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Chair

Mr. Chris Warkentin

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• (1530)

[English]

The Chair (Mr. Chris Warkentin (Peace River, CPC)): Colleagues, seeing that it's 3:30, I'm going to call to order this 32nd meeting of the Standing Committee on Aboriginal Affairs and Northern Development.

Today we have Manny Jules here.

Manny, we appreciate you coming to present to us today.

Manny comes to us on behalf of the First Nations Tax Commission.

We will turn it over to you for your opening statement, after which we will begin our questioning. You have been to committees before and you know generally how the process works. You are the only witness today.

Colleagues, we will continue until one of three things happens. The first is that we run out of questions. The second is that we run out of time. The third is that the bells start to ring, and there is a possibility of votes this afternoon. One of those three might impact our timeframe.

Ms. Duncan, you have a question before we begin.

Ms. Linda Duncan (Edmonton—Strathcona, NDP): Just in case we are pulled out of here, the first tour begins right after the break. Am I correct?

The Chair: That's correct. Yes.

Ms. Linda Duncan: So what happens to the committee? Does the rest of the committee meet?

The Chair: No. When the committee is touring, meetings do not happen simultaneously in Ottawa.

Ms. Linda Duncan: So there will be no meetings that week?

The Chair: That's right. I can inform committee members that the only thing left to do to confirm our travel is simply a motion in the House of Commons. That will be determined expeditiously, as we have now been approved for travel in the other areas.

Mr. Jules, we'll turn it over to you for your opening statement, after which we will follow up with questions.

If anybody has any other stuff to bring up, maybe we can do that later.

Mr. Clarence T. Jules (Chief Commissioner and Chief Executive Officer, First Nations Tax Commission): It is an

honour to address the House of Commons Standing Committee on Aboriginal Affairs to discuss land use and sustainable development.

For those of you who don't know me, I am Clarence T. "Tax" Manny Jules. I was named after my father. He was chief of our community in the 1960s. He taught me all I know about politics, and he is still the person I most often turn to for encouragement and insight. I, myself, was a council member from 1974 to 1984. I was elected chief of my community three times by acclamation, and I served 16 years.

My father was the first to recognize our two greatest challenges as first nations. First, the Indian Act froze the development of our legal and administrative framework in the 19th century. This has meant that we cannot move at the speed of business, and that we only get a tiny fraction of our share of private investments on our lands. Second, we don't even own our own lands. This has made us wards of the state and created a dependency cycle that steals our hope.

It is because of my father that I am here today to talk about the proposed first nations property ownership legislation, which I will shorten to FNPO.

On March 29 the government announced its intention to work with interested first nations to develop and implement the first nations property ownership legislation. It was a historic announcement, and it was a proud moment for the first nations who have led this initiative, the First Nations Tax Commission, and for all Canadians who want to address the problem of our economic disadvantage.

This legislation will allow participating first nations to help themselves. First nations that choose to participate will own their lands. Our permanent jurisdiction over taxation and lands will be confirmed. Participating first nations will have a model legal and administrative framework. They will be able to make decisions at the speed of business.

The 19th-century Indian Act legislated us out of the economy and took ownership of our lands. They are held in trust on our behalf. It is time to leave the 19th century behind. It is time to legislate our way back. FNPO will accomplish this.

This legislation will mean that we will have the same property and land title systems on our land that the rest of Canada takes for granted. It will mean we can obtain mortgages, build equity, finance businesses, and transfer wealth to our children, as do other Canadians. This is an opportunity to free the imaginations of our entrepreneurs. It is a chance to raise our productivity. More importantly, it is an opportunity to escape dependency and to begin to restore our culture of independence.

FNPO is good for Canada. The March 29 budget accurately frames our policy challenge over the next 30 years. In 20 years, two workers are going to have to be as productive as seven were in the 1970s. If we can't make these two workers more productive, then we must accept some combination of cutbacks in government, reductions in personal disposable income, longer working hours, or delayed retirements.

Just as a quick note on that, I absolutely support the Prime Minister in his announcement that we should raise the age of being elders to 67. In my community it's 60, and I'm 59. I'm not ready to be an elder yet.

If we become poorer, politics will become more divisive. Because of it, we will fight over who bears the most pain. None of us want this. We must create the conditions that lead to long-term economic growth in Canada.

First nations must be part of a productivity strategy. We are a younger population. One in 10 new workers is going to be a first nations person over the next 20 years. We are currently the most underemployed component of the workforce. If we remain underemployed, then Canada's productivity challenge will become even more difficult.

FNPO will make first nation lands and individuals more productive. The legislation will reduce tenure uncertainty and investor certainty. It will reduce the costs associated with business transactions such as issuing a mortgage, transferring title, and securing financing. It will confirm and help implement first nation jurisdiction and enable open markets.

• (1535)

The titles of reserves are held by Canada. The titles of FNPO lands will be held by the first nation. Individual ownership is limited to certificates of possession and leases on reserves. FNPO will allow for fee simple ownership. FNPO lands will have the same tenure certainty as other lands in Canada. FNPO lands will not be constrained by the inefficiency of the Indian Act.

FNPO will mean access to financing for housing without requiring ministerial or first nation guarantees. According to information from the Assembly of First Nations and Aboriginal Affairs and Northern Development Canada, at the current rate, it will take between 200 and 850 years to reduce the existing backlog of needed housing units for our reserves. If our members had title to their individual lands, they could obtain mortgages like any other Canadian. Think of what that would do to the housing backlog. Think of what that would do for first nation and Canadian economies.

FNPO will mean improved outcomes for other initiatives related to first nation education and resource development. Investments in first nations education will work better when the people receiving

that education are living on lands that are productive and that generate economic and employment opportunities. People need to be exposed to workplace opportunities and business success stories early in life so they can see the value of education.

It is easier to reach agreement on resource developments when first nations have productive land. Presently, first nations are able to receive only a tiny part of the benefit from resource development on their current lands and traditional territories. They miss out on most of the benefits of investment because it is so difficult to do business on their land. Consequently, they focus on receiving a large share of a relatively tiny part of the benefit stream, such as royalties, and it is harder to reach agreement. When first nations are able to fully share in benefits, agreements will be easier to reach because the agreements will focus on our mutual economic interests.

FNPO will mean we are less likely to be treated as a social issue. Social problems follow from a lack of opportunity. The platform for addressing social problems must be an economic one that starts with making our lands more productive. FNPO can increase our revenues and improve our self-reliance. As we say at the tax commission, investors are taxpayers.

Many first nations have already pursued a great deal of investment on their lands, and under FNPO they can facilitate more. We are not afraid of investment. It is how we generate revenues. It is how we improve the quality of services. It is how we create our own circle of growth, where investment leads to more public revenues, which lead to better public services and infrastructure, which attract more investment to start the cycle again.

FNPO can help resolve disputes related to matrimonial property and estates. These disputes are often not settled because we can't use the value in our lands to resolve them. FNPO will allow a broader range of property owners. It will enable the real estate markets to work effectively on our lands. This will mean fairness in the division of matrimonial assets. It will mean estates held by multiple heirs, or those that are intestate, can remain or become productive.

The additions to reserve process should be adapted to allow FNPO as an option. It would have immediate benefits in Saskatchewan and Manitoba. In Saskatchewan, 25 first nations are spending \$440 million to purchase land as part of the TLE Framework Agreement. Over 1 million acres of land are being added in Manitoba through the Manitoba TLE Framework Agreement.

These lands could provide locations nearer to markets for these first nations. FNPO status would allow these lands to become productive. They would provide home ownership, home equity, and business investment opportunities.

The First Nations Tax Commission contracted research to estimate the benefits of applying property ownership legislation to additions to reserve lands. Despite using very conservative estimates—no pun intended—the results are impressive.

● (1540)

It is estimated that, during the next 15 years, a combination of FNPO, additions to reserve, and more open markets could generate \$3.7 billion in investment, create over 30,000 employment opportunities, and lead to \$48 million in annual property tax revenues to provide local services and build infrastructure.

These are conservative estimates because we assumed that only 1% of the TLE lands in Saskatchewan and Manitoba became FNPO lands. No other provinces were considered. We also assumed that only 40% of that 1% would be developed over the next 15 years. We also assumed that the values would approach the current values of smaller communities in rural areas over that time. Saskatoon, Regina, and Winnipeg values were not included. Finally, we did not include resource development opportunities, only commercial and residential.

Some \$3.7 billion in investment represents much less than the 1% of anticipated total investment in these provinces over the next 15 years. In other words, the benefits will likely be much higher. The FNTC has also commissioned research to estimate the fiscal and economic benefits for 10 possible proponent first nations. Using similar conservative estimates, the estimated increase in the potential investment, property values, tax revenues, and employment is close to \$3 billion for these communities.

To put these benefits in context, consider that each year the federal government is allocating about \$100 million to improve first nation access to capital and economies. They have to do this because there is a credit crisis on our lands. We can't access capital like other Canadians because the market does not work on our lands.

With FNPO, the ten first nations that have so far expressed interest will see their access to capital increase by \$500 million once the legislation is passed. In addition to providing significant economic benefits, FNPO can better protect first nations lands than the current system because participating first nations will be able to establish land-use plans that can protect and set aside community lands.

The FNPO initiative has been criticized because there is a fear that some first nations will sell all of their lands. This is ridiculous. Over 90% of land in Canada is held by the crown. First nations know the importance of land and jurisdiction, and their response is likely to be similar. Furthermore, FNPO will mean that first nations will always have tax and land management jurisdiction over their lands regardless of who lives there.

First nations will have powers of expropriation exercised in a fashion similar to the rest of the country. These lands will revert to the first nation government in certain situations, such as when someone dies intestate. Another example is when a first nation goes extinct right now, the reserve lands that are set aside and which title

is vested in Her Majesty reverts to the provincial government. In other words, FNPO lands will be like those in the rest of Canada. If I buy land in Ottawa, it remains under the jurisdiction of Ontario; it does not become part of Tk'emlups. Similarly, if one of you bought land in my community of Tk'emlups, it would always remain and be under the jurisdiction of Tk'emlups.

The FNPO initiative is also criticized because it is suggested that we already have sufficient powers to make markets work on our lands without having title to our lands. Markets on reserves are often limited to band members or only those interested in purchasing a lease. The band member market is small, and trading values are very low. The leasehold market is much larger, but at best represents 65% of the fee simple. Leaseholders lose value when they reach the end of their term. They are significantly more costly to establish and administer than clear individual title.

● (1545)

Land titles are currently registered in the Indian Lands Registry, a deeds system. FNPO will create a Torrens land registry system. The Torrens system is more certain, more stable, and more efficient than the Indian Lands Registry. With a Torrens system we can give our members guaranteed title instead of a certificate of possession. Torrens-based title should enable an open market, and property values that are the same as they would be in the neighbouring jurisdiction.

Establishing the legal and administrative framework for our lands to support markets can take years to establish and cost millions of dollars. Many of our current solutions give our governments powers but no guidance or institutional support. To use a comparison, it is like giving other governments in Canada the keys to the car to set out on their journey, but asking first nations to build the car before they can get started.

FNPO legislation will create a first nations Torrens system and a 21st-century legal and administrative framework that will utilize the best practices seen in the provincial, federal, and local systems across Canada. It will create model standardized laws so first nations will reduce the years they will need to develop their legal framework. We will provide the institutional support through the First Nations Tax Commission. We will utilize the Tulo Centre of Indigenous Economics to build local capacity and implement investment-oriented administrative systems.

We want FNPO to help participating first nations catch up in a matter of years instead of decades, and it will cost a fraction of the implementation costs. This will reduce investor costs so first nation governments can be competitive and finally begin to move at the speed of business.

Some have suggested property ownership is not part of our culture. I disagree. Market economies are not foreign to us. We created them ourselves. We traded goods over hundreds of miles. The Mayans had a complex trade network. How could pipestone, dating back to before contact, end up in my territory in south central British Columbia when it only comes from a few places in the world, such as Pipestone, Minnesota, if we did not trade? How could corn be used throughout the Americas before contact if we did not trade?

Trade cannot be financed without capital. We had to build transportation methods such as boats, and build trails, roads, and public buildings. They required community investments based on a future return to the community and the individuals. They required us to raise our own revenues and pay for them ourselves.

Markets need institutions to facilitate trade. From Alaska to California, we agreed to a common trade language. We recorded transactions relating to labour and goods. That trade language was Chinook. It was a combination of aboriginal languages, English, and French.

We had individual property rights. Our clothes and shoes were not meant to clothe the entire community. Our winter homes belonged to certain families. According to our written history, our community had individual property rights dating to the early 1800s and the reintroduction of the Peruvian potato into our community.

I recognize that FNPO may not work for all of our communities, but it is about restoring our freedom of choice. Throughout our history we had the ability to choose successful innovations and reject poor ones. Our most successful innovators were the Mayans, the Aztecs, and the Incas. Each of our cultures was built on our competitive advantage and created sustainable economies.

After contact, a system of central planning was imposed on us. This did not work in eastern Europe and it does not work for us. It meant that we lost our ability to choose, and we became mired in poverty. We have now begun to re-establish our institutions, and first nations will determine which ones are successful by their own choices.

•(1550)

FNPO is about restoring our hope. We have prospered in the past. We have been decimated by disease, warfare, and most recently, with the good intentions that have created our dependency. We have begun to rebuild the legal and administrative foundation to support markets on our lands. Once we restore property rights to our lands, I believe we will unleash a wave of creative and entrepreneurial spirit.

In the words of one of my cultural heroes, Chief Joseph, from 1879:

Let me be a free man, free to travel, free to stop, free to work, free to trade where I choose, free to choose my own teachers, free to follow the religion of my fathers, free to talk, think, and act for myself.

Thank you very much for this time.

The Chair: Thank you, Mr. Jules.

We'll start the rounds of questioning now.

Ms. Duncan, we will turn to you for the first seven minutes.

Ms. Linda Duncan: Mr. Jules, it's quite well known that you're a proponent of this measure, and I think you presented your case very well. It would be easier for us if we had the argument on the other side, so what I'm going to do is to try to throw some of those arguments at you. You did a pretty good job in your presentation of making us aware that not everybody is in favour.

My first question to you, Mr. Jules, would be: have you actually conferred with the 600-plus first nations on this? Is there an Assembly of First Nations committee on this, and if so, have you met with them to discuss the pros and cons of this measure?

Mr. Clarence T. Jules: They've already taken a stand, without—

Ms. Linda Duncan: I don't know that.

Mr. Clarence T. Jules: They've already taken a stand, without asking me about what my position was on those matters. They've rejected the FNPO proposal. That was without hearing my arguments or the proponent first nations' arguments about why they want this particular piece of legislation.

Ms. Linda Duncan: So the assembly has discussed this and so far said that they are opposed.

Mr. Clarence T. Jules: That's right, without consulting the proponents.

Ms. Linda Duncan: I noticed that you referenced that some have argued there are already measures in place. I read some of the legal journals where lawyers who have looked at these alternatives have suggested that the measures that are more urgently in need of support by the government, to further the economic interests and independence of first nations, are to complete the treaty-making process, to actually implement those agreements, to resolve the specific claims, and to put more resources so that they can expeditiously finalize additions to reserves. What is your view of those positions?

•(1555)

Mr. Clarence T. Jules: I have no argument with that. If that's what they wish to pursue, then...Godspeed. I think first nations have to have a lot of opportunities to make their own choices, their own decisions.

I have been involved in these matters for over 38 years. I have lots of practical knowledge in terms of dealing with the issues. I've been involved right from the onset with supporting the Assembly of First Nations, going to lots of their meetings, and being involved in their consultation processes.

I helped set up the first Indian-led amendment to the Indian Act in 1988. I worked with the Quebec government to get them to amend the municipal act so that Sept-Îles could begin to tax on their own lands in the mid-1990s. I've worked with Justice LaForme to set up an independent claims commission. I worked with Michael Wilson and Paul Martin to help set up the first nations commodity tax room, so that we can occupy the areas of the goods and services sales tax.

I've dealt with questions related to lands management and lands development. I worked with Robert Louie when FNLMA was in its infancy.

So I'm very familiar with all of the various processes, all of the pitfalls and the successes—and there have been a lot of successes under the existing legislative framework. I have no argument about that. What I feel, though, is that I'm not here to advocate the status quo. I believe in what the Prime Minister said on January 24, that you can't just blow up the Indian Act. I've listened, since 1975, to “let's get rid of the Indian Act”. I was involved in the closure of the Department of Indian Affairs in Kamloops in 1975. I was involved in the rejection of government funds in the spring of 1975, and it was at that point I started to hear “let's get rid of the Indian Act” every five years. Believe me, Linda, it's been the longest five years of my life.

What I want to do is provide an option for first nations to begin to move away from the Indian Act so that the title of our lands can be vested in us. When I look at the historical record of individual first nations leaders who have talked about the implementation of their treaty rights, all of them say that they didn't say this land should be turned into an Indian reserve.

Ms. Linda Duncan: Can I just go back to that point right there? That's exactly what I'd like to pursue, the point that you're saying.

What is puzzling me with this system is that right now.... Of course, it's different under modern treaty, because they have a whole separate system of governance. So let's, for example, just apply this to those who are under historic treaties and who potentially have reserve lands. Some, of course, don't even have reserve lands, but do have land.

What puzzles me is this. Who would own this land, and who would make the decisions on who gets to have title to the land?

Mr. Clarence T. Jules: The proponent first nation communities that I'm working with have gone through a land-use study exercise. They've outlined which lands would be held communally. In most cases they're already under certificate of possession. So individuals already have a certificate of possession. The contemplation is that those would be rolled over if the band wishes, if the community wishes, to the individual. The title would be collectively held.

So in my particular case in Kamloops, the title right now.... An Indian reserve is title that's vested in Her Majesty. So when you look at who owns the Kamloops Indian reserve, it's the federal government. Why am I here asking that legislation be passed? It's because I want the ownership to pass from the federal government to the collective interest in Kamloops.

•(1600)

Ms. Linda Duncan: So would the title revert back to the collective interest if they reneged on their mortgage, for example?

Mr. Clarence T. Jules: The title would always be, in perpetuity, Kamloops.

Ms. Linda Duncan: How is that different from a certificate of possession?

Mr. Clarence T. Jules: It's substantially different because you would be able to have fee simple ownership.

Ms. Linda Duncan: How could you have fee simple ownership if the band owns the land? This is what's confusing to me.

Mr. Clarence T. Jules: It's like Ontario or British Columbia. They have title to the provincial lands.

Ms. Linda Duncan: But not the private lands....

Mr. Clarence T. Jules: Well, they do. If you don't pay your taxes, they'll come and take it.

The Chair: Thank you.

I think that's helpful in terms of drawing out some of these discussions, but we do have to constrain ourselves as much as can possibly do to our seven minutes.

Mr. Clarke, we're going to turn it over to you for the next seven minutes.

Mr. Jules.

Mr. Clarence T. Jules: Just quickly, I want to read statements on Attawapiskat by two of your colleagues.

This is Charlie Angus:

Thanks to the provisions of the Indian Act, workers who may want to build their own house in Attawapiskat are unable to do so because they can't get a mortgage on a reserve.

Another one of your colleagues, Gilles Bisson, argued that the act should be overhauled to allow first nations to own their homes as private property, something the legislation currently prohibits.

The Chair: Thank you, Mr. Jules.

We'll turn it over to Mr. Clarke now, for seven minutes please.

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

Mr. Jules, if you want to continue, go right ahead. I don't mind. Again, thanks so much for coming in. Do you have any more points you want to clarify?

Mr. Clarence T. Jules: There are lots, but I'm here to facilitate discussion with parliamentarians, and I welcome this opportunity.

Mr. Rob Clarke: Thank you.

You mentioned 25 million Saskatchewan and \$440 million in TLE land—the framework. Then you mentioned about Manitoba and the money being spent there.

What I see in what you're trying to say—and I'll try to say it in simple terms—what we're seeing are the non-aboriginals. It's easy for non-aboriginals to go out to the countryside, purchase land just like the first nations is doing for TLE land, but it's easier for the non-aboriginals to go and buy some property, subdivide it, and start small municipalities, which then become economically self-sufficient. What we're seeing with the first nations are the barriers that the Indian Act is creating, even for the purchasing of a TLE land.

What you're mentioning with the first nations property ownership is getting into the non-aboriginal communities in that structured framework, is that correct?

Mr. Clarence T. Jules: That is correct.

The Chair: Mr. Clarke, I have to interrupt here, and I do apologize to everybody around the table, but I have to suspend the meeting unless people concur and there's unanimity that we continue. I don't know why the bells are ringing. We're seeking confirmation.

So there is consensus to move along. We'll move along.

Mr. Clarke, we'll turn it over to you. We'll try to update colleagues as things go.

Mr. Rob Clarke: Mr. Jules, I have a couple of questions here. What steps must first nations communities undertake in order to opt into the first nations property ownership?

Mr. Clarence T. Jules: The first step, obviously, is to get the legislation passed through the House and through Senate, and then receive the royal assent. Ultimately what we foresee is that there will be a vote firstly with the band council to engage in a process to educate their members because the members have to know all of the pluses and minuses of moving towards this piece of legislation. Then there would be a vote within the community to opt into the legislation.

Mr. Rob Clarke: I understand the fee simple method you're saying. What I'd like to ask you further is why is first nations property ownership needed?

Mr. Clarence T. Jules: When I started to think about these issues, it was obviously in relationship to my experience in Kamloops and what I saw there. I started to read some of my dad's statements in 1968 about the consultation process called "Choosing a Path", which was undertaken with Jean Chrétien and the Trudeau government and was about abolishing the Indian Act.

At that time, in 1968, my community said that we didn't elect the bureaucrats of the Department of Indian Affairs to be our counsel, that we elected our government, and they should be the ones governing us and our lands. We have to be able to move at the speed of business, they said, and if there is no provision in the Indian Act for land title for the federal government, we want indefeasible title ourselves. This was said in Kamloops in 1968. So the reason that I feel we need legislation, which is called FNPO right now, is to begin to create an entrepreneurial middle class within the first nations.

Yes, there have been communities that have been geographically blessed and that have taken advantage of FNLMA and other processes to benefit from their location, within the restrictive framework of delegated lands authorities and using the Indian Act deed system, but I want to move beyond that. I want to move so that

we can have indefeasible title to our lands, so that individuals can go, like every other Canadian, to the Royal Bank or a bank of their choosing and be able to secure a mortgage based on the same principles that every other Canadian would have to follow.

This isn't going to be a program where it's a social housing approach. There is still a need for social housing. This doesn't do away with that. This also doesn't do away with all of the other sections of the Indian Act. There are still going to be a lot of other sections that have to ultimately be dealt with.

My view is that first nations have to be able to have a choice. I'm hoping that they will ultimately move to a choice that empowers the individual. This is amongst the first individually aimed pieces of legislation that empower individual people to be able to free their imagination.

● (1605)

Mr. Rob Clarke: Thank you.

What I'm seeing with the Indian Act is that it treats first nations almost like second-class citizens. With this modernization, with the FNPO you're proposing, I'm just wondering what benefits first nations property ownership will have.

Mr. Clarence T. Jules: As I hinted at in the document, I think it will lead to better education. Right now in the federal budget there is a commitment for some \$270 million for education and another \$300 million or so for infrastructure to build schools. Education is an important component of a strategy for us to break the cycle of dependence.

But if you can't instill in our youth another way, the federal government is going to have to reinvest another \$500 million in the next five years to again catch up in education, whereas if you begin to empower the individual and free them from the dependence that we all have right now in the social policy area—depending on the federal government to finance schooling, as an example—that means individuals will have a future. They're not going to be looking at the so-called grey markets of economic activity. They will be able to participate in the free market system that we have here in Canada, and in all of those avenues, really, that we've been legislated out of.

The Chair: Thank you very much.

Thank you, Mr. Clarke and Mr. Jules.

Ms. Bennett, we'll turn to you for the next seven minutes.

Hon. Carolyn Bennett (St. Paul's, Lib.): Thank you.

You say that you've been consulting with other first nations who were interested in this approach. Could you let the committee know what are some of the first nations that have expressed interest so that we might be able to talk to them?

Mr. Clarence T. Jules: There is my community of Kamloops, Little Shuswap, Shuswap, Whispering Pines, Kitselas, and Brokenhead in Winnipeg. So there are a number of communities that I've talked to.

● (1610)

Hon. Carolyn Bennett: We've heard a lot of positive things about the first nations land management regime. What does your proposal do that you can't do under the land management regime?

Mr. Clarence T. Jules: You have to realize that with the FNLMA, it's still Indian reserve lands. The title to those lands are still vested in Her Majesty, so they don't move us away from the Indian Act. I'm not here to buttress and to continue to hold up the Indian Act. I want to find ways and means to get away from that, so that's one component.

It also still relies on the Indian Lands Registry, which is a deed system. In one leasehold interest in my community, we have a lease that's in excess of 500 pages—that's a book. When a lawyer comes in and begins to look at a lease or a deed system, it goes back maybe 45 years, whereas a Torrens system is one page, and you can go to the bank with it.

Hon. Carolyn Bennett: What would be the acceptable threshold for a community to decide to do this? Because some of the concerns that we've heard and the recent documentary on CBC Radio... I remember Gary Merasty describing that if there's reserve land that then falls out of the ownership of a community member, it's like a paper-punch going through it—the checkerboard that everybody's worried about. It can become a very lacy-looking piece of property that eventually is no longer owned by the community.

Mr. Clarence T. Jules: It's like Canada, or the provinces. Do we say that Ontario is lacy? Do we say that Ottawa, because it has a lot of different tenures, is lacy? I don't think so.

Hon. Carolyn Bennett: What would happen, then, if the future leadership wanted to get out of fee simple?

Mr. Clarence T. Jules: Then they'd have to—like they do right now—buy the interest.

I'm not proposing that we move to what happened under the Dawes Act in the United States. I've studied that extensively. The whole notion behind the Dawes Act, after the western expansion by the United States, was to open up lands and take them away from the Indians. So most of the land was taken away, and given to individual settlers. Some land went to individual tribal members. I'm not proposing to do that.

The title will always be vested in the collective interest of the community. It will always have jurisdiction over those lands, no matter who would have interest in those lands. The vote is going to be the same as Quebec's right to secede from Canada.

Hon. Carolyn Bennett: Fifty plus one.

Mr. Clarence T. Jules: Yes.

Hon. Carolyn Bennett: I think we say a clear majority in the present—

Mr. Clarence T. Jules: It's going to be a clear majority.

Hon. Carolyn Bennett: I think the debate is not fifty plus one. That's an unclear majority for a lot of people.

As for the budget and explorations in terms of the future possibility of an act, who would do those consultations?

Mr. Clarence T. Jules: It would be the proponent first nations and the federal government.

Hon. Carolyn Bennett: So consultants? What resources are needed to be able to carry that—?

Mr. Clarence T. Jules: In order to get to the stage we're at right now, it's taken a long time. This didn't just happen yesterday or on

March 28. What we started to do, first, was to make a decision that this is something that we needed to do. This came about because of the work I've done over the years. I was an adviser for two different Auditors General, looking at developed housing on reserves and finding out that most of the homes built on a reserve are disposable—lasting on average seven years. How do you deal with that? There are housing backlogs, repairs that need to be done, all of those things, and it all led to the conclusion that we have to do this.

I dealt with Sheila...not Sheila—what's her name?

• (1615)

Hon. Carolyn Bennett: Was it Sheila Fraser?

Mr. Clarence T. Jules: No, it wasn't Sheila. There was Sheila Fraser, but it was the lady from London.

She was parliamentary secretary. It was Sue Barnes.

Sue was pursuing the matrimonial real property, and I was saying to her, as well as to Bob Nault and Ron Irwin—I was having these kinds of discussions back in those days—that if you build matrimonial real property on the Indian Act, you're building it on sand, because you just aren't going to have the certainty of land tenure if you're going to do it simply on the Indian Act.

The people who are impacted are women and children, so out of all of that we started to look at a series of studies. One of them was to determine whether this could be done under the constitution, because people were saying it couldn't be done.

So, yes, it can be done under the constitution. What are the economic benefits of doing this? A number of studies led to the conclusion that this is possible and that these are the economic benefits. Then we worked with the finance standing committee over a period of a number of years. Massimo was one of the individuals I was dealing with within the Liberal Party. I also met with Mr. Martin, Michael Ignatieff, Bob, and the whole range of people. The finance standing committee said we should explore this, and that led to an agreement.

They visited Kamloops and visited with the proponent communities, which led to that being included in the recommendations from the finance standing committee. The next steps are to begin to actually draft the legislation and to introduce it into the House.

The Chair: Thank you.

Thank you, Ms. Bennett.

Mr. Boughen, you have seven minutes.

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

Welcome, Clarence, to our committee and thank you very much for taking time to be with us today, because we appreciate your knowledge and your willingness to share that with us.

I'm looking at the first nations property ownership idea that we've looked at here and there, and off and on, in our study.

As you view it, would there be a change of landscape in terms of land tenure on reserves? Do you see a big change there in terms of people owning the land?

Mr. Clarence T. Jules: As far as I'm concerned, it would be a game changer.

I visit lots of communities in my capacity as commissioner, and most communities I visit have a 10-year waiting list for housing. Most of the communities that have third-party management have it as a direct result of individuals not paying their mortgage on reserve lands, and it's because they end up with no equity at the end of it.

This changes that.

This allows an individual who is "mortgageable", who has a steady job, and who has a good credit rating to go to the bank of his choice and get a mortgage the same way any other Canadian would.

One of the aspects I didn't talk about was the ability to be bonded. A lot of the communities that are now acting as proponents of the proposal are saying they want to be bonded so they can have businesses that get contracts, whether they be for road building, construction, or working in the mining industry, which a lot of the communities are moving towards now. So bonding is another aspect.

There is the passing on of wealth. People are saying we have property rights on reserve now, but my brother died intestate in 2010, and guess who looked after his estate? It was the Department of Indian Affairs, the owners of the land, not his family.

That changes this.

It empowers the individual to begin to think creatively, to become more productive, and to be part of the local, regional, provincial, national, and therefore, global economy. Right now we're not a stakeholder in that.

• (1620)

Mr. Ray Boughen: Which first nation communities do you believe would benefit most from this proposal and why? And are there any first nations that would likely not benefit?

Mr. Clarence T. Jules: I would go back to Attawapiskat. In the last year, you had lots of controversy over that particular community, and visits by Charlie Angus—the MP and apparently a Juno-award winner—and the MPP both saying this community should have property rights so that they can have mortgages.

My understanding is that they have an agreement with De Beers that created the potential for 500 jobs. They've only been able to take advantage of 200. They have 100 people working in the mine who could go to the bank and be mortgaged. That would lessen the housing needs of, by my estimates, at least 100 people.

Initially, the communities that go forward are going to be small in numbers, because we're still operating under an oral tradition. First Nations have to be able to hear, they have to be able to see the results, and they're very conservative. They don't want to move away from what they're already familiar with.

The only status people aware of what life is like without the Indian Act are the Nisga'a, for 10 years, and Tsawwassen. All the others, like my father—his grandfather would have been born before the Indian Act, but that's a few generations now.

And that breaks that cycle of dependence.

You will also, I believe, get more transparency and accountability from our governments because individuals will want to make sure that investment happens on our lands and that there is no squandering of our meagre resources. There's going to be an overall benefit for all first nations and for all Canadians, ultimately.

Mr. Ray Boughen: Thanks, Mr. Jules. Thanks, Chair.

The Chair: Thank you.

There's just a little bit more time. Did anybody have a follow-up question?

Mr. Clarke, go ahead

Mr. Rob Clarke: With your vision.... If it were enacted today, what do you think the timeframe would be to implement the whole process?

Mr. Clarence T. Jules: As you can tell, I'm an optimist—

Mr. Rob Clarke: You're being optimistic.

Mr. Clarence T. Jules: —but also a realist.

I've been doing this now for 38 years, as I have said. Legislation usually takes, on average, about seven years from its inception to its passage. I've been involved in several pieces of legislation already.

Because of the policy announcement in the budget, I look forward to working with the proponent first nations over the summer, and having legislation ready for introduction into the House hopefully this fall. And then having that referred to this committee for this study, and then going through the process with the committee with any particular amendments or changes required to make the legislation work better. Then it's back to the House, and then over to the Senate to go through their processes.

I'd love to see that happen before December 21 this year, before the world ends.

Voices: Oh, oh!

Mr. Clarence T. Jules: The other piece that is critically important is the parallel process in which we're going to have to engage with the provincial governments. In order to make this happen, we have to have provincial buy-in. A lot of first nations feel—and you heard it over and over again on January 24—that they have the crown in the room, when, in fact, they don't.

You have the indefeasible crown, which is the federal government and the provincial government. Both are stakeholders in this. It took me a while to learn what a federation was all about. I learned that through sitting on a committee with Mr. Rae for six years called the Forum of Federations.

I witnessed Bill Clinton talk about federalism in Mont Tremblant. The message that he brought was that we are a family, and that all members of the family have to begin to work together. It's like a democracy. A democracy just doesn't simply mean one person, one vote. It's more than that. We have to begin to bring first nations into this family and be productive in a way that is unrealized yet. We were once a fundamental part of the economy.

I'll be having discussions with the provincial governments over the summer. I've already had a number of discussions with British Columbia, Manitoba, Ontario, and New Brunswick. I look forward to a number of the other provinces that will come forward. Saskatchewan has indicated that it quite likes the idea, but doesn't want to move ahead of the first nation proponents.

We've gone past the point where the federal government has to find solutions for us. It's the first nations that have to do it. At the same time, there have to be processes for the individual first nation communities. That is already starting to happen at the local level. We're engaging and having discussions with them. I'm probably looking at 2014.

• (1625)

The Chair: Thank you, Mr. Jules.

We'll turn to Mr. Genest-Jourdain for five minutes.

[*Translation*]

Mr. Jonathan Genest-Jourdain (Manicouagan, NDP): Mr. Jules, when you talked about the First Nations Property Ownership Act, one specific notion caught my attention—that of seizure capacity.

I would like to know if you have determined the incidence of emission, by provincial courts, of writs of seizure—garnishee summons or writs of execution—and the possibility of judicial land seizures for nations that, of course, adhere to those principles.

[*English*]

Mr. Clarence T. Jules: This was one of the areas that the first nations talked about extensively when we had a proponent meeting with them. What they said was that they didn't want to be restricted by section 89 of the Indian Act. They wanted to be able to be bonded; therefore, the seizure provisions of section 89 would not apply in cases where monetary issues are involved.

Where they started to draw the line was with third-party issues, like somebody getting into a car accident and wanting to go after the property owners. They were saying that's not something they wanted to get into. If we're using the lands for mortgageability and bonding, then, yes, the lands would be seizable.

[*Translation*]

Mr. Jonathan Genest-Jourdain: Still with regard to the First Nations Property Ownership Act, what do you think about exporting the stated principles to remote communities?

I hail from the Uashat community. Earlier, you talked about Sept-Îles. Back home, the only things we have plenty of are pawn shops and shylocks.

Do you feel that, for remote, and socially and financially disadvantaged nations, that principle is applicable and exportable?

To my knowledge, one of the first actions promoted will be, of course, trying to alienate that land for financial gain. Some land in my community is located on the shores of the St. Lawrence River. That land still has some value added. Quebeckers are interested in it.

[*English*]

Mr. Clarence T. Jules: I have had the chance to visit your community on several occasions. Ricky Fontaine—I don't know if

you know Ricky—was on my tax advisory board for a number of years. As I mentioned earlier, when Sept-Îles first started to move into the holy area of property tax, they couldn't because the Quebec government was occupying the field, and we had to amend the municipal act. That took about five years to do.

When we talk about the seizure of lands within the context of mortgageable interests, it's something you have to go into with your eyes open. I'm not promoting somebody going in and saying they're going to sell these lands for beads and trinkets. That isn't the purpose of what I'm proposing. The purpose of what I'm proposing is to empower the individual so they rely on themselves, as opposed to somebody else, to move ahead. That's the kind of culture I believe your people had, and my people have had since time immemorial.

• (1630)

[*Translation*]

Mr. Jonathan Genest-Jourdain: I have a fairly broad question I will try to remember.

How much time do I have left?

[*English*]

The Chair: You have one minute.

[*Translation*]

Mr. Jonathan Genest-Jourdain: Mr. Bevington, go ahead. I cannot recall my question.

[*English*]

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

I'm interested in the approach, but I want to look at the larger picture. I'm going to read you something written by Pamela Palmater, a Mi'kmaq lawyer. She says:

Similarly, section 35 of the Constitution Act, 1982 is a significant promise to aboriginal peoples to both recognize and protect their aboriginal and treaty rights. Perhaps most importantly, section 35 is a constitutional promise to aboriginal peoples to protect their distinctive cultures and identities for future generations. Since land is critical to the identity of First Nations as well as to the maintenance of their cultures and communities, it seems illogical to suggest that First Nations are best served by dividing up their reserves into individually owned parcels of land available for sale to non-aboriginal people in the name of economic development.

Is that a harsh judgment by her?

Mr. Clarence T. Jules: From the onset I knew there had to be a broad public debate over this issue. There was a book released in 2009 that brought it to the forefront. I knew that this was going to be a substantive change from the status quo. All of us in this room recognize that the status quo hasn't been good for first nations. Even Ms. Palmater would agree with that.

When I look at implementation of our rights under section 35, that's what this does. It allows our first nation governments to make a choice for themselves, an informed decision.

To me, the freest expression of our collective interest is individual rights. Without the free expression of our individual rights within that collective, we're not going to survive as a people. Indeed, that was how we always operated. In traditional times if we didn't like the system, we went somewhere else and started our own band. We can't do that now, because the Indian Act says, "You're from this place."

When I think about our traditional land base, it isn't just the Indian reserve. So this has to be part of an overall strategy to resolve the issues we have facing indigenous peoples across the country.

Some of it is real resource-revenue sharing. But without being able to utilize what we have, we can never do that adequately. We'll always just say, "Well, let's take the smallest share that we can out of that because that's all we can get." I want to change that. I want to be able to change it in a very fundamental way that empowers our governments, so that our governments will always be here for future generations.

I'm not here to have an extinction. There have been examples in Canadian history where communities have become extinct. Indeed, because of the smallpox epidemics of 1862 and 1863 in British Columbia, a number of my communities became extinct, and they joined to form the remaining 17 Shuswap communities that I'm a member of now. The Nicola people of Merritt have become extinct.

Indeed, one of the proponent communities, Whispering Pines, has said they want to participate in this because they know that if they go extinct because of the wording of the Indian Act, which says 6(1), 6(2), and by 6(3) you're not a member...

They're saying they want to be able to have their own land base, so that future generations will be able to enjoy what little land they have now, but also to use that as a springboard to move ahead.

Ms. Palmater and others are entitled to their positions, and the communities that make an informed decision to move ahead on this basis have the same rights.

•(1635)

The Chair: Thank you, Mr. Jules.

Mr. Payne, we'll turn to you now for five minutes.

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

Thank you, Manny, for coming. It's just fascinating listening to you talk about something you strongly believe in.

I know you touched briefly on the differences between the First Nations Land Management Act and the first nations property ownership act. I don't know if there is anything else you want to add to that in terms of the differences you've already explained. I do have some other questions around that.

Mr. Clarence T. Jules: Just to finalize that area, there has been a lot of concern from individuals who are under FNLMA, and I have no objection to their choice. I think if it works for them—good.

What I'm proposing is substantively different. It involves having a Torrens system with fee simple interest. It does something that can't be done under the Indian Act right now. So FNLMA still is an Indian reserve. There still is crown liability. They don't have areas of jurisdiction over the environment, for example. So there are some limitations, but it's been successful in a lot of communities, and I'm

not about to dis what successes they've had. What I want to be able to do is go beyond that.

Mr. LaVar Payne: The other thing I have to say is that you have a pretty open mind on which first nations want to belong to which types of systems, so I think that's really outstanding on your part.

I need a little bit of clarification. You did talk particularly about the fee simple and the community aspects of the ownership of the land. Did I understand you correctly when you said that even with the fee simple, the jurisdiction would still remain within the band?

Mr. Clarence T. Jules: That's right.

Mr. LaVar Payne: Okay. This takes me on.

You also talked about the provincial buy-in. What needs to be done? Assuming that the federal act is passed and everything goes forward, what needs to be done to work with the province to ensure that this goes forward and meets all of the needs you're looking for?

Mr. Clarence T. Jules: I'm sure that all the committee members are aware of the St. Catharines Milling case and the Star Chrome case in Quebec. If you're not, those were very important cases right after Canada became a country. They pointed to, and underlined, the fact that if there are lands that are set aside for Indians, title, if you will, is vested in the province. So Indian Affairs basically has the administrative responsibility over reserves and Indians. That's the 91(24) provision.

To put that aside, the provincial governments have to pass legislation so that there's no ambiguity in the title being transferred from the federal government to the first nations government. I don't want to have a situation in the future where somebody dies intestate, or some community becomes extinct, and the province says, "Well, we're going to raise our title." That's why the provincial governments have to be involved.

I think there are other areas that are critically important when we look at provincial spheres of jurisdiction. I talked about one of them, which is the environmental issue. The province has developed, over a longer period of time, institutions that we need to be able to access. We can either use existing legislation or we can do it, as we're proposing, under FNPO, by default. The first nation would have the jurisdiction, but if they chose not to exercise that jurisdiction, other laws would apply, at their request, by default.

Mr. LaVar Payne: You talked about your brother and his passing, and his estate having to be looked after by Indian Affairs. It just blows my mind that this is what actually happens. This idea of fee simple and being no different from any other Canadian has great appeal to me, and obviously to you. You touched a bit on some of the economic benefits. Also, for those who do pass on, those lands, as I understand you, would continue to belong to the heirs of that individual.

• (1640)

Mr. Clarence T. Jules: That's right.

Another area I talked about was when an individual dies intestate, there's no impetus on the part of the heirs to settle the estate. In my community, we have some very valuable tracts of land. It's now two generations since the individual passed away. But there's no impetus on the part of those heirs to settle the estate, because what are they going to do with it?

We have situations such as Kahnawake, just south of Montreal, where there are some beautiful old homes, yet people have a one-thousandth interest in them. People aren't interested in settling a lot of those outstanding issues.

The Chair: Mr. Payne, unfortunately, we've gone over by about a minute now. So we'll have to move on to our next questioner.

We'll go to Mr. Bevington, for five minutes.

Mr. Dennis Bevington: I have just a few questions.

How will reserve lands be transferred to fee simple ownership without inviting provincial jurisdiction?

Mr. Clarence T. Jules: The first step must be the passage of federal legislation that sets up the process by which title, which is now vested in the federal government, would be transferred to the first nation. Provincial legislation would also have to be passed to ensure that they respect that process and will not be trying to raise their interests. The only province that doesn't have a requirement to do that is British Columbia, but British Columbia has agreed to do it, because I've asked them—from really a momentum position—to do it. There have been discussions with both parties about it.

I think the passage of the provincial legislation would ensure that those interests the province may feel it has, because it has what's called an interest that underlines the Indian reserve, wouldn't be raised.

Mr. Dennis Bevington: So right now, on first nation reserves, if you have a certificate of property, you can achieve a mortgage. You can also lease to somebody else who can achieve a mortgage. Is that correct?

Mr. Clarence T. Jules: On the existing Indian reserve?

Mr. Dennis Bevington: Yes.

Mr. Clarence T. Jules: Yes, if you receive the appropriate approvals.

In the case of Kamloops, when I was chief, I had a handshake agreement with the Sun Rivers development. They spent \$18 million before a lease was even granted. So then you have to designate land, and now there's discussion about taking away the sections that deal with designation. The history of the designations or the conditional surrenders of lands goes back to the Star Chrome and St. Catharines Milling cases, where there had to be a federal role in all of these issues.

So you have to have a vote and then you're able to enter into an agreement. Once that happens, you have to ask the landowner—who is Her Majesty—to enter into a lease on your behalf. So you're the beneficiary of that lease.

Mr. Dennis Bevington: Even if you're under the First Nations Land Management Act?

Mr. Clarence T. Jules: That's a little bit different. You asked about the Indian Act.

Under FNLMA, you can enter into longer term leases on your own. Under the Indian Act you have to have a vote amongst all of the electors who have a 49-year lease. There's a court case...not a court case but an action under the Human Rights Commission to have an individual do a 99-year lease. But as all of you appreciate, even when you have a 99-year lease, there's a certain tipping point. So when you start getting to year 30, 40, 50, the land values decrease —

• (1645)

Mr. Dennis Bevington: I have another question because I have a few of them.

Is it possible to establish a Torrens registry under the land management act?

Mr. Clarence T. Jules: They've chosen to have a deed system under the Indian Act.

Mr. Dennis Bevington: But there's nothing that would prevent that from happening.

Mr. Clarence T. Jules: They've chosen to have a deeds land registry system under the Indian Lands Registry. So right now under the Indian Lands Registry, there's a registry for Indian reserves, for designated lands, and for FNLMA lands—and that's deeds.

So as I pointed out, eventually you're going to end up with an encyclopedia.

The Chair: You have 20 seconds if you have something there, Dennis.

Mr. Dennis Bevington: Pretty tough, 20 seconds.

The Chair: Okay, well, the last time I gave somebody a minute, it went on for five minutes. I'm speaking about Mr. Bevington. Last time I gave him, it went over to 8 minutes and 43 seconds.

So Mr. Seeback, I'll turn it over to you.

Mr. Kyle Seeback (Brampton West, CPC): Thank you, Mr. Chair.

It's great to have you here. This is very interesting to me.

So if I were to try to summarize what I'm hearing, this is just going to give another option for first nations with respect to land management. You'd have almost a spectrum. You're going to have 53/60 for some. Then you're going to have some people who will say FNLMA, and then with this legislation there is now going to be an additional option, which is conversion of certain parts of reserve lands to fee simple.

Would that be accurate?

Mr. Clarence T. Jules: Well what we're contemplating is that the entire land base would be under FNPO, because otherwise it would lead to the leasing that was mentioned earlier. So it would all be under FNPO. There isn't going to be a choice of bits and pieces.

Mr. Kyle Seeback: If you opt in, if a community opts in, in that vote—

Mr. Clarence T. Jules: The whole land base....

Mr. Kyle Seeback: —then the entire reserve land base is going to be registered under fee simple.

Mr. Clarence T. Jules: That's right. Transferred.

Mr. Kyle Seeback: Transferred under fee simple.

I was reading one comment for my own explanation. It was in some of the notes that we all get. It talked about a reversionary right remaining with the first nation. Do you have any idea what that means?

Mr. Clarence T. Jules: A reversionary right.

Mr. Kyle Seeback: A reversionary right.

Mr. Clarence T. Jules: Well there's a right of resumption that the provinces have over lands and they keep that so they can take lands for public purposes.

A reversionary interest that bands would have over lands.... You know, that would be akin to a right of expropriation, I would guess.

Mr. Kyle Seeback: Just in some of the notes that we get from the library it says, "Regardless of who holds the fee simple interest, the underlying title or reversionary right is intended to remain with the First Nation."

Mr. Clarence T. Jules: Yes. That simply means that the title will always be vested in the first nation, no matter who has an interest in it.

Mr. Kyle Seeback: I want to go quickly to a couple of things.

There are obvious differences between a leasehold interest and a fee simple interest. That's part of what you're talking about. What do you see as the major disadvantages and advantages of loans—access to capital—under a fee simple system versus somebody who has a leasehold interest?

Mr. Clarence T. Jules: I hosted a national conference on this in October of 2010. I had Hernando de Soto make a presentation at the conference, and those of you who don't know, he wrote a book called, *The Mystery of Capital*. He sits on a committee with Madeleine Albright to alleviate poverty for the UN.

I had him up to talk about all of these issues, but one of the panellists that was there was a lawyer for the Royal Bank. He was saying that banks are really reticent to use a leasehold interest for the borrowing of money. I found that in my own experiences as a chief of my community. Yes, you can borrow money based on your mortgages, but when I purchased on behalf of the band and the neighbouring ranch, Harper Ranch, they wouldn't accept leases. Because we have lots—we have a couple of thousand leases on the Kamloops reserve.

I said, we have this, and they said they were interested in the FNGST—the first nations goods and services sales tax—so we were able to leverage that. When you go to the banking institutions, they want to be able to have something that's a little bit more secure than a lease.

• (1650)

Mr. Kyle Seeback: It would be simple if it would obviously be that.

How am I doing for time, Chair?

The Chair: One minute....

Mr. Kyle Seeback: One minute, great—

The Chair: And four seconds.

Mr. Kyle Seeback: All right.

What other factors that are going on with the reserve, other than the lack of fee simple, are causing or hindering economic development? I know that's a broad question in 40 seconds.

Mr. Clarence T. Jules: Well, it's one of the major factors in the underdevelopment of our lands. When you compare the lands in most of the proponent communities and the neighbouring jurisdiction, it's night and day. In Kamloops, they used to call the reserve the dark side. It's because we didn't have as many city lights as the city of Kamloops, so it is underdeveloped. Why is it underdeveloped? It's because of the Indian Act. When you don't own or have title to the land and somebody else owns it, they are always in the position of making the decision for you.

The processes that you have to be involved in are long and convoluted. One aspect was about 32 different steps that we had to take before a lease could be granted. My dad said in 1968, by the time Indian Affairs came back and said we could lease, the developer was gone. That's one aspect.

The other one is the deed system. Looking at the deed system, it's historical research. That's another aspect.

Then, when you have the banking institutions, say in a particular jurisdiction, they have one set of criteria if it's a Torrens system. It's easy to determine how much of an interest you have and how much they would be willing to give a mortgage on. On a reserve there's a whole bunch of different factors.

One of the stories the banker told was that they had the 99-year lease, but they didn't have the water. They didn't have access to the water, or the other services that could go in and make that land valuable. They had an appraisal that the land was worth \$2 million because of the lease. They went back and told the gentleman they would give him \$900,000. The banker said, do you know how much we paid ultimately? Zero, because they had no seizable interest.

The Chair: Thank you Mr. Seeback, Mr. Jules.

We're going to turn to Mr. Genest-Jourdain and then over to Ms. Hughes after.

[Translation]

Mr. Jonathan Genest-Jourdain: Mr. Jules, I want to go back to the First Nations Property Ownership Act. You provided some information on modulation in terms of individual ownership. Given the fact that my community is, to this day, still nomadic—meaning that people go from one home to another, have no permanent address and move around throughout the year—how will a title of ownership be modulated when an individual wants to obtain one, for instance, if the band wants to allocate lots to individuals? I would like to know what you think about that.

[English]

Mr. Clarence T. Jules: I think it would be much the same way as they do it in your community now. When I visited Sept-Îles there were two different communities. When I toured, there were individual property lots on which individuals had built homes. It wouldn't be any different from that.

In order to come up with a community plan, the community comes together and says, "This is the subdivision plan we're going to create so individuals will be able to have title to these lands". That would be put to a community vote, and then it would be ratified by the community and implemented.

[Translation]

Mr. Jonathan Genest-Jourdain: Currently, in my community—be it in Malietenam or Uashat—people are not owners. They were simply allowed to live on that land. They do not even own homes. I wanted to make that point clear.

•(1655)

[English]

Mr. Clarence T. Jules: But they do reside in the homes.

Mrs. Carol Hughes (Algoma—Manitoulin—Kapuskaing, NDP): Thank you very much.

In Ontario as a whole, how many first nations are part of your organization or interested in your organization, where a claim has been completed for a first nations land management community? Have any of them been completed?

Mr. Clarence T. Jules: Some of them are starting to move into what's called FNLMA. I haven't personally approached communities in northern Ontario to be part of or a proponent of this particular initiative.

Mrs. Carol Hughes: Are there any in Ontario?

Mr. Clarence T. Jules: Yes.

Mrs. Carol Hughes: How many are there?

Mr. Clarence T. Jules: There's one community. Another community is nearing a settlement and wants to set up lands under FNPO.

Mrs. Carol Hughes: I'm going to pass it over to my colleague for a minute, and if there's time left I'll take it.

Ms. Linda Duncan: I just want some clarification, Mr. Jules. Is this proposal coming from the tax commission or is it yours personally? I would also welcome some information from you, in your role as the head of the tax commission. I'm interested in knowing your experience.

My understanding is that the role of your commission is to provide information to people about leaseholds and opportunities for taxation of leasehold properties. I'm just wondering if you could also take the time here as the chair of the tax commission to share some of that experience with us about how first nation communities are benefiting from those mechanisms.

Mr. Clarence T. Jules: Sure. I'll give you a little bit of a history lesson.

My dad started to deal with the tax issue in 1965. It was to snowplow some of the lands on our Mt. Paul industrial park, which

you created in 1961. You went to the provincial government. The province said, "Well, you're an Indian reserve, so talk to the Department of Indian Affairs". We ended up having discussions for over 20 years.

When I was a claim chief in 1984, I wrote a letter to all of the communities in Canada asking them to support Kamloops to amend the Indian Act. During the time previous to that, we worked with a lot of communities to try to have tax jurisdiction under the Indian Act. Then it was announced in the 1986 federal budget that there would be an amendment so we could tax on reserve lands, and by 1988 the legislation was passed.

I had to get the provincial government to vacate the tax field. There were three communities that came forward—Kamloops, Westbank, and Musqueam. They were the first communities after the provincial government had an orderly vacating of the lands. Now there are about 140 communities involved in real property tax. They collect about \$100 million on an annual basis, and we're nearing \$1 billion in revenue since I started to do this work.

Ms. Linda Duncan: What's the breakdown between houses and businesses?

Mr. Clarence T. Jules: It's a mix. There are residential developments, some railway rights-of-way with CPR, industrial developments, and commercial developments. Those are the taxable interests that first nations go after, and because of that they're able to lever that to have interests that they can—

Ms. Linda Duncan: That's on leased lands.

Mr. Clarence T. Jules: That's right.

Ms. Linda Duncan: So there's a fair bit of revenue from leased lands.

Mr. Clarence T. Jules: That's right. Remember that leased lands are one-tenth of the value of fee simple lands. So obviously that's going to increase.

The Chair: Thank you.

Mr. Rickford, we'll turn to you for the next five minutes.

Mr. Greg Rickford (Kenora, CPC): Thank you, Mr. Chair, and thank you, Manny, for being here today.

First, I have to declare something here, Mr. Chair. On two previous occasions, I spoke at length with the witness and I've had difficulty sleeping afterwards because he's given me lots of food for thought. I'm not prepared to declare him hostile, but I'm tired again today because I've been thinking about these things. I should say to you, Manny, intellectually and practically, I'm not quite there yet, but I do appreciate that the trajectory of this discussion has been looking at what options are out there in an overarching way and what they would look like. There's obviously a context in which this arises.

Second is, in terms of implementation, to appreciate and understand that what is there now is not working. I think of the great Kenora riding. I think of Lake of the Woods. My colleagues get mushy here when I start talking about my own riding. We see tremendous value in one of Canada's most beautiful areas. We see some of the first nations communities developing land through federal programs for residential development. Magnificent places get built on these, and the real value of them ultimately isn't realized. So that doesn't work either. What does work?

We've seen 99-year leases, and as you say, the value plummets. Owners in a leasing context have nothing at the end of that, and the value of that land isn't benefiting anybody in the first nations community either. I've been involved with that legally. So I'm fixated on this issue and I'm so glad to be participating in this study and looking at those options. Yours specifically gives me concern along these lines.

I want to capture a little about the Nisga'a experience that you're well familiar with because in my mind, where I've struggled with this the most, is the fact that, particularly in the interior of B.C., these communities come forward, they've got choice land on Okanagan Lake, and everything is more perfect than it could ever be in Washagamis First Nation—although there is some potential there—or in some of the isolated first nations communities, for example, one of the 25 in my region, and we say, “That's kind of a perfect-world scenario. What's going to happen there?”

Can you tell us a little about that experience and how that process converted real value to a fairly remote section of British Columbia?

• (1700)

Mr. Clarence T. Jules: I've worked with the whole range of communities ranging from Squamish that has multi-billion dollar potential in terms of development. I worked initially with Westbank on the implementation of taxation and a number of communities right across the country. Some of them start out relatively small. One good example was in Millbrook by Truro. They're not really isolated, but when I first started to work with them, they had a \$25,000 tax base. Now they have a Tim Hortons, a cineplex, motel complexes, all of those.

If you can't imagine an economic solution, then you can't think about it. What we have to begin to do is to get people to use their imagination about what is possible. In my particular case, that's hope for the future.

Mr. Greg Rickford: We've been working with first nations land management, and again I appreciate this option theme that's coming out. What is your sense of what implementation would look like for something like this or potential entrant communities? I've got notions of the Torrens system having to be introduced. I've got ideas around fee simple both in concept and in practical application. We have a process with first nations land management whereby an entrant goes in and resources are available then to build capacities in these different areas. You mentioned the environment.

If I had more time, I'd talk about the interesting ideas around the province. These are all parts of the capacity piece that we're talking about with first nations land management.

How does that interface with what you're bringing forward today, at least by way of comparison?

Mr. Clarence T. Jules: To be quite honest, we're going to learn an awful lot from the experience of FNLMA, from the communities that are going through that process and where they're going to be headed.

There's a couple of communities involved in this process that are part of FNLMA. What we're going to be able to do is have.... I don't know if I mentioned it at all, but I've set up an institution called Tulo. Tulo is a Chinook word meaning “profit”. It's a centre for indigenous economics. It's being set up in conjunction with Thompson Rivers University. We'll have university programs. We're going to have accredited administrators who have a sense of what needs to be done in terms of the economic approach.

We're appealing to communities that have an economic vision for the future. That has to be translated from the thought into the practical application of education and training, and then followed through the system. Tulo is a critical component of that.

We'll be having workshops at the community level so that the community is ready and able to assume the jurisdiction. That's a lot of work with the proponent communities and with the individuals. In many cases, it's about building trust between the councils and the people who actually own the land, because in many cases there isn't enough trust between the two.

It's creating a national institution, really, that can impart knowledge quickly and easily to first nations so that we can speed up the process instead of waiting another 40 or 50 years, or another two or three generations.

• (1705)

Mr. Greg Rickford: Thank you, Chair.

I know that I'm out of time, but I just want to say thank you for this today. I look forward to you coming out to our region to at least begin a conversation—as you say, a fulsome debate—on the options that are out there. Thank you.

The Chair: Ms. Duncan, we'll turn to you for the next five minutes.

Ms. Linda Duncan: I wonder if we could go back to the role of the First Nations Tax Commission, because we actually haven't had a chance in this review to learn about what the commission does.

In looking at the terms of reference, I see that this looks quite similar to the other boards and commissions we've had in here, but you're concentrated on building capacity, providing guidance, and so forth in the establishment and delivery of taxation systems, and also in leaseholds. I'm just wondering if you can share with us some of the lessons learned.

For example, do you need more dollars for capacity? Is it an issue of capacity? Is it just that some have opportunities and some don't? Could you just share with us some examples and maybe some recommendations to improve the system so that first nations can actually benefit from those two goals?

Mr. Clarence T. Jules: This is why I really liked the announcement in the federal budget that there is going to be more money for education. One of the limiting factors we have is being able to bring students to Tulo to educate them. We have to be very creative in terms of trying to find and create bursaries so that we can have an educated administration. That's the way we disseminate information from the inner workings, if you will, of the tax commission. That's where we lock, if you will, with the communities.

Ms. Linda Duncan: Do you currently have a fund to bring in people and to go out and teach?

Mr. Clarence T. Jules: We've done it through a number of ways, and those ways are getting more and more difficult to pursue, meaning that we don't have the resources to do it but we've found resources to do it—

Ms. Linda Duncan: It sounds like you're hopeful. My understanding was that the education money was to build schools, but I'm glad to hear you sound hopeful that some of the money is actually going to deliver the programs.

Mr. Clarence T. Jules: Well, I would hope so.

Ms. Linda Duncan: Okay.

I'm going to turn it over to my colleague, Ms. Hughes, who I think has some questions.

Mr. Clarence T. Jules: I could go on about all of those....

The Chair: Ms. Hughes.

Mrs. Carol Hughes: I talked to one of my first nations chiefs on this. I was just wondering about it, because before we could even go down the road of taxation, they're saying that they feel the treaties would need to be recognized, first of all, and their land claims would have to be dealt with in order to do it. I'm just wondering about your comments on that. Do you support that quote from him?

I've spoken to a few of them, actually, because they're saying that before you can even do this, you need to resolve a few things, and it's not going to work because the fact of the matter is that these land claims have been sitting there for a long, long time. Some of my first nations are not getting any responses from the minister's office on these issues.

Mr. Clarence T. Jules: If a community or a leadership chooses to use that approach, I'm not going to argue with that individual. If an individual community or council comes forward and says they want to do this, I'm more than happy to go in and work with them.

That's what optionality is all about. It's the freedom of choice.

Mrs. Carol Hughes: The other question I have is with respect to a comment that you made about the difference between the certificate, the fee simple, and the ownership piece. You said they're not going to go out there and sell their lands. But if they own the land they have an option to sell it to whomever they want, do they not?

• (1710)

Mr. Clarence T. Jules: That's correct.

Mrs. Carol Hughes: So I'm just wondering how much support that would bring to some of the communities when they're going to see a checkered effect in their communities. I know this is very near

and dear to their heart to ensure that their communities remain whole.

Mr. Clarence T. Jules: Yes, but we're dealing with situations even in Ontario where you've already got lots of leasehold interest. The majority of non-native residents on reserve lands are here in Ontario—the vast majority. So when we talk about having a lace or a checkerboard effect, it's already the situation. We're not proposing to do that. It's up to the individual communities to make those kinds of informed decisions.

Mrs. Carol Hughes: At the same time the community's interest is being protected with respect to that land.

Another piece on that is the CMHC piece. The fact of the matter is that first nation members can actually get CMHC financing, and again, the community's interest is being protected. Maybe you could clarify that for me.

Mr. Clarence T. Jules: That's one of the problems. You have a dispute between CMHC and Aboriginal Affairs over who has responsibility for the provision of houses on reserve lands. Then, to complicate matters even further, you have individuals from your communities and others who say they have a treaty right to a home.

Mrs. Carol Hughes: Sagamok First Nation is an example.

The Chair: Ms. Hughes, you're out of time. I do apologize, but you've gone over by 30 seconds. It's okay if the witness will finish answering but I don't want supplementary questions asked.

Now I'm going to take the chair's prerogative. Actually my colleagues on this side have ceded their question time to me.

Mr. Clarence T. Jules: Mr. Chair, I want to finish answering this question.

The Chair: I'll let you do that.

Mr. Clarence T. Jules: In order for a CMHC loan to happen on reserve, the band council has to ask the Minister of Indian Affairs to provide a ministerial guarantee. Even when you go to a bank—there are a couple of banks that provide housing on reserve lands—the band council is asked to backstop that. That's led to a situation where the majority of communities that end up in third-party management are a direct result of individuals not paying back their housing loans, and it's because they don't own it.

Mrs. Carol Hughes: I just want to say that it's worked very well for Sagamok First Nation.

Mr. Clarence T. Jules: There are—

Mrs. Carol Hughes: It was a comment, not a question.

The Chair: There are no comments from committee members unless it's your time.

I'm going to jump in now.

Mr. Jules, like many proposals that come to this table, there's interpretation and there's misinterpretation of different things, and I certainly appreciate your clarity with regard to your own proposal. I think it's sometimes important to hear from the actual proponent of a proposal rather than just listening to the opponents.

There are those who would liken your proposal to the federal government's 1969 white paper that sought to distinguish the rights of aboriginal people to land. I'm wondering if you could just add some clarity. I think you've been clear in your explanations today, but I still maybe don't understand the process in how a first nation community would retain the constitutionally protected right to always be the underpinning of the land. So even if it went into private hands, what would be necessary to ensure that it always came back to the first nation, so that it was always still first nation land, that it wasn't provincial lands, and that even though it was sold multiple times, it continued to be part of the first nation community?

Mr. Clarence T. Jules: First, let's go back to "Choosing a Path". This was, from my understanding, part of the Trudeau government, because of his thoughts about Indian reserves being the model for the apartheid in South Africa. He philosophically didn't agree with apartheid. He wanted to do away with the Indian Act. Because of that, there was a policy paper called "Choosing a Path" about exploring that option. It was rejected by all communities across the country. It's because of that position that, on January 24 of this year, the Prime Minister said the Conservative government wasn't going to blow up the Indian Act. He said it had long roots and it wasn't up to him. So we realize it's up to us to make those choices.

We talked about section 35 of Canada's Constitution, the recognition of our inherent right to self-government, and all of those other niceties that are in the Canadian Constitution. It's not as though we're dealing with the St. Catharines Milling case, where the Premier of Ontario argued before the Supreme Court that lands ceased to be Indian lands if they were used for any purpose other than an Indian reserve. When you look at everything that has taken place over 100 years, the underpinning is constitutionally doable by the federal government.

• (1715)

The Chair: I think that your proposal has been misrepresented by some—

Mr. Clarence T. Jules: Oh, yes.

The Chair: —as being a way for lands to cease to belong to first nations as soon as they are held in private ownership. Would there be a provision in your proposal under which those lands would be constitutionally protected as first nations' land.

Mr. Clarence T. Jules: Well, I think that—

The Chair: Is my understanding correct? Would that be necessary?

Mr. Clarence T. Jules: This isn't a treaty process. This isn't a self-government process. We've given considerable thought to whether or not this could be done under 91(24) of the Constitution Act. These lands will continue to be lands reserved for our purposes.

The Chair: It is retained and it's never ceded.

Mr. Clarence T. Jules: That's right. It's constitutionally protected.

The Chair: I'm not a lawyer and I don't purport to be and I don't even purport to understand the process, but there are legal opinions that would assure you that it would be protected constitutionally. I'm thankful for them. That's helpful information. I'm wondering if there are any documents that could be distributed to the committee with regard to the legal opinions.

Mr. Clarence T. Jules: Yes.

The Chair: That would be helpful.

I'll turn to Ms. Bennett now for her questions.

Hon. Carolyn Bennett: Your proposal has a long history. It received some acknowledgment in the budget last week. What would you see as the timeline in respect of the budget and the money it would take? I don't believe there is any dollar value in the budget document.

Mr. Clarence T. Jules: I'm glad that you asked that question. One of the things I have been wanting to do is create national institutions that facilitate true self-governance. That means an ability for the institutions to create money to operate themselves. Part of the proposal is to have property transfers so that the land title system would ultimately be self-supporting. We're using pretty much the same formula as FNLMA as a transition. It isn't going to be in perpetuity that you get the money, but—

The Chair: I apologize. This time I do have to interrupt because it's my requirement.

We have, I believe, half-hour bells. If there's consent, we can continue to complete Ms. Bennett's five minutes. I believe it's about four more minutes. If colleagues are okay with that, we'll just continue for the next four minutes.

Let's get some confirmation on the time of the vote.

Voices: Thirty minutes.

The Chair: It's a 30-minute bell, so we're fine, if colleagues are amicable for the four minutes.

Turning it over to you, again, Ms. Bennett, for the remainder of your time.

• (1720)

Mr. Clarence T. Jules: To continue answering the question, the intention is to create institutions that ultimately are self-supporting, and also that the communities would be able to share that responsibility, from larger communities to smaller ones, because that straightens out some of the inequity issues. That's the approach we're taking. Ultimately, some of the moneys are going to have to be fine-tuned, if you will, and that will be part of the request made to government.

As for the timing, I mentioned earlier that I continue to be an optimist. I'm hoping that the legislation will be introduced this fall, and realistically, probably passed soon after—not within a number of months, but within a small number of months.

Hon. Carolyn Bennett: In your conversations with government, seeing that there wasn't any money in this budget for it, do you see the act being tabled in the fall and then money in next year's budget for it? Or what are you hoping for?

Mr. Clarence T. Jules: I think some of the start-ups, obviously, would have to come from the existing budget allocations. If there's a requirement for new moneys, it would obviously have to be in next year's budget.

Hon. Carolyn Bennett: What budget allocations right now would apply to this process?

Mr. Clarence T. Jules: I'm not the Aboriginal Affairs accountant.

Hon. Carolyn Bennett: But something from in the department, which was just cut by \$250 million.

Mr. Clarence T. Jules: Yes.

Hon. Carolyn Bennett: Okay.

On the difference between land management and your proposal, you stated that it's not possible to get a mortgage. Because lots of people.... Even lands under the Indian Act have a mortgage.

Explain the difficulty or what you're talking about, in terms of mortgages.

Mr. Clarence T. Jules: It depends on where you are. In the Westbank community, it's relatively easy to get a mortgage because you're in a hot area for real estate development, and that's coupled with 99-year leases. If you're dealing with considerably shorter leases, for example in Kamloops, we have a 49-year lease in Mt. Paul industrial park, and so when people come forward and want to sell the lease or renew it, they say, "We want to turn the clock back". Even if there are five years gone, they say, "Well, we want to start all over again". You end up starting the clock over again, so that they can go to the bank and get a mortgage. But the quality of

development isn't to its full potential, and that's what I want to get to. I want to be able to realize the full market value for the lands.

Hon. Carolyn Bennett: The difference being?

Mr. Clarence T. Jules: The difference being that under a lease arrangement, you're going to be able to get 65% of its value, not 100%.

The Chair: Thank you, Ms. Bennett.

Colleagues, before we shut down the meeting, I just want to make you aware of one document that was distributed to committee members. This is a confidential document for committee members only, outlining those witnesses that we have not yet heard from and that committee members expected we would hear from at some point.

I just put that out there so that members can look at that over the next few weeks.

Other than that, I do want to thank you, Mr. Jules, for being here today, for answering our questions, and for certainly giving us a lot of food for thought.

Committee members, we'll now adjourn.

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