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Chair

Mr. Chris Warkentin

Standing Committee on Aboriginal Affairs and Northern Development

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• (1535)

[English]

The Chair (Mr. Chris Warkentin (Peace River, CPC)): Colleagues, I call the meeting to order.

This is the 49th meeting of the Standing Committee on Aboriginal Affairs and Northern Development. Today we continue our study on Bill C-27.

Today we have officials from the Department of Indian Affairs and Northern Development. We have Ms. Kustra, Mr. Jacques, and Mr. Francis.

Thank you for joining us again. We appreciate your willingness to come.

We are going to turn it over to you for your opening statements, after which we will turn it over to our colleagues for questions. Thanks so much again for being here and for taking this time out of your day.

We'll listen to your opening statements, and then I'm certain there will be questions.

Ms. Brenda Kustra (Director General, Governance Branch, Regional Operations Sector, Department of Indian Affairs and Northern Development): Thank you very much, Mr. Chair.

[Translation]

Over the last few weeks, the committee members have heard from a number of witnesses who have shared a variety of perspectives on Bill C-27. These presentations have been reviewed, and this afternoon, I would like to address some of the issues and comments that emerged.

[English]

To begin with, this afternoon I would like to remind the committee of the overall objective of Bill C-27, which is to enhance the financial accountability and transparency of first nations.

As the committee has heard from witnesses, first nations governments are certainly seen as governments by their own members. They are to be treated as governments for the purposes of financial reporting, as you have also heard from the Aboriginal Financial Officers Association.

As we all know, governments in Canada, whether federal, provincial, or municipal, must adhere to legislation that ensures that financial statements of the government and its entities, including those regarding the remuneration paid to its elected leaders, are

shared with the public—governments, that is, with the exception of first nations governments, which operate under the Indian Act.

Bill C-27 will simply address this gap. In doing so, this bill also addresses a situation in which the lines of accountability between first nations councils and their own members are also blurred.

As the minister stated in his opening remarks to this committee, if a first nations member cannot access the financial information relating to his or her band, that individual can ask the department to release the information, and each year, Aboriginal Affairs and Northern Development Canada receives requests such as this from first nations individuals looking for basic financial information relating to their community.

They should be able to have access directly from their band. Although, as the minister indicated, the department does not formally record statistics on the number of requests we receive, some of our regional offices have as many as 25 to 30 such requests each year. Legislation that ensures this information is easily accessible to everyone will remove the minister and the department from the equation in all of these cases, thereby promoting more direct lines of accountability between first nations leaders and their members. In short, Mr. Chair, this bill aims to shift the accountability bargain between first nations governments and their communities.

In addition to requests for documents, the department receives formal complaints regarding the potential mismanagement or misappropriation of band funds and remuneration of officials. Since January 2011, there have been approximately 250 such complaints. There are also more serious allegations of criminal wrongdoing with respect to financial management.

[Translation]

This is not to suggest in any way that first nations are mismanaging their finances, or are not accountable to their members. In fact, there are many examples of first nations—some of whom you have heard from as witnesses over the last few weeks—who are not only meeting the basic expectations, but also exceeding them.

[English]

Unfortunately, however, many remain who are not, as these requests and complaints demonstrate. With greater transparency provided by this bill, many of these requests and complaints would likely not be necessary, as information would be readily available to the public.

The transparency around publication of remuneration and expenses will remove the speculation that currently exists and dispel the rumours around the salaries of first nations leaders. This bill would also mean that first nations individuals would no longer feel intimidated, in a manner graphically described to you by the representatives of Peguis Accountability Coalition and others, in challenging their governments on how their money is being spent or simply asking for copies of a band's financial statements.

The transparency as a result of this bill will advance the discussion around accountability between a first nations chief and council and its members. This bill would also mean that all Canadians would see the reality of how first nations governments are funded. As Jody Wilson-Raybould stated in her appearance before this committee, and I quote:

...having consolidated financial statements and disclosing revenue or investments does, for the most part, actually recognize and expose the reality of what our first nations are having to bear in terms of supporting our own governments beyond the federal transfers....

This would promote the kind of public discussion about the ways in which first nations governments can be supported in the future.

As another of your witnesses, John Graham of Patterson Creek Consulting, pointed out, "...public policy is always better if there is essentially good information." While this information is currently provided to my department, it cannot be shared in a meaningful way to promote this kind of open discussion.

One important element needing to be underscored is that this bill would address the existing gap in transparency without increasing the number of reports a first nation must produce. This committee has heard about the reporting burden that first nations continue to face. The minister, during his appearance before the committee, described the efforts the department has taken in recent months, and will continue to take in the months ahead, to reduce this burden. It is therefore critical that the approach taken to ensure financial transparency of first nations government does not add to this problem.

Mr. Chair, this bill does not add to the problem. Instead, this bill simply ensures that some of the critical documents already submitted to the department as part of the first nations funding agreement are made available to the public. Some of your witnesses—for example, Mr. Harold Calla—from the first have suggested that other documents, such as annual reports, would be more appropriate to be publicly available. Certainly there is nothing in this bill that precludes doing this.

While first nations are not currently required to prepare annual reports to the department, many first nations do prepare them and share them with their community members. Nevertheless, applying this approach to all first nations would represent, for many, an increase to the number of documents they are required to produce.

However, Mr. Chair, I must advise that the department is examining ways to move forward on an approach that can be characterized as "one application, one agreement, one report, and one audit". This approach would involve transforming the department's transfer payment system to ensure that it focuses on the recipient, reduces administrative burden, and integrates sound

management practices. Specific elements of this work include continuing the advancement of our approaches to risk management; exploring opportunities to develop common, simplified transfer payment administration systems; standardizing contribution agreements among federal departments; and having a common reporting framework and single-recipient audits. Bill C-27 would complement this work.

• (1545)

Mr. Chair, Bill C-27 may be seen by many progressive first nations as an opportunity to put in place or expand upon their own practices, which aim to enhance overall accountability of their government. In this way the bill serves as a catalyst for change in many communities, which will lead to greater confidence in first nations governments. Greater confidence and transparency result in increased opportunities for flexible, multi-year agreements, which come with opportunities for streamlined reporting.

Finally, Mr. Chair, much has been said about the treatment of band-owned businesses in this bill. To be very clear, the intention of the bill has always been to put into legislation the same practices with respect to the treatment of band entities as are currently in place in the funding agreements. It is important for the users of financial statements, especially first nations members as owners of those businesses but others as well, to see summary statements that capture the activities of their government.

While we would encourage first nations to provide as much detail as possible to their membership about the specifics of band-owned entities, the overall objectives of the bill do not require it. The financial information of those entities that are considered to be part of the first nation's overall economic activities will be aggregated. We believe this will be enough, albeit a minimum.

Both the determination of which entities are to be included and the manner in which their financial information is presented will be established not by the department but by the standards set by the Canadian Institute of Chartered Accountants, as well as by those of the Public Sector Accounting Board. This ensures that the same standards that apply to businesses owned by other governments in Canada will apply to first nations governments in precisely the same way.

The challenge, however, has been to find language that balances both the need for precision in legislative drafting with accounting concepts that are both complex and dynamic.

[Translation]

We understand that the committee has received suggestions from witnesses with respect to how these provisions could be made clearer, and we look forward to seeing the results of your consideration of this matter.

I would now be pleased to answer your questions. Thank you, Mr. Chair.

[English]

The Chair: Thank you very much for that opening statement.

We'll turn to Ms. Crowder for the first seven minutes.

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

I want to thank you for coming before the committee today and for your presentation.

I have a couple of questions. One is around the band-owned businesses. Part of the implication has been that having chiefs and councils report on moneys that they may receive from a band-owned entity somehow or other deals with a conflict of interest. However, my understanding is that a chief and council will report that, but it doesn't lead to any conflict of interest code being developed as a result of this legislation.

Is that correct?

Ms. Brenda Kustra: That is correct. Many first nations do, however, have conflict of interest codes in place in their community, but there is nothing in this legislation that would require a conflict of interest code.

Ms. Jean Crowder: In effect, all it will do is highlight the fact that a chief and council might receive money, but it will do nothing to affect how they might participate in a council meeting or participate in any decisions with regard to that band-owned entity; it is simply a reporting requirement, isn't it?

Ms. Brenda Kustra: That is correct. It is the same reporting requirement as what exists currently.

Ms. Jean Crowder: You made a comment about criminal wrongdoing. My understanding is that what you were saying is that there were some investigations going on in some cases about criminal wrongdoing, but this legislation will not deal with any of that, will it?

• (1550)

Ms. Brenda Kustra: No, it will not.

The reference I made was to allegations and complaints that come in to the department in which people make allegations about mismanagement of band funds. They often provide evidence and documentation of those types of activities. In a case such as that, the department would turn the information over to the RCMP for further investigation. Investigating anything related to criminal wrongdoing is not something the department itself takes on.

Ms. Jean Crowder: I'm not clear, though, how this act would help out with any kind of criminal wrongdoing investigation. As you pointed out, this information is already available.

Ms. Brenda Kustra: It would not help out in terms of any investigations, but it would make financial information publicly available. If there were parts of the first nation's financial statements that were potentially looking a little suspect for some reason, this information would be available for anyone who wanted to look at it further and question it further with the chief and council. However, there is no direct relationship between the financial statements that would be prepared and any investigation with respect to wrongdoing or malfeasance.

Ms. Jean Crowder: So in effect this is a bit of a red herring, because those statements are already available to band members upon request, if their chief and council aren't already providing them.

Ms. Brenda Kustra: Band members do have access to the financial information, either directly from their chief and council or, if they can't get it from the chief and council, by requesting the department to provide access to that information.

Ms. Jean Crowder: At the beginning of your presentation you indicated that the department doesn't keep statistics on this. Much has been made about how not having to respond to these requests is going to afford a great savings to the minister and the department, although we actually don't know how many there are.

I want to go to the Office of the Auditor General. This is in a report on federal government financing to first nations that came on September 23, 2012; it was a summary done by the Library of Parliament. It indicated that:

The Office of the Auditor General has noted significant gaps in the Department's ability to provide reliable information to Parliament.

Then it goes on to talk about a number of the areas in which the department is unable to provide information to Parliament. It seems this is another example in which the department cannot provide information to Parliament when we're trying to determine the scope of the problem.

Would you comment?

Ms. Brenda Kustra: This is one of the areas in which, as indicated, we don't keep regular statistics on the number of what I would call informal requests that come to the department. In many cases, a request could be a first nations member phoning a funding services officer to ask for a copy of the report, and the funding services officer calls the band manager, they talk about the issue, and the report is released. We don't keep track of every phone call that comes in and the subject matter of every phone call, which is why we don't specifically keep track of these statistics.

Ms. Jean Crowder: I guess that's what's troubling. This has been sold a bit as a response to this demand in communities, but we can't demonstrate that there actually is this overwhelming demand in communities.

Can you tell me what the department has done, either through tribal councils or other organizations, about educating first nations band members on how to read a financial statement?

Ms. Brenda Kustra: I know that our funding services officers across the country participate in community meetings, along with the accounting firms that prepare the financial statements for the first nation. Many first nations have community meetings at which they present the financial information. Our staff, along with the accountants, take the community members through the financial statements, explaining what they mean.

Ms. Jean Crowder: Can you tell me how much money the department spends on that activity and how many times it happens across the country?

I have been approached in a variety of communities by community members who don't know how to read financial statements, so I know this happens, but I'm not sure how widespread it is. I know that sometimes the tribal councils have provided some of the financial support to bands, and we know that tribal councils are being cut.

Can you tell me exactly how often the department provides it or how much money the department has put in for providing that kind of service to first nations or to tribal councils?

• (1555)

Ms. Brenda Kustra: I don't have information here today about the number of sessions that may have been conducted across the country over the past year. In addition to the department, the Aboriginal Financial Officers Association provides information and teaching sessions, as do many other organizations, about how to read a financial statement.

Ms. Jean Crowder: It would be great if you could provide to the committee how many times it has happened over the last year and how much money the department has spent on those educational activities around reading financial statements.

Do I have time left?

The Chair: Yes, you have half a minute.

Ms. Jean Crowder: I will let it go, then. Thank you.

The Chair: Thank you.

We will turn to Mr. Rickford for seven minutes.

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

I would be happy to skip my turn so my colleague could proceed with her questions.

The Chair: Absolutely. We will turn to Ms. Bennett for seven minutes.

Hon. Carolyn Bennett (St. Paul's, Lib.): Thanks very much.

Following up on my colleague's question, this bill was brought forward as a solution to a problem, but it sounds as though this problem has never been measured in terms of the number of inquiries and in terms of lack of transparency and, as my colleague has said, the money it has cost. Once this bill is in place, should it be in place, how will you know if it's working or not if you have not been keeping any numbers?

What I believe you have been saying to us is that you think the number of requests will diminish because of this legislated transparency law, but you don't have any numbers to compare with.

Ms. Brenda Kustra: As I indicated, we don't normally keep track of the statistics, the number of phone calls and the number of visits from first nations members to regional offices. I did indicate in my remarks that one of the regions did report to us that they had between 25 and 30. That is because that region happened to be keeping track of it. One of the things that I think—

Hon. Carolyn Bennett: If you remember all of our questioning before that, was that all for one community? In a region, were those 20 complaints about one first nation, or were they about 20 different first nations? In terms of what happens, if this is now legislated...

It's quite odd that there are no numbers. It is the worst kind of situation when you are trying to solve a problem and you don't even know the extent of the problem. How will you know if you are winning?

Ms. Brenda Kustra: The information about the 25 to 30 requests that came in from one region were for a variety of communities. It wasn't 25 requests from one community. Quite often, one member of

a community will come forward on behalf of other members in the community to request access to the financial information—

Hon. Carolyn Bennett: Sometimes that same member comes forward 20 times.

Ms. Brenda Kustra: Yes, and—

Hon. Carolyn Bennett: And you have no idea what that is.

Ms. Brenda Kustra: I don't have the details.

Hon. Carolyn Bennett: I simply can't imagine how that can be a way to run anything, but if...

Chief Darcy Bear had three very distinct concerns. One was separating salaries and remuneration, taking expenses out of that and making sure that was clear. He also had real concern about the band-owned businesses. He had real concerns that the transparency needed to be to his members, not to all Canadians, because that is the relationship and the responsibility of the chief in council.

You didn't even mention your amendments in your initial remarks. Do the government amendments deal with all of Chief Darcy Bear's concerns? Your amendment G-2 says, "...acting in their capacity as such and in any other capacity, including their personal capacity". Can you explain what that means?

• (1600)

Ms. Brenda Kustra: As a point of clarification, Mr. Chair, with respect to the discussion of amendments, is that a discussion and a question and answer that would be properly addressed when we get to that specific amendment in the clause-by-clause study?

The Chair: Thank you for that. I think that would be helpful. The more we eat up time now, the more we will reduce the time we are.... We're going to continue until we are finished. Those questions would be better addressed during the clause-by-clause period. The witness is correct.

Hon. Carolyn Bennett: I think we did ask the officials to come with a broad.... That's the reason we were here. Have the government amendments addressed the concerns we've heard since May?

The Chair: That's exactly what we'll be able to ask during that time. We'll give ample opportunity. The witnesses have agreed to stay during the clause-by-clause portion of the time.

Hon. Carolyn Bennett: Okay. This is bizarre, but anyway, okay.

Do you believe that the bill, as amended by the government, addresses the three concerns of Chief Darcy Bear?

Ms. Brenda Kustra: I'm pleased to share with the committee that in fact we have been working with Chief Darcy Bear to find a way to address the issues that Chief Bear has raised regarding the split of salary and expenses, as you have correctly indicated. Chief Bear was quite concerned that the tally of salary and expenses would be totalled and would misrepresent the actual value of the salary of elected officials as opposed to the expenses that were incurred in implementing their duties.

With respect to the band-owned businesses, I did make reference in my comments to the clarity that we need in the bill in order to ensure that the bill is not interpreted as requiring band-owned businesses to publish their financial statements. That was not the intention, and I do believe that—

Hon. Carolyn Bennett: “Aggregated”, in the language you've used, means what?

Ms. Brenda Kustra: It means rolled up, in exactly the same way the financial statements are prepared right now. If we were to take Chief Darcy Bear and the Whitecap First Nation as an example, the financial statements that are submitted right now, to the department, display band-owned businesses in a certain fashion. That would not change under this legislation.

However, Chief Bear thought that there was a possibility that the clause in the legislation could be interpreted to require full public disclosure of band-owned financial businesses, and I believe that when we do get an opportunity to look at the revised wording around the treatment of band-owned businesses and band entities, you will see that the issue has been addressed.

The Chair: Thank you so much. We'll now turn to Mr. Rickford again.

Mr. Greg Rickford: Thank you, Mr. Chair, and thank you to the witnesses here today.

I have a couple of questions to hopefully close out, certainly from our perspectives, some residual issues.

For most of the witnesses, if not all, one of the questions I had put may be directed to you, Karl, more than to the others. I had said that it seems to me that for many first nations communities, the requirements for producing the financial reports would in fact not be redundant. It was a function of just posting them. There were many first nations who responsibly manage this task, and indeed responsibly manage their financial affairs.

To that extent, would you agree that the public disclosure of these statements would not just enable private investors and the general public but more importantly reduce or hopefully eliminate, as a superordinate goal, any residual suspicion or point of contention with the chief and council simply by reporting and making those documents accessible?

Ms. Brenda Kustra: If I may, I'll take—

•(1605)

Mr. Greg Rickford: By the way, the answer has been yes, but I want to hear from the department officials, because it's consistent with the line of questioning from my colleagues, which I completely appreciate.

Ms. Brenda Kustra: The answer is definitely yes. The fact that this information would be publicly available reduces all of the speculation, the rumour mongering, all of the misinformation that is around with respect to not only chief and council salaries but also the extent to which first nations governments are funded by clearly identifying the revenues and expenditures by program, consistently reported for every first nation across the country and publicly available. It will effectively, I hope, dispel the misinformation and rumours that are out there.

First nations leaders will be able to point to the statements that are publicly available and advise people to just look at the statement for the information and see that there's nothing hidden and it's readily available to everyone.

Mr. Greg Rickford: That's important, because regardless of who we've had here making contributions as witnesses, there was consensus around that point. We may disagree about how that presented itself, how it was accessible to different pathways, but consistently this was identified as something of benefit in those regards.

Hopefully, this will be dealt with in the next fiscal year. There is a time afterward within which the communities would have to prepare, so we still have a fair amount of time before that requirement would be given effect.

However, there has been some concern about non-compliance. Karl, perhaps you could clear up what the implications are of non-compliance. Could you clarify for us whether it would include health and safety funding, and whether, in a worst-case scenario, funding could be restored if it ever came to be necessary?

Mr. Karl Jacques (Senior Counsel, Department of Justice): With regard to the funding, maybe Brenda could determine which exact funding would be.... Basically, it's the band support funding that may be retained.

However, the measures in this act are measures that are already in place in the contribution agreements. There is nothing new in here. There's similar legislation in other provinces that have that kind of withholding of funding for not reporting or not meeting some disclosure or reporting obligations.

These are discretionary; you don't need to go to court. You don't need these... Basically, any member could.... Although there is a possibility to go to court for that, that's the last resort. You don't have to do it. Things could obviously be dealt with on a case-by-case basis between the member and the—

Mr. Greg Rickford: Thank you.

The Chair: Ms. Hughes, we'll now turn to you for five minutes.

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

Ms. Kustra, you said you worked very closely with Chief Darcy Bear to address some of the concerns and to try to make sure that the legislation was truly reflective of those things he felt concerned about. Did you work with anybody else?

Ms. Brenda Kustra: Chief Darcy Bear, I believe, is the only one who officially wrote to the minister in December of 2011, after the introduction of the legislation, to express his concerns, and he actually did come forward with some proposed wording for amendments to the bill at that time.

Mrs. Carol Hughes: You didn't work with anybody else.

Ms. Brenda Kustra: With his advisers, Chief Darcy Bear is the only first nations leader we have worked with to specifically address the concerns that have been raised.

Mrs. Carol Hughes: Given the concerns that the AFN has raised on this bill, nobody approached the AFN to see about comments to have a better piece of legislation that could be acceptable to them, is that right?

Ms. Brenda Kustra: That's correct.

Mrs. Carol Hughes: Thank you.

You also mentioned 250 complaints. Was that this year alone?

Ms. Brenda Kustra: Those statistics are since January of 2011. Those are official letters that come in to the complaints and allegations unit in the Department of Aboriginal Affairs and Northern Development.

•(1610)

Mrs. Carol Hughes: How many were in 2011, and how many in 2012?

Ms. Brenda Kustra: I don't have that.

Mrs. Carol Hughes: If you have it, could you table it, please?

The question was asked about how many communities there were as well. If you could also table that information, it would be great. If any of them were by the same person, could you also table that and say, "This person called and made so many complaints". Could you do that?

The Chair: Mrs. Hughes, I don't know that.... Maybe the department can—

Mrs. Carol Hughes: Well, she's got 250 complaints listed.

The Chair: I don't think they would share personal information of individuals.

Mrs. Carol Hughes: It doesn't have to be for that particular individual. What it can say is that they've received 20 complaints from one individual for the same first nation. It doesn't even matter if the name of the first nation is there or not. I only want to know the statistics. Obviously, if she has 250, we should be able to get that.

The Chair: We'll leave it to the department to determine what will be appropriate.

Mrs. Carol Hughes: Okay.

The Canadian Bar Association indicated that

Most communities do not have funding to build the infrastructure necessary for Internet access, or the resources to create and maintain their own websites.

They go on to say that

Many initiatives with the potential to streamline reporting have been started but have not resulted in meaningful improvement.

You talked about the reporting, and Ms. Crowder mentioned the tribal councils, and we know the tribal councils have played an integral role in helping some of the smaller first nations to build capacity in order to address the financial issues and the accountability and transparency that they all strive for. I'm wondering if you could you tell me what the department has done so far to reduce the reporting burden on first nations. Also, is the department looking at providing first nations with the necessary tools to ensure they get access to the Internet, or to be able to create the capacity they need to be able to use it?

Thank you.

Ms. Brenda Kustra: Thank you very much for those questions.

With respect to the requirement in the legislation to publish information on the Internet, there are a number of ways that can happen. The information can be published on a first nations website. If they don't have their own website, the first nation can make arrangements with another organization to have the information published on their website, such as a tribal council or a service

organization such as the Aboriginal Financial Officers Association of Canada or something else. It doesn't have to be on a community website.

Mrs. Carol Hughes: Because you mentioned the fact that the tribal councils have had their funding slashed, I'm wondering what the capacity will be for them to do that.

Ms. Brenda Kustra: Tribal councils will continue to provide the services that their first nations request of them. The issue around the reductions to tribal council funding relates to the fact that tribal councils will no longer be required to deliver five specific advisory services in order to be eligible for funding from the department.

Mrs. Carol Hughes: Is one of those advisory services with respect to financial assistance for other first nations?

Ms. Brenda Kustra: Yes. One of the advisory services that tribal councils were providing was in relation to financial management. However, the tribal councils can continue to provide that service to their member first nations. The only difference is that it's not one of the five mandatory services that the tribal council had to deliver in order to receive funding from the department, but they will still be able to deliver it if their member first nations request it of them.

Mrs. Carol Hughes: But with no funding—

The Chair: Thank you, Ms. Hughes. You are out of time.

Ms. Crowder has a point for clarification.

Ms. Jean Crowder: On a point of clarification, you said that Chief Darcy Bear had submitted suggestions and amendments. Did you consult with any other group or non-first nations individual organization?

Ms. Brenda Kustra: Chief Darcy Bear brought a couple of advisers to the table.

Ms. Jean Crowder: Other than Chief Darcy Bear and the Whitecap Dakota, did you consult with any other organization or individual group other than the Whitecap Dakota group?

Ms. Brenda Kustra: Chief Darcy Bear was the only one who came forward with specific suggested wording changes to the legislation.

•(1615)

Ms. Jean Crowder: Nobody else was consulted in developing the legislation.

Ms. Brenda Kustra: As you know, Bill C-27 started as a private member's bill, Bill C-575 under Madam Kelly Block. In the Speech From the Throne, the government indicated its intention to bring it forward as a government bill. There was no additional external consultation that took place prior to the introduction of Bill C-27.

The Chair: Thank you, Ms. Crowder.

Seeing no additional questioners on the list, it has been agreed that we'll move into clause-by-clause study, so I'll suspend for a few moments so we can reorchestrate the table. Then we'll move back into clause-by-clause consideration.

We ask our witnesses to remain at the table or to stay available after we come back to order, but we will suspend for three minutes.

•(1615) _____ (Pause) _____

•(1620)

The Chair: Colleagues, I call this meeting back to order. We are now going to move into clause-by-clause study of Bill C-27.

Colleagues, before we get started, we have some housekeeping. Any deck distributed before today's meeting should be taken off the table and discarded, because we don't want people using other materials as reference in the numbering of the amendments. I say that as a point of clarification because I know other decks were distributed earlier.

There was a circulation of an amended amendment. I think you will have received it. It's in regard to amendment G-1. There was a technical glitch in the printing of the original one in the deck, and therefore the corrected one has been included there. To clarify, the G-1 that's part of the deck can be removed and replaced with the one just distributed. I'm hoping that I'm not muddying the waters more than I need to before we get started, because it's going to get muddy as we go.

Colleagues, we now move into the clause-by-clause portion.

Pursuant to Standing Order 75(1), we postpone clause 1 as the final clause to be considered because it is the short title. What we do with the bill in the ensuing hours will determine whether it's the correct short title. We then move to clause 2.

(On clause 2—*Definitions*)

I believe the government had an amendment, amendment G-1, that was recirculated independent of the deck. It's the two pieces of paper that were distributed separately from the deck.

Mr. Rickford, go ahead.

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

I'm seeking the support of all my colleagues on this particular amendment.

Chief Darcy Bear of the Whitecap Dakota raised concerns that the current wording of the bill, specifically in this clause, could be interpreted to mean that a first nation's audited consolidated financial statements as well as the individual audited financial statements of each entity that the first nation controls would all need to be made public.

This, of course, is not the intention of the bill; instead, it's to maintain the current practice of presenting the financial information of entities consolidated in the first nations' financial statements according to generally accepted accounting principles and at an aggregated level.

Colleagues, this is in keeping with the rules and definitions of the Public Sector Accounting Board and the Canadian Institute of Chartered Accountants in how first nations presently prepare and submit their audited consolidated financial statements to the department. This bill would not undermine the competitiveness of band-owned businesses and would put in place the same rules that apply to businesses owned by other governments in Canada.

With the changes in the definition of "consolidated financial statements", the definition of "Control — entity" is no longer needed, as the entities that must be included would be more clearly reflected in the new definition of consolidated financial statements.

Chief Darcy Bear has also brought some concerns to our attention with the definition of "remuneration", which includes the concepts of both salary and expenses. This could give the impression that both should be reported as one figure instead of being reported separately. Combining the two categories into one figure would not give first nation members and the public a proper understanding of the actual remuneration that first nation elected leaders are receiving or the expenses for which they are being reimbursed. Many leaders have high expenses associated with the cost of travel, for example, as a result of the remote locations of their communities. Including these amounts into a general figure for remuneration could be misleading and would not create an accurate financial picture.

Finally, Mr. Chair, this government amendment to subclause 2(1) will serve to clarify the requirements of the bill and ensure that first nations members have the information necessary to properly assess the remuneration and expenses of their elected officials.

Thank you.

•(1625)

The Chair: Thank you, Mr. Rickford.

Colleagues, for your consideration, this is an amendment to line 1, which, if passed, would then have an impact on amendments NDP-1, LIB-1, LIB-2, LIB-4, and NDP-4, because we cannot amend a line that has already been amended. By amending line 1, all of the other ones would be deemed non-moveable.

I just wanted you to be aware of that.

Ms. Jean Crowder: Which are those other ones?

The Chair: They are NDP-1, LIB-1, LIB-2, LIB-4, and NDP-4.

Did that provide any clarity? The process is that we can't amend the same line twice; if there are conflicts, we wouldn't see them surface.

Ms. Crowder, were you seeking to...?

Ms. Jean Crowder: I'm just going to say we won't support it because of the inclusion of the entities. We will not support it because of the inclusion of the first nations entities, other than the chief's and council's salaries.

The Chair: Is there anybody else who wants to speak to that amendment?

Hon. Carolyn Bennett: That's our feeling as well. That's what we were trying to clarify in our amendments.

Mr. Greg Rickford: Just for greater certainty and understanding, Mr. Chair, is it that by moving this clause as we have it submitted or tabled here, those five others...?

The Chair: If this passes, those would then not be moved.

Seeing no additional speakers to the amendment, we'll now move to a vote.

(Amendment agreed to [See *Minutes of Proceedings*])

The Chair: Then we will strike NDP-1, LIB-1, LIB-2, LIB-4, and NDP-4.

NDP-2 is the next amendment we would consider, if somebody were to move it.

Go ahead, Ms. Crowder.

Ms. Jean Crowder: I so move.

This again comes back to my comment around an entity meaning a corporation or a partnership, a joint venture or any other unincorporated association or organization.

In testimony from witnesses we have heard grave concerns about including this information in publicly released statements, so I would like to suggest that we delete those lines.

The Chair: Go ahead, Mr. Rickford.

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

With respect, the consolidated financial statements of a first nation include financial information relating to the first nation and, according to generally accepted accounting principles, certain entities that the first nation controls or has an interest in. It is therefore necessary in order to ensure clarity around what constitutes an entity for the purposes of this act, and so we'll be voting against that motion.

• (1630)

The Chair: Seeing no other people seeking to intervene, we will now take a vote on NDP-2.

(Amendment negated [See *Minutes of Proceedings*])

The Chair: The next motion would be LIB-3, if Ms. Bennett were to choose to move that.

Hon. Carolyn Bennett: I'm unclear why it wasn't incorporated in the one that we opposed and you passed.

The Chair: Is this LIB-3?

Hon. Carolyn Bennett: Yes; it concerns expenses.

The Chair: I'll have an answer for you momentarily.

You are correct, and because of the altered version that was circulated—it was a late addition—you're absolutely correct that it is non-votable.

We'll move now to amendment NDP-3.

There is a difficulty with this, but I'll wait until it's moved before I highlight it.

Ms. Jean Crowder: I move that Bill C-27, in clause 2, be amended by adding after line 21 on page 1 the following: "First Nations Ombudsman" means the Office of the First Nations Ombudsman established by regulations made under section 14.

This has been recommended a number of times, and it would seem that rather than having a more heavy-handed approach, having a third party, somewhat like an Auditor General, who could provide that arm's-length oversight, arm's-length advice, or arm's-length conflict resolution would seem a good way to go, rather than playing into what has often ended up as a stereotype about first nations governance not necessarily being as upright as that of other levels of government.

I think it may alleviate some of the pressures that communities may feel.

The Chair: I think it would be helpful if I ruled on what I think is important information before we engage further in debate.

I believe it's essential that we include and consider together amendments NDP-3, NDP-14, and NDP-18, all of which deal with the idea of a first nations ombudsman. Each of these contains references specifically oriented towards the creation of that office.

If there is a willingness from the committee members to combine the three in a single vote, I think it would be essential to do so.

Ms. Jean Crowder: Can you give me those numbers again?

The Chair: Yes, absolutely; they are NDP-3, NDP-14, and NDP-18, all of which refer to the creation of a first nations ombudsman.

Ms. Jean Crowder: There's a LIB-14. I don't have an NDP-14 in my package.

A voice: NDP-14 comes after LIB-17.

Ms. Jean Crowder: Oh, so 14 comes after 17?

Can I ask a procedural question on this?

It would seem to me that if NDP-3 is defeated, the others wouldn't be votable anyway, would they?

The Chair: This is the thing: it's only at NDP-18 that the office is actually created; the others simply refer to the creation of that office. I therefore think it essential that we consider all of them together.

We don't disallow or allow the creation of the office until later on in the package. It would be important to consider all of them as a block. I have a ruling as it relates to NDP-18—that is, the actual creation of the office—and therefore I think it's important that we consider them together.

• (1635)

Ms. Jean Crowder: Do you want to start with your ruling?

The Chair: Well, if there's willingness to work together in this way to consider all three together, I then can make a ruling, and that will save us some time.

Seeing that generally everyone is willing to move forward in that direction, here is my ruling.

Bill C-27 enhances the financial accountability and transparency of first nations. The amendment seeks to create the office of the first nation ombudsman. According to *House of Commons Procedure and Practice*, second edition, as stated on pages 767 and 768: Since an amendment may not infringe upon the financial initiative of the Crown, it is inadmissible if it imposes a charge on the public treasury, or if it extends the objects or purposes or relaxes the conditions and qualifications specified in the royal recommendation.

In my opinion as the chair, in seeking to create the new office of first nations ombudsman, this amendment would certainly infringe on the financial initiative of the crown, and therefore I rule that this amendment is inadmissible. There certainly would be a financial consideration to it.

That is my ruling.

Ms. Jean Crowder: I'm not going to challenge the chair.

The Chair: I appreciate that.

Just so that we are clear, then, we can strike amendments NDP-3, NDP-14, and NDP-18.

This takes us to amendment NDP-5.

I will note that NDP-5 and LIB-5 are exactly the same, and that therefore moving one will impact upon the success or failure of the other in the same way.

Ms. Jean Crowder: I of course move that Bill C-27, in clause 2, be amended by deleting lines 10 to 19 on page 2.

The bill says that the conclusion that “an entity is controlled by a First Nation is based on an analysis”, and so on. It comes back to the issue of band-controlled entities.

I appreciate the department's clarification that the intention was not to have band-controlled entities publish their financial statements in this way, but there still is sufficient concern, particularly in the absence of a code of conduct. I think this is being sold as a bit of a bill of goods implying that there is going to be some sort of conflict of interest code or code of conduct implicit in this.

Again, the department acknowledged that this wasn't included, and I acknowledge that, but I think this is being sold as a bit of a bill of goods to people, implying that somehow this is going to deal with conflict of interest concerns, and it will not do that. Therefore, I recommend that we delete this subclause.

Mr. Greg Rickford: With respect, it's our understanding that G-1 amends the definition of “consolidated financial statements” in clause 2, which results in the definition of “Control — entity” no longer being necessary. The removal of the definition of “Control — entity” has already been addressed in G-1, so we would be unable to support this motion.

The Chair: Not seeing anybody else seeking to speak to this, we will now go to a vote.

(Amendment negated)

The Chair: The motion is defeated; therefore, LIB-5 is defeated as well.

(Clause 2 as amended agreed to)

(On clause 3—*Purpose of Act*)

The Chair: NDP-6 is the first that seeks to amend clause 3.

Ms. Jean Crowder: I move that Bill C-27, in clause 3, be amended by replacing, in the English version, line 23 on page 2 with the following:

“disclosure of their audited consolidated”

Again, I think it's simply removing the word “public” from that line.

• (1640)

The Chair: Go ahead, Mr. Rickford.

Mr. Greg Rickford: Thank you.

On NDP-6, with respect, Mr. Chair, the purpose of the bill is to provide for public disclosure of the audited consolidated financial statements and of the schedule of remuneration and expenses by

releasing information to Canadians at large. The anonymity of first nation individuals will be maintained.

This will allow individuals to access information on their band's finances without fear of reprisal, an issue that was raised by a number of witnesses. For that reason, we won't be able to support this motion.

The Chair: I don't see any additional speakers to NDP-6. We will now vote.

(Amendment negated)

The Chair: NDP-7 is the next one we will consider.

I should point out that G-2 and LIB-6 will have conflicts if NDP-7 is passed; therefore, if NDP-7 is passed, we will not vote on either G-2 or LIB-6.

Ms. Jean Crowder: I move that Bill C-27, in clause 3, be amended by replacing lines 25 and 26 on page 2 with the following:

“remuneration paid by a First Nation to its”

This is the issue. The line that we would be amending is “by any entity that it controls, as the case may be”. Again, it's coming back to that question about entities that the band controls, so we would suggest a change of wording to remove that entity.

Mr. Greg Rickford: Mr. Chair, with respect, without a reference to entities in this section, the schedule of remuneration could exclude remuneration received from band-owned businesses and other enterprises which, according to the public sector accounting board standards, are to be consolidated by the first nation. Remuneration paid to chiefs and councillors whom these entities control should be within the scope of the bill if the purpose of the bill is to be achieved.

Furthermore, the revised definition of consolidated financial statements in subclause 2 as proposed by the government helps to clarify the scope of the bill. In addition, G-2 further clarifies what is to be included and is in keeping with the amendments put forward by Chief Darcy Bear of the Dakota Whitecap First Nation.

For those reasons, we would be unable to support this motion.

The Chair: Not seeing additional speakers, I will now call the vote on NDP-7.

(Amendment negated)

The Chair: Amendment G-2 is the next motion in our process.

I point out that if passed, it will have an impact on the admissibility of LIB-6.

Would you like to move it, Mr. Rickford?

Mr. Greg Rickford: Sure.

The Chair: I'll turn to you, and then Ms. Bennett.

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

This is a consequential amendment linked to amendment G-1. It amends clause 2 to separate from the definition of “remuneration” the concept of expenses into its own definition. Amendment G-1 also amends the definition of “consolidated financial statements” in order to clarify the definition and removes the definition of “Control — entity”. This amendment is needed to ensure consistency throughout the bill.

The Chair: Ms. Bennett, go ahead.

Hon. Carolyn Bennett: This was what I was asking about in the previous session. I'd like the officials to explain what "including their personal capacity" actually means.

Mr. Andrew Francis (Director General, Corporate Accounting and Materiel Management, Chief Financial Officer Sector, Department of Indian Affairs and Northern Development): In terms of their personal capacity, it's if a number of band councillors work part time for the band and work elsewhere. In terms of their private involvement, if they're an employee of a band-owned business, they would be reporting, given the current wording.

• (1645)

Hon. Carolyn Bennett: Is that disaggregated data you're asking for in this amendment, or is that also lumped together?

Mr. Andrew Francis: The new wording adds some clarity to the definition of remuneration. Remuneration is a clearer term that says money or its equivalent earned from the entity. For instance, in the old wording there could be a misinterpretation: would it apply if the councillor owns his own business or earns other income? How it is linked was not very clear. This new wording says that if there's a band-owned business and he's getting some form of remuneration—so that's any type of compensation—that's what is reported. Does that clarify it for you?

Hon. Carolyn Bennett: If he is the engineer for a band-owned business, does it say next to his name what he gets in salary for being a band councillor and separately what he's getting for being the engineer on this bridge-building project?

Mr. Andrew Francis: If it's remuneration from a band-owned business and it's a commercial operation, that individual will have to disclose a remuneration. Remuneration is pretty wide. It's base salary, extra pension—it could be a number of things. They'd have to report any asset they'd derive from a band-owned business with the word "remuneration".

Hon. Carolyn Bennett: Would it be separately, or lumped together?

Mr. Andrew Francis: In terms of lumped together, it comes back to how the band businesses get consolidated in. Band businesses will get consolidated in at a very high level. Given what they're doing, they have some discretion as to the level where they'd separate the remuneration.

For instance, right now you could state your travel expenses and divide it right out by airline and various travel components. This piece of legislation talks about a general remuneration within the accounting standards. The appropriate level is whatever the material level of reporting or the right detail of reporting is to pass on information. Given the circumstances, it could vary a little bit, depending on what else comes into effect.

I can't say for that individual that it's going to be exactly this piece of remuneration divided out. In other situations, it could be different. For instance, remuneration could just be salary, and they'll lump it in as remuneration. In other spots, there would be a value to separate out perhaps a pension ability if it's quite large relative to.... It's not just the salary, but also the overall compensation given out.

Hon. Carolyn Bennett: The concern has been that people don't understand what the difference is between being a council member

receiving a salary and having separate remuneration for your job as the mechanical engineer in the band-owned company. Would it be left to people to subtract what it looks like all the other council members are getting compared to this person, who looks like he's getting a lot more, without any explanation of why?

Mr. Andrew Francis: Right now, when first nations track their dollars and the aboriginal businesses under that first nation track their dollars, they're reporting it internally already. What this legislation does is make it public. The chiefs and councillors within the governance document.... You may want to talk to the program, but they're already disclosing how much they're making or being paid from the first nation.

In terms of the remuneration from an entity, if they're earning some remuneration from a band-owned business, they'll have to disclose it with this wording.

Hon. Carolyn Bennett: In not wanting to disclose the books on band-owned enterprises, in terms of preventing predatory practices from non-band-owned enterprises, this would mean that.... If this person had a particular expertise, that salary would be disclosed.

• (1650)

Mr. Andrew Francis: When you talk about the competitiveness of the entity and what's involved and what's being reported, it's a net of the revenue and expenses that gets reported up to the income statement within the financial statement, so there's not much that gets reported up in that way.

In terms of the competitiveness of the skill set of that individual, if they're a councillor, they probably have other levels of involvement with the community that they wouldn't leave simply for a higher salary in a band-owned business. How it would link is a very hard question to answer without a specific example.

Competitiveness in its own right is a difficult discussion to have, because a lot of the industries or companies.... I'll give you an example. We've looked at some of the financial statements that are already publicly disclosed. Some of the businesses are part of a monopoly, whether it's gaming or the tuck shop within an ice rink. Other things are very specific to tourism, so I'd have to hear an exact example to try to talk to it, Mr. Chair.

The Chair: Thank you.

Ms. Crowder had a question.

Ms. Jean Crowder: It's along the same lines.

When you were testifying, I talked about conflict of interest. My understanding is that those of us in political office will declare if we have a company that we receive remuneration from, or if we sit on a board, or whatever it might be, but I don't think we have to declare the money we get from it. Did you look at how this compares with other elected officials, either municipally, provincially, or federally? Are we asking something different from first nations from what we expect from other elected officials?

Ms. Brenda Kustra: Actually, we did do some research. If parliamentarians, for instance, have another source of income, it is declared to the Ethics Commissioner and the actual value of that income is also declared to the Ethics Commissioner.

Ms. Jean Crowder: Yes, it's declared to the Ethics Commissioner, but that doesn't show up on our public statement. We have to disclose how many teeth we've got in our mouth to the Ethics Commissioner, but when I get my statement out, there are non-publicly disclosed things in my statement.

Did you look at whether any remuneration that we get from a corporation or board, or whatever it might be, is publicly disclosed? I don't think it is. I think the fact that we get it is disclosed, but not the amount. I know when I was a municipal councillor, I didn't have to disclose the remuneration I got from my other job, because it was a part-time position. I had to disclose any conflict of interest, but not the actual dollar value.

The Chair: It wasn't a crown corporation, though, maybe.

Ms. Jean Crowder: Well, it's a band-owned entity, right? This has been driven by the fact that it's supposedly a conflict of interest clause, and in terms of public disclosure, is an apples and oranges thing happening here?

Ms. Brenda Kustra: I would say that it's not so much a conflict of interest issue, but rather it's for first nations members and Canadians at large to understand the dynamic in the community about where salary is derived for elected officials.

Ms. Jean Crowder: Help me understand this. This is where my struggle is.

Let's say the band has a successful band-owned entity. It's a successful corporate entity, and I'm employed by that corporate entity as well as being a band councillor. Because they've been competitive and have a successful business, I don't know why how much I get paid matters. It's important around conflict of interest because I should recuse myself if the band is making any decisions concerning that entity, but I'm not sure why the amount of money I get paid is relevant. I think we're held to a different standard here.

•(1655)

Ms. Brenda Kustra: Many of the folks we're speaking about, the elected chief and councillors, do in fact end up on boards as a result of being an elected official in the community. They may be a professional engineer and have a contract with a band-owned business and also be representing not only themselves but also the first nation in various business enterprises.

This legislation is putting into a legislative framework the existing practice of disclosure currently required in the financial statements. We're not asking for more disclosure than is currently disclosed in the financial statements that first nations present to the department by virtue of their funding agreement.

Ms. Jean Crowder: I still see a double standard here. There are members of Parliament who are probably involved in things as a result of their being elected members. They declare them to the Conflict of Interest and Ethics Commissioner, and then there's a determination made about what is released publicly.

I don't expect you to.... You're not the government, so you're not going to defend or undefend, but it seems to me there's a different standard here, that's all.

The Chair: We'll turn to Ms. Hughes now.

Mrs. Carol Hughes: Thank you very much.

I want some clarification, because my colleague Mrs. Bennett had talked about salaries being disclosed. For example, if a band councillor is a schoolteacher, does that get lumped into one salary, one remuneration? I need that information. Is that separate in the part, or is it up to the first nation on how they're going to post it?

Mr. Karl Jacques: Mr. Chair, I will answer that.

Nothing in this bill would require those remunerations to be separate. Basically, it has a schedule of remuneration and a schedule of expenses. There's nothing that requires them to be separated by employment or whatever. It would depend on the way the first nation would see it.

Mrs. Carol Hughes: Are you saying that it's going to be a choice as to whether they want to lump them in?

Mr. Karl Jacques: Currently, the act doesn't require them to divide them.

Mrs. Carol Hughes: It could be that someone's getting the wrong information about how much a teacher is actually making. If it's done separately, there could be an issue with that person's being able to get other employment, trying to get a bit more money somewhere else. She mentioned an engineer as an example. If an engineer who is currently a band member and may be showing a massive total is trying to get a job somewhere else and wants to compete, the competitor now has access to the public information on how much he's really getting. Now he's at a state where he can't really try to get more money from whoever may decide to hire him. It does actually play against him.

Right now, if Joe Blow down the street who's off-reserve wants to hire him, he knows exactly how much he's making on-reserve and knows that he's not going to be able to barter with him to try to get him over. He knows how high or low he can go.

Ms. Brenda Kustra: I suppose that's a bit of a double-edged sword in terms of the transparency and what it means in real life to the individuals.

The Chair: With no further questioners, we'll now move to a vote on G-2.

(Amendment agreed to [See *Minutes of Proceedings*])

•(1700)

The Chair: Therefore, because it will create a line conflict for LIB-6, we'll move to the final consideration of the clause in its entirety, as amended.

(Clause 3 as amended agreed to)

(On clause 4—Application)

The Chair: Moving to clause 4, NDP-8 is the first one on the list, and I do have a ruling with regard to it. If it could be moved, that would be....

Go ahead, Ms. Crowder.

Ms. Jean Crowder: I'm sorry. I'll speak to NDP-8.

What this amendment is trying to do is set some parameters around the kind of reporting, and suggesting that if a first nation has been issued with a financial management certificate by the First Nations Financial Management Board, the act would not apply because the first nation has met with a lot of respect in the financial administration of the first nations and has been approved by the board. This amendment is an effort to emphasize that we're often talking about first nations governments that are self-sufficient, and first nations that have these well-established financial practices should be exempt from this piece of legislation because they're already complying in a manner that their communities have deemed appropriate.

Therefore, I move the amendment.

The Chair: Thank you, Ms. Crowder.

NDP-8 and LIB-7, colleagues, are pretty well identical. As a result, I have a ruling that relates to both of them.

Bill C-27 enhances the financial accountability and transparency of first nations. This amendment proposes to create an exemption in the application of the act. As *House of Commons Procedure and Practice*, second edition, states on page 766:

An amendment to a bill that is referred to committee after second reading is out of order if it is beyond the scope and principle of the bill.

In my opinion as the chair, the amendment would create an exemption in the application of the act where it does not currently exist and is contrary to the principles of Bill C-27. The act should apply to all first nations. It is, therefore, inadmissible.

That deals with both NDP-8 and LIB-7.

There being no additional amendments to clause 4, I will call the vote.

(Clause 4 agreed to [See *Minutes of Proceedings*])

The Chair: Colleagues, it would be helpful in the future if you'd indicate by showing your hand if you are in fact in favour or opposed.

(On clause 5—*Accounts and consolidated financial statements*)

The Chair: On clause 5, we have amendment G-3.

We'll get Mr. Rickford to move G-3.

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

Amendment G-3 is a consequential amendment linked to G-1 to amend clause 2 in the definition of "remuneration". This amendment is needed to ensure consistency in the wording of the bill by stating both terms "remuneration" and "expenses" throughout.

The Chair: Thank you.

Ms. Crowder would like to speak to that.

Ms. Jean Crowder: Again, it comes back to the discussion we've already had. We'll be opposing this because it should actually say, "financial statements and schedules of remuneration and expenses", because it's important that there be separate schedules for expenses and for the various kinds of remuneration, whether it's chief and council or whether it comes from another entity. As a result, we will oppose this amendment.

The Chair: Seeing no additional speakers on amendment G-3, we will now move to a vote on it.

(Amendment agreed to [See *Minutes of Proceedings*])

(Clause 5 as amended agreed to [See *Minutes of Proceedings*])

(On clause 6—*Schedule of remuneration*)

The Chair: On clause 6, we will move to amendment G-4 to begin.

• (1705)

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

This is a consequential amendment linked to amendment G-1, which amended the definition of "consolidated financial statements" to clarify that definition. Amendment G-1 also amended the definition of "remuneration", separating the concepts of remuneration and expenses into two distinct definitions. This amendment is needed to ensure consistency in the wording of the bill.

Thank you.

The Chair: Go ahead, Ms. Crowder.

Ms. Jean Crowder: Again, it's the problem with "by any entity that it controls". It continues to be the same problem of having entities that first nations control showing up on these single remuneration schedules.

The Chair: I should have pointed out before you intervened, Ms. Crowder, that if in fact amendment G-4 passes, we'll have a line conflict with amendments LIB-8, NDP-9, LIB-9, and LIB-10, which therefore, if this is passed, will not be moved, as they would be in conflict at those lines that would have been already amended.

Not seeing any additional speakers on amendment G-4, we'll go to a vote on amendment G-4.

(Amendment agreed to [See *Minutes of Proceedings*])

(Clause 6 as amended agreed to [See *Minutes of Proceedings*])

(On clause 7—*Copies — members*)

The Chair: On consideration of clause 7, amendment G-5 is the first one on the list.

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

This is a consequential amendment linked to the motion to amend the definition of "remuneration", which separates the concepts of "remuneration" and "expenses" into two distinct definitions. This amendment is needed to ensure consistency in the wording of the bill by adding "and expenses" wherever "remuneration" is mentioned.

Thank you.

The Chair: Thank you, Mr. Rickford.

I want to point out that if this is passed, it will be in conflict with amendments LIB-11 and LIB-12, and therefore those won't be votable if amendment G-5 is carried.

Go ahead, Ms. Crowder.

Ms. Jean Crowder: Again, I am glad to see the expenses added, but it needs to be “schedules of remuneration” so that they are separate. For that reason, we'll oppose it.

The Chair: Thank you, Ms. Crowder.

Seeing no additional speakers on the amendment, I call the question.

(Amendment agreed to [See *Minutes of Proceedings*])

The Chair: The amendment is carried, and therefore amendments LIB-11 and LIB-12 will not be votable.

We will go to amendment NDP-10.

Ms. Jean Crowder: We are suggesting that clause 7 be amended by replacing lines 2 to 5 on page 4 with the following: “within a reasonable time”. This is just to allow first nations to respond in a manner that fits within their abilities to do so, so we suggest that we remove the time reference that's currently in the bill.

The Chair: Thank you.

I see Mr. Rickford—yes, Mr. Wilks?

Mr. David Wilks (Kootenay—Columbia, CPC): I just want to know where we are.

The Chair: Oh, pardon me. We are dealing with amendment NDP-10. It's page 29 in the deck.

Go ahead, Mr. Rickford.

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

With respect, the phrase “reasonable time” could lead to different interpretations across first nations and could lead to the purposes of the bill not being achieved. A timeframe is required to ensure clarity with respect to the standards that are expected of all first nations. A 120-day timeframe is consistent with the existing requirements under the funding agreements between first nations and the Department of Aboriginal Affairs and Northern Development for submissions of the documents to the department, and for that reason we will be unable to support this motion.

The Chair: Seeing no additional speakers to NDP-10, we'll vote.

(Amendment negated [See *Minutes of Proceedings*])

(Clause 7 as amended agreed to [See *Minutes of Proceedings*])

On Clause 8—(*Internet site — First Nation*)

The Chair: On clause 8, amendment NDP-11 is the first on the docket.

• (1710)

Ms. Jean Crowder: We're suggesting that subclause 8(1) now read: 8.(1) A First Nation must make the documents referred to in paragraphs 7(1)(a) to (d) available to its members

(a) if practicable, by publishing them on its Internet site, or by causing them to be published on another Internet site; or

(b) by another form of public disclosure determined to be suitable by the First Nation.

This is in part to deal with the fact that we've always maintained that a first nation's chief and council should be accountable to their own members and not to third party interest groups who have no

day-to-day involvement in the governing of the nation. We would argue that there are organizations out there that perhaps don't always come at this with goodwill, and it's more appropriate that these documents be made available to members but not to other outside third parties.

The Chair: Thank you, Ms. Crowder.

I should make people aware that if NDP-11 passes, NDP-12 as well as LIB-13 would be in conflict and therefore not votable.

Go ahead, Mr. Rickford.

Mr. Greg Rickford: With respect, Mr. Chair, the purpose of this bill is to provide for the public disclosure of the audited consolidated financial statements and the schedule of remuneration and expenses. Clause 7 already provides for the provision of the documents to members of the first nations, so this amendment would be duplicative.

The phrase “if practicable” in paragraph (a) of the amendment and the phrase “determined to be suitable” in paragraph (b) could lead to very different interpretations and could lead to the purpose of the bill not being achieved.

Furthermore, Mr. Chair, the bill already provides for ways in which first nations who do not have a website can have another organization or the department post these documents on their behalf, which will help to address the practicability of the requirement to publish via the Internet.

For those reasons, we'll be opposing this motion.

The Chair: Go ahead, Mrs. Hughes.

Mrs. Carol Hughes: For me the question is that without some safeguard like this in place, the bill in its current form again speaks to the competitiveness that first nations would be faced with first of all, the issue of being able to compete, as well as to the situation of people who may be trying to advance themselves.

If anything, I think we're hindering the ability for some first nations to have that competitiveness. We're trying to push these first nations to put this on other people's websites, other organizations' websites, and I think that is not what first nations wanted.

Therefore, I won't be supporting the government's stance on this, and I'll certainly be supporting the NDP's view.

The Chair: Thank you.

Not seeing any additional speakers to NDP-11, we'll move to a vote.

(Amendment negated)

The Chair: Now we go to NDP-12. Ms. Crowder, why don't you move NDP-12?

Ms. Jean Crowder: I thought NDP-12 and NDP-13 were gone.

The Chair: No. Because NDP-11 was defeated, there is no line conflict.

Ms. Jean Crowder: Sorry.

“To be published on an Internet site within a reasonable time” is again looking at capacity within bands about what they're able to do. There needs to be some latitude, particularly since funding for tribal councils has been reduced, which is one of the avenues where first nations governance get their support.

The Chair: I should point out that if NDP-12 is passed, it would rule out the ability for LIB-13 to be moved.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: Next is LIB-13. I do have a ruling as it relates to this so, Ms. Bennett, did you want to move LIB-13?

• (1715)

Hon. Carolyn Bennett: Didn't you just rule that out?

The Chair: I have not yet. No—

Hon. Carolyn Bennett: I'm finding all the subjunctives very hard. All the “ifs” are very surprising.

The Chair: I should have been clearer. Because amendments NDP-11 and NDP-12 failed, you're therefore able to move amendment LIB-13.

Hon. Carolyn Bennett: Thank you.

Maybe lightning will strike a couple of members on the other side.

Some hon. members: Oh, oh!

Hon. Carolyn Bennett: Well, it would be thorough for me to move it, sir, with its predictable outcome—demise.

The Chair: It is so moved, and unfortunately, we may not see.... It may be less predictable, because I have a ruling on this particular motion.

Bill C-27 enhances the financial accountability and transparency of first nations. This amendment proposes to restrict public access to certain disclosures to members of the first nations only.

As the *House of Commons Procedure and Practice*, second edition, states on page 766:

An amendment to a bill that was referred to committee after second reading is out of order if it is beyond the scope and the principle of the bill.

In the opinion of the chair, the creation of a restriction to the act is contrary to the public principle of the Bill C-27; therefore, it is inadmissible.

Amendment NDP-13 is the next that we'll consider.

Ms. Jean Crowder: I move that Bill C-27, in clause 8, be amended by deleting lines 14 to 16 on page 4.

This particular section of the bill refers to documents that must remain accessible to the public, on an Internet site, for at least 10 years. That seems an unreasonable length of time. The last time I checked, Canada Revenue Agency goes back only seven years, so I'm not sure why we would ask first nations to go back 10 years on this.

It seems like an unreasonable request, so I would recommend that we delete that section of the bill.

The Chair: I'll just note for colleagues that because amendments NDP-13 and LIB-14 are almost identical, if NDP-13 fails or passes, we will consider LIB-14 dealt with.

Mr. Rickford, go ahead.

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

With respect, a minimum timeframe is required to ensure the documents are easily accessible over a period of time and to ensure that the documents are not posted for an overly brief period to technically comply with the legislation.

To the member's point, the 10-year period is consistent with the standard recognized in most jurisdictions, and by our department, for the retention of financial documents.

For those reasons, we will be unable to support her motion.

The Chair: Seeing no additional speakers, we will now vote on amendment NDP-13.

(Amendment negatived)

Therefore, amendment LIB-14 is also disposed of.

We'll look to amendment LIB-15.

Ms. Bennett, go ahead.

Hon. Carolyn Bennett: This amendment narrows it such that nations are allowed to mail or drop off the documents rather than create and maintain a website.

The Chair: Mr. Rickford, go ahead.

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

With respect, the purpose of the bill is to provide for the public disclosure of audited consolidated financial statements and the schedule of remuneration and expenses. This brings the public disclosure requirements of first nation governments in line with other governments in Canada. This motion would effectively make it optional for first nations to make these documents available to the public, thereby not achieving the bill's purpose.

For those reasons, we'll be unable to support that motion.

The Chair: Ms. Hughes, go ahead.

Mrs. Carol Hughes: I want to add my support for this amendment, with respect to the fact that not all first nations have access to resources in the same way that the rest of the governments across Canada do, and the Government of Canada.

I would support this motion.

The Chair: Ms. Crowder, go ahead.

Ms. Jean Crowder: Access to Internet resources is very uneven, particularly in rural and remote communities and actually not in such rural and remote communities.

My riding of Nanaimo—Cowichan on Vancouver Island is not remote, although there are rural aspects of it. If you're a kilometre off the highway, you don't have access to high-speed Internet, and we're only an hour north of Victoria.

It's crazy to think that everybody is going to have access to Internet. Band members can't afford computers in many cases, and since the CAP program has been cancelled, they aren't even able to go into public libraries to access the Internet there.

It's an unreasonable request, so I fully support Ms. Bennett's amendment.

• (1720)

The Chair: Seeing nobody else seeking to speak to amendment LIB-15, we'll move to a vote.

(Amendment negated [See *Minutes of Proceedings*])

(Clause 8 agreed to)

(On clause 9—*Internet site — Minister*)

The Chair: We are on clause 9 and amendment LIB-16.

Go ahead, Ms. Bennett.

Hon. Carolyn Bennett: We are suggesting that it require permission of the first nation for the minister or ministry to publish, as is now done through their contribution agreement. It just seems respectful that the department not get to put anything up on the website without the permission of the first nation.

The Chair: Thank you, Mrs. Bennett.

I should point out to colleagues that if amendment LIB-16 carries, then LIB-17 will not be admissible, because it would be in line conflict.

Is there anybody who wants to speak to amendment LIB-16?

Ms. Hughes, go ahead.

Mrs. Carol Hughes: I just want to get some clarification, maybe from the department.

If a first nation doesn't have the resources to put this up on a website because they don't have a website, will the Government of Canada put it up on their website?

An hon. member: Yes.

(Amendment negated [See *Minutes of Proceedings*])

The Chair: Amendment LIB-17 now can be moved, because amendment LIB-16 was defeated.

Go ahead, Ms. Bennett.

Hon. Carolyn Bennett: I think it's linked with the defeated one, but we're just saying again that we would replace it with the "Internet site of Aboriginal Affairs and Northern Development Canada without delay after", with permission.

The Chair: Thank you, Ms. Bennett.

(Amendment negated [See *Minutes of Proceedings*])

(Clause 9 agreed to)

The Chair: Looking to clause 10—

Pardon me.

Do you have a comment, Ms. Crowder?

Ms. Jean Crowder: I'm sorry. It's a minor thing about clause 9, which just carried. It says, "The Minister must publish the documents referred to...on the Department of Indian Affairs and Northern Development's Internet site...".

Should it not say the new name?

The Chair: This may be a question to the department. My understanding is—

Mr. Karl Jacques: The legal name is still Indian Affairs.

Ms. Jean Crowder: Oh, okay.

The Chair: Thank you for that clarification.

We'll look to clause 10.

Because the only amendment that was provided on this clause was defeated earlier, we'll go to the question on clause 10 in its entirety.

(Clause 10 agreed to)

(Clauses 11 and 12 agreed to)

(On clause 13—*Power — Minister*)

The Chair: On clause 13, amendment NDP-15 is the first amendment.

Ms. Jean Crowder: I move that Bill C-27, in clause 13, be amended by deleting lines 12 to 20 on page 5.

This is with regard to the ability of the department to withhold moneys payable as a grant or contribution and so on, if any breach occurs. There are any number of problems with this particular clause.

I understand from the department that this wouldn't affect delivery of health and social services and water and such things, but it still doesn't seem respectful of a new relationship or a nation-to-nation relationship. I'm hopeful that there would be many other attempts to work this out before moneys are cut off.

• (1725)

The Chair: I have Mr. Rickford and then Mrs. Hughes.

Mr. Greg Rickford: With respect, the measures laid out are required to ensure that first nations comply with the act. These provisions reflect those that are already found in the funding agreements between first nations and Aboriginal Affairs and Northern Development Canada. Should this motion be adopted, subclause 13(1) would need to be amended to delete the words "take one or more of the following measures", so for that reason we will not be able to support this motion.

Mrs. Carol Hughes: Again, I think the fact of the matter, as he's mentioned, is that when they get funding, they already report on that funding to the department. I don't think you should be penalizing them if they don't happen to get this on the website. The department has the information. They could certainly release the information about that particular funding.

We have first nations who are having a lot of difficulties in some areas, who are already underfunded by this government with respect to their services, whether it be education or whether it be child care, and we're once again saying that we're going to withhold funds if they don't put this.... It's not through any fault of their own if there may be some difficulty with the council that has been elected or if there's capacity or tools missing, so again I ask you to reconsider and to support NDP-15.

Thank you.

The Chair: Seeing no additional speakers, I ask all those in favour of NDP-15 to please signify.

(Amendment negated)

The Chair: We are now looking at NDP-16.

Ms. Jean Crowder: Again, this is more along the same lines. In this particular case, what we would be looking to do is delete paragraph 13(1)(c), which says, "terminate any agreement referred to in paragraph (b)". Again, it's the same line. It's a paternalistic approach to a nation-to-nation relationship.

As was pointed out in relation to an earlier clause of this bill, if the documents aren't published, the department can publish them on their site, so to take a heavy-handed approach of terminating agreements because the first nation didn't comply simply doesn't make any sense.

The Chair: Not seeing any speakers to NDP-16, I will ask all those in favour of the motion to so indicate.

(Amendment negated [See *Minutes of Proceedings*])

The Chair: Next is NDP-17.

Ms. Jean Crowder: NDP-17 is, again, amending clause 13 by deleting lines 23 to 26. This is in the same vein. It's "an amount withheld under paragraph 13(1)(b) is deemed to be an amount that is due or owing for the purposes of section 37.1 of the Financial Administration Act".

I've already presented the argument about why I don't think this whole administrative measure should go forward, so I would urge all members to support NDP-17.

Mrs. Carol Hughes: I was wondering about something in relation to this one as well as in relation to some of the other ones that were defeated: if first nations don't have the capacity to do this because some of them are fairly small first nations and there are not a lot of people in that community, will you provide them with the people resources to help them through it?

Mr. Andrew Francis: In terms of posting it online, which the department will do, or...?

Mrs. Carol Hughes: I mean posting them online or getting the information together.

Mr. Andrew Francis: Right now, all the first nations do provide the financial statements to the department, so there's no increased reporting burden on that level.

Mrs. Carol Hughes: How difficult is it for you to compile that information and format the report yourselves?

Mr. Andrew Francis: Do you mean if we were to put together their financial statements?

Whenever it comes to financial statements, for any entity, the management is responsible for what's in those statements. Whether it's a government, first nation, municipality, or publicly traded company, it's management's responsibility for putting those financial statements together.

Of course, they sometimes bring in outside help or have internal resources, and then afterward have auditors review it, if it's that type of financial statement, so—

• (1730)

Mrs. Carol Hughes: I was asking that question because the tribal council cuts will certainly impact some of these first nations, and they are the people the first nations relied on to help them put this together. I wanted to raise that point.

Thank you very much.

The Chair: Thank you, Ms. Hughes.

(Amendment negated [See *Minutes of Proceedings*])

(Clause 13 agreed to)

The Chair: Shall clause 1 carry?

Some hon. members: Agreed.

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

The Chair: Shall I report this bill as amended to the House?

Some hon. members: Agreed.

The Chair: Shall the committee order a reprint of this bill?

Some hon. members: Agreed.

The Chair: Thank you, colleagues.

Thank you to our witnesses. We appreciate that.

Colleagues, I'd like to have a short meeting with the subcommittee members to determine what we're going to do for Wednesday's meeting.

Ms. Crowder, go ahead.

Ms. Jean Crowder: This isn't about Wednesday. When do you want the witnesses for us for the November 19 meeting on Bill C-45?

The Chair: As soon as possible, but that's part of the discussion that we should have as a subcommittee.

We will have a brief get-together now, and then we'll determine how we move forward.

We are going to suspend and clear out the meeting room. I'd like to have a short subcommittee meeting for two minutes.

This meeting is suspended. We'll move in camera.

[Proceedings continue in camera]

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