. Rob Clarke: Do the first nations want to continue with negotiations past the three years?

Ms. Anik Dupont: I guess from the first nations' point of view, it's getting used to the concept that we come in and this will take three years. It's been a difficult adaptation for everyone when it comes to the pace and how we need to focus more at the tables.

The first nations sometimes feel that, yes, they are being pushed and shoved through the process, but we have a lot of discussions with them, and they understand that the ultimate goal is for us to get them in front of a settlement sooner rather than later.

Mr. Rob Clarke: Okay.

I'm looking at pages 10 and 11 of the specific claims policy and process guide, and it's a very in-depth process. Step one is submission and step two is early review.

Step three is research and assessment:

Although the First Nation does not receive a response as to whether its claim has been accepted for negotiation within the three-year time period, the First Nation has the option of either waiting for the results of the federal government's assessment or filing the claim with the Tribunal for a determination on its validity and compensation.

Step four is negotiation and settlement:

Although the three-year time frame for negotiations begins on the date the Minister notifies the First Nation in writing that the claim has been accepted for negotiation, the negotiation process itself will not begin until the Minister has received evidence, such as a Band Council Resolution, stating that the First Nation is prepared to enter into negotiations on the basis set out in the notification of acceptance.

So the three-year timeframe starts when the minister gives approval.

Ms. Anik Dupont: Right.

Mr. Rob Clarke: Can they negotiate with the first nations beyond 2011?

Ms. Anik Dupont: Of course they can.

Mr. Rob Clarke: Thank you.

The Chair: Mr. Rafferty, for five minutes.

Mr. John Rafferty (Thunder Bay—Rainy River, NDP): Thank you very much, Mr. Chair.

I have a couple of quick questions here, and perhaps it will allow a little more time for...

Dr. Bennett is going last, correct, after me?

• (1200)

The Chair: We're going to work her in.

Mr. John Rafferty: You're going to work her in. Okay.

There has been much talk recently, certainly a lot in the media, about how the land claims negotiations go. I don't know if this is the case in the specific land claims category, but we've seen the "take it or leave it" attitude talked about. Is that something, in terms of specific claims, that's talked about in this process at all now?

Ms. Anik Dupont: From what we've seen in the press, when they talk about "take it or leave it" offers on the table...I guess our negotiation process differs a bit from other negotiation processes in that we have worked with the first nation to arrive at what we believe could be the value, or how the claim will be valued. When we come back to the table with an offer, we explain to the first nation what our offer is. We try to make our best offer, what we consider to be a fair and equitable settlement of that claim.

Do we spend a lot of time back and forth with the first nation discussing what the amounts are? To a certain extent we do. We try to explain to them how we came to the amounts. But we always put our best offer forward. First nations could interpret that as us saying, “Well, it's a take it or leave it offer”, but we put forward to them what we believe is a fair and equitable settlement.

Mr. John Rafferty: Does it mean that after that point you're not willing to talk any more about your best offer that you've now put on the table?

Ms. Anik Dupont: For most cases, we present the fullest offer we can make to them, so we leave ourselves very little room to manoeuvre. That's because we want to get to the settlement sooner rather than later with the first nation.

Mr. John Rafferty: So when that offer is on the table, if it's not acceptable, they can then go to the tribunal?

Ms. Anik Dupont: After the three years of negotiations, they can go to the tribunal.

Mr. John Rafferty: So there might still be some remedy then for them in that particular case?

Ms. Anik Dupont: Yes.

Mr. John Rafferty: The second question I have might be for Mr. McNeil.

Sometimes specific land claims have unintended consequences. One of them is that the cash that is received is often used for ATR lands attached to reserve lands. In other words, lands are purchased to increase the size of the reserve, or for investment, or for any other reason. I have some experience with that. I'm sure that Mr. Rickford has also had some concerns from municipalities in his riding. Keep in mind that municipalities are very large in northern Ontario. The town of Emo and the town of Fort Frances have both approached me to say that a strip mall has now been bought using this specific land claim money and they now no longer have that tax base. That's what I mean by unintended consequences. I have been told that the provincial government is responsible now for paying the municipality back for that lost tax revenue.

I wonder if any of you could shed some light on that for me. When I am approached by municipalities and they ask where their tax base is now, it's gone, particularly around the town of Emo, where farm land is being bought up and is disappearing, what is the answer for me to give?

Ms. Anik Dupont: As part of our negotiation process, we do extensive consultations, especially when there's a land component, or an ATR component, to that. Our teams often have town meetings. They go and brief, meet with the officials, the municipalities, the mayors. They have town meetings to make sure that information is totally made available throughout the process. Also it's not just the government that does that. We do it either with the first nation, or the first nation has discussions. So we do try to involve the municipalities to ensure that everybody is made aware. Any purchase of land is always done using a willing buyer or willing seller approach. So we don't displace—

Mr. John Rafferty: I'm not concerned about the willing buyer or willing seller part. As I say, municipalities are concerned that their tax base begins to erode. Also keep in mind that in northern Ontario, those tax bases are very fragile. It's not as if you have enough room

to manoeuvre. All it takes is a collapsed culvert on a bridge and suddenly your budget is gone for the next five years as you try to repair that. They are understandably very concerned.

• (1205)

The Chair: Mr. Rafferty, sorry to jump in. Your time is long gone, but we hope to get back to you if you can negotiate with—

Mr. John Rafferty: Can I just get one quick response?

The Chair: No, you can't. We're already 30 seconds past your time.

Ms. Bennett, we'll give you the floor now since you missed earlier.

Hon. Carolyn Bennett: Is there a document or a road map of all of the land claims and the status of each of those land claims?

Ms. Anik Dupont: All that information is available on our website. There's a public searchable database.

Hon. Carolyn Bennett: Is it in a chart that is alphabetical or by region? Do you have to search for each one individually?

Ms. Anik Dupont: The reporting centre allows you to do that. It's very flexible. You can press “print” and you'll get all the specific claims that are in our process right now. They give you the status, where it is, what the specific claim is. You can do it by province. It's quite versatile, and it allows people to have ready access as to where those claims are.

Hon. Carolyn Bennett: Does it show the “third year, do not cross” date?

Ms. Anik Dupont: If it's a claim that has been filed with the minister, it will have that date. All the dates are identified as part of the report. So it will say to you that this claim was filed with the minister on such a date. It will say that this claim was accepted for negotiation on such a date. So you know that from that date there is the three-year timeframe.

Hon. Carolyn Bennett: As I think were my colleagues, over the summer I was very concerned about the “take it or leave it” aspect in a process that's supposed to be based on negotiation, mediation, or whatever. The idea that “this is our last deal and otherwise you can take it to court”, which is of course a very expensive process, is worrying. I don't know that I'm reassured that “whatever is our last deal” is the way this thing was originally set up.

Ms. Anik Dupont: We have no plans to terminate any negotiations. It is important that that be said. We are trying to manage the negotiation process to get ourselves to a settlement within three years. That is our approach. That's how we're organizing ourselves to do it, but we are not terminating any negotiations.

Hon. Carolyn Bennett: But you are. When the clock runs out at three years, what happens?

Ms. Anik Dupont: Each and every negotiation table is managed independently. We monitor the work and the progress at the table, and we do it with the first nation as well because we want to get to a settlement by such a time. All the work at the table is focused on achieving that settlement, so if we are getting close to the three years and we have all the information that allows us to put an offer on the table, we'll put an offer on the table. If we don't have all those components, we will continue the discussions.

In certain cases we have no choice. There might be other parties to the table so that it takes some time for us to get to a settlement, but we do not arbitrarily terminate negotiations after three years.

Hon. Carolyn Bennett: At the three-year point, is there is some leeway by Canada to actually extend it?

Ms. Anik Dupont: Yes.

Hon. Carolyn Bennett: You can extend it if you want. So even when there is this arbitrary message that it's to be done in good faith, putting an unacceptable deal on the table a week before the three years is up should be avoided. Is that right?

Ms. Anik Dupont: Yes.

Hon. Carolyn Bennett: You are saying there is nothing automatic at the three years. There is no sort of "see you in court" at three years.

Ms. Anik Dupont: The "automatic" is there, but it's not ours. At the three-year mark the first nations can leave the process and bring their claim to the tribunal and we can be still sitting at the table, so it's up to the first nation.

•(1210)

Hon. Carolyn Bennett: Okay.

The Chair: Thank you, Ms. Bennett.

Mr. Rickford, go ahead, please, for five minutes.

Mr. Greg Rickford: Thank you, Mr. Chair.

Thank you to the witnesses. This has been helpful, especially for committee members who are new here. We went through this process just under a year ago, and we had an opportunity to interview the commission as well on that process. There are transcripts available to that end. They might be beneficial.

I was struck by part of your speech. After you talked about the pillars, you actually had an independent evaluator who found, among other things, that this is working, that "changes resulting from the action plan could be expected to enhance the ability of the federal government and first nations to settle specific claims, which in turn could promote greater social and economic development". I can't help but think that certainly for a senior policy analyst like Kathy Green, this would have been something she was either seeing the results of or had thought about.

I'm saying that pre-emptively because this committee has taken note of a couple of big-ticket items that first nations leadership is talking about, and one of them—a key one, I might add—has been the strategic economic development of land, or land-use planning.

I know that specific claims don't necessarily fit into that per se, but on this side of the table certainly we are beginning to be struck by what appears to be an emerging constellation of tools and

instruments and/or processes that offer up opportunities for first nations to move forward on sustainable economic development planning.

This is perhaps particularly for the senior policy analyst. Can you expound on the last part of that comment, which appears to have been from your evaluators, on what discussions you might have had about how this benefits, as a tool or an instrument, economic development prospects for first nations communities?

Mrs. Kathy Green (Director, Research and Policy Directorate, Specific Claims Branch, Department of Indian Affairs and Northern Development): The compensation that first nations achieve through the settlement of specific claims is theirs to do with as they choose. There is an expectation that the compensation received will be used for the benefit of the community as a whole. With no empirical study of that having been done, it would be safe to say that is what happens with the compensation received from specific claims settlements, that bands do invest it in various ways to the betterment of their communities and their population.

Mr. Greg Rickford: Sure, and I can appreciate that this part of the data may not be something that you would necessarily be in the business of gathering, but this didn't occur in a vacuum.

A voice: No, absolutely not.

Mr. Greg Rickford: Your independent evaluator said that this has benefits. I was just wondering if that discussion moved beyond what you've stated is more or less obvious.

My question to you as a panel, then, would be this. As we consider the prospects of strategic economic development of land, in its very rudimentary form, as even I am trying to put a concept to it, we would benefit from consideration of our analysis or the results of some of these claims as they may have been settled, to understand what they're doing, and they would form an interesting part of our analysis of strategic economic development of land use planning.

I know that land tenure reform creeps in there. I don't mean to invade that space, but perhaps you could comment on that, Anik.

Ms. Anik Dupont: We have been looking at that, and as a continuation of a discussion with our colleagues in lands and economic development, we will continue to look at that, because some of the first nations, as Ms. Green has said, have invested. They have used the settlement money to invest in their communities, either by putting in some of their funding to improve housing or, also, by buying land for them to be able to build on or to have access to businesses and be able to participate in the local economy.

•(1215)

Mr. Greg Rickford: And that clearly is an important component of this.

Thank you, Mr. Chair.

The Chair: No problem.

Committee members, we've moved expeditiously through the first two rounds. If there's a willingness, we'll go into a third round of questioning as well, but if we do want to get to committee business, just be mindful of that and of the necessity to keep your questions to the point and as short as possible.

Mr. Rickford.

Mr. Greg Rickford: How many more rounds does the...?

Ms. Linda Duncan: I just have a couple of follow-up questions.

The Chair: The third round includes one...well, we can move people in or out based on the list.

Mr. Greg Rickford: Just go in the order and...?

The Chair: Yes.

If people don't have a question, please, let's pass it on to the next person.

Ms. Duncan, for five minutes.

Ms. Linda Duncan: Madame Dupont, I have a follow-up question. I want to go back to the three-year timeline. I have two questions in that vein. On the first one—I haven't had a chance to look at the evaluation yet, and I look forward to looking at it—I notice in the points that you have pulled out in your presentation to us on the independent evaluators.... My first question is, was the evaluation done before the department made it known that they're going to stick to a three-year timeline for all specific claims reviews? Also, did they comment on this policy of the three-year timeline, if it was then in effect?

Ms. Anik Dupont: The three-year operational framework has been in operation since the announcement of the action plan. The evaluation does cover that three-year period. They interviewed first nations and other organizations, as well as employees, to develop their recommendations.

Ms. Linda Duncan: So it would be fair to say, then...because when my colleague and I met with the department in the summer, we were told that there is not a broad-brush policy of the department to end all negotiations at three years. But from the testimony here today it sounds like that in fact is the government policy in place: if you don't complete your negotiations within three years, that's it, even if there's a small one or a large one or whatever, or even if there is a matter that would take another couple of months to negotiate.

Is the policy in fact in place? Is it the understanding of the department, regardless of what the legislation provides, that no specific claim goes past three years?

Ms. Anik Dupont: No. What we're saying is that we are managing each and every negotiation process to reach a settlement within the three-year process—

• (1220)

Ms. Linda Duncan: But where does that three years come from? This is what I remain puzzled about. Where is the government getting this three-year deadline? I don't understand that. I know the act gives...and there's a very specific reason for that. The legislation was intended to put in place a process that would trigger greater government attention to this file. So the first nations, then, are given that right to go before the tribunal—not the government.

I still remain puzzled. Where, then, has the government...? I mean, a first nation doesn't have to go to the tribunal at three years. It's simply given the option to go to the tribunal at three years—

Ms. Anik Dupont: Yes.

Ms. Linda Duncan: —or even earlier if something else happens and the minister agrees.

So you're saying that at this moment, if first nations are negotiating claims and three years have passed, they can continue those negotiations...?

Ms. Anik Dupont: If we feel that we need to continue the negotiations, of course; if we're not done and we don't have an idea of where we're going towards the settlement, yes.

Yes, the act says three years. What the department is trying to do is govern itself in accordance with what the act says. We are governing ourselves in response to the first nations, who have come to us complaining that it was taking too long. So if we have the act, whereby the first nations can avail themselves of access to the tribunal, and we continue to do the negotiations without set timeframes, there's an imbalance there. The first nations will not be getting what they want, which is a fair, expeditious, and equitable resolution of their claim, and then we've changed nothing. The government has done its reform to work towards that, to the settlement of the claims.

Ms. Linda Duncan: I fully understand that the government is showing their cards, that they're committed to trying to expedite these languishing claims, these claims that have been going on for 100 years, 50 years, 10 years, and so forth. But we're now talking about claims that have been filed just three years ago, two years ago, or a week ago.

I'm still not getting a really clear answer. I've been told by a number of first nations—they've contacted me, which is why I asked for the briefing—that they're very disturbed that there now appears to be a policy that at three years it doesn't matter if you're close to resolving something, that's it.

So I'm seeking, so that I can pass on my understanding of the government policy.... There is not a clear “three years and that's it, accept our settlement and we're going on to the next first nation....”

The Chair: You just have 20 seconds left, if there can be an answer. It may be a repeat, but...

Ms. Anik Dupont: There is no policy to end the negotiations in three years. It's a framework that we've adapted to get to the settlements within three years.

Ms. Linda Duncan: It's a framework and a policy.

Okay. Thanks.

The Chair: Thank you.

Mr. Seeback, five minutes.

Mr. Kyle Seeback (Brampton West, CPC): I'll pick up where Ms. Duncan left off, because there still seems to be some confusion about this among some members.

We keep hearing “three-year deadline” and “three-year time limit”. From what I've heard, from what you've said today, there is no time limit. It's a timeframe. Is it safe to say that it's an option of the first nations to appear before the tribunal or they can continue to negotiate after the three-year timeframe...?

Ms. Anik Dupont: Yes.

Mr. Kyle Seeback: Is there a cost to the first nations to go before the tribunal?

Ms. Anik Dupont: If they have representation, there's a cost to the first nation, but there's funding available to cover those costs.

Mr. Kyle Seeback: If they choose to get some independent legal representation, there would be a cost, but there's no actual cost if they choose not to get that kind of representation?

Ms. Anik Dupont: The rules of the tribunal stipulate that they have to be represented by legal counsel, so they have to seek legal counsel.

Mr. Kyle Seeback: Can you tell me more about the mediation services unit, for example? What does it do? Can you give examples of when the MSU has been used?

Ms. Anik Dupont: The mediation services unit will administer the rosters of the independent mediators. If at the table both parties agree there's an issue that needs to be kind of massaged better to get to a settlement that we just can't see, or that we're not able to crack, I guess, both parties can request a mediator.

They can also specify as to what type of mediator they want; it might be that it's a very narrow question, so they would give us much direction as to what it is they would like to see in a mediator. Then, looking at those criteria, our services will look at the roster

and refer names to the negotiating table. The parties will analyze who's there and then choose a mediator of their choice.

Mr. Kyle Seeback: Just so I'm clear on this, it can be on any specific issue that's proving to be difficult in the negotiations. A mediator's services can try to help resolve that particular issue?

Ms. Anik Dupont: If both parties feel there is a need for it, yes.

Mr. Kyle Seeback: Great.

Thank you.

The Chair: Committee members, it looks to me as though there's no indication that those people who would be available to speak in the third term here have any desire to intervene.

We do thank you for coming today to provide this material to us. I think you've whet our appetite possibly for some additional discussions later on. We do appreciate your testimony today, and we appreciate the time you have taken to present as well as to prepare for this. Thank you so much.

Colleagues, I'll suspend the meeting for just a few moments so that we can move in camera, and then we'll have a discussion on future business at that point.

[Proceedings continue in camera]

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