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Chair

Mr. Chris Warkentin

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● (1530)

[*English*]

The Chair (Mr. Chris Warkentin (Peace River, CPC)): Colleagues, I will call this 33rd meeting of the Standing Committee on Aboriginal Affairs and Northern Development to order. We are continuing our study as it relates to land use and sustainable economic development for first nations communities.

Colleagues, before we get started, there are a couple of things I want to do. I want to welcome Jean Crowder to our committee. This is the fist time we've met as a committee in this capacity here on the Hill since your appointment, Jean, so congratulations and welcome back to the committee. I think you and I served some six years ago on this committee together. I do want to thank you for joining us, and I look forward to the next while that we spend together on this committee.

We are back now, colleagues. On behalf of those of us who travelled to eastern Canada, I can report that we had a successful trip, and it was a good opportunity for us to learn a whole host of things, many of which we intend to report to those of you who didn't travel with us. We look forward to having that discussion, and seeing that discussion continue as we move into the second leg of travel next week. If you have questions with regard to the travel, there will be some information that will continue to flow over the next week as we make preparations. If people have questions, feel free to ask me, the clerk, or our logistics officer as well. I know your staff have that contact information.

Moving on, colleagues, we have two witnesses before our committee today. We have Brian Hardlotte, the vice-chief from the Prince Albert Grand Council.

We want to thank you for travelling to Ottawa to testify before our committee today. Thank you so much. We look forward to hearing your opening statement.

We also want to thank Mr. Warren Johnson for joining us as well.

We know that you have some information that you want to share with our committee, and we want to thank you for coming as well.

We're going to turn it over to you both now. We'll start with the vice-chief, and then we'll move to Mr. Johnson. After that we will start the rounds of questioning.

Vice-Chief, we'll turn to you now for your opening statement.

Mr. Brian Hardlotte (Vice-Chief, Prince Albert Grand Council): May I ask how much time I have?

The Chair: We'd like to keep it to around ten minutes, give or take. If you'd like, we can signal when that time is approaching, but we won't constrain you to the exact ten minutes.

Mr. Brian Hardlotte: Thank you very much.

[*Witness speaks in Cree*]

I want to thank the Creator for bringing me to this place today. I just want to thank and acknowledge everyone around the table, and thank you for allowing me to speak on a very important matter, the land use and sustainable economic development.

My name is Brian Hardlotte, as introduced, and I am a vice-chief of the Prince Albert Grand Council in the province of Saskatchewan. The Prince Albert Grand Council is made up of 12 first nations. It serves 28 communities in northern Saskatchewan. The first nations within the grand council are made of the following linguistic groups: the Dene to the north; the Swampy Cree, eastern sector; and the Woodland Cree and the Plains Cree to the south. A Dakota nation is also with the grand council. Our membership comprises approximately 37,000 people, and within that number, 75% are under the age of 25. It's a very young population.

I was born and raised in the Cree community of Stanley Mission, one of the communities that make up the Lac La Ronge Indian Band, a community that is situated on the majestic and beautiful Churchill River—the Missinipi, for the Cree. As first nations people, we are naturally attached to the land and therefore have inherent rights and powers to access and use our ancestral lands, as we refer to them. This is an ongoing relationship going back since time immemorial. It's our belief that the Creator allowed us to be the stewards of these lands and to ensure that the abundance of life on these lands continues for many future generations.

Our use and access of our ancestral lands is based on our first nations laws, which are derived from natural laws, laws of the Creator. It's by the abiding of these laws that the land has sustained us for so long. Without these laws, much of our customs and traditions would not exist and the respect for Mother Earth would not exist.

First nations views on land and resources must not be ignored. We only take what we need, and it's on this premise that we must come together in order to practise sustainable economic development through lands and its resources. Furthermore, first nations laws must be the proponent for economic gain through practical harvesting methods of natural resources. This is not to imply that everything must be undisturbed.

Historically, we have freely used and accessed our ancestral lands without restriction, and this has changed as government, along with industry, freely access and use our ancestral lands for mining and exploration without proper consultation and accommodation.

First nations people understand that they require free prior and informed consent from industry and government before any exploration and mining, logging, or other natural resource extraction is done. Industry must get the social licence to proceed. I may add that we have veto—what's called veto—on any developments within our ancestral lands. This veto we inherited from our ancestors, and this veto is still intact today, as we did not surrender our sovereignty or any lands whatsoever.

● (1535)

We will start using this veto to ensure that we are consulted properly and are given a rightful share of revenues from natural resources extraction, but this will not exclude partnerships and collaborative initiatives, both with the government and with industry. Our people then will have sovereignty and will begin the road to prosperity.

As I speak here today, our understanding of the title to the land comes from our inherent rights and will always come from the inherent powers that give us the right to use and access our ancestral lands left for us by our ancestors. This can no longer be ignored.

The Prospectors and Developers Association of Canada issued a press release on the new proposed environmental assessment process, which sheds some light on the involvement of aboriginal peoples in this process. I quote:

> We commend the federal government for its goal of a system that provides predictable and timely reviews, reduced duplication, strengthened environmental protection and enhanced Aboriginal consultation.

It is vital to point out that this group, which represents a healthy number of industry's companies, raises “consultation”. It tells us that industry has consultation as part of their plans.

The first nations within the Prince Albert Grand Council, whom I represent as a vice-chief, feel that in order for us to gain benefits from land use and sustainable economic development, we must be proponents for any development on our ancestral lands and gain nominal benefits, as all governments have in the past. We can create partnerships with industry and government, and first nations peoples can enhance self-sufficiency, as this would remove our dependency on government for our well-being.

The thought of revenue sharing has been introduced to the governments of the day. This must be addressed. In our thoughts, this is what we are entitled to, and this is what has been long ignored. The government must refrain from Canadianizing our first nations. We have long been citizens of our respective nations, and that is what needs to be recognized and respected, with a recognition that we are distinct and independent from the Canadian political fabric. Government cannot treat us as ordinary Canadians.

Revenue sharing is a matter of international covenant rules, since we are dealing with treaties that are based on sharing the land. We did not surrender any lands and resources at the time of treaty, nor did we surrender our sovereignty. This has to be recognized as well. It is written on the British treaty template, but in our understanding, our elders insist that the surrender of our lands was never part of the negotiations, and this also must be addressed.

The basics of treaty have included the right to trap, fish, and hunt. We believe these are inherent rights that we had prior to treaty, and they have to be recognized under the treaty. But what good are these rights when we are running out of land space where we can practise these rights? Land use from other resource users is in direct violation of these treaty-based rights when their activities displace first nations from their ancestral lands.

In conclusion, it must be understood by the government that we have inherent powers—in fact, distinct from all parts of Canadian society—and the same recognition can be derived from the treaties we have signed. Many people in government often tell us that we must leave the past in the past and move on. Well, it's easy for the government to say that, since they gained tenfold benefits from our land and we've been relegated into reservation plots where we are jailed and forced into poverty.

● (1540)

We need to address the issues from the past, and those are the treaties, in order to come into the present and move into a more prosperous future.

With that, *ikosi, teniki, marci cho*, and *waste*.

Thank you very much.

Ninanaskimon.

The Chair: Thank you, Vice-Chief. We're thankful that you came, and thank you for your testimony. We'll have some questions for you shortly.

We'll turn to Mr. Johnson now for his opening statement. Then we will follow up with some questions.

Mr. Warren Johnson (President, New Road Strategies, As an Individual): Thank you, Mr. Chairman.

I'm honoured to have been asked to talk to you today. My understanding is that the committee, as part of its work, is seeking a better understanding of the key issues and challenges related to first nations land and environmental management on reserve.

I was recently involved in coordinating research, undertaking literature reviews, and preparing discussion papers in this area to help animate the discussions and support the work of the Assembly of First Nations/Aboriginal Affairs and Northern Development joint working group on additions to reserve.

It is this work I'll be drawing from in my remarks, principally from discussion papers that I understand came to the attention of the committee on additions to reserve and the environmental regulatory gap.

Having said that, I am here as an individual, not to represent the working group or either of the parties.

It is useful to position where first nations are on the continuum of land management activities relating to reserve, remembering that my data was compiled in 2010.

First, two-thirds of all first nations had no involvement in this continuum and were not receiving any land management funding.

Second, less than 10% were exercising any form of delegated or self-government authority over their lands—although FNLMA has increased this recently—and the lands advisory board, which I think has already spoken to the committee, feels it could up this to 20% or 25% over time, given resources for FNLMA. Even if this could happen tomorrow, it would still leave 75% to 80% of first nations operating under the Indian Act over the longer term.

I understand the committee is also interested in identifying what alternative land management options might be considered for those who do not have access to or are awaiting to access FNLMA, and that is the main focus of my remarks.

Looking at the research, we first find that numerous researchers are pointing to the need for improvement in individual property rights on reserve over those afforded first nations by the federal government under the Indian Act, while protecting the communal nature of reserve lands. Unfortunately, the two instruments under the Indian Act most often cited as effective in this regard have proven to be bureaucratically very cumbersome, suffer from major land-use planning and regulatory gaps, and are not instruments that many first nations are comfortable with. These are certificates of possession, or CPs, which are issued by the Minister of AAND on the request of the band and used to grant title to individual members; and designating lands by way of referendum for leasing by the department.

Looking at each of these in turn, certificates of possession are an anathema to many. First, as noted in a companion study by Professor Bradford Morse and Yvonne Boyer, CPs are the successors to the location tickets used in the 1800s. They were part of the singularly unsuccessful historical system of enfranchisement, whereby Indians were to be educated in church-run schools, give up their identity, and be provided with individual land allotments that would be taken away from their reserves. They were later used under the Indian Act by Indian agents, often under questionable circumstances.

Secondly, there is no effective legislative mechanism for either the first nation or the federal government to regulate CP land use once the CPs are granted. This creates a regulatory vacuum that gives rise to many of the questionable land-use activities currently found on reserve. I would note that the Canadian Human Rights Tribunal in the Beattie decision appears to rely on just such regulation by the first nation.

Thirdly, AANDC's estate operations, as they relate to intestate CP holders, appear to be dysfunctional, giving rise to many unresolved CP estate issues. At last count, the department was running a backlog of over 500 section 50 sales on behalf of non-member beneficiaries. As an example, Akwesasne alone apparently has over 250 CPs with unsettled divided interests among member beneficiaries. The issue is compounded by the fact that 15,000 CPs have been registered without any surveys.

The net result of all of this is that new CPs, which must be requested by the first nation, are being issued at a rate that is satisfying less than 5% of new household formation on reserve.

As for designations, despite huge efforts by the Indian Taxation Advisory Board—now the First Nations Tax Commission, which you have also heard from—which championed the Kamloops amendment to the Indian Act in 1988 establishing the legal distinction between absolute surrenders and conditional designations, many first nations do not trust or understand the distinction, especially given the sorry history of surrenders in Canada.

● (1545)

Second, the designation process suffers from using the highly onerous Indian Act surrender provisions, in terms of voting process, ratification thresholds, and the bureaucratic management process. The result is that AANDC presentations to first nations state, “The designation process will require a minimum of 2 years to complete and more often...at least 3...and drafting a new lease can take up to two more years”, for a total of five years—hardly the speed of business. As a result, many first nations find designation votes highly divisive, with the vast majority of votes having to go to a second vote with a lower threshold before they are successful. You could then ask, why have the first vote?

This leads us to our second major research finding, that as the 31 more successful first nations who participated in the recent reserve land and first nations development study noted, and I quote:

> Today INAC is even more the problem than the Indian Act, due to underfunding of its own operations and those of First Nations...and lack of competence and instability in staffing, with the result that more successful First Nations currently have more success...working outside the Indian Act than inside it.

Not surprisingly, then, in a comparable study conducted by the aboriginal affairs group, we found that a large proportion of reserve land-use activities are not registered in the Indian lands registry at all, and involve no federal approvals, as they are either what are loosely termed "buckshee leases" by bands or CP holders, or "custom" allotments by bands to members. Specifically, around 80% of all individual/family allotments are done outside the Indian Act; 50% of total band leasing is unregistered; and 66% of all short-term usage of reserve lands, like for gravel pits, garbage dumps, etc., is not federally regulated.

Our third major research finding, which follows from this, which was confirmed by both AANDC and Environment Canada in their response to the fall 2009 report of the Auditor General, is that there is a significant environmental regulatory gap on reserve and that legislation is required.

On environmental assessment, despite first nations requests, and apparently due to cost considerations, since 1992 no regulations under section 59 of CEAA have ever been passed to allow first nations to operate under CEAA. Equivalently, on environmental protection, the government designed part 9 of CEPA in 1999 to help close the environmental protection gap on federal land, which CEPA defines as including reserves, but no regulations specific to reserves have ever been passed.

While first nations have some local bylaw, business regulation, and land-use planning authority under the Indian Act, which they could use for environmental protection and land and resource management purposes, these provisions are antiquated, unfunded, and have penalty and enforcement provisions that are totally inadequate. Unfortunately, these same provisions apply to federal authorities, and as the Auditor General found, the result is that AANDC does not enforce any of its Indian Act resource or environmental management regulations.

Up to this point, the federal approach to environmental management on reserve has been incremental: to work on specific areas of legislative and regulatory development under federal administration, as they each became critical and reached a tipping point in terms of health and safety and/or growing federal legal liabilities. However, as was reported to Environment Canada in 2007:

> While progress is being made...it is highly unlikely that the expected outcome of holding operations on Aboriginal lands to the same environmental protection and prevention standards as comparable operations on adjacent non-Aboriginal lands —will be met.

With oil and gas now separate under the Indian Oil and Gas Act, major projects separate under the First Nations Commercial and Industrial Development Act, and water potentially separate under the Safe Drinking Water Act, it now appears that the "residual environmental gap" identified by the Auditor General in 2009 effectively encompasses all local works other than water, all residential and small and medium business activities, and all non-oil and gas resource activities on reserves in Canada.

Here it has often been pointed out that it would be much more effective to have these more local projects regulated by first nations themselves through improvement in band law-making and enforcement powers, especially as they relate to land-use planning and zoning, similar to other communities in Canada.

The fourth major research finding relates to additions to reserve. Here the joint working group referenced earlier successfully completed its initial mandate with its recommendations to AANDC in 2010 to create a new ATR policy category to give priority to ATRs resulting from decisions from the claims tribunal. If implemented, this would result in three positive ATR categories: legal obligations, for example, as they arise from TLE and specific claim agreements; tribunal decisions; and normal community growth.

● (1550)

Given this and the recent progress AANDC has made to improve ATR operations in order to meet its legal obligations in the Prairies, the key ATR issues that stood out from the research related to more general ATR policy considerations and to legislative issues.

On policy, there is a range of overlapping issues flowing from the last ATR policy review with the AFN in 2001, which were either left undone or have been too narrowly interpreted operationally, including the narrow definition of service area being used in some regions, the inappropriate exclusion of economic development from normal community growth needs, and the failure to put in place an adequate community land-use planning regime to support the policy on community growth. Collectively, these impact heavily on community growth additions, important in those regions largely in eastern Canada with small reserves and little claims activity.

On legislation, from the experience in Alberta, Saskatchewan, and Manitoba with legal obligations under the claims implementation legislation, there is a range of possible legislative initiatives that would improve the ATR process for all categories, including a national version of the current prairie claims implementation legislation, inclusion of all categories of ATR rather than just claim settlements, the ability to have ministerial rather than Governor in Council approval of Indian Act section 35 easements, an alternative and more reasonable ratification procedure for pre-reserve designations to accommodate third-party interests, and the potential for land-use planning votes, adequate zoning bylaw authorities, and the recognition of first nations instruments to replace designations completely and facilitate the whole process before and after reserve creation.

The final finding from the research was that the current situation with respect to land and environmental management on reserve, as described previously, appears to serve no one's interests. Consider the following.

First, the current situation represents a major barrier to sustainable economic development on reserves, which house the most significant underemployed group of people in Canada. This situation results in a major opportunity cost to the Canadian economy. The Centre for the Study of Living Standards estimated this cost at $36.5 billion in annual lost economic output, $14.2 billion in annual expenditures, and $3.5 billion in annual lost tax revenues to Canada as a whole by 2026.

Second, just looking at the growing federal litigation liability, it appears that it could well be less expensive in terms of direct cost to the federal treasury to close the gap than to maintain it. According to a recent study done for the National Aboriginal Land Managers Association, the total federal land-based contingent liability is some $5.74 billion. These liabilities are growing at an annual rate that is greater than the entire lands management budget of INAC.

Third, as a result of TLE and specific claim settlements, the reserve land base is growing dramatically, as is the on-reserve population. When you couple this with the facts that specific claim settlements are not fully costed and that the reserve land base is not considered a cost driver for budget purposes by Treasury Board and AANDC, the AANDC lands A-base operational budget has effectively been in decline for decades, both in real terms and in relation to the reserve land base. With neither first nations nor AANDC and Environment Canada having the necessary legislative authority or resources to manage reserves to a standard anywhere near comparable to that for other communities in Canada, as they noted to Parliament in 2009, the problem can only get worse.

I would therefore draw four points to the committee's attention.

First, there clearly is a role for specific improvements in both ATR policy and legislation of the type I understand is now under discussion in the AFN/AANDC working group. This would benefit both FNLMA and non-FNLMA bands.

Second, either as part of this or separately, there is also a central role in all the issues cited for both an alternative and/or more reasonable ratification procedure for both pre-reserve and post-reserve designations and an initiative to provide first nations with adequate land-use planning and bylaw authorities.

Third, as was reported to Environment Canada in 2007, the regulatory gap has been documented and studied for over a decade, and there is urgent need for action. Given the failings of the incremental approach, it now appears time to fill the environmental gap as a comprehensive package.

● (1555)

Fourth, the estates issue is a tragedy and needs urgent attention.

In conclusion, I would note that these findings appear consistent with the results of the recently published first nations land and economic development study, in which 31 of the more successful first nations were interviewed.

The first three recommendations to government from these first nations were as follows: first, do what you have to do well—speed up additions to reserves, lower the threshold for designation votes; second, build a tool kit so first nations can manage the rest—land-use planning, zoning, bylaw enforcement, etc.; third, clean up the mess you have created—speed up claim settlements, fix the reserve parcel fabric, clear up the estates backlog.

Thank you.

● (1600)

The Chair: Thank you, Mr. Johnson.

We're going to now turn to our colleagues for questions.

We will start with Ms. Crowder.

Ms. Jean Crowder (Nanaimo—Cowichan, NDP): Thank you, Mr. Chair. It's good to be back with the committee.

I want to thank Vice-Chief Hardlotte and Mr. Johnson for being here today.

I did read your paper on additions to reserve, Mr. Johnson. At the beginning of your paper, under the communal nature of reserves lands, it says:

> These rules, which largely focus on the federal government's colonial role of intervening in dealings between First Nations and third parties, are antiquated and inadequate and serious gaps are evident throughout.

You also pointed out that interest in communal property has never really been given a chance to work on reserves in Canada. I also want to mention that there are many other people who have done work on this matter, about whether private property on reserves is the way to go, whether some form of fee simple would be beneficial. I'm from British Columbia, where there is some form of fee simple, and many concerns have been raised about it.

I want to refer to Mark Stevenson. Stevenson characterizes the questions of the tenure of treaty settlement lands as a tough issue, one that has become a problem area for some first nations because of the dogmatic insistence of both the federal and provincial governments that lands set aside as treaty settlement lands not retain their status as 91(24) lands, or lands reserved for Indians. He goes on to say that it's one way for the federal government to get out of its fiduciary responsibility.

In British Columbia, and in other places in Canada, first nations have been very concerned about any move towards fee simple lands because it signals to them that the federal government is washing its hands of its responsibilities.

We hear of the ongoing underfunding with respect to bylaws, land-use planning, environmental regulations, and funding for the bureaucrats to enforce these things. I wonder if you could comment on what advantages or disadvantages you see with fee simple lands, private lands, on reserve.

Mr. Warren Johnson: The advantages and disadvantages are fairly apparent. The work that's been led by Manny Jules and company is bringing those issues forward. My own view is that this is a false debate. There are some first nations who clearly want to move in the direction of the legislation that's being developed, to allow for fee simple on reserve within the—

Ms. Jean Crowder: Mr. Johnson, I'm not sure everybody is clear. When you're talking about fee simple lands on reserve, you're taking about the formula under which the first nations, instead of the crown, would own the reserve land in fee simple. We're not talking about fee simple where, for example, Nisga'a and Tsawwassen fee simple lands could theoretically be sold to non-first nations.

Mr. Warren Johnson: The key point is that whatever their status or to whomever they were sold, they would remain first nations land. My concern is that this initiative is going to serve, at least in the short to medium term, very few first nations. It's been designed for very few first nations. The vast majority of first nations are not looking in that direction.

Ms. Jean Crowder: Is it because they don't have the capacity, or they don't have the resources? Why?

Mr. Warren Johnson: I hesitate getting into that because that's a political discussion with the first nations. I think you should ask them.

My problem is that the instruments, short of fee simple and the kind of legislative initiatives being proposed, have never been used properly to begin with.

Ms. Jean Crowder: You're talking about certificates of—

Mr. Warren Johnson: Let's take leaseholds as an example. There's no reason you can't lease land on reserve, for example. There are whole parts of the world where corporate and foreign interests can only lease land.

Ms. Jean Crowder: Could you name a couple of examples in other parts of the world? I'm thinking the committee might want to look at—

● (1605)

Mr. Warren Johnson: Downtown London, England.

Ms. Jean Crowder: Okay, downtown London, England.

Mr. Warren Johnson: It's crown land. You can only lease it.

I haven't done a detailed study on this. This is just what I've heard in discussion with people who should know. There are parts of New England in the United States, a good part of Southeast Asia.... They're former Commonwealth lands. They're called Commonwealth realms. They maintain that sort of crown status and you can only lease land. That's true in the Australian Capital Territory as well.

Those places I've named happen to be the world's major financial districts, and one of them is a major growth engine in the world economy. They don't have any trouble operating with leased lands.

That's not to say if a first nation's preference is to get into a fee simple arrangement they shouldn't be doing that. My concern, as you've seen from the remarks I've provided to committee, is that in the current situation there are tools, with adequate resourcing and authorities, that first nations could be using, which are satisfactory and which might be satisfactory to a large number of first nations, and certainly are satisfactory to some of the major economies in the world.

Ms. Jean Crowder: In other words, fee simple shouldn't be seen as a panacea to solve economic development issues on first nations territories. What in fact needs to happen is a number of the other things you've outlined in your presentation, whether they be bylaws, or environmental protection, or land-use planning—those kinds of things need the resources, the tools, and the support, whether it's fee simple, or leased, or certificates of possession, or customary tradition.

Mr. Warren Johnson: My impression is that in Canada we've fallen into a little bit of a false debate. I think, originally, as a straw man it was posited that all the efforts have gone in to make the reserve system and the Indian Act, or however it's been touted by the speaker, work, but it doesn't work, so we need to do things differently. Therefore, you jump over to this fee simple discussion.

The point is that the whole Indian Act system, the whole relationship with first nations—take it from whenever—has never been made to work.

Ms. Jean Crowder: Thank you, Mr. Johnson.

The Chair: Thank you.

I think we're going to have a good discussion here today. There are going to be a lot of questions.

Mr. Clarke, we're going to turn to you for your seven minutes.

Mr. Rob Clarke (Desnethé—Missinippi—Churchill River, CPC): Thanks very much, Mr. Chair.

Thank you very much to the witnesses for coming here today.

Chief, from what I understand, Saskatchewan is almost in a unique situation. There are 74 first nations, and only a handful of them actually participate in the First Nations Land Management Act. From what I understand, I see the economic potential of the First Nations Land Management Act benefiting northern Saskatchewan.

From the conversation we had coming to the committee, in regard to the capacity of the Prince Albert Grand Council, for instance, how many are actually participating in the First Nations Land Management Act, or are actually negotiating in that process?

Mr. Brian Hardlotte: In the Prince Albert Grand Council I don't think any of the first nations, that I'm aware of, participate in the First Nations Land Management Act.

I can say that the province initiated what it called land-use plans. I'm aware that some first nations participate in land-use plans.

Mr. Rob Clarke: Can you explain the process or what land-use plans are, what the province is in negotiations with right now?

Mr. Brian Hardlotte: The land-use plans were started in the nineties, and it's the province that pretty much had the lead role in developing these plans.

The one I am familiar with is for my ancestral lands area. It's called the Missinipi integrated land use plan. My first nation, the Lac La Ronge Indian Band, participated in this land-use plan. It covers 3.9 million hectares of territory—12,045 square miles. It's a huge area.

The land-use plan is a strategic government and first nations document that identifies lands and resource management issues. It's a road map that sets the direction for present and future management, use, and development of a major part of the ancestral lands. That process is still there.

For the process in the Missinipi, you had regional meetings; you had local advisory meetings. When the land use was planned, an elders gathering was held and the land-use plan was provided by translation to the elders.

The whole process took somewhere like 10 years; it was a 10-year process. It's not a one-year process to develop a land-use plan. To this date, that I'm aware of, it hasn't really passed and gone into legislation.

I am also aware that there are other land-use plans in our neighbouring first nations that were done and have been passed into legislation. In my opinion, those other land-use plans were done very quickly.

I hope that answers your question.

● (1610)

Mr. Rob Clarke: Partly.

Now with the First Nations Lands Management Act that the government is proposing, in working with other first nations we've seen the benefits to some of the communities just in Saskatchewan alone, such as with the Whitecap Dakota. They've participated, and you've seen the economic benefits there, through private ownership of their lands, the casinos, the golf courses. We've seen them progress to where they only have a handful of people on economic assistance.

I'm wondering what stage PAGC, Prince Albert Grand Council, is at in regard to negotiations under the First Nations Land Management Act. What stage are you at?

Mr. Brian Hardlotte: There are no first nations that are really engaged in that process, that I'm aware of.

On the Whitecap Dakota, compared to some of the bigger first nations within the Prince Albert Grand Council, their numbers are very low.

We haven't really engaged in that process with the federal government.

Mr. Rob Clarke: What's happening in the negotiations? What's preventing PAGC from progressing further?

Mr. Brian Hardlotte: We haven't really had those people come to work with us and give us the information. Let's sit down and let's do the work. We haven't had that offer.

Maybe we have, but I'm not really aware of it.

Mr. Rob Clarke: Vice-Chief, in regard to economic development and negotiations, how much capital has been invested in the process with the Province of Saskatchewan?

We talk about 3.9 million hectares. What are we looking at for economic spinoffs? Has that been forecasted?

Mr. Brian Hardlotte: Nothing has really been forecast, and there are really no numbers. I'm well aware that some of the first nations, mine, for example, and some of the first nations in the Athabasca, have benefited from the land use. Some of the first nations are also engaged with industry, with IBA. But there are really no numbers, so I can't answer that. I can get numbers for you and forward them.

● (1615)

Mr. Rob Clarke: That would be great. Thank you.

The Chair: Thank you.

We'll go to Ms. Bennett for seven minutes.

Hon. Carolyn Bennett (St. Paul's, Lib.): Thank you, both. It was very helpful.

I guess, Vice-Chief, I would like to know more about the veto and how that actually is affected or could be affected in terms of these very important decisions concerning your land.

Mr. Johnson, you're quite encyclopedic on all of the things we're trying to study.

It's a bit unusual, Mr. Chair, but I think it would be beneficial for the committee to have the answers to the 13 questions written by our Library of Parliament, if that would be possible, in writing, from Mr. Johnson. He hasn't seen the questions we've been provided by the Library of Parliament, but I think it would be excellent if we could provide them for Mr. Johnson and have a written response. I think it's fairly important.

If I have time, I'll come back to some of the things we learned last week about the lack of timeliness on ATR and environmental cleanup and anything else you want to add. You can either do it in writing or during my questioning.

Vice-Chief, could you tell me how this veto ought to work or should work?

Mr. Brian Hardlotte: On the veto, as first nations people, we have faced a lot of legislation and regulations in the past. In some cases, we've complied with the restrictions imposed on us.

On your question, we believe that we do have that. We believe that we inherited that from our ancestors. We believe that first nations have the power to stop an official action, I guess, especially enactments of legislation that in history have been imposed on us. In this whole process of working together and consulting with first nations people in this area of land use and sustainable economic development, I believe that first nations people, government, and industry can come together and in some cases work on legislation that works for everyone.

Thank you.

Hon. Carolyn Bennett: Mr. Johnson, last week we were at Mashteuiatsh, where they've been waiting on an ATR that would take them out to the highway, which would actually allow them economic sustainability in a real way. They seem to have waited a long time for this.

Is it just that there aren't enough people working on these things and there isn't enough capacity in the department? Or is it that every time there's an election or something, people down their tools? Why do these things take so long?

Mr. Warren Johnson: In dealing with an antiquated process, a process that doesn't have any other comparison outside of this environment...the federal government actually has to take ownership of the land to make it reserve, to transfer it, to worry about third-party interests and all that. These are all authorities only the federal government has.

● (1620)

Hon. Carolyn Bennett: I think what we were hearing last week.... Is this a Department of Justice problem, this fear of litigation, whether it's environmental, whether it's potential lawsuits from others? Is it being slowed down by the Department of Justice, or is it really the Department of Aboriginal Affairs?

Mr. Warren Johnson: It's the whole process. I don't think you can single out any one part of it. My own opinion is that the department is spread far too thin.

I really like the way the participants in the reserve land and economic development study, those first nations that I quoted at the end, posit their remarks. What they're really saying is it would be better if the government.... Perhaps I could quote another part of that because I found it very useful; it said if the government wants to help, it needs to learn how to get out of the way. If that could happen and the resources that are saved from getting out of the way, not doing things that first nations can better do, were then put on the things the government has to do.... The federal government has to take responsibility for additions to reserve, as long as you're talking about federally owned land held for the use and benefit of first nations.

There are certain things, irrespective of the Indian Act or whatever the legislative future of all this is, that the federal government has to do. From my perspective, it needs to concentrate on the things it has to do, its core responsibilities, and do them well. The rest should be up to first nations.

The Chair: You're almost out of time, but I think you're remembering some of those things that were very important from our travels.

If I can intervene with the last couple of seconds—

Hon. Carolyn Bennett: You can have my time, Chair.

The Chair: Thank you.

We heard that one community has some issue with regard to third-party interest. The difficulty is...as you say, the federal government obviously plays an important role in the additions to reserve process, but we also heard about the impediment of third-party interests.

At the provincial level there's an opportunity for annexation of lands, and there can be a price determined by the province for reasonable compensation for annexed lands. There doesn't seem to be the same provision within the additions to reserve.... Is there such an inclusion? Is there an ability for the federal government to annex lands that have a third-party interest and force these folks to the table? That seems, in one case, at least, to be what extended the timeframe by several years.

Mr. Warren Johnson: Not that I'm aware of, but I think there are other ways of making the third-party interest issue easier to deal with.

The specific example I'd use is to think of yourself as the third party. You have some right on the land. The land is going to be purchased by someone else, in this case a first nation. They either maintain your right or buy you out.

The trouble is, you're going to be moved under the Indian Act. What's the comparable instrument under the Indian Act to my current right on this property, even if the first nation wants to leave me there? There is no comparable instrument under the Indian Act. The first nation doesn't have the authority to issue these instruments.

So you get into these convoluted legal mechanisms of taking things under the real property act and having to get into....

The simple example is in my remarks. If first nations had adequate bylaw and land-use planning authority under the Indian Act—which is largely an enforcement issue, not legally a very difficult issue—and it wanted to acquire land and there were interests on it, it could have a community land-use planning vote, like any other community would. They could say they were interested in these lands, they would maintain these activities on it, or whatever, and there would be no issue. That could all be done before the land was added to reserve.

There are a variety of ways of getting at this process, some of which I know are under study by the working group I referenced earlier. There is no facility for this kind of thing. My experience, having had some responsibility for it for a number of years myself, is that the federal government would be very loath to use that responsibility even if it had it. It's operating in a local area. It's provincial land; it's not federal land to begin with. Is it going to go in and start annexing people?

● (1625)

The Chair: Yes, that is the question. Thank you.

Mr. Boughen, we're going to turn to you for seven minutes.

Mr. Ray Boughen (Palliser, CPC): Thanks, Mr. Chair, and thanks to our panel for taking time out of your busy day and sharing some thoughts with us.

When we look at the first nations, they've expressed concerns that the process of adding land to reserves is time consuming and costly. What do you consider the main challenges of the current addition to the reserve process?

Vice-Chief, could you have a run at that one?

Mr. Brian Hardlotte: I'm not really familiar with the process.

In the province of Saskatchewan we're dealing with the lands there, our crown lands, and the reserves are considered federal crown land. The whole thing about treaty entitlements, first nations, and being able to purchase lands, original crown lands, in their area...I'm familiar with that process.

First nations from the Prince Albert Grand Council are entitled first nations, treaty land entitled first nations. They have purchased lands even in the cities, for economic benefits, to build such things as gas bars. It's a good process.

The Government of Saskatchewan has the authority to sell lands in any of their crown lands. As first nations people, because of our relationship with the land, we really don't like that.

I can also mention that in Saskatchewan, even on crown lands, there are lands that we call traplines. I was a trapper. My dad and my grandfather were trappers. The provincial government, because of the NRTA, made what they called a block system in the north. This block system is what they call a northern fur conservation area. I belong to a fur block. But in that fur block there are a whole bunch of people. Again, this was a regulation, I guess, that was imposed on us. From that block, they're further broken up into what they call zones. The zones are further broken up into what they call traplines, and those are family traplines, lands that were inherited from our ancestors. The whole idea of the block system was conservation and management, and to this day that system is still there.

I can say that first nations people...as you know, trapping was a big part of the building of Saskatchewan, the building of Canada. It was a main part of economic development in our first nations communities in the past, and it is to this day.

We complied with those regulations and restrictions. We've become so used to those restrictions...not restrictions, with the regulations. For example, when there's a company doing exploration in my trapline...in the past we worked with the company and got along, not really a proper consultation but a consultation. With the land-use plans, I think that's the other goal: they're going to consult with the trappers.

You're consulting with first nations people. You're also consulting with the trappers. The traplines are like lands owned by farmers in the south. They're attached to us. We didn't pay anything for the land; we inherited the land. And we've managed this land and we've conserved the area in the land.

● (1630)

But that's the province of Saskatchewan, and that's the way it still is today.

Mr. Ray Boughen: Thanks, Chief.

I guess this question is to either of the gentlemen. Could you explain the issue of third-party encumbrances for us in more detail and the proposed ways to address these issues in a timely and effective manner?

Mr. Warren Johnson: The issue here is that it's difficult for many first nations to find land for the purpose they're looking for it that doesn't already have some kind of encumbrance on it. That encumbrance can be a hydro line, it can be a railway right of way. Some of it's not even registered on title. For example, provincial lodges and things are often permitted, as opposed to registered on title. So there's a variety of situations for first nations when it's going out to acquire land, and when I say “going out to acquire land”, somebody with that kind of flexibility is likely somebody who has a claim settlement, as opposed to just doing the normal, more routine community addition, where there are other issues. In either case, it's unlikely you're going to find.... A lot of land is going to be encumbered by some kind of right of way or restriction on it. It could be an existing mineral right, which then requires access provisions, given the right of the mineral holder.

In a large number of those cases that I'm familiar with, having worked in the area for a fair number of years, first nations don't have any difficulty with a lot of these issues. The trouble is with the process to transfer those and transfer a federal title to reserve creation and replace the instruments. You can't replace the instrument until after the reserve is created, so there's no security for the third party before the reserve is created. How do you start the process? It's a catch-22.

The structure of the current process.... If you wanted to design a process to fail or to take a very long time and frustrate everyone, it would be this process. If you wanted to design a different process, well, then, you could do that.

In reference to my earlier remarks, some of the instruments, all of which would require, unfortunately, legislation.... I say "unfortunately" because it's sometimes difficult to get legislation through, but in this case, this is something that could be easily partnered with first nations on to accelerate the ATR process.

The Chair: Thank you.

I hate to jump in, but the clock is running away on us, so we're going to turn to Mr. Genest-Jourdain for five minutes.

[*Translation*]

Mr. Jonathan Genest-Jourdain (Manicouagan, NDP): Mr. Johnson, do you understand French?

Mr. Warren Johnson: Yes.

Mr. Jonathan Genest-Jourdain: I have a few questions for you and I hope they fall under your area of expertise.

Under the Indian Act and the fiduciary relationship, could you tell me what obligations the Canadian government has when it comes to reclaiming contaminated lands on reserves?

● (1635)

[*English*]

Mr. Warren Johnson: It gets a little difficult, depending on the situation and the cause of the contamination, but as a general rule it's a federal liability. It's federal land. It was under federal watch that the lands were contaminated, even if the contaminant is often a federal undertaking. The major contaminants historically have been the diesel spills from diesel generation and the like. These things weren't monitored. They have been going on historically. We've built schools on top of the contaminated lands. The problems go on and on.

That's why I think there's been major concern raised, and for well over a decade now, with the environmental gap. It's not just an issue of contamination. It's an issue of historical contamination. It's an ongoing problem.

Nobody is regulating CP lands. In some communities, because of the community's own consensus, CP issues are less of an issue for them. They manage by consensus. That's not an issue. But for large numbers of first nations, they don't consider CP land under their authority. The federal government has no authority on them. And it turns out that many of the issues we find in the papers about illegal garbage dumps, fires in dumps, tire-burning, or whatever on reserves are, when you go to look at them, on CP land.

[*Translation*]

Mr. Jonathan Genest-Jourdain: Still along the lines of contaminated lands on reserves, if it has to do with a signatory nation to the First Nations Land Management Act, does the responsibility for reclaiming those lands go fully to the community or does the federal government still have some responsibility for those lands?

[*English*]

Mr. Warren Johnson: At the point of the first nation taking over responsibility for land management under FNLMA, that is where the federal liability ends. Anything that happened before that is a federal liability. There is a federal obligation under the FNLMA to clean that up. I would have to check the record—I haven't in a while—but I think we're a little late in doing those cleanups. There's a frustration within the FNLMA.

From there forward, it's a first nations responsibility. The only difficulty is that to guard that in the future, you need to be exercising your environmental assessment and environmental protection authorities that you have under FNLMA. But under FNLMA, you're not allowed to do that unless you have signed an environmental management agreement with Environment Canada. There has not been one environmental management agreement signed with Environment Canada yet.

So the problem that we're talking about in terms of the regulatory and environmental gap has spilled over into self-government under FNLMA.

[*Translation*]

Mr. Jonathan Genest-Jourdain: Thank you.

I still have one minute?

[*English*]

The Chair: Yes.

[*Translation*]

Mr. Jonathan Genest-Jourdain: [*Inaudible—Editor*]

Vice-Chief Hardlotte, could you tell me what the position of your community is with respect to uranium exploration on your traditional territories?

[*English*]

Mr. Brian Hardlotte: I can start off by saying that I worked in the uranium industry with exploration companies right from the start, working for contractors. I guess a contractor works for the company.

In my younger days, as a young man, I worked in the field of exploration in things like line cutting. You cut lines; it's hard, laborious work. You cut lines in the bush so the companies, geophysicists, can come in and walk those lines and do the work they have to do. I did that as a young man. I worked in a uranium mine for a little while, not long.

The first nations people...like I said, we are not against development. We just want to do it in a sustainable manner, protecting the environment and water and making sure all the areas are being monitored—the water is being monitored and also the land. I believe right now it's really the responsibility of industry to monitor the water where their mines are situated. I feel the monitoring should be a little more broad, not just in their area.

We're not against development. We're not against mining. We just want to work together with industry and with government, and work on things like land-use plans.

● (1640)

The Chair: Thank you, Vice-Chief.

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

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

Thank you, Vice-Chief and Mr. Johnson, for coming today. It's important testimony that you're giving.

I have a couple of questions for you, Mr. Johnson. What I'd like to ask you is about legislation on the Claim Settlements Implementation Act, in terms of Manitoba, Saskatchewan, and Alberta, and reserve creation.

Could you help us understand that process and the claims that may be coming through that process?

Mr. Warren Johnson: Unfortunately, as you may have seen from my remarks, this legislation only applies in those three provinces, and only to claim settlements.

If you're looking for a way to help out the ATR process nationally, as I said in my remarks, there's one area to look at.

Not to oversimplify, a first nation has an option of whether to use that legislation if it has an addition to reserve. If it takes that option, the two principal things that happen is that it can do a pre-reserve designation, which means before the reserve is created it designates the land and accepts some of the third-party interest to help facilitate that process that we were talking about.... While the designation process is still an onerous process, which itself should be fixed, having the ability to do that helps to accelerate the addition to reserve and settle the uncertainty around the third-party interest, prior to the reserve being created. It's important from that perspective. That designation is accepted as if it was an Indian Act reserve designation.

The second thing it allows is for the minister, rather than the Governor in Council, to approve the addition to reserve, which cuts two to three months off the process.

Those are the two principal features.

With the experience on it, and I provided a number of points in terms of potential legislative options.... As an example, if there is already a section 35 easement taken for public purposes, it requires a section 35 Indian Act replacement instrument. That requires an order in council. You can have this, frankly, ridiculous situation where the addition to reserve is going through this process because the first nations opted in to accelerate it to a pre-reserve designation, the minister can approve the reserve himself, but the specific instrument accepting the right of way, or whatever it is there, has to go to an order in council separately as opposed to being part of this other process.

There are a variety of suggestions on the table in areas that I know the joint working group I was discussing earlier is looking at. I completed my work for them in January, so they'd have to speak on where they are now and where that's going.

Those two are the basic elements of the legislation, and there is clearly some potential in looking at that experience and expanding it.

● (1645)

Mr. LaVar Payne: With all the improvements there, it would certainly be beneficial.

Mr. Warren Johnson: To expand it nationally, to apply it to all additions to reserve, and to pick up a whole range of these points, like the section 35 easements...if you could couple that with some improvements in the designation process and whatever, which first nations might be quite willing to accept, you could probably do a lot.

Mr. LaVar Payne: I had some other questions in terms of the current additions to reserve policy. You've touched on some of that already. It's been revised on more than one occasion, I understand. You touched on some of the biggest challenges and making them simpler and faster.

Do you have any other thoughts around that process as to what could be much more beneficial and help move that along more quickly? We know there have been issues and problems dragging these things out for long periods of time.

Mr. Warren Johnson: There's a whole range of them. The addition to reserve discussion paper that was made available to the committee is a fairly lengthy paper, as you can see.

As an example, one simple thing that most people respect, and I know first nations do, is just saying no. Letting something languish in a bureaucratic process for 10, 15, or 20 years, which is not going anywhere, where there are major difficulties from a federal perspective.... Why hide behind the process? Just say no and why.

We found out in the analysis we were doing with the working group that there are three categories of ATR in the policy. There are legal obligations from the claims settlements, or court rulings or whatever, say a return of railway land or something like that; there is the normal community growth; and then there's something called “new reserves/other policy”. That's actually a category for which in the period we covered in the study there was only one ever passed. That's the category of “no”. If that's the category you're in, you're not getting anywhere.

We had a member of the committee, when I was working on it, a first nations representative at the committee, who was actually in the process with first nations in Quebec and had been for 10 or 15 years. It wasn't until we had the discussion around the committee that he understood he was in the wrong process. These were landless bands looking for reserves. That's a political financial decision that has nothing to do with the ATR process. Major relocations of communities and these things that cost major money...major political decisions normally have to go to cabinet. Just clarifying that category would remove the frustration among a number of first nations who are wasting a lot of time and resources on it.

I could go on.

The Chair: I'm certain. We wish we could drag this out a little bit longer because we're getting a lot of good information. I apologize that I'm trying to enforce a little bit of the time keeping.

We're going to turn to Mr. Bevington for five minutes.

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

I want to first thank you, Mr. Johnson, for your information. I think that was a great suggestion by my colleague to get you to answer those questions.

I would also like it if at some point in time you could elucidate your point about the departmental shortfall in resources and manpower to actually do the work that's required. I don't want to get into that now. I know you mentioned it. I do have some questions I want to address to the vice-chief. If you could present us with more information on that topic, I would be very appreciative.

To the vice-chief, I'm interested, of course, in the land-use planning process. Within the Athabasca region, does that extend to the Alberta border as well?

Mr. Brian Hardlotte: No.

The Athabasca land-use plan that is being done does not go into that area. I'm familiar with the area. I have a map here, but to your question, it does not go to Alberta.

Mr. Dennis Bevington: But your first nations are in that area?

Mr. Brian Hardlotte: Do you mean the land use?

Mr. Dennis Bevington: No, the actual Prince Albert Grand Council.

Mr. Brian Hardlotte: There are first nations to the north. The Fond du Lac First Nation, the Black Lake Dene Nation, and Hatchet Lake Dene Nation are involved with the Athabaska land-use plan. But it's still in the working stages; nothing has been really.... To my knowledge, they've had their.... They did the process a little differently from the Missinipi land-use plan.

In our process there was a land-use plan provided for us from government. With them, I'm not sure, but I think they were on their own. They did their own land-use plan, which to me is a better process, because you're looking at your maps, you're really educating your members, putting them to work. Maybe, as an example, you can utilize summer students who are going to school in the area of natural resources. I think that's a better process than being provided a land-use planner and having them do all the work, such as the GIS work, within their department.

I'm also a little familiar with other land-use plans in the other provinces. An example is the Whitefeather Forest initiative in the Pikangikum area in northern Ontario. I had a look at their land-use plan, and I was totally impressed and amazed at the work they did with their land-use plan, using, of course, the pictures and using their own language and their own syllabic system right in the land-use plan, so their elders can understand it. It was a good process.

● (1650)

Mr. Dennis Bevington: Do you have a review period for potential changes to the land-use plan?

Mr. Brian Hardlotte: Yes. Once it's passed in provincial legislation, I think there's a five-year review process.

Mr. Dennis Bevington: Can you move designations on particular pieces of land at every five-year process with the agreement of both parties?

Mr. Brian Hardlotte: I guess that would be the process, to revisit some of the.... It's not set in stone, so to speak. It's kind of a living document.

Mr. Dennis Bevington: You're encompassing a very large area, and I'm sure much of it is still in a pretty natural condition. Is there an ecosystem approach that's taken in terms of...?

Mr. Brian Hardlotte: There is an ecosystem approach to the land-use plan.

Mr. Dennis Bevington: So you put things in—

The Chair: I do apologize, but you've gone over your time, and we'll finish off with that last answer.

Thank you.

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

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

Vice-Chief, we've heard from a number of leaders who have come to this committee to talk about the challenges of operating land under the Indian Act. I wonder what your experiences are with that, and what your thoughts are on how those issues might be best addressed.

Mr. Brian Hardlotte: Do you mean operating reserve lands under the Indian Act?

● (1655)

Mr. Kyle Seeback: Yes.

Mr. Brian Hardlotte: I can only speak for my first nation, the Lac La Ronge Indian Band. We're in the north, on the Churchill River. Our first chief went out from our area and went south. He had a vision of maybe getting information on farming. So he travelled south and got reserve lands, I guess, on farm lands. One of our reserves is at Little Red River reserve. Paskwawaskihk, they call it. It's a Cree word for a prairie. We got those lands, and of course, to this day, those lands are still kind of taken care of by the department.

I guess with anything on the reserve, you know, you have to have a BCR, a band council resolution, if you're going to do anything. Let's say an entrepreneur band member is going to do something on reserve. He has to have a band council resolution, and that band council resolution comes to Ottawa. On our farmlands, the revenues come to Ottawa. We don't take care of them. For anything we're going to do economically with band revenue money, we have to have a BCR, and that BCR has to come to Ottawa and be okayed, I guess.

Mr. Kyle Seeback: It slows down the process.

Mr. Brian Hardlotte: Yes.

I can say that we've gained economically with the farmlands in the past and to date.

Mr. Kyle Seeback: Mr. Johnson, my colleague, Ms. Crowder, talked about how you were saying that fee simple—I don't know if you said it was a false promise—seemed to be leading in the wrong direction. There are other things that certainly are available. There is 53/60 and the FNLM. Do you see those tools as being beneficial to land use? If so, yes. If not, why not?

Mr. Warren Johnson: First, just to set the record straight, I didn't say there was anything wrong with fee simple. The witnesses who appeared before you said it was an issue that was going to apply to a few or ten first nations, and I'm worried about the other 600. If we go beyond FNLM, I'm actually then worried about the other 400 who aren't going to be in that, even with the current discussion of maybe upping that to 20% or 25% in the rest of the FNLM.

Clearly, the FNLM, apart from the ATR aspects of what I was talking about and recommending, would be an issue worth reconsidering for those other first nations. FNLM already includes all of that and goes beyond it. So clearly, it is a very useful instrument.

Not all first nations are opting into it. And there's still a major regulatory issue with respect to it, which, quite frankly, should concern us all.

It already includes the land-use planning zoning authorities. It allows you to set laws in place with adequate enforcement provisions.

Take the Indian Act as an example. Whether it's the federal government or a first nation doing something on reserve, if it has an instrument, it's usually the federal government, because there aren't that many instruments actually provided to the first nations. If there's an enforcement issue, you have no ability to do administrative measures. You can't issue a cease work order. You can't tell somebody to demolish something that shouldn't be there. You can't tell them to clean up something they've done. You have no administrative authority. You can fine them $1,000, and you can do it once. You can't fine them $1,000 a day. Five first nations have tried it. I've seen their bylaws. You can't do that.

I mean, if you're making millions of dollars in profit by allowing all of the regional construction companies to illegally dump hazardous waste on your site.... Talk to anyone who owns a construction company in your ridings and they'll all confirm this. I've talked to them myself. If there are reserves around, that's where the construction industry goes to dump its stuff. Tipping fees are minimal, and you don't have to worry about any of the regulations.

The Chair: Thank you, Mr. Seeback. Your time is up.

Mr. Warren Johnson: I'm sorry. I hope that answered your question. I got off on a bit of a tangent there.

The Chair: Thank you, Mr. Johnson.

We'll turn to Ms. Hughes for five minutes.

Mrs. Carol Hughes (Algoma—Manitoulin—Kapuskasing, NDP): Thank you very much, Vice-Chief Hardlotte.

Also, Mr. Johnson, I think your input is quite appreciated here. I know that some of the information you've provided certainly is enlightening to some of us.

With respect to the environmental piece, I was part of the delegation that travelled last week to some of the first nations communities. What was interesting was that one of them made it very clear that they certainly were not looking at moving forward on the First Nations Land Management Act until there was a cleanup of their environmental sites—the land that was impacted by the environment. We had another first nation that basically said the same thing, and they were leery about even buying additional land at this point, because of the addition to reserve issue.

I'm just trying to get some sense of this, because it's not just about the land itself. It's also about the health and well-being of people. So when you're looking at wanting to diversify yourselves and at going into the economic development part of it, if you're going to buy this land, you want to make sure your community will still be healthy at the end of the day.

I know that health crises on reserve are often directly related to the environmental contamination. Look at my riding, for example, where Serpent River First Nation has faced contamination in the past from contaminated water. Similarly, we just have to look at Grassy Narrows, where the waters were contaminated by mercury as well.

So when people are looking to diversify, whether it's their land or the water near their land, it's very difficult to accept that type of responsibility. As you said, that's something that needs to be cleaned up. The first nation was telling us that they're just not going anywhere with the government's commitment to clean that up.

In some areas, I see first nations not being able to take advantage of the First Nations Land Management Act because of this contamination. I appreciate the fact that, as you indicated a while ago when Jonathan asked his questions, it is the responsibility of the federal government, but I just don't know how successful that can be.

I know you've done quite a bit of research on that, so I'm just wondering if you have anything to add.

● (1700)

Mr. Warren Johnson: I'm not sure there's much I can add. I'm not completely up to date on the FNLMA. There recently has been a lot of discussion that I'm not completely familiar with around it and around some of these issues.

The difficulty is that I don't think it was ever fully appreciated what the degree of the existing liability to first nations was prior to the transfer under FNLMA. There is—I don't mean to be pejorative here—I think a naive understanding that self-government will be paid for out of existing resources of the department or departments. Well, if existing resources were inadequate to do the job over the last 150 years, how can they be adequate for the job of the future under self-government?

As far as I'm aware, there was never an FNLMA cleanup fund put together, so the resources were gathered from the Treasury Board, from federal cleanup funds, etc. The department did the best it could, but the resources were just not there. As to whether they're there today or not, I can't comment, but there are the two sides of the issue, and from my perspective, I think that's the major problem on FNLMA.

On the FNLMA bands, for the environment paper you saw, I had the privilege and the opportunity to go through.... They go through a variety of stages of planning for their environmental management agreement. A good number of them—I can't remember the exact number—had done extensive work and had gone much further than they actually had to in the first stages of this preparation for their management agreement. I was amazed. This was excellent work. This was really good work.

They had already gone into discussions with the neighbouring municipalities on how they were going to jointly manage things like garbage collection and recycling, and practical things like well water, waste disposal, hazardous waste, and that kind of stuff. Also, with regard to the federal government, they discussed whether they would adopt or use federal or provincial regulations rather than trying to build this huge infrastructure of regulations around hazardous waste.

It was an excellent job. But from what I understand, there's no money to implement it.

● (1705)

Mrs. Carol Hughes: During your research, did you—

The Chair: Ms. Hughes, sorry, I have to intervene. You're over your time. I do apologize, but that's the way it happens when you're up to question.

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

Mr. David Wilks (Kootenay—Columbia, CPC): Thanks, Chair. I'll carry on from where Ms. Hughes was leaving off, again to Mr. Johnson.

With regard to addition to reserve policy, certainly a lot of reserves border major municipalities or crown provincial land, or whatever the case may be. A lot of times there are overlapping jurisdictions on that type of thing. What do you see as the role of the province or municipality in the reserve process as we move forward in regard to what their responsibilities may be vis-à-vis taking over the reserve responsibility?

Mr. Warren Johnson: I guess in simple terms it's just the good neighbour approach. You have issues of land use and bylaw harmonization and those kinds of issues. The difficulty everybody is in is that the first nations don't actually have the authority to do it.

I did a search on all of the attempts by first nations using the Indian Act bylaws to do comprehensive land-use planning and zoning. It's the type that would then allow you to go to your neighbouring municipality, in terms of your existing land base or an addition, and say, “Okay, where do we partner? How do we harmonize our stuff? You can have some confidence that my regulations are enforceable just like yours are.” It doesn't work. They have that $1,000 fine and no ability to regulate the CP lands without stronger enforcement provisions.

First nations are hampered everywhere you look by lack of authority. I referenced the analysis I did of the FNLMA preparations for their environmental management agreement. As I referenced, a large number of them went and talked to either the district planning authority, as the vice-chief was talking about, if they were in more remote areas, or it was the neighbouring municipality, whichever had the planning and land-use authority for the provincial government. When they heard that this was a potential FNLMA band that would have an equivalent authority, they immediately went to work; both parties immediately went to work.

All these problems we hear about all the time on both sides or one side disappeared because the first nation finally was coming to the table as a partner with its own authorities and a level playing field. It was able to function and to do the deals. Without that, there are never-ending problems, because the municipalities are in a difficult situation. They're trying to do deals, but the first nation partner doesn't have the authority to enforce the deal that it's doing, unless it has the moral authority and its community is just going to abide by it, independent of any actual legal regime.

Mr. David Wilks: I'm going to add to that. With regard to the regulatory gap on environmental issues, I'm sure you would agree that just passing legislation is not good enough in itself. It's also necessary to deal with the full range of issues that the provinces typically address in managing environmental issues, such as enforcement of provincial laws, etc.

What role do you see for provinces in addressing the regulatory gap on environmental issues on reserves?

Mr. Warren Johnson: That would be up to first nations. As governments, first nations would naturally want and need to get into new intergovernmental agreements. On the majority of the research I've seen where first nations have done it, once they have the authorities.... Actually, that's the basic problem. Once there, all the planning that I've seen in fact contemplated referential incorporation, if not by the federal government, then by the first nation itself, of the parts of the relevant regulatory regime that they didn't think they should do themselves. So it's complete harmonization.

Mr. David Wilks: I guess what you're saying—I believe you alluded to it before—is if we could learn how to get our hands off this, it would work well.

Mr. Warren Johnson: Yes. Provide the first nations with sufficient authority that they come to the table as equals. The provinces and the municipalities, in any of the cases I've seen where that's occurred, are quite willing to do the deal.

● (1710)

Mr. David Wilks: Thank you very much. I appreciate that.

The Chair: Thank you, Mr. Wilks.

Colleagues, that ends our second round of questioning. We're scheduled to go to quarter after five, and I know there are a couple of members who have short questions. We'll go through the speaking list generally for the third round. If members could limit it to fewer than five minutes, that might be helpful to ensure we can get most folks in.

We'll turn to you, Ms. Crowder.

Ms. Jean Crowder: You mentioned the reserve land economic development study. Is that publicly available?

Mr. Warren Johnson: Yes, with some of the participating first nations. I've been waiting for something to come out on it publicly, and it seems to come out by the participating first nations. They're putting it up on their own websites. I have a website reference.

Ms. Jean Crowder: It would be very useful if we could get that website reference.

Briefly, back on the environmental piece—

Mr. Warren Johnson: It's on Chief John Thunder's website, if you already know it. If you don't, then I'll give you the reference.

Ms. Jean Crowder: Thanks.

On the whole issue around regulations and the FNLMA, are there other regulations aside from the ones on the environment? Obviously, the environmental gap is enormous. Are there other regulations with regard to the FNLMA that are missing, aside from the ones on the environment?

Mr. Warren Johnson: Not that I'm aware of.

The first nations have to pass land codes, and then they're applying the laws in whatever way they see fit. I haven't assessed what it is they're doing with their own codes and stuff. That's up to them.

A key component of this is that they can't exercise the environmental authority under the FNLMA without having signed an environmental management agreement with...whether it's both INAC and Environment Canada or just Environment Canada, I'm not sure, but none has been signed. No authority has been exercised. Environment Canada withdrew from its partnership agreement with the department because nobody has any money.

Ms. Jean Crowder: Okay. Just to be clear about this, even though in theory, under the FNLMA first nations can assert their authority with regard to environmental regulations, they can't do it because these agreements aren't signed.

Mr. Warren Johnson: Yes, without a legislative change—

Ms. Jean Crowder: That's crazy.

Mr. Warren Johnson: —but that would just legalize a regulatory gap.

Ms. Jean Crowder: Right.

In your view, before first nations engage in the FNLMA, is there adequate assessment done about the state of the environment on the reserves? You pointed out in your paper that there are 2,500 contaminated sites that have been identified on various reserves.

Mr. Warren Johnson: I'm not sure it's safe to say there's an adequate assessment done ahead of time. I haven't looked at that in detail.

The first nations got the assurance legally. It's in the act. The liability is federal.

Ms. Jean Crowder: The federal government is responsible.

Mr. Warren Johnson: How much of the assessment that needs to be done is done before the transition as opposed to after, I'm not sure.

Ms. Jean Crowder: Then 10 or 15 years down the road, when a piece of land is determined to be contaminated, the question becomes, when did the contamination happen? It's no wonder that some first nations are now raising concerns about getting involved in this when they could be on the hook. They could be liable.

Mr. Warren Johnson: Yes, and there are other first nations that aren't worried about the historical liability but are worried about the future liability, because the contemplation they have for the land they want to use the FNLMA for is environmentally sensitive, and they know they're not going to have any authority over the environment because they can't get the authority over the future operation either without the environmental management agreement.

Ms. Jean Crowder: Right, so that's a real—

Mr. Warren Johnson: It's not just the past; it's the future.

Ms. Jean Crowder: It's the future as well.

It sounds like that's something else we might need to follow up on as a committee.

The Chair: Thank you, Ms. Crowder.

Mr. Rickford, we'll turn to you for a short question.

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

I think my residual questions after this great discussion are probably going to come up with the same result as my colleague Jean's and other questions that have been asked.

I'll go back to one thing, if I could, Warren. You were describing issues around third-party encumbrances. If I got my note down correctly here, you identified that a key issue is that most lands have third-party encumbrances. Many of them are not registered in any title process, for example, or certainly as government would go in terms of its roles at all levels. There may be other industries with some sort of bundle of rights or what have you, maybe even an individual person.

The trouble arises when there is no process to create or negotiate replacement agreements. I think you were probably more clear in using legal nomenclature; no instruments available, is what you said.

I can't help but think, based on your discussion today, that you might have a couple of solutions that are floating around in your work on the management public policy side. I know a couple of minutes won't do it justice, but I don't think I heard what some of them might be.

● (1715)

Mr. Warren Johnson: There are two sides to this. The other problem for a lot of first nations that have difficulty, for example, with the designation process, or whatever they had to do in a pre-reserve designation to accept the third party...they won't select land with those interests on it because they know the difficulty they're going to have with the voting process and all that in their communities. So it's biasing the selections first nations have a right to under their claims agreements. They're trying to avoid those situations because there is no reasonable way of dealing with them. That's a point I would make.

The best idea I have heard is if first nations had available to them their own land-use planning bylaw and enforcement authorities, equivalent to any other municipality—we're not asking for anything special here, we're asking for the kind of stuff that any community in Canada has—if they had that, then if you have a potential land selection...I mean, take it to an extreme. So they have a settlement and they can now go and get *x* amount of land for reserve. They could mandate, through their land-use plan, the characteristics of this selection: we're willing to take land with third-party interests; we're looking for farm land; we're looking for residential development land in this area, or whatever it is. There is no reason why that—as it would be in any other municipal situation—couldn't be taken to be equivalent to the designation vote, and the land-use plan and the zoning be the instrumentation to replace the third-party interest.

If those instruments have legal standing, there's no legal risk to the existing third-party interest. So they're replaced. If I buy your land and there's an easement on it, I don't have to negotiate with the person with the easement; I only have to accept that easement. If the first nation had the authority to do the same thing, there would be no negotiation. Why are you negotiating the replacement of an interest? There's nothing to negotiate. You're simply replacing the instrument. You don't do it in any other jurisdiction. Why would you do it here?

These negotiations open all sorts of cans of worms. People are trying to say, now we can get something in this deal, and they drag on for a long time the first nation without the capacity to do it. I think you have an opportunity to get rid of much of that with decent authorities.

Mr. Greg Rickford: I appreciate that.

I want to sneak in one final question more on the governance. So much of what we're talking about occurs in the context of specific claims, particularly in British Columbia.

I wonder if you could or would comment on some of the nuances and perhaps success stories coming out, particularly around additions to reserves, if there are any, in the context of specific claims, based on your experience, both in government and now on the management consulting side.

Mr. Warren Johnson: I'm not sure what you're looking for here, but very early on, for example, in the TLE process in Saskatchewan, when the first urban reserves got created and the economic benefits to both communities became evident, there was some reticence at the beginning, and, let's face it, there's still a little bit of racism left out there.... When the economic benefits became evident from some of these early reserves, some of the major proponents and spokespeople for first nations urban reserve creation became the city planners and city councillors in Saskatchewan.

The more communication—

Mr. Greg Rickford: The City of Prince Albert itself is what you're talking about.

Mr. Warren Johnson: Yes, people like that.

At one point, the Federation of Canadian Municipalities had a committee that we worked through that was passing that good information around. Unfortunately, that doesn't exist.

The same thing happened to a number of first nations and to the provincial and municipal governments in the Atlantic when the Marshall funding was used to begin to help deal with the pitifully small size of the eastern reserves. The Quebec and Atlantic reserve sizes, relative to the west, are a shame. But when some money became available under the Marshall strategy to help deal with additions to reserve in the Atlantic, all of a sudden this became a major economic development issue for both the first nation and the communities they were participating with.

● (1720)

The Chair: Thank you, Mr. Johnson.

We'll turn to Ms. Hughes for a short question, if she has one.

Mrs. Carol Hughes: It's good.

The Chair: I think we've got some clarity on that, so thank you.

I would just ask...well, we've run out of time. Perhaps I shouldn't open another can of worms.

Ms. Bennett has a question.

Hon. Carolyn Bennett: I was wondering if we could get Mr. Johnson a copy of the Library of Parliament questions for him to answer.

The Chair: We would happily accept answers from Mr. Johnson, but we have to recognize that Mr. Johnson isn't on our payroll, so we can't instruct him to do anything. However, if there are questions that you want to pass on to him, and if he were to then respond to the committee in writing, we would welcome that, but we certainly don't want to oblige anybody to do any additional work.

We're already thanking you for your time and for making your time available to us. It's already a very generous offer. Certainly, if there's something that you would like to provide in writing to—

Hon. Carolyn Bennett: I'll give him this and he can answer whichever ones he'd like.

The Chair: Mr. Johnson.

Mr. Warren Johnson: I can't say, not having seen the questions.

The Chair: Right, and certainly we wouldn't expect you to answer at this point in time as to whether or not you could do it, but we'd certainly be appreciative if you were to provide anything in writing.

Mr. Warren Johnson: If it would be useful, it wasn't prepared as a brief, but my speaking notes had a fair amount of detail on some of the areas that were being questioned. They could be—

The Chair: Yes, and I think we'd like to make that available. It's just an issue of making it available in two official languages, so that may take some time before we're able to do that.

In addition, of course, Mr. Johnson has a number of different reports that he has been involved in, so people should make those available to themselves. I know that working with your staff you can probably get a hold of that.

Ms. Hughes.

Mrs. Carol Hughes: Briefly, and as a follow-up to the meeting we had last week, I was wondering if those communities got a heads up as to what we were going to talk about. I am wondering because while we were at the communities, it seemed that they didn't have a summary of what it was we wanted to talk to them about. That's the feeling I got.

If that wasn't done, I would suggest you do it for the next group, please.

The Chair: That was done, Ms. Hughes. I'm certain I didn't get that impression, but if that was your impression, just be assured that they were given full documentation as to what the committee was undertaking.

Thank you so much, Mr. Johnson and Vice-Chief. We want to thank you for your generous contribution to this committee's hearings. We certainly appreciate you making your time available and giving us the answers that you did. Thank you so much.

Committee members, we don't have committee business that we thought to entertain today, so that will be moved over to the next meeting. I believe there's some committee business that we want to undertake before we travel again, but that has not been prepared.

I'll adjourn the committee.

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