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Chair

Mr. Chris Warkentin

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•(0845)

[English]

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

This is the 66th meeting of the Standing Committee on Aboriginal Affairs and Northern Development. Today we continue our study on Bill C-428, a private member's bill.

We have Mr. Harold Calla with us this morning. He's back with us on this study, as he's been with us in previous studies. Mr. Calla is chairman of the First Nations Financial Management Board.

Mr. Calla, we thank you for coming. We appreciate your testimony and your willingness to come today.

We'll turn it over to you for the first 10 minutes. Then we'll have some questions for you.

Mr. Harold Calla (Chairman, First Nations Financial Management Board): Thank you, Mr. Chairman.

It's a pleasure to be here again.

I want to start by acknowledging each of you who has the courage to stand for public office and serve this country. I thank you for that.

I'm particularly pleased to have the opportunity to speak to this issue today, because I think we hear a lot of discussion across the country. As an aboriginal person and a member of the Squamish Nation, I've understood the need to move beyond the Indian Act. I think the Indian Act is a document that does not reflect the current state of the law, or the current times, so how we choose to do that is problematic, but I think we have to start. I applaud the effort to begin to look at making changes, many of which need to be made.

I have reviewed the brief of the Canadian Bar Association that was presented to you in April. I can support much, or almost all, of what they say. I will have a look at making some comments in regard to some of those things.

As we look at moving beyond the Indian Act, I think we need to recognize the needs of many different stakeholders. It's not just the first nations community. It's not just the first nations members. It's the regional impacts that decisions made by first nations may have.

I know in eastern Canada it's not as prominent, but in western Canada many first nations communities are in urban areas, and many first nations communities have significant numbers of non-aboriginal members residing on their lands. As we look at how we're going to make changes in section 81 laws, I think we do need to understand that fact.

The other thing we need to appreciate is that first nations governments should not be required to be held to a higher standard than other orders of government in this country. First nations governments need to have the capacity, both human resources and financial, for systems of governance that reflect best practices and that, to the greatest extent possible, reflect the historical perspectives of traits that first nations wish to see themselves governed under.

The ability to sustain the governing model will be fundamental in any changes we want to contemplate. It will create chaos in our communities if we don't have the ability to sustain the governance models that we're proposing. Most importantly, I think it's in the interest of all Canadians, not just aboriginal Canadians but all Canadians, that we look at some systemic change in the relationship that promotes self-reliance and promotes the ability to support building the Canadian economy.

There has been a presentation prepared for you. I'm not going to recite it verbatim, but I think you should appreciate the many section 81 laws. If you look at the scope of section 81 laws in the presentation, they do have impact on those who reside on reserve lands.

What I don't see in this is a process by which bylaws will be developed. Is it a circumstance where five or six of us get together one day at council and decide that we're going to develop and pass a bylaw? I think most systems of modern governance provide for some consultation, some input, and some process by which these laws are proclaimed. I would respectfully suggest that you consider these principles of governance as you look at this legislation.

Those also need to conform to standards. What we're moving to, and what the Financial Management Board is all about, is creating standards so that all stakeholders can appreciate the basis on which they're being dealt with. Notice publication, consultation through public meetings, and those kinds of things would also be very important in the process to developing laws, with several readings. I mean, look at the way you conduct your business. How should it be any different?

We can look at some of the provisions that will undoubtedly be controversial. I want to draw your attention to section 85.1. I have read the Canadian Bar Association's submission to you, and I'm in support of the position they put forward.

I'd just like to remind you all that it is appropriate in this country that other orders of government determine these matters for themselves in terms of where liquor and drugs are to be served. If a first nation community is of an opinion by the majority that they don't want alcohol on the reserve, we should not preclude them from doing that.

• (0850)

One of the things that I think is very burdensome, and perhaps you weren't aware of it, is this concept of publishing laws in a newspaper. Do you do it? No. Is there a place where I, as a Canadian, can go and find out what laws are made and published? Yes. But to put the notion forward that a bylaw, which in some cases can be pretty substantial in terms of its content, needs to be published in a newspaper I think is onerous and unnecessary. Having it available on a website and having it published in the *First Nations Gazette* should deal with all of the matters that need to be dealt with in terms of the public being informed.

I would respectfully suggest that you look at that provision and understand that in that particular case, in my view, you're asking first nations governments to do something that no other order of government is required to do in this country, to my understanding.

I think the matter around trusts and estates is a complicated one. While I appreciate the effort here to start to try to deal with it, I would respectfully request that this is the type of provision that I think needs to be dealt with in the manner that's being proposed by the Canadian Bar Association. You need some enabling position, you need some alternative in place, you need to function under some sort of standard before we make these carte blanche changes, and I think we do have to deal with the reality of many first nations citizens dying intestate. This provision doesn't even remove the responsibilities completely from the minister, in my view.

I would therefore respectfully request that you look at the proposals that have been suggested by the Canadian Bar Association, but that you do move forward. This issue of estates is as difficult as getting a GIC appointment these days.

A little humour, people, come on. I mean, this is 3:30 in the morning for me. I'm from the west coast, so if I can laugh, you can.

Voices: Oh, oh!

Mr. Harold Calla: I think we have to find a more appropriate mechanism to deal with trusts and estates, so I would encourage you to continue to develop that. I'd encourage you to look at some of the provisions that have been suggested by the Canadian Bar Association.

I want to conclude by saying that I applaud the effort to begin to deal with the need to amend the Indian Act. The issues around truancy officers and all of those kinds of things...where it's antiquated, it should be gotten rid of, and I applaud that action. There are some matters that have been raised with you that I ask you to consider, and that you appreciate that you're starting to develop a modern-day first nation government. When you make these decisions you need to be aware of the requirements for a first nation to be able to successfully undertake the responsibilities that are being put upon it. That means human and financial resources. We eventually have to get to the point in this country where we are

discussing a revised fiscal financing arrangement between first nations and other orders of government in Canada. Unfortunately, it doesn't matter what you do here in this legislation; if there isn't a capacity or the resources to be able to do it, it's going to fail, and then we'll all be seen as having failed.

We have to bite it off one piece at a time, whatever we can chew, but we can't lose sight of a much broader objective. I will ask the question I asked the last time I was here. It's really important that we begin to develop a vision of what we want this file to look like in 20 years. We have to take incremental steps to move that, and every incremental step has to be measured against an outcome that we see in 20 years, which I would hope would be more self-reliant first nations contributing to the Canadian economy and having a much better opportunity to be self-governing than they have today.

With that, Mr. Chairman, I'll conclude. Thank you.

• (0855)

The Chair: Thank you, Mr. Calla.

We'll turn it over to our colleagues.

I would only inform you, Mr. Calla, that you have seen a document that we haven't yet seen. The Canadian Bar Association will be coming in a week's time to us. I haven't seen the document formally at the committee level. You may have given it to us, so we'll get that distributed as soon as we possibly can.

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

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

Mr. Calla, we don't have your brief or the document. I think it was likely because it was submitted in English and needed to be translated, so we have not yet had the benefit of either.

The Chair: Ms. Crowder, I've been informed that apparently it has now been posted on the Canadian Bar Association's website, so we will all have access. The Canadian public has access, so I guess we'll have access in that form. It's less conventional than usual, so I thought I'd inform folks of that.

Thanks, Mr. Calla, for drawing that to our attention. We appreciate it.

Ms. Crowder.

Ms. Jean Crowder: Unfortunately, we haven't had the opportunity to review either of those documents in order to pose questions in the context of what you presented, so we may be asking you to repeat some of what was in your document.

Just a point. I think everybody agrees the Indian Act needs to either go or be radically revised. What we've been hearing from a variety of people is around the process. Grave concerns have been raised about the fact that what we have is a private member's bill before the House, a bill that hasn't been brought forward from government and that hasn't had consultation. When you talk about needing to take incremental steps, do you have suggestions on how we can move forward on those incremental steps?

Mr. Harold Calla: I'd just like to ask, why does it take a private member to initiate the action?

Ms. Jean Crowder: That's a very good question. For example, on the section on residential schools, the minister promised to come forward with a government bill to remove those sections of the legislation. So that's a really good question about why it's a private member and not the government.

Mr. Harold Calla: Mr. Chairman, I have been working in this field for 25 years. I've seen and worked with many governments, and I've worked with many good people who have served various parties. This is not a partisan political issue. It is a matter that requires all parties to seize and to support, because in the absence of that all-party support for a change, it doesn't happen.

In the legislation that I've had the opportunity to represent my community as a proponent of—the Land Management Act, the Fiscal and Statistical Management Act, FNCIDA, and FNOGMMMA—we never got anything done if we didn't get all-party support. Even in the years of a majority government we couldn't get legislation passed.

So I would say to you, yes, there does need to be a process. But there are some administrative matters the government has imposed that are onerous and unnecessary, that government has the responsibility to change and Parliament has the responsibility to change. I would encourage you to look at it from that perspective. Is there a much broader discussion around self-government? Absolutely. Do we need to define a process for that? Absolutely.

We also need to recognize that we cannot wait until 600-and-some-odd first nations in this country move lockstep. It has to be enabling and it has to be a process that people feel secure in, and I think all parties need to contribute to that.

● (0900)

Ms. Jean Crowder: Yes, I don't disagree with you on that. And I also don't disagree with you that there should be any expectation that 633 first nations should move lockstep. I think the challenging point always has been that there still needs to be a process where first nations are engaged when significant changes are happening.

I think you rightly point out that of some of the other legislation that parties have supported, the First Nations Oil and Gas Act is a really good example of opt-in legislation. It wasn't legislation that was mandated for every first nations to engage in. The First Nations Land Management Act is another good example: first nations choose whether they're going to participate in that. We've supported that legislation in the past.

We're having difficulty supporting this piece of legislation, again because of the way it was brought forward. You rightly pointed out that there are no resources attached to it, because a private member's bill cannot do that. It can't compel the government to spend money. We know a number of these are going to have impacts on first nations' ability to manage. The issue around newspapers is a good point. You have to pay for the newspaper... There are all kinds of assumptions around that. So we're being challenged by a piece of legislation that, first of all, has some grave errors in it and, secondly, doesn't have much support out there, as far as we can see.

When you talk about administrative matters, are there some key administrative matters that you think could be expedited?

Mr. Harold Calla: Well, I think the whole concept and the time it takes to engage the minister in the approval of bylaws is problematic. You're putting the burden on an individual in the government, regardless of party stripe, which I would find difficult for anyone to fully administer. You could easily get 633 laws a week. So the burden of the minister having this responsibility, in my review, is unreasonable.

Because you've not had the opportunity to review the Canadian Bar Association briefing, you'll find, when you do read it, that in the main it is supported. There are the areas I have discussed in which the Canadian Bar Association feels there needs to be some further work done on this.

Generally, the concept of removing the Minister of Indian Affairs as the truant officer over Indian children...that's a matter that was brought on and imposed by government.

I view this legislation as an initiative by an individual within the parliamentary system to look at some antiquated provisions that no longer apply and to say, as an administrative matter we're going to clean these things up. And I support that.

What I would also support is everybody around this table engaging in a really positive discussion about what you want this file to look like in 20 years and how we start to get there. That's what needs to happen. It is the piecemeal approach to dealing with these things one-off that has created a problem for centuries, and that needs to be addressed.

Ms. Jean Crowder: We would agree that the piecemeal approach is a problem, and we would like to see a more comprehensive approach to dealing with these administrative matters.

Thank you, Mr. Calla.

The Chair: Thank you, Ms. Crowder.

We'll turn now to Mr. Clarke for seven minutes.

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

I'd like to thank the witness for coming in from British Columbia to provide testimony. I'm sure it's got to be very difficult with the time changes.

Mr. Calla, your organization strives to provide the tools and guidance in first nations financial management to reporting systems in order to support economic and community development.

I have a couple of questions. One, how does the Indian Act hinder economic development?

● (0905)

Mr. Harold Calla: I can best describe it by saying that in 1990, when I went to the Bank of Montreal to ask to borrow money, I was asked where the minister was. It was the first time I had ever been addressed that way. I jokingly said I didn't think I was coming to church.

The fact of the matter is, Indians and first nations governments need to be empowered. We don't have the same abilities. It's starting to change. There's been legislation developed that first nations can opt into that is helping do that. But I think the biggest challenge in dealing with the ability to develop an economy is the ability to create regulatory harmony between on-reserve and off-reserve economic development opportunity.

The First Nations Commercial and Industrial Development Act is designed to do some of that, but it deals with the harmonization of laws. It doesn't necessarily deal with the process by which laws are made that a first nation government is going to make. That's one piece that I think we need to pay some attention to.

I see the impediments being the inability of the first nation, as a government, to engage with the mainstream economy without having to deal with the bureaucracy—the minister—being problematic. Access to capital has been a problem. We're in the chicken and egg thing. Where's the money? How do you support capacity development? How do you engage with the mainstream economy? We need to invest in getting first nations to the point where they have an understanding of what it takes to engage with the business world in a global economy as it functions today.

All you need do is look at the \$500 billion in resource and energy initiatives that are implicated by consultation and accommodation in this country to understand the problem, and everybody's trying to find a solution on how to do that.

There's no quick fix. You're going to have to deal with first nations that have an interest, because of opportunity existing within their territories, to engage in processes where that capacity is being developed, and that's what we do at the Financial Management Board with the other institutions under the fiscal management act.

Mr. Rob Clarke: What we're seeing here with the First Nations Land Management Act is how it's taken the Indian Act or gotten rid of a third of it for first nations communities that are willing or actively participating in that program. We see the economic benefits that are affecting them or those individual first nations. With Bill C-428, some of those communities cannot participate under the First Nations Land Management Act. Do you feel that this bill can also assist those first nations that don't readily qualify to participate in the economic developments?

Mr. Harold Calla: Certainly, the ability to pass your own bylaws and not involve the minister will be a help. But at the end of the day, the issue, whether you're waiting 40 days or not, is not going to substantially change that. I think it's the other aspects of your land code and the internal processes that are a strong factor in influencing economic development in aboriginal communities.

I've always been disappointed, as a proponent of the Land Management Act, that we've been challenged in getting first nations, since the inception of the act, to be eligible to become part of it. At some point in time in this country, I say to everybody around this table, because it's not a partisan issue, you have to bite the bullet on the cost it's going to take to get people there. You have to start looking at the benefit. You need to start doing the research on this study. What are the economic impacts of not allowing first nations communities into the system?

I see an announcement in the budget. Well, we now have enough money, and thank you, for another 33 first nations to come under the land management system. Thank you for that, but what are we going to do with the other 90? Why are we waiting for those other 90? What are the fiscal impacts of not moving on those things today? That's the kind of cooperation that I'm saying we need to start to look at. There has to be a rationale. I know it's tough; I'm an accountant. I can appreciate the difficulties we have in this country today, and you, as parliamentarians, need to be prudent in how you utilize scarce resources, but you can't be afraid to make an investment that you know will yield a result. You just have to make sure that result is forthcoming.

● (0910)

Mr. Rob Clarke: You mentioned the First Nations Land Management Act and seeing additional funding for additional willing partners. There have also been individuals out there in our first nations communities who want to participate, and they want to foot the whole cost themselves to participate, but they haven't been accepted. Will this bill be able to allow them, in any way, to participate for economic development, by forming their own bylaws or by removing these outdated sections so they don't have to wait to participate for economic development, such as growing their own crops or selling their own produce? There are just so many different opportunities out there. Sometimes, waiting for ministerial approval up to a year or two years...you get the investors walking away rather than coming to the table.

Mr. Harold Calla: Unless we are able to eliminate the need for the minister and the department to participate in land leasing arrangements, I'm going to say that the answer is no. It's not going to help, because those are some of the more substantive issues that have to be dealt with.

The other is understanding what regulatory harmonization needs to take place to get the highest and best use out of the land. The example I want to use is this: if you're developing market housing on reserve land, you would want some provincial rules of general application around the tenancies act to apply. I don't see this legislation being able to do that in and of itself. Will it improve the opportunity to do some economic development? Absolutely. Will it fill all of the voids? No.

The Chair: We'll turn now to Ms. Bennett for seven minutes.

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

I think we all know that the way forward.... I was very grateful to your 20-year view, that if we don't keep our eye on that strong common purpose of an economy and a self-government that allows for the potential of first nations, we're going to get this wrong. I guess I am concerned, like my colleague from the NDP, that the piecemeal approach, and coming from a private member, is actually distracting us from getting on with a government approach that would receive, I believe, the support of all parties—if the government put in place a process.

The name of the bill is the Indian Act Amendment and Replacement Act, but I don't see any work being done on how it's actually going to get replaced. What you describe is the revised fiscal financial relation between the crown and first nations; it is a piece of work that has to get done.

I hear you saying that biting off one piece at a time is okay to get rid of some of this administrative nonsense, but I also hear that the piecemeal approach hasn't worked in the past and that we've actually got to get going on the big picture.

I guess I'm worried that without that 20-year plan...this bill, which had no consultation before it, which has serious errors—failure faults. Whether it's intoxicants or whether it's posting in newspapers without resources, there are serious errors in this piece.

I think we're going to have to agree to disagree. We don't like this bill and this approach and this kind of time being spent at a parliamentary committee when we think it's something the government should be doing in a proper fashion.

Could you tell me what it would look like in terms of...? Bob Rae tabled a motion giving two years for a first-nations-led process, to figure out what the process would look like to get out from under the Indian Act.

What would be your way to get to that 20-year vision between the crown and first nations?

● (0915)

Mr. Harold Calla: We don't have enough time.

Some hon. members: Oh, oh!

Mr. Harold Calla: Respectfully, I want to say that I think we're losing sight of the fact that, as I see this bill, a lot of it is undoing decisions that were made by previous governments on administrative matters that are no longer relevant. We weren't consulted when they were brought in. We hated them. But the fact of the matter is that they were brought in, and I applaud the effort. Do I wish it had come from a broader spectrum? Absolutely, I do, but at least somebody is taking some action and saying that these things need to be done away with.

I think what is going to be required in the future is for you to understand what's required. A lot of good work was done by the royal commission that has fallen on deaf ears. There was a lot of good work resulting from many court decisions that have defined some of the new relationship issues we're facing. Instead of hiding from those things, we need to embrace them in a modern-day context, in my view—everybody does.

What does it look like, and how do we become involved in the process? You have to become involved with those people who are able and willing and have the capacity to move beyond where they are today. You can't force this on anybody, so it has to be enabling. It's going to require Treasury Board and Finance and the whole discussion around how first nations raise revenue, how they pay for the services they receive. It's not an easy topic.

That's where the consultation in all of this needs to come in. This legislation actually calls for somebody to report to Parliament on the progress towards replacing the Indian Act. I've never, ever seen a

piece of legislation that says somebody should report. Because of the constraint of its being a private member's bill, there isn't the body of work behind this bill to say how it should be done. Respectfully, it's your challenge as parliamentarians—all of you in this room—to develop the process and to make reference to this piece.

Nobody has been willing to take up the challenge. We do little things, and the issue more or less goes away. But it's not quick enough now. We need to be in a position in which everybody demonstrates good faith and we need to get rid of some of the things that today are irritants to first nations.

As you read the Canadian Bar Association document, you'll start to see some of their position and that of the aboriginal law society.

I'm not saying it's the best solution. I'm disappointed, quite frankly, that it took this long and that it takes a private member's bill to do some of this stuff. But don't prejudice the initiative because it is a private member's bill in and of itself, I respectfully ask you. Somebody is doing something, and something is better than nothing.

The Chair: Thank you.

We'll turn now to Mr. Rathgeber for seven minutes.

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Thank you.

Thank you for your testimony.

In your opening comments you indicated that in your opinion first nations ought not to be held to a higher standard of accountability than other levels of government. I'm inclined to agree with that statement, but I'm curious. There are two ways to remedy the situation. One is to bring other levels of government up, or, alternatively, if this piece of legislation were to hold first nations to a higher level of account, to lower them.

I wonder whether you have an opinion as to where the bar ought to be set with respect to all levels of government, agreeing with your proposition that first nations ought to be held to the same level—not higher or lower—of accountability as other government levels.

● (0920)

Mr. Harold Calla: Wow. It's like I'm taking a poison pill here.

First of all, I don't think you can ask first nations to lead. Initially, first nations need to be held accountable at the same level. Does the bar need to be raised? I think if you asked every Canadian...yes, the bar does need to be raised. We have auditors general, we have budget officers, we have all kinds of people who provide oversight to first nations governments, and we see all kinds of challenges that are being raised as a result of that oversight.

Having spent 20 years of my life in and out of Ottawa, and I've been here probably about two months a year since the early nineties, I've had the opportunity to observe our process, unlike most Canadians. I wish it could be less adversarial, because if it were less adversarial we might be able to get some things done.

If there's a problem here, it is that if anyone were to come forward and acknowledge that there needed to be improvements, I wouldn't want to be the government sitting in question period.

This is a matter that everyone has to embrace—saying we want to improve accountability. It can be, but it has to be done in the context of a cooperative effort among all parties in the parliamentary system. Then, as that bar gets raised, other orders of government should also be required to rise to that level. But you can't ask first nations to lead something other orders of government aren't leading, because we don't have the capacity or the resources to do it.

Mr. Brent Rathgeber: Thank you, and I agree with that.

In your answer you mentioned, and I think it's fairly well appreciated, the adversarial nature of aboriginal-federal government relations. Would you also agree that there are adversarial relations within first nations communities themselves, and that they are a significant obstacle to meaningful reform to the Indian Act and to first nations governance generally?

Mr. Harold Calla: Yes, there are differences of opinion. We're no different from any others. The fact that in this country we're all called Indians is a bit of a misnomer. I'm Coast Salish. I'm not Mohawk. There are different traditions, cultures, and approaches. No, we don't all agree. Some of us have treaties; some of us don't. Some of us have different visions of what those treaties were intended to be than others who have treaties. Those of us who don't have treaties have a completely different perspective, so it's always going to be a challenge to create unanimity on any of those issues.

But that doesn't mean you can't move forward with those who can. That's what I say. You can't wait for 633. You have to begin to work with those who have expressed desire, those who have the capacity and the experience to move forward. These matters will eventually find their way. I look at the Land Management Act and the Fiscal and Statistical Management Act. In 1988, when the amendment to the Indian Act on taxation was there, everybody said this would not benefit anybody. Four or five first nations might deal with this. Well, there are 100 first nations in this country now with section 83 laws. There is \$60 million to \$70 million a year going into first nations communities as a consequence of these actions, and it's not seeing a demand being put on the federal government for transfers.

Not everybody in this country has the opportunity to level the property tax or to engage in economic development, and that's the issue we have to deal with. We have to make it in their interest to deal with these issues. I think we're starting to make inroads. The issues between first nations will always be there. If you get to the point in this country where all the provinces are agreeing with one another, I would then hold out hope for first nations, but not today.

Mr. Brent Rathgeber: You said a deficiency in this bill is that it doesn't set out a process for bylaw development. That was 633 first nations. Can one size fit all, or should the bylaw development mechanism be left to first nations to develop? As you said, there is not necessarily unanimity among those 633 nations.

• (0925)

Mr. Harold Calla: As I said before, I would like to see first nations empowered to pass laws that are consistent with standards. That's what we do on the financial management board. There is no reason why you couldn't have standards around governance. Up until a year ago we had a governance institute. There may have been some issues on how it was being managed, but we do need the ability for first nations who are seeking advice on how to develop a governance

structure to get that advice. I think that's a matter that we'd like to address in the future.

Certainly if you were to look at our standards at the financial management board, we deal with some of those issues, but not all of them. They do need to be dealt with. We do need to provide the capacity for first nations who want to move to a process for making laws that reflect best practices to be able to do so.

Mr. Brent Rathgeber: Thank you very much, sir.

The Chair: Thank you, Mr. Rathgeber.

Mr. Genest-Jourdain, we'll turn to you for the next five minutes.

[*Translation*]

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

Mr. Calla, one thing you said during your presentation really struck me. You mentioned by-laws being developed and passed behind closed doors by six or seven people. Has that kind of thing happened before? Have legislative measures and restrictive measures affecting all first nations members been passed without any real involvement from community members?

[*English*]

Mr. Harold Calla: Certainly for those who have self-government agreements, those who have entered into treaty, much of this does apply. There is no ministerial approval required. So yes, there are first nations who have opted into those arrangements that currently are functioning. If you look at Tsawwassen First Nation in British Columbia, as an example, if you look at Westbank, if you look at the Naskapi Cree, if you look at their whole process, it's moving towards this.

What's absent in this is the ability to say—just as you do in the parliamentary system—if I'm going to consider a law, how do I make it known that I'm considering a law? I think we need to have that in this process. I agree with moving the minister outside, but there are stakeholders, many of whom may have financial interests on reserve land, who can be impacted by these laws, and that fact needs to not be ignored. I'm not saying it is, but it needs to be recognized as a potential. For those individuals, in their relationship with that first nation community, it would be beneficial for them to be aware.

[*Translation*]

Mr. Jonathan Genest-Jourdain: Mr. Calla, you also said it was mandatory for by-laws to be published in a medium other than just written newspapers. It is important to take advantage of the Internet and Web sites and other methods to let people know that consultations are being held.

To your knowledge, does this private member's bill, Bill C-428, specifically provide for such measures to ensure optimal participation by communities?

[English]

Mr. Harold Calla: The *First Nations Gazette* has been in existence for quite a number of years. It is not unlike the *Canada Gazette* in many respects, in that it is a place where people can go to determine which laws have been passed. Initially, it was for property taxation laws.

This bill proposes that bylaws be published in that same *First Nations Gazette*, in French and English, and that people will be made aware of it. So, yes, there is an ability for the Canadian public to be made aware that this is a place.... The *First Nations Gazette* is also on the website. It has its own website and it does publish a hard copy. So there is a place to go for these laws to be passed that is not inconsistent with the way other orders of government are published.

There is an unintended consequence here as a result of the fact that if you opt into the fiscal management act, as it is now called, your section 83, all laws come under that. One of the things we have to be certain of is that we're not asking people to go back and publish laws already there. It's a technical issue we can deal with.

The big issue is if you look at my community, Squamish, our zoning bylaws, for example, are about 64 pages long. Are we going to publish those in a newspaper? No, and I don't think anyone intended them to be here. So I think this whole concept of publishing the text of it, giving notice that it might be passed is okay, but publishing that in a newspaper is not reasonable. That needs to be changed. If you have to publish that a law has been passed, okay, but really, most first nations have a website. Having it there and having it in the *First Nations Gazette* should suffice. You shouldn't need anymore.

● (0930)

The Chair: Thank you very much.

We'll now turn to Mr. Rickford for five minutes.

Mr. Greg Rickford (Kenora, CPC): Thanks, Mr. Chair.

Thank you for coming today. It's always a great opportunity to talk to you specifically on the important work your board is doing.

I have five minutes here, so I'm not going to get very far, quite likely, but I am compelled to make some broad observations on the basis of your presentation and some of my colleagues' questions from both sides, which I appreciate very much.

I find this whole debate across the piecemeal versus incremental spectrum, if you will, interesting, probably more as a legal matter but also as a practical matter. As somebody who has spent close to 20 years practising law in first nations communities, this whole notion of a blanket approach within a specified period of time, even if the consultation process is clearly laid out, could spell trouble, given the socio-economic range we're talking about here among the 632 chiefs. As you rightly pointed out, lawyers, doctors, and first nations chiefs have a lot in common. If you put everybody in a room, you're not likely to walk out with one particular perspective—and for very good reasons, I might add.

I obviously side on the piecemeal approach that some sorts of substantive steps have to be taken before major changes occur to the Indian Act, which take a look at the residual conditions that exist so that you know and understand what the Indian Act could or would

look like. What, in fact, by default, is it covering? I feel very strongly about that.

My predecessor in my riding, the former Minister of Indian Affairs, Bob Nault, took some important steps with the first nations governance act. Perhaps, unfortunately, major pieces of that—which I really supported in its totality—didn't end up going through, because of the conditions and political dynamics of the day.

I would also add an interesting point that I haven't heard so far, and that is, the provinces do play a role in this. Some of the discussion around own-source revenue and certain kinds of what one might call legal activities necessarily depend on full cooperation with the provinces, I would say particularly on own-source revenue.

For this idea of things to work, whether the Indian Act exists in part, it is modernization. Rob has taken some important steps I think with respect to residential schools. As a person who negotiated on behalf of more than 900 survivors at the table, I think it is important that we have a first nations person taking that important symbolic step on the residential school piece. I would add, Harold, that there are some pieces of this bill, as it is, on which the government is certainly open to amendments, so some of my questions, as we heard earlier today from across the floor, are chipping away at that, and I think we'll arrive there.

That's a fairly long introduction, but I can see you nodding with some general consensus. You may want to add to that, but before you do, Harold, I would like to put this question to you. In addition to your thoughts on what I've said, and given the strong possibility that this will advance through the process and will become a useful piece of legislation for us, what does your board think is an important next step? You alluded to some of them in your opening presentation, but for practical terms, what do you think would be some important measures?

Perhaps since you've consistently said you want to defuse and depoliticize this, put those thoughts out there.

● (0935)

Mr. Harold Calla: I'd like to see the Financial Management Board, because we exist, or another entity be able to provide certification that a first nation has a government structure in place that is consistent with the principles of modern-day government. That's what I'd like to see.

In terms of your comments, I do agree with you. Sometimes we say a word and we take different meanings from that word. We worked on the legislation of the fiscal management act for 10 years, and we sat down in little back rooms and decided that we thought this would work. We consulted with everybody. Then we implemented it. Now we have to make some amendments, because we found out where it doesn't work. Nothing is ever going to be perfect. That's just the world we live in.

We have to have pieces of an integrated approach, not piecemeal, and pieces of an integrated approach ask what we want this to look like in 10 years and whether we are measuring this action against that intended outcome. That's what I would like to see.

The Chair: Thank you.

We'll turn now to Mr. Bevington for five minutes.

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

Thank you for the very sage comments you made here today on many of these issues.

The problem with this bill is that some of the things that are quite obvious to do away with are supported generally, and I think they're not all that important in that they're not used that much as well, so there are parts of legislation that are antiquated and not likely to be used.

Having read this Canadian Bar Association presentation, it's clear to me that they're not supporting the work on wills and testaments in this bill, and that I think is one of the major elements of this bill. Do we strip this out of the bill, to get rid of some antiquated parts of legislation that aren't really used? Do we go ahead with something that's not going to work quite right in order to change some things that might work okay? What do we do here?

I appreciate the idea of taking the minister out of approving bylaws. I come from the Northwest Territories, where we're desperately trying to get the federal government out of our face completely, so I appreciate the struggles of reserves in having to get bylaws approved through the minister now.

If we don't want to move ahead with wills and testaments because they may upset the apple cart in a greater way with this bill not providing replacement, yet other elements may have some merit in them, how would you suggest this be accomplished?

Mr. Harold Calla: I do have some suggestions, not surprisingly. I think you need to look at point 2 on page 12 of their brief, looking at the coming-into-force provision. It would accomplish the objectives. You would need to establish some opt-in provisions in that clause, to develop the standard for a capacity to be able to deal with these issues.

I think you have to deal with it in this legislation, not strip it out, because in my experience, since 1988, it takes on average 10 years to move an aboriginal issue through the parliamentary process. Go back through every piece of legislation that's ever been done—it takes years. We've got an opportunity here to deal with this in a way that is an irritant to first nations. We haven't got it right today, maybe, but we have the ability to make the kinds of amendments being proposed. Look at the Canadian Bar Association's position in their conclusions and recommendations in their point 2:

If s. 7 is not removed from Bill C-428, that a transition or "coming into force" clause be added stating that s. 7 will not come into force until Parliament has introduced companion legislation to fill the gaps...

Let's get moving on it. Let's not just say, oh, we're going to get rid of this and we're not going to deal with this issue. Put the burden on yourselves to begin to deal with the issues.

● (0940)

Mr. Dennis Bevington: By the same token, as long as there's this coming into force, governments can sit on it as long as they want. Would you propose that there be a timeframe attached to the coming into force? This could sit on the books for years in this form.

Mr. Harold Calla: It could, but I have the greatest confidence in the royal opposition's being able to raise the issue with government to encourage them to act.

Some hon. members: Oh, oh!

Mr. Dennis Bevington: They may be the loyal opposition soon, so—

Some hon. members: Oh, oh!

The Chair: Thank you.

We'll now turn to our final questioner, Ms. Ambler, for five minutes.

Mrs. Stella Ambler (Mississauga South, CPC): Thank you, Mr. Chair, and thank you, Harold, for coming to see us today.

First, thank you for talking about economic independence and making that a focal point of your remarks. In general, would you say that this bill is in line with your hopes for providing this kind of economic independence for first nations, this autonomy, independence?

Mr. Harold Calla: It does, in this context, though, and it's a double-edged sword for you.

Mrs. Stella Ambler: It's never a simple answer, is it?

Mr. Harold Calla: The issue here is if you look again at our presentation, at the scope of section 81 laws, it has significant impact on residents of reserves, some of whom may have substantial investments on reserve, some of whom may reside there. You are eliminating the 40-day period of the minister. You're eliminating the opportunity for somebody to engage in a discussion with those stakeholders on the implications of a proposed bylaw. Respectfully, that needs to be replaced with an alternative engagement process with those stakeholders.

Mrs. Stella Ambler: Do you suggest something specific?

Mr. Harold Calla: I think you need to have a process that is contemplated, for instance, by the tax commission and the work they do around property taxation, where you have consultation with stakeholders. There's an ability to appeal. Look at a local government. Many of these matters that are referred to here in section 81 are responsibilities that ordinarily would fall to a local government. How do municipalities deal with these issues? I think we need to have not dissimilar processes, as these bylaws are developed on first nations lands. I think that would be helpful.

Mrs. Stella Ambler: The difference, though, between a reserve that operates under the Indian Act and a small town, for example, is that small towns don't have to deal with the myriad decisions that are obviously contained under the Indian Act, which the leadership on reserves have to deal with, everything from education to things that are obviously not under normal municipal jurisdiction. One great example of that is this proposal to remove the provision that prohibits the growth and sale of agriculture.

Can you tell us what your organization's position is on that? Do you think it will contribute to the regulatory harmony, or are those two different things?

• (0945)

Mr. Harold Calla: I don't think they're two different things to the extent that the private sector needs to have confidence in your ability to have the authority to undertake the business transaction you're contemplating, whether that is selling group product, leasing land, or developing a building code. The authority of a band council to make those decisions needs to be unquestioned. The ability for others to intervene, as they can now do, on a political basis...and I'm not saying it has happened, but the fact is you've got 40 days. If I believe that my economic interest is going to be impacted as a consequence of a bylaw, I can go and appeal to the minister.

When Squamish entered into the property taxation regime in 1994, I had to come to Ottawa and sit with the Minister of Indian Affairs and the largest tenant in our reserve, the owners of the Park Royal Shopping Centre, to have a discussion about how we would enter property taxation. It was not a bad thing. Now, if we're going to replace that with this legislation in some aspects, all I'm saying is that there will be some in your constituency who might not be happy about that.

Mrs. Stella Ambler: I'm wondering if you provided any of your suggestions, either verbally or in writing, to Mr. Clarke during the consultation phase of his bill. Was this the first we were hearing from you or not?

Mr. Harold Calla: On this bill, yes, it is.

Mrs. Stella Ambler: Okay, good.

Can you tell me if the creation of your First Nations Financial Management Board responds to some of the challenges or problems the Indian Act has created?

Mr. Harold Calla: Yes, it does—significantly. It develops a process by which a first nation gets certified. Its financial performance.... It must have a law. It must have a financial management system. We come back periodically to determine that they are still in compliance with their financial management system.

Mrs. Stella Ambler: Would you have the same role if the act were repealed?

Mr. Harold Calla: Yes.

The Chair: Thank you, Ms. Ambler.

Thank you, Mr. Calla. We appreciate your testimony today, and we thank you for your thoughtful presentation and thoughtful answers to the questions. We all appreciate that. I know it's a service to the folks who will be affected by this that you've come before us and given us those thoughtful answers.

Colleagues, we will now suspend for five minutes, and we'll move back in camera for a committee discussion on future business.

The committee is suspended.

[Proceedings continue in camera]

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