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Chair

Mr. Chris Warkentin

Standing Committee on Aboriginal Affairs and Northern Development

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• (1100)

[English]

The Chair (Mr. Chris Warkentin (Peace River, CPC)): Colleagues, I will call this 20th meeting of the Standing Committee on Aboriginal Affairs and Northern Development to order.

Today, colleagues, in our study of land use and sustainable economic development, we have before us two separate witnesses. We have representation from the Office of the Auditor General. They will be speaking specifically, colleagues, to the report that has been distributed to members, and it is chapter 6 of the 2009 report. We will hear from them with regard to that report. I remind you, colleagues, that this is what they are here for and prepared to speak about.

We have with us as well representatives from the Department of the Environment. They will be answering questions related to the issues we have heard about with regard to the possible legislative gaps and probably additional items on that fund.

We're going to turn it over for opening statements first to representatives from the Auditor General.

I believe, Mr. Campbell, you have an opening statement. We'll turn it over to you.

Thank you.

Mr. Ronnie Campbell (Assistant Auditor General, Office of the Auditor General of Canada): Thank you, Mr. Chair.

[Translation]

Thank you for this opportunity to discuss chapter 6—

[English]

The Chair: Excuse me, Mr. Campbell, I'm just recognizing a point of order.

Hon. Carolyn Bennett (St. Paul's, Lib.): I was just wondering when we would deal with the motion that was tabled last week.

The Chair: We could do that. If it would please the committee, it would be best that while we have witnesses here, we hear from them and then we will set some time aside at the end of the committee meeting to deal with that, if that is something for which there is all-party support. Is everyone happy with that? I think there is a general consensus. Thank you.

Mr. Campbell, I apologize for that. Please, the floor is yours.

Mr. Ronnie Campbell: Thank you, Mr. Chair.

[Translation]

Thank you for this opportunity to discuss chapter 6 of our November 2009 report—Land Management and Environmental Protection on Reserves. I am accompanied by Jerome Berthelette, Assistant Auditor General, and Frank Barrett, Principal.

Reserve lands are central to first nations peoples' history, cultural identity, and day-to-day activities. Mr. Chair, as your committee probably knows, many aboriginal communities are among the most economically deprived in the country. Their sustainable economic development depends on their access to and control over their land and natural resources, and on a clean and healthy environment.

[English]

In this audit, Mr. Chairman, we examined how Aboriginal Affairs and Northern Development Canada and Environment Canada have carried out the federal government's responsibilities for land management and environmental protection on reserve lands. This included looking at regulatory and non-regulatory measures used to manage the environment and at the support that Aboriginal Affairs and Northern Development Canada provides to those first nations wishing to assume more control of their reserve lands.

Provincial and municipal laws and regulations generally do not apply on reserves. Our audit found that there are few federal regulations in effect to protect the environment on reserves. As a result, residents of first nations reserves do not have the same environmental protection as do other Canadians.

While the federal government has the authority to develop regulations on reserves, it has rarely used this authority to mitigate environmental threats that are regulated off reserves by provincial governments.

Mr. Chairman, we also found that Aboriginal Affairs and Northern Development Canada has done little to monitor and enforce compliance with the regulations that do exist. For example, while there are regulations under the Indian Act that require a permit to be issued by the department for anyone wishing to operate a landfill site on reserve lands, we found that the department has issued few permits and is not equipped to conduct inspections, monitor compliance, or enforce regulations.

Mr. Chair, our audit also looked at Aboriginal Affairs and Northern Development Canada's commitment to transfer control of land management to first nations who want it and are ready to take on these responsibilities. This is part of an overall departmental approach to facilitate first nations' control over their communities.

Aboriginal Affairs and Northern Development Canada has provided options since the early 1980s for first nations who considered that the Indian Act regime of land management was not meeting their needs. Aboriginal Affairs and Northern Development Canada has developed legislative and program options to support first nations who wish to assume greater control of land management on their reserves. However, most first nations lands are still managed by the department under the Indian Act.

First nations access to alternative land management regimes established by Aboriginal Affairs and Northern Development Canada does not meet the demand. Two programs that have been in place for decades still operate, with 95 first nations participating. However, they have been closed to any additional first nations since 2004. Instead, the department has developed two other options for first nations to assume more land management responsibilities.

The reserve land and environmental management program has remained a pilot program since its creation in 2005, and access has been limited. Similarly, there is a waiting list for first nations who want to access the other alternative, the First Nations Land Management Act regime.

● (1105)

[*Translation*]

As well, our audit found that the department provides too little access to training for first nations in comparison with the land management responsibilities it is transferring to them if they operate under either of these regimes.

During our audit, officials from both Aboriginal Affairs and Northern Development Canada and Environment Canada cited a lack of funding as a key reason for not meeting some of their commitments.

Our audit made five recommendations. These included the need for Aboriginal Affairs and Northern Development Canada and Environment Canada to work together and with first nations to develop the means for better environmental protection on reserves, and to assess their funding requirements for fulfilling their land management responsibilities. We also recommended that Aboriginal Affairs and Northern Development Canada provide greater access to its land management initiatives and land management training as required.

[*English*]

I should note that this audit was substantially completed in May 2009, and we have not audited since that time. I want to highlight that point, because we quite often come before the committee six or seven months after the audit work has been completed. So in this case the audit work was completed in May 2009, and we have not done any audit work since that time.

At some point your committee may want to discuss with Aboriginal Affairs Canada and Environment Canada the funding they have currently committed to deliver the programs we discussed in our audit. You may also want to ask these departments to update the committee on actions taken since the audit to address the recommendations in our chapter on progress in addressing the issues we raised in our audit.

Mr. Chair, that concludes my opening statement. We will be pleased to answer your committee's questions.

Thank you.

The Chair: Thank you, Mr. Campbell. We appreciate your testimony this morning.

Mr. Moffet, I understand you have a submission and opening statement as well. After that we'll have members of the committee ask questions of both of you. I appreciate that you have made yourself available today as well.

Mr. Moffet.

● (1110)

Mr. John Moffet (Director General, Legislative and Regulatory Affairs, Department of the Environment): Thank you, Chair and committee members, for taking an interest in the work of Environment Canada.

In my opening remarks I'd like to address three issues. First, I'll provide a brief overview of environmental management generally in Canada. Second, I'll outline the nature of the environmental management regime on reserves, and I apologize if I'm duplicating testimony you've already heard. And then third, I'll explain some of the initiatives Environment Canada has taken to strengthen environmental management on reserves and on aboriginal lands.

Environmental management in Canada involves a broad range of activities, including scientific research and risk assessment, the development of standards and regulations, licensing, permitting, monitoring, enforcement, public education, and compliance promotion. Responsibility for environmental management in Canada is shared among the federal, provincial, and municipal levels of government. Provinces and municipalities have primary responsibility for natural resources, land and water use, and local issues including waste management. Through their control of land use planning and facility approval processes, they manage the environmental impacts of a wide range of residential, commercial, institutional, and industrial activities.

Environment Canada is primarily responsible for issues of national concern. Regulations passed under the Canadian Environmental Protection Act, for example, allow the department to manage issues such as the release of toxic substances, the export and import of hazardous wastes, air emissions from fuels, engines, and vehicles, and environmental emergencies. The Fisheries Act prohibits the deposit of deleterious substances into fish-bearing waters. And under the Species at Risk Act, we work with Parks Canada and the Department of Fisheries and Oceans to identify and protect endangered wildlife and their critical habitat throughout Canada. Under the Migratory Birds Convention Act, we regulate the hunting of more than 500 species of migratory birds and put in place measures to ensure these birds remain abundant.

Other federal departments also contribute to environmental management in Canada. For example, Parks Canada protects nationally significant examples of Canada's natural heritage; Fisheries and Oceans is responsible for ensuring healthy aquatic ecosystems and sustainable fisheries; Transport Canada regulates the transportation of dangerous goods and various environmental aspects of rail, ship, and train performance throughout Canada; Natural Resources Canada supports the sustainable development of our natural resources; and of course Aboriginal Affairs and Northern Development Canada, from whom you have already heard considerable testimony, influences environmental performance on reserves and in the north in multiple ways, including through its application of framework legislation, through the development of land claims and self-government agreements, through its participation in the contaminated sites program, and through its extensive programs to enable reserves to manage land use and resource development issues.

There are various environmental management challenges on reserve, some of which stem from the fact that while federal laws apply throughout Canada, including on reserves, provincial laws related to lands and their use generally do not. As a result, reserve lands generally do not benefit from the full range of environmental protection that applies off reserve. Aboriginal Affairs and Northern Development Canada and Environment Canada have worked with aboriginal partners to identify the environmental issues that arise as a result of this gap, to identify which are the most significant, and to address the more difficult question of what is the best way to address these issues.

While circumstances vary greatly from one reserve to the next, the most important environmental issues likely relate to solid waste management, hazardous waste management, waste water discharges, environmental emergencies, and source water protection. The environmental and health consequences of these potential so-called gaps can vary widely depending on the level of development on a reserve, population density, remoteness, and a range of other factors. In addition, the lack of clearly defined rules can undermine economic development by creating investment uncertainty.

So what's our role? The vast majority of Environment Canada's regulations apply throughout Canada on private and provincial lands, on federal lands, and on aboriginal lands. Some of these regulations, of course, address significant environmental issues on reserves. When that is the case, we spend considerable time and effort consulting with aboriginal partners, both about the standards themselves and about how to ensure their effective implementation on aboriginal lands. For example, we are developing regulations to phase out the dumping of under-treated sewage into our waterways.

•(1115)

In 2010 we proposed wastewater systems effluent regulations and then spent over a year engaging with provinces, municipalities, and aboriginal organizations. We now anticipate publishing the final regulations this coming winter. These regulations will establish clear standards throughout Canada, including on first nations communities, other than small waste water systems, and they will not apply in the north, where we need to do more research to develop cost-effective treatments for extremely cold climates. We're planning

significant outreach activities to support the effective implementation of these regulations on reserves.

In addition to these types of specific environmental protection regulations, we also play an important role in supporting conservation. Of course, popular conservation programs can raise a number of challenges, particularly where long-term public interest goals of maintaining biological diversity bump up against private land use and resource development interests. These issues apply throughout Canada, but they can be particularly significant for aboriginal people. On the one hand, traditional environmental knowledge, values, and modes of interaction with the landscape and wildlife mean that many aboriginal lands represent valuable reservoirs of species at risk. On the other hand, in the absence of effective governance regimes and tools, specific restrictions associated with species at risk protections can be seen as impediments to development opportunities on reserves.

Recognizing this challenge, our species at risk program supports capacity-building on reserves. We have a number of stewardship funds, including a dedicated aboriginal fund for species at risk, and a broader habitat stewardship fund, both of which support the development of practical tools to allow aboriginal communities to manage their species at risk obligations in ways that also enable economic development to occur.

We're also working with our colleagues at Aboriginal Affairs and Northern Development Canada to find opportunities to support or leverage other programs to build aboriginal capacity, for example, by linking conservation goals with that department's efforts to strengthen land-use planning on reserves, as land-use planning can provide an important foundation for both economic development and the effective management of conservation objectives.

Although most of our authorities apply nationwide, we also have some authority under part 9 of the Canadian Environmental Protection Act to issue regulations that are specifically focused on federal operations, federal lands, and aboriginal lands.

As the 2009 Auditor General's report noted, studies have consistently identified a number of important issues on reserves. In particular, petroleum fuel storage is one of the key environmental threats on reserves. In response to this concern, the government enacted the storage tank systems for petroleum products and allied petroleum products regulations in 2008. We rarely win prizes for the titles of our regulations. These regulations were promulgated under part 9 of CEPA, and essentially they establish the same standard on federal lands and reserves as applies off federal lands and off reserves by provincial requirements.

In addition to promulgating regulations, an important role of the department is to support capacity to ensure that the regulations targeted on reserves can actually be implemented. As such, we've delivered over 60 information and training sessions to first nations, which have involved more than 200 first nations communities. In addition, we're working with the Department of Aboriginal Affairs and Northern Development, which has committed almost \$80 million to help bring storage tank systems on reserves into compliance with the regulations.

Developing practical and properly resourced solutions is significantly more challenging than either identifying the gaps themselves or coming up with a particular regulatory solution. The key issue on reserves, as you've no doubt heard repeatedly, is often capacity development, both in terms of technical skills and in terms of governance authorities.

Environment Canada, as I've described with respect to storage tanks and species at risk, can and does support technical capacity in terms of providing regulatory compliance promotion and skills development. However, the role of our department with respect to governance authorities on reserves is much more limited. We're primarily a regulatory department, and our authority under part 9 of CEPA is just that. It authorizes the department to regulate on reserve those issues that are regulated by provinces off reserve.

• (1120)

This authority is a backstop authority, and there are at least a couple of reasons to consider using it with caution. First, each reserve likely has different challenges and priorities and may be ill-served by the imposition of a series of uniform federal regulations. Second, before imposing new legal obligations it may be more important to ensure that reserves have the legal and institutional capacity to manage their own environmental risks in ways that account for their own land use and commercial and industrial development goals.

In conclusion, there are many federal legislative authorities and programs in place working to address environmental management on reserves. There is no doubt a need to better align these activities and possibly add to them. However, regulations alone are unlikely to solve the environmental challenges on reserves.

Environment Canada is committed to working with our partners to enhance first nations' legal and technical capacity to identify and manage environmental issues, and to enable much-needed environmentally sound investment and development on reserves.

Thank you.

The Chair: Thank you, Mr. Moffet.

I'll turn to our colleagues for questioning. Ms. Duncan, you'll begin with seven minutes.

Ms. Linda Duncan (Edmonton—Strathcona, NDP): Thank you, Mr. Chair, and thank you to the witnesses.

First I want to commend the commissioner for sustainable development for the fabulous work you've done in this area. I really appreciate your thorough reports. They provide a good framework for what has been done and what needs to be done.

My first question is to Mr. Moffet. It's nice to see you, Mr. Moffet, and nice to know you're still there at Environment Canada looking after our best interests.

Part 9 of CEPA has been there for a long time—since the mid-1980s, when CEPA was first enacted. It provides federal regulations for environmental management and protection on federal lands, but also for aboriginal lands. Over all the incarnations of CEPA, that part has remained. It very specifically references the power of the government to enact regulations for a myriad list of environmental management matters on first nation lands.

The obvious question is why has the department never enacted any regulations, and are there plans to move in that direction? Are you working with Aboriginal Affairs in that direction?

Mr. John Moffet: Although they have been somewhat amended, you're right that these provisions have been in CEPA since its first incarnation in 1988. Under the current part 9 we've promulgated federal PCB regulations—the storage tank regulations I referred to. In addition to authority to develop regulations, part 9 also authorizes a wide range of other activities, such as the development of objectives, guidelines, and codes of practice.

Environment Canada has been and continues to be very involved in supporting the development of guidelines and codes of practice that can be utilized by a variety of parties, including first nations. For example, largely as a result of the surveys that have identified solid waste management as a priority issue on reserves, we have recently focused our attention on the development of municipal solid waste guidelines that can be used on reserves.

There are already regulations under the Indian Act addressing solid waste, and in consultation with Aboriginal Affairs and Northern Development Canada we concluded that rather than imposing an additional regulation, it would be more value-added to provide a guidance document that can be tailored to the needs of specific reserves.

Ms. Linda Duncan: Thank you.

In another area, there was a Federal Court ruling just this past summer, where former environment minister Jim Prentice was found to have erred in law because he made the determination that he didn't have to consider first nation rights and titles when he made decisions under the Species at Risk Act.

As a result of that court decision, are changes being made in the practices within the federal government to comply with the law? Are you working with Aboriginal Affairs on that matter?

I'm still waiting for a response to my letter written three months ago to the minister, so I'm wondering if you know what's going on.

• (1125)

Mr. John Moffet: Let me commit to try to find out where the response is to your letter.

And yes, the department across all of its programs has taken a look at our obligations with respect to what's known as "duty to consult". The particular court case applied to the Species at Risk Act, but across the department we have reinforced our basic obligations under the Constitution to discharge that duty to consult across all our programs whenever we are contemplating a decision that might impact statutory, negotiated, or inherent aboriginal rights.

Ms. Linda Duncan: Okay, thanks.

I have a thousand and one questions to ask the commissioner's office, but your presentation and your reports themselves stand fairly clear. You have clearly indicated concerns with the environmental regulatory gaps for first nations and with the capacity issue, which I note Mr. Moffet has also raised. You have very honestly said that this was your 2009 audit, and there may have been profound changes since then.

I wonder if you could elaborate a bit more on the issues you saw, both for those nations that have adopted the land code and for those that are still under the Indian Act regime. Is there a need for federal intervention, perhaps, even as a holding pattern, to enact some regulations that could be adopted by the first nation?

I have worked in Environment Canada and I've been engaged in the development of regulations over 40 years. It's a hugely complex area, where you need a lot of experts. You need legal expertise. I'm wondering what your comment would be in your review on the capabilities of the first nations under those respective regimes in moving forward to fill that huge regulatory void?

Mr. Ronnie Campbell: Thank you for the question. I'm going to ask Mr. Barrett to help me with some of the details.

First of all, I'm the Assistant Auditor General responsible for our work on aboriginal issues. I'll pass on the member's good wishes to the Commissioner of the Environment. He's a colleague of mine. And yes, he does great work. Thank you for that.

Ms. Linda Duncan: And so do you.

Mr. Ronnie Campbell: Thank you for that too.

In a great many of the audit reports we've done in the Office of the Auditor General, we've touched on capacity. It was interesting in the context of this audit, because we did see an appetite on the part of first nations to get the training so they could take on their new responsibilities. Yes, it was over two years ago, but at that point that appetite wasn't being satisfied because courses and training weren't available.

I will make two broad comments. One is that when first nations move forward and take more responsibility, two things are worth keeping in mind. One is to make sure that expertise in the capacity is in place so people with responsibilities can fulfill those responsibilities. The second issue I will mention is that it's really important that first nations take control in responsibility, and come outside of the Indian Act on some aspects of this. It's really important that they do this with eyes wide open and that there's a good assessment of the environmental liabilities that may be associated with the land for which they'll be responsible.

The Chair: Thank you so much. Our time expired long since, but maybe we can get back to that in future questioning.

Mr. Rickford, you have seven minutes.

Mr. Greg Rickford (Kenora, CPC): Thank you, Mr. Chair.

Thank you, gentlemen, for coming here today. We had a chance to discuss briefly and beforehand some of the things this committee is looking at.

Ronnie, I appreciate your comments, the important work that you did up until 2009. And I think it was greatly appreciated that we had a chance to read in both speeches today for a better understanding. I think it's important to point out that since 2009 some profound changes have taken place. I know that quite recently we've seen the minister and the national chief of the Assembly of First Nations move beyond conceptual thinking, but very much grounded in some of the words you were using in your speech today.

The joint action plan identifies education, governance, economic development, and we're being more efficient and effective with specific land claims, as an example. That was an agreement they came to.

Similarly, our approach to water and waste water treatment is a great model to think about. It includes three essential components: capacity, which includes reporting, monitoring, and maintenance of these advanced pieces of infrastructure; objectivizing and prioritizing critical infrastructure, which is something that hadn't been done necessarily well in the past; and legislation in some instances, particularly with respect to water and waste water, and certainly we're seeing that with land management.

Gentlemen, these are all important principles, whether we're talking about investment certainty, governance, regimes in specific training. You can see them popping out in all of our collective discourse.

And very recently the ASETS program through HRSDC has done two important things. One, it has taken a look at the broader skilled training that is required for vast regions, particularly up in the great Kenora riding, with more than 25 isolated and remote first nations communities. There is technology support to integrate education and streamline it, so that we have access to those things. And certainly, as we've identified here today, there is real action on dealing with contaminated sites, storage tank systems.

As somebody who has spent more than eight years living in these isolated, remote communities, I have an appreciation for these kinds of things. I also understand some of the challenges that you face.

I'm talking to the environmental folks here today. We run into provincial legislation that effectively makes parks of vast areas of northern Ontario, for example, which has included some reserves. In the crosshairs, of course, we have things like the Ring of Fire, which is the largest chromite deposit in the world, a 200-year potential for sustainability, an east and west corridor that represents significant potential for capacity development. But also cleaner, greener energy forms as the justification for opening these areas up necessarily depends on that kind of certainty.

With all of this read in together, I think my first question is going to be to the Environment Canada officials.

How does Environment Canada see itself in the most practical way, the best way moving forward, where the puck is headed, not necessarily where it's been in terms of effective consultation, accommodation, and real results in the context of some of the big projects? We can talk, for example, about the Ring of Fire and the Whitefeather Forest management initiative out in the most north-westerly part of Ontario. This is a fairly broad question, but it has real impact on how we decide with respect to certain environmental assessment processes from major projects, versus joint panel reviews and the likes.

I'm not sure, John, whether you might want to open the discussion on that.

• (1130)

Mr. John Moffet: In addressing this broad suite of issues that you described, I'll suggest three things Environment Canada is engaged in and intends to remain engaged in.

First of all, with respect to specific issues on specific reserves, in Environment Canada we see ourselves playing a supporting role to Aboriginal Affairs and Northern Development Canada. We have a certain capacity that we can share in the form of skills transfer, compliance promotion, providing some basic science to enable decision-making. We can provide that on an as-needed basis to individual reserves or to collections of reserves.

If there is a need to develop legal or regulatory tools, again, we see ourselves working in collaboration with Aboriginal Affairs and Northern Development Canada, who of course work in collaboration with their aboriginal partners. In looking at what is the best tool, and if Environment Canada has access to the best tool, then we can deploy that, but we don't see ourselves asserting, in any given situation, that our tool is the right one.

• (1135)

Mr. Greg Rickford: Just to cut you off there for one second, I think you're raising an important point. I get the fact that you can't be in the business of being interventionist per se. When we talk about large areas of a province, and projects that implicate a number of communities, how can Environment Canada reach out and be consultative when those communities may have differing opinions on, for example, an environmental process that would, could, and should take place? It may come as just a presentation to the different communities or one as a whole. Is that something you can and do perform?

Mr. John Moffet: We do that in a couple of ways, one where we actually regulate specific activities—for example, mining. We have a regulation with respect to mining effluents. If a mine is discharging water, effluent in any way, they have to comply with regulations that we administer. If a mine wants to change its activities, or if a new mine wants to develop, then they'll be subject to those regulations. There will necessarily be a process of consultation that goes well beyond the individual mine, and implicates the larger community and all the relevant stakeholders. I actually supervise the mining regulatory group. To be candid, I haven't met half of them because they're constantly on the road engaging with local communities. That's specific activity subject to specific regulations.

I think the issue you're getting at, though, is with respect to a suite of development that may implicate a landscape or an eco-system or a

region, or however you want to define it. I think the more effective way in which the government currently engages with communities—and indeed needs to, if anything, improve the way we engage with affected parties—is the environmental assessment process.

Environment Canada plays a supportive role. That process is administered by the Canadian Environmental Assessment Agency, which reports to our minister. I apologize for being somewhat bureaucratic here. It's a separate agency, which reports to our minister. We provide technical input on areas of our expertise. This committee may want to talk to the agency about its plans for things like regional environmental assessments, which provide an opportunity to step beyond individual developmental opportunities, and to do a more forward-looking review of the possible implications of a range of development opportunities in a particular region.

The Chair: Thank you. I apologize for cutting in, but we have overrun the time.

Ms. Bennett, you have seven minutes.

Hon. Carolyn Bennett: Thanks very much.

In the AG report, you've said, Mr. Campbell, that obviously there's a waiting list for first nations, and also that there was too little access for training, and also that officials from both the Department of Aboriginal Affairs and Northern Development and Environment Canada cited a lack of funding as the key reason for not meeting some of their commitments. You also noted that your audit was only completed in May 2009, and you've suggested that maybe we should ask the Department of Aboriginal Affairs and Northern Development and Environment Canada what funding they have currently committed to dealing with the problems that you highlighted in your audit.

Given that Environment Canada is the only one here, I was wondering, Mr. Moffet, if you would explain, other than the \$80 million for the storage tank systems, what you think it would take to be able to fulfill some of the items in the Auditor General's report, and what do you think we can expect to see in the 2012 budget, seeing we only got oil drums in the last one?

• (1140)

Mr. John Moffet: I'm afraid I can't speak for Aboriginal Affairs and Northern Development Canada, other than to say that the specific recommendation the Auditor General's report made was that both departments should assess the funding requirements they needed to fulfill their land management responsibilities with respect to the First Nations Land Management Act.

Both departments did assess their financial needs. And just to give you an example, Environment Canada estimated that we would need about \$1.5 million to provide significant support to the full range of environmental management agreements that were being developed in 2009-2010. That capacity, however, remains unfunded at Environment Canada.

I believe Aboriginal Affairs and Northern Development Canada did a similar estimate, considerably higher, and received some money. Again, I can't speak to the precise amount.

The issue at Environment Canada, however, remains largely unfunded, and as a result we provide support to first nations participating in the FNLMA on a responsive basis and within our existing funding envelope.

Hon. Carolyn Bennett: I'll go back to the Office of the Auditor General. It's sort of an unfunded liability to the planet. This is serious, what you've uncovered. When would you be back in the field to find out if anything has happened?

Mr. Frank Barrett (Principal, Office of the Auditor General of Canada): Obviously we would not be able to speak to what has happened since 2009 until we've done a follow-up audit. We don't have it on our plans exactly when we're going to do our next follow-up, but certainly every second year we do follow-up audits on various issues, so this would be one of those we'll tend to look at usually four or five years afterwards.

Hon. Carolyn Bennett: So the relationship is such that you would wait four or five years, even if it looks like there is.... Is there anything flagged in your department when budget after budget comes through, estimates after estimates, where there's nothing dedicated to fix this problem?

Mr. Ronnie Campbell: Thanks for the question. You raise a very real concern.

We don't follow up every audit report we do, but we try to get the biggest bang for our buck. We invested a considerable amount of effort recently, towards the end of Madam Fraser's term, to follow up a large number of audits we had done in relation to first nations issues. This was not one of them, but I think that the broad observations we have in the chapter 4 we tabled in June are probably worth bearing in mind. Largely those speak to the fact that the system is incredibly broken: there's a lack of service targets for what exactly government is committed to doing, a lack of funding for it that's not just through contribution agreements, and lack of a legislative base behind that, and then the tertiary and secondary support systems that you would expect to see. So we were calling for a completely new approach to how programs are designed and implemented on reserves, bearing in mind how we do them off reserve.

• (1145)

Hon. Carolyn Bennett: In medicine, when we approach wait times, it usually means you actually have to have more people doing it, or you have to decide on the appropriateness of what it is. The experts say you have to actually drain the pool, because you can never keep on top of wait times unless you get rid of the backlogs, and that usually takes some resources.

It sounds as if you're of the view that moving more and more of the communities into the land management approach would be a good thing, and yet there are huge wait times for that to take place. You've said it needs investments. Do you have any comment about how this could take place, or what would make your heart go pitter-pat at the next audit if it happened?

The Chair: Mr. Campbell, we have expired in terms of time, but we would like an answer if it could be short.

Mr. Ronnie Campbell: Thank you, Mr. Chair.

Fundamental change is what would make my little heart go pitter-patter.

The Chair: Thank you very much.

Mr. Wilks, you have seven minutes.

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

I thank you gentlemen for coming today.

I'll get to specific things in a second here, but with regard to the audit paper, and specifically to the federal and provincial regulations and waste water and water treatment, why does there seem to be an environmental regulatory gap on reserve vis-à-vis off reserve? As you are aware, for off reserve we are required to follow provincial and/or municipal guidelines. It seems to me as though some reserves do hook up to municipal waste water treatment centres, and that resolves that issue.

Is there the potential of reserves that are not formed to any regulatory body, that it would be easier to form to a provincial body than a federal regulatory system? In some instances we do not have federal regulations, especially when it comes to waste water. We do for water systems, but not for waste water.

Mr. Frank Barrett: Thank you for the question.

I guess the simple answer as to why there is a regulatory gap is that this is an area, as you said, that is typically regulated provincially. Obviously, as we have been saying in many cases, provincial regulations do not apply on reserves.

If we were to have no regulatory gap, it would require that we have consistent federal legislation and regulations that mirror those of the provinces. In some of the priority areas, including waste water, you have certain divisions under the Indian Act, but largely in terms of solid waste, waste water, toxic substances, toxic waste—or hazardous waste, rather. We don't have any federal legislation that is applicable on reserves. That's the reason for the gap. What it would take at this point....

There are situations where some reserves have signed service agreements with the provinces, but we still see, say in the waste water area, that over 200 first nations clearly do not have any permits or service agreements with nearby municipalities. Clearly, we have a gap there. It would take federal government legislation to close that gap.

The Chair: Mr. Moffet.

Mr. John Moffet: May I add to that? The question, sir, has two parts.

Generally, on where the gap arises, I take no issue with Mr. Barrett's response. In terms of waste water, the government has promulgated draft regulations, which will apply across Canada, including on reserves. Those regulations will come into force this coming winter. In terms of legal coverage, as of this coming winter there will no longer be a gap.

There will remain an extensive period of time during which investments will have to be made and capacities will have to be developed to ensure that waste water systems across Canada, including on reserves, come up to the appropriate standard. On that particular issue, this is an example of how regulations of national applications promulgated by the government can address an issue both on reserve and off reserve.

• (1150)

Mr. David Wilks: If I may just lead into that a little bit then, once that regulatory regime comes into effect, will that supersede provincial regulation?

Mr. John Moffet: I'm going to duck the term "supersede". Federal regulations will apply across Canada. Some provinces also have regulations—not all. Indeed, many do not. In many cases, the issue is addressed by means of municipal by-laws. The federal regulations will establish a baseline standard.

If provinces also have a regulation or a program in place, any waste water facility will have to at least meet the federal standard. If the provincial standard is higher, they'll also have to meet the provincial standard. In terms of what the regulatee will see from an administrative perspective, we are currently negotiating administrative agreements with all jurisdictions in Canada to enable a one-window monitoring and reporting approach so that there will be no overlap on the administrative front.

Mr. David Wilks: Over the years we've seen millions of billions of dollars placed into first nations communities across this land. I'm curious to understand the process, from the Auditor General's office. Do they feel that more money needs to be placed into first nations regulatory bodies, or do we need to find better ways for the money being provided to benefit first nations?

It seems to me that at times we're just throwing money, and we believe that throwing money works. Throwing money doesn't work. Where do you see us stopping and saying, "Just a second, there's money there. How do we fix this now? How do we make it work within the means?"

Mr. Ronnie Campbell: Thank you for the question.

As I mentioned earlier, we tabled a report in June that followed up on a considerable number of audits we did in this area. We're essentially saying that you can't get there from here. We're not producing the results that anybody likes, generally speaking, on reserves. Nobody likes these results, and if we carry on doing the same things we're going to get the same results.

The four things we identified include a legislative base for things that normally require and benefit from a legislative base; support organizations that go along with school boards and health boards; funding mechanisms that suit the purpose; and setting the target for what level and type of service is there to be delivered. Those are the key parts of my response to the question.

Sometimes the question is how long is a piece of string? On what has to happen as part of this discussion, somebody needs to define how long that piece of string should be in terms of what are the services and levels of services. Then the funding will flow. But one has to believe that whatever we're doing now can and should be done much better for people on reserves.

The Chair: Thank you, Mr. Campbell.

Mr. Genest-Jourdain, you have five minutes, please.

[*Translation*]

Mr. Jonathan Genest-Jourdain (Manicouagan, NDP): Good morning, gentlemen.

Gentlemen, I especially appreciate that your report talks about the training for the two land management regimes. To my knowledge, this is the first time we have received so much information and detail on that training.

I have a few questions. Is the training provided to first nations land managers for the two regimes similar? What kind of prerequisites do people participating in that training need to have? Do they have to be members of the community? Unless I am mistaken, this program is spread out over two years. It is probably provided by a university. Could you tell us more about how it all works?

• (1155)

Mr. Frank Barrett: Thank you for these questions.

[*English*]

Mr. Chair, I'm very happy to address this question.

There are a couple of things. First of all, it should be noted that the two programs we're talking about are fundamentally different. One of them is a delegated program. The regional land environment management program is a delegated program under the Indian Act, and there they had established a training program.

The other program we're referring to is with respect to the First Nations Land Management Act, and that is a very different regime. It's pulling the first nations out of the Indian Act and giving them very different powers. However, that second program did not have a training program with it. There was a process put in place at one point to develop training. It did not materialize, so the Department of Aboriginal Affairs said the land manager who was in this other program could access the training we have for the RLEMP, the reserve land and environment management program.

The difficulty, first of all, is that it did not have all of the components you would need for an FNLMA community. For example, there was no training on how to develop a land code, on how to develop an environmental management agreement. That's one serious problem. The other one is with respect to access. Again, if you were accepted into the program, which was a whole other major constraint, for those who did receive training the department provided training for one person per first nation. That has proven to be very problematic.

The individual who is the land manager in the first nation would typically be the person designated to receive the training. They would take the training, but two years later they could be in another position or they were no longer living on the reserve or they were no longer available, or in some cases where we conducted interviews the individual may have passed away. Well, now in effect the community is still considered to have this delegated authority but without the trained individuals. So that was a problem for those with the delegated program.

With respect to the First Nations Land Management Act, the issue was that it was better than nothing, but it wasn't at all designed for their needs.

[*Translation*]

Mr. Jonathan Genest-Jourdain: I have another question about this.

Regarding the first nations registered under the First Nation Land Management Act, unless I am mistaken, they are not obligated to have a designated first nations land manager. The same goes for someone going through training.

Who manages first nations lands during that training period, which may take several years? In other words, how is the land managed?

[*English*]

Mr. Frank Barrett: Thank you for the question.

I think the important element here in terms of program design is that it's the first nation that's designated as being an RLEMP first nation, but it's an individual who receives the training.

We speak to this at the end of the chapter, and I think the issue is that there were real funding constraints. I don't believe this is how it was originally envisioned. Again, the RLEMP program was set up first as a pilot program, which was expected to be available broadly to all first nations. We have to keep in mind that more than half of the first nations are still completely under the Indian Act, with no delegation and no opportunity for entering the RLEMP program.

Notionally they would have an opportunity perhaps of entering the First Nations Land Management Act program, except in that program they really don't have the funding to be accepting broad applicants either. So we have the constraints both ways on who can go in.

Given that they're working with what they have, so to speak, what we were seeing, again, going back to the 2007-08 period, was that the department would invite people to come in, but often it would be a last-minute thing because their budgets wouldn't be secure. Maybe a month or less beforehand, they would send out invitations to those they were accepting in—and it's only if they invited you that could you come in; that's how you became an RLEMP program.

Of course the commitment is that one individual who is the land manager on a reserve would have to take two weeks of the training—two weeks in the community, two weeks there—for a whole period of time. Well, if the first nation is swamped and they have lots of land transfers going on, or for personal reasons the individuals may not be able to leave for two weeks a week or two later, they ended up in the last couple of years that we looked at with something like 17 of the 30 people who were able to go. Access became an issue from that perspective, plus you ended up at the end of the day with one person trained.

• (1200)

The Chair: Thank you very much.

Mr. Seeback is next, for five minutes.

Mr. Kyle Seeback (Brampton West, CPC): First I'll go to Mr. Campbell.

You were talking earlier about the gaps with respect to environmental regulations. I noticed when I read through your paper today that until the 1980s all land management under first nation reserves was exclusively the responsibility of the federal government, but that some have opted out, through programs such as first nations land management and self-government and perhaps some other modern treaties.

Is it fair to say that any gaps that exist have existed for a long time on reserve?

Mr. Ronnie Campbell: Thank you for that question.

Gaps in any walk of life, whether it's environmental or otherwise, rather creep up on you. As life develops off reserve we create expectations—for health, for education—and once we start to supply and provide those services to people off reserve, the question then becomes, what about on reserve?

There was a time when there was no environmental regulation or protection for anybody. Now there is lots of it for those of us who don't live on a reserve, and that's where gaps are created. As we move off reserve, what do we do on reserve?

Mr. Kyle Seeback: These gaps that you're discussing would have existed ten years ago, in most cases, right?

Mr. Ronnie Campbell: Yes.

Mr. Kyle Seeback: Ms. Bennett talked about a waiting list for programs such as first nations land management. I take it that this waiting list has existed not just in the last couple of years either. It's a waiting list that developed back in the early 2000s, because I believe the FNLM program was closed to new entrants in 2004. Is that correct?

Mr. Ronnie Campbell: Yes, that would be correct.

Mr. Kyle Seeback: Thank you for that.

I'm going to ask Mr. Moffet about how these problems have been addressed. I understand that there have been some steps taken. I think you talked about them briefly in your opening statement.

Could you perhaps bring us up to date on some of the legislation or programs that have been brought forward in the last number of years to try to address some of these environmental gaps?

Mr. John Moffet: I can only speak for Environment Canada on that issue. Aboriginal Affairs and Northern Development Canada of course has received renewed funding to support increased work under the FNLM and is also pursuing a variety of other strategies with respect to negotiating self-government agreements with a variety of first nations.

With respect to Environment Canada, the main developments are the ones I've spoken about. They are the ongoing support we're providing for the storage tank regulations, which are responsible for a significant portion of the environmental risks on many reserves, and the imminent application of the waste water system regulations, which will apply the same standard to reserve waste water systems as to off-reserve waste water systems, which in turn are being supported by funding being provided by Aboriginal Affairs and by Infrastructure Canada to enable the implementation of appropriate technologies.

In addition to that, of course, the federal government last year promulgated changes to the Environmental Assessment Act that affected both reserves and developments off reserve and have gone some way to providing a little more coherence and clarity and predictability to enable a variety of parties to participate in processes to review potential environmental impacts of planned developments.

• (1205)

The Chair: You have about ten seconds, if you have a question that would be that short.

Mr. Kyle Seeback: I don't have a question.

I was just surprised that there is anything that makes the heart of an auditor go pitter-patter, but that was good to know.

The Chair: Thank you, Mr. Seeback.

Mr. Bevington, you have five minutes.

Mr. Dennis Bevington (Western Arctic, NDP): I think you mentioned that you're doing this within the limit of your resources or that INAC is doing this within the limit of its resources. Do you have any idea, after doing the audit, what the total resources are that are dedicated by INAC towards environmental matters for first nation and Métis communities?

Mr. Ronnie Campbell: No, I don't have that information. As I said, we haven't done any audit work in this area since 2009.

Mr. Dennis Bevington: Okay.

I'm interested in the fuel storage issue, because having dealt with diesel storage issues throughout the north, it's pretty....

Now, they did an assessment. Did they find any contamination? It's in the Auditor General's report; they say that INAC did an assessment of *x* number of fuel tanks. Did they find contaminated sites?

Mr. Frank Barrett: I don't think I have that information at my fingertips. Certainly we know that they've been assessing them and determining what was needed.

Mr. Dennis Bevington: They did an assessment, but did they not notice whether they were leaking or whether there was any contamination? Was there not a part of the report that would deal with that?

Mr. Frank Barrett: What we deal with is contaminated sites. There's another area in which we look at cases in which there are contaminated sites and a clean-up. That's not under a regulatory regime, but—

Mr. Dennis Bevington: Has INAC cleaned up any contaminated sites on reserves?

Mr. Frank Barrett: Yes. We point out in the chapter that Aboriginal Affairs, as INAC now is called, has done something to address contaminated sites; however, we also point out that in their assessment and determination of what sites are contaminated, they are finding sites far more quickly than they are cleaning them up. We also point out that their current estimates are that they're not going to meet their target of cleaning up the contaminated sites that were observed before 1998. The target was to clean those up by 2020.

Mr. Dennis Bevington: Are there any figures on how many sites...? In your analysis, did you look at it at all?

Mr. Frank Barrett: Yes, in paragraph 6.81 we make reference to their having identified 1,610 contaminated sites in April 2008 and to 557 of them being high- or medium-risk. Those are the ones that are particularly a problem. But then they continued doing assessments. Between April 2008 and April 2009 they discovered 270 more suspected contaminated sites on reserves. Then they put some money into cleaning it up, but in effect they're finding the contaminated sites far more quickly than they're able to clean them up.

Mr. Dennis Bevington: Within government as a whole, supposing you found contaminated sites on another government facility on their land, what are the regulations like for the clean-up there?

Mr. Frank Barrett: What the federal government did, I believe through Treasury Board, was set up a \$3.5 billion cost-shared program to help all federal departments clean up their contaminated sites. That was dealing with the DEW line and lots of other areas in government as well.

In fact, perhaps Mr. Moffet could speak to this. I believe Environment Canada is very much involved. But certainly there has been some activity there.

• (1210)

Mr. Dennis Bevington: Do you want to add something, Mr. Moffet?

Mr. John Moffet: I have a couple of points.

First, on the issue of storage tanks, standards with respect to the construction and management of storage tanks are typically promulgated by provinces to address storage tanks off federal land and off reserves. However, the federal government has regulations in place to address the same issue on federal lands and on reserves. We've been very active in identifying where those storage tanks are as well as working with relevant communities to enable them to bring their storage tanks up to standard.

In 2010 we worked with Aboriginal Affairs to identify about 3,100 community-owned storage tanks. Prior to that, we only had 100 registered across all of the reserves. The first step, of course, is to know what the scope of the issue is. Of these 3,100, a little less than a quarter were on aboriginal lands. The next step is to ensure awareness of the regulatory standard and, where appropriate, provide funding to enable compliance. Aboriginal Affairs has dedicated funds—I don't have the specific figure in front of me, but I believe it's over \$20 million—to enable compliance with those regulations.

The next issue is what programs are in place to support the cleanup or the remediation of contaminated sites. Obviously the storage tank regulations are in place to prevent the development of future contaminated sites. The government, of course, is dealing with a very significant liability with respect to existing contaminated sites. There is a multi-year, multi-billion-dollar program that applies both off and on reserves across Canada; Aboriginal Affairs and Northern Development are full partners in the delivery of that program.

I apologize that I don't have the particular details about what portion of the money is spent there, but it's not accurate to say no work has been done there. They're full participants in the government program.

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

Mr. Clarke, for five minutes.

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

I'd like to thank the witnesses for coming before the committee here today.

It's kind of interesting when I look back from a law enforcement standpoint, having worked on reserves for a majority of my career and having to deal with a lot of the issues on law enforcement, as well as some enforcement on environmental factors. I just sometimes see the regulatory gaps that come forward, especially in certain circumstances, such as landfills, which are very difficult when they're close to dwellings and everything like that.

I just want to ask a couple of questions here.

My first question concerns the regulatory gap on environmental issues: would you agree it's not enough just to pass the legislation? From what I've seen in the past from the provincial standpoint, the full range of issues addresses managing the environment from the provincial side, such as the enforcement of provincial laws. I hope you can clarify that.

Secondly, you mentioned the Indian Act, and I'm interested in that. What types of changes would you propose if you could change it under the Indian Act, or what type of legislation would come forward?

Mr. John Moffet: Maybe I can address the first question, and leave the speculation to my Auditor General colleagues.

I apologize, I may have misunderstood your question. Were you asking about the possibility of enforcing provincial laws on reserves?

Mr. Rob Clarke: Well, no, I know we can't do that. I just wanted more clarification. The full range of issues provincially typically addresses managing environmental issues, such as enforcement of provincial laws. I'm just wondering what types of gaps there are.

•(1215)

Mr. John Moffet: That's a good question.

Aboriginal Affairs and Northern Development and Environment Canada have done work to identify this issue in two different ways. One is on what the actual environmental issues are. They really haven't changed since the 2009 Auditor General report that listed the key issues that arise across reserves in Canada. I would say, however, that the major change has been the emergence of the storage tank regulations, which hasn't solved the problem but directly addressed one of those key issues. There is also the forthcoming promulgation of the waste water systems regulations, which again haven't solved the problem but provide part of the solution for one of those key environmental issues.

The other way to look at the problem is to put on my former lawyer's hat and ask what laws, as opposed to what issues, are not addressed. Maybe what I could do is describe what a typical provincial environmental regime covers. It's very extensive.

Most provinces have in place either regulations or a permitting scheme to cover various types of air emissions, ranging from emissions from boilers and other large industrial or commercial facilities to rules around open burning. Typically, a province has in place rules around drinking water quality, discharges to surface water, discharges to sanitary sewers, and the use of septic systems. Most provinces also address solid waste, largely at the municipal level. In addition, most have laws around contaminated sites and hazardous wastes. Some have rules around the application of pesticides.

Also, most municipalities, as creatures of a province, have authorities to put in place land use rules, which may not be directly related to environment but which establish the basis for decision-making, both for commercial development and for environmental protection.

Provinces are primarily responsible for managing extraction and development of natural resources, be it timber, fishing, hunting, extraction of minerals and aggregates, and oil and gas development. In addition, provinces often have in place various rules around regulating transportation of dangerous goods and response to spills, some of which are replicated at the federal level. But not all of these are replicated at the federal level. Therefore, where these are not replicated federally, one can argue that those rules do not apply on federal lands and on reserves. That provides the legal basis for the gap, which in turn gives rise to the various environmental issues I talked about earlier.

The Chair: Thank you, Mr. Moffet.

Ms. Duncan, you have five minutes.

Mr. Rob Clarke: Could I get a written response to my last question?

The Chair: Yes, there was a final question. Is there a possibility that we could have a written response to that?

Mr. Clarke, maybe you want to ask your question again so that it's on the record.

Mr. Rob Clarke: With regard to the Indian Act, what other type of legislation do you think would be of benefit, going forward?

Mr. John Moffet: I'm going to give you the answer that I may be difficult here, but the Department of the Environment doesn't have a position on what the Indian Act should look like.

We could go out for a beer, but I can't speak for the Department of the Environment on that topic.

The Chair: We appreciate that. Thank you very much.

Ms. Duncan.

Ms. Linda Duncan: Thanks.

I have three or four questions for Mr. Moffet. I'll put them out and you can answer. You may want to connect them all. This is in follow-up to your testimony.

Mr. Moffet, you mentioned the one-window approach on the new federal regulations, specifically on waste water. That's fine with the provinces, under the equivalency provisions, I presume. But who's going to inspect and enforce those regulations on first nations lands?

Secondly, if that responsibility is going to be transferred to the regional office or to first nations, what capacity is there to deliver that? Has the central office indicated to the regional offices that they should make more intensified monitoring inspection and enforcement on first nations lands, in response to the Auditor General's report?

Thirdly, in the Auditor General's 2009 report, recommendation 6.75 was that Indian Affairs and Environment Canada should work in partnership with the first nations in developing and implementing a strategy to fill those regulatory gaps. How is Environment Canada consulting? You mentioned at the outset your recognition of the constitutional duty to consult. How has Environment Canada consulted the 630-plus first nations in developing those rules and the strategy to enforce them on first nations lands?

• (1220)

Mr. John Moffet: Thanks for the questions.

I'll respond to the first two together and then treat the third one separately. I take it the first two are about our plans to inspect and enforce the forthcoming waste water system regulations, and particularly how we would manage that on reserves.

We're currently in the middle of negotiations with each province to develop administrative agreements to address the question of precisely how well we collectively implement the regulations, conduct compliance promotion, collect the information, and enforce where necessary. Those discussions include specific discussions about what arrangements will be made on reserves, and the answer may be different from province to province. Some provinces may undertake to conduct the inspections and do the enforcement—

Ms. Linda Duncan: Have the first nations agreed to provincial officers coming on their land?

Mr. John Moffet: If provincial officers do that, they will not be acting as provincial officers; they will be acting as federal officers enforcing a federal regulation. They would be agents to the crown, not agents to the provincial government.

Before this happens, of course, the next step to having initial discussions with the provinces will be to have discussions with first nations. Those are planned to occur over the course of the next year.

I want to be really clear there. We're talking about enforcement of federal regulations, and we can designate anybody we want to be an agent of the crown. They may, for the rest of their day job, be a provincial official, but where they are enforcing a federal law they will be acting as a federal agent.

Those negotiations are under way. The initial meeting has been held with each province—just a “get to know you” kind of thing. I can't tell you what they're going to look like. If I had to predict, I'd say the arrangement may differ province by province.

Ms. Linda Duncan: There will be no delegation to first nations staff to enforce those federal regulations?

Mr. John Moffet: There may be, but the answer will have to depend jurisdiction by jurisdiction—and in the case of first nations, first nation by first nation. We're just starting the process of those discussions, but we're open to coming up with arrangements that are as streamlined as possible for the affected facilities. That's the goal. It

depends entirely on capacity and willingness of the provinces, the Yukon Territory, and the various first nations that are affected.

That's the first set of questions. The second question was whether we are working in partnership with first nations in looking at the broader issue around the gap. Let me speak to two things.

First, in responding to the Auditor General's report, last year the Department of Aboriginal Affairs and Environment Canada established an environmental regulatory gap working group—another very clever name. The first step this group has undertaken is an internal exercise to identify the gaps, as we understand them. The next step will be to start talking to aboriginal partners to verify that those are the gaps and to talk about, on a case-by-case basis, the best way to resolve the gap. The exercise will have to be undertaken in full partnership with affected first nations.

With respect to implementation of the First Nations Land Management Act, we work together with Aboriginal Affairs in close contact not just with individual first nations but also with the Lands Advisory Board, which was the body established under that act to provide the forum for first nations interaction with the government to guide the implementation of that act.

• (1225)

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

Our last questioner is Mr. Rickford.

Mr. Greg Rickford: Thank you.

Mr. Chairman, I'm going to defer to my colleague Ray, who has a question he wanted to ask. If there's enough time, I may ask mine.

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

Welcome to the panel.

In your report, John, you talked about environmental and health consequences and then you have a statement here on page four, the fourth paragraph down: “Environment Canada and Aboriginal Affairs and Northern Development Canada are working together to address these issues.”

Who is taking the lead on this, and what happens when we have issues like in northern Saskatchewan, with billions of dollars of mining and caribou trails clashing with one another and with employment for hundreds of first nations people? How do we resolve those issues?

Right now it seems that issue is locked into never-never land.

Mr. John Moffet: That's a broad set of questions.

In general, in terms of addressing the environmental management gap as a general issue, Environment Canada sees itself playing a supportive role under the leadership of Aboriginal Affairs and Northern Development Canada, because Aboriginal Affairs and Northern Development has the relationship with first nations, and also has access to a much broader sweep of tools, not all of which may be perfect, but which are explicitly designed to provide governance capacity on reserve.

As I mentioned in my presentation, Environment Canada doesn't have the tools to enable or to change governance capacity on reserves, and I think that has to be a key part of the solution going forward.

As to the specific decisions made around specific proposed development in various areas, including the example that you provided, the federal government's first window onto those activities is via the environmental assessment process, which, as I mentioned earlier, is subject to the Environmental Assessment Act, and is coordinated by the Canadian Environmental Assessment Agency.

Again, I might suggest that it may be useful for this committee to hear from the Environmental Assessment Agency as to how it operates and addresses those sorts of issues from the full range of stakeholders, including the aboriginal people who are affected by proposed development.

The Chair: Go ahead, Mr. Rickford.

Mr. Greg Rickford: Thank you.

Very quickly, Mr. Barrett, you spoke about the audit in 2009 from the Auditor General, and that there were a number of recommendations for us to move forward with. I'm going to lay out a few of them, and I'm going to give you an opportunity to comment on these developments and to give further recommendations

In budget 2011 the government has allocated more than \$20 million over two years as part of its ongoing support for the first nations land management regime, the one we spoke of privately as being so critical to this study. At the time of the 2009 report, 22 first nations were operational under the first nations land management regime—clearly, not enough. There are now 35 operational. There's a fundamental issue of capacity to actually go into the regime, and I can appreciate that.

So to that extent, our department and the Lands Advisory Board have been working on potential amendments to that legislation that could help make the legislation operate better, in particular to smooth the transition for new first nations to enter the regime and increase the potential for them to thrive under it.

The government has signed a memorandum of understanding regarding a new funding formula that paves the way for a successful reopening of the first nations land management regime, and our department is currently working with the Lands Advisory Board to finalize prioritization criteria in order to assist in determining which first nations will be best positioned to take advantage of the opportunities this regime can offer in the future.

These are the main ones. How does that sound to you? And in this last minute or two, are there other recommendations we could build on?

• (1230)

Mr. Frank Barrett: Thank you for the question.

I have just a couple of points. First of all, we haven't done any audit work since 2009, so we can't speak to that. What you're saying sounds encouraging, certainly, and we'd have to see the fullness of it. We'll take some time in looking at it.

Also, our recommendations did focus around the need to transfer control to those first nations that want to move into it. So how that's happening becomes very important.

Training, and specific training for the different types of programs, was a very important aspect.

Mr. Greg Rickford: We spoke about it earlier.

Mr. Frank Barrett: Yes, it is important.

Then, of course, if you're addressing the environmental gaps, and dealing with the contaminated sites, those would be the things that you would want to make sure you're addressing.

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

I'm going to use the chair's prerogative and be the last questioner.

This is for you, Mr. Campbell. You talked about the need for fundamental change with regard to the control of lands by aboriginal people. You speak very clearly in the report of the control of land being a determining factor for the well-being of these communities. You specify the necessity of using land as collateral and using land for the development of resource extraction and a whole host of other things. Then you point out the difficulty within the Indian Act with regard to the cumbersome requirements for surveying the population of the band, voting on leasing opportunities, and ongoing problems in terms of just getting simple leases signed.

We heard from one person who testified before our committee that it took over seven years to lease a piece of property out to a bank, a chartered bank, when in fact the competitors, which were the adjacent communities, could make this decision in less than 90 days, in many cases.

Are those the transformational changes you are looking for? Many of those issues need to be addressed so that these first nations communities can move at the speed of business that every other municipality moves at. Is it your assessment that the crown is risk-averse?

What we've heard in some testimony at this committee is that the crown, because it has a responsibility, wants to avoid risk at all costs. That's partly the reason for the time it takes for many of the approvals to move forward when it comes to leases and stuff. Is it your assessment that it's the crown's risk-averse nature that drives some of these longstanding wait times?

Mr. Ronnie Campbell: Thank you, Mr. Chair. Thanks for the question.

I think I would preface anything by saying that there's great variety among first nations. Their sense of risk is what's important to them. We've certainly heard from some who tell the story you've just told, Mr. Chair. They wanted to do something, and it took forever to do it, and they missed the opportunity. Certainly, depending on where first nations are located and what their opportunities are, we've heard those kinds of stories or those views as well from first nations.

The transformative change, I would say, is to get away from this ad hoc, catch-up, "oops, there's a gap here" type of process we've had. Water was one like that. Lots of Canadians, a hundred hundred years ago, carried their own water. Everyone did it, and now we're not like that. We've created those gaps by asking, belatedly, what about first nations?

I think the transformative change is to ask what level of services and protections and program standards Canadians expect will be publicly funded. Then deal with those on reserves on a real-time basis rather than by taking great leaps forward off reserve and then catching up decades later. That would be the transformative change. I think some of that would apply to the issues under discussion today.

Thank you.

● (1235)

The Chair: Thank you very much, gentlemen, for appearing before us today. We appreciate your coming before us and being part of our final meeting of the year. This is our final meeting. We appreciate your testimony and your coming on short notice. We

didn't give you a lot of notice, but we appreciate your being available.

Committee members, we are now going to suspend. You can greet our witnesses and chat with them with regard to other questions, and then we'll return for committee business in camera.

● (1235)

(Pause)

● (1235)

The Chair: I call our meeting back to order.

I inadvertently said that we'd be moving in camera, simply because that has been the prerogative of the committee when we're dealing with future business. But in fact we need consensus if that's what we are going to do.

Sometimes it's less political if we move in camera and deal with these things. Is it the desire of the committee to move in camera?

I'm not seeing consent.

Mr. Rickford.

● (1240)

Mr. Greg Rickford: I make a motion to go in camera for committee business.

The Chair: That is a non-debatable motion.

(Motion agreed to)

[*Proceedings continue in camera*]

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