HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Aboriginal Affairs and Northern Development

AANO • NUMBER 067 • 1st SESSION • 41st PARLIAMENT

EVIDENCE

Thursday, April 18, 2013

Chair

Mr. Chris Warkentin

Standing Committee on Aboriginal Affairs and Northern Development

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● (0850)

[*English*]

The Chair (Mr. Chris Warkentin (Peace River, CPC)): Colleagues, I'll call this meeting to order. This is the 67th meeting of the Standing Committee on Aboriginal Affairs and Northern Development. Today we continue our review of Bill C-428.

Today we have before us, for the first hour, witnesses from the Assembly of First Nations. Today we welcome Chief Jody Wilson-Raybould. Thanks so much for joining us. We have Karen Campbell joining as well. Thank you so much for being here.

You're familiar with our process here at committee. We'll turn it over to you for an opening statement of approximately 10 minutes, and then we'll have some questions for you.

Ms. Jody Wilson-Raybould (Regional Chief, British Columbia, Assembly of First Nations): Thank you, Mr. Chair, and thank you, members of the committee, for allowing me some time to present on Bill C-428.

I'm the regional chief for British Columbia and the national portfolio holder for governance at the Assembly of First Nations. I'm happy to be joined here today by Karen Campbell and Alyssa Melnyk from our offices.

Turning to Bill C-428, as set out in the preamble of the bill, there's no question that the Indian Act is "an outdated and colonial statute". On that, we all agree. However, for far too long, our political challenge has been what to do about it: appeal it, amend it, or replace it, and if so, what with? Our challenge has also been to find the courage and the ability to actually do something about it.

In this regard, I commend MP Clarke's leadership in bringing forward this bill to further stimulate the conversation about what actually needs to be done to move forward. Unfortunately, Bill C-428 is not the solution. We need strong and appropriate governance, not tinkering with the Indian Act, creating perhaps the illusion of progress.

The good news is, however, that first nations do have solutions and are making progress in their efforts to move away from the Indian Act, despite progress being far too slow. We need to continue developing our own solutions, building on our success and what we have learned over the past 40 years from those first nations that already are governing outside of the Indian Act, either sectorally or comprehensively through self-government agreements.

Additionally, mechanisms are needed to support our nations, at their option, to move beyond the Indian Act when they are ready, willing, and able to do so. While the preamble of Bill C-428 acknowledges that the Indian Act "does not provide an adequate legislative framework for the development of self-sufficient and prosperous First Nations' communities", the bill itself is not a mechanism that will move us closer to the appropriate legislative framework that would assist our nations in comprehensively moving beyond the Indian Act. Public Bill S-212, An Act providing for the recognition of self-governing First Nations of Canada, was developed to meet this need, a bill I hope at some point I will be presenting on before you.

Bill C-428 is an eclectic bill. In addition to the requirements for the minister to report on progress, moving away from the Indian Act, in clause 2, there are two types of amendments to the Indian Act that are proposed: first, those that repeal and amend sections of the Indian Act that are no longer appropriate in this day and age; and second, amendments that repeal, amend, or add language that would design aspects of our post-colonial world for us. It is the latter group of changes that are problematic. This is all the more significant because the changes would not be optional and would apply to all first nations still governing under the Indian Act.

Unless these clauses of Bill C-428 are amended or removed, this bill should not become law. Ironically, keeping them could even create new problems. I know that a review of the clauses of the bill will take a little bit of time, but I will try to do it in brief, so I hope for and look to the indulgence of the committee.

Looking to clause 2 of the bill, which requires the minister to report to this committee on the work undertaken to develop new legislation to replace the Indian Act, I appreciate the intention; however, this suggests in my view that it could take years until we actually do. Respectfully, this sends the wrong message. We have the solutions now. Personally, I'm less interested in reporting on progress made in developing appropriate federal legislation than simply making progress as the first order of business.

It is equally important, of course, that all first nations know what options are currently available to them, along with the continuum of governance reform and to opening up the post-colonial door, to know what other nations are actually doing on the ground in terms of developing the policy framework for their post-Indian Act world, and further, what work is required. This is why the BCAFN developed our governance tool kit, which provides or includes a comprehensive governance report. Mr. Chair, I do have copies of the tool kit on a USB. With your indulgence, I would like to provide them for the members of the committee.

The report referred to in clause 2 should probably be tabled in Parliament, or it is not just in the interest of this committee. The clause also makes reference to the report being developed "in collaboration with First Nations organizations and other interested parties", but does not define what these organizations are or whom the other interested parties might be.

More generally, what constitutes adequate consultation, and how deep, with respect to developing federal legislation is complicated. What is required depends on the intent of the legislation. Is it enabling, or is it intended to govern first nations, and is it optional?

A more considerate and rigorous approach needs to be developed. Our nations are extremely upset with the consultation processes to date.

Clause 3 amends the definition of "reserves", and is required because of other amendments proposed to the act.

Clause 4 addresses the application of the Indian Act off reserve and removes references to sections of the Indian Act that will be repealed later in the bill.

Clause 5 repeals sections 32 and 33 which, of course, are paternalistic and prohibit a band member, or a band, from selling their animals and crops unless Indian agents approve. All self-government agreements do away with these sections regardless of whether or not the nation assumes jurisdiction over agriculture. These sections should have been repealed years ago.

Clause 6 deals with special reserves. I'm not sure what is intended by this amendment, or why it was proposed. This is a really complicated area of the law and any tinkering with this section could have unintended consequences.

Clause 7 removes those sections of the Indian Act dealing with wills and estates and the descent of property. This is one of the most problematic series of amendments proposed in this bill because jurisdiction for wills and estates would automatically default to the provinces. While some first nations may desire this, simply making provincial law applicable with respect to all Indians with no option would amount to a surrender of jurisdiction and is not appropriate.

Furthermore, this is another very complicated area of the law that is tied to how lands are held and administered by our nations. It really needs to be dealt with at the same time, or after a nation has developed its approach to land management, how lands are held, interest created and registered, and so on. All self-government agreements deal with lands as well as wills and estates.

Clause 8 repeals the sections of the Indian Act that provide for the minister to disallow any bylaw made by a council under section 81 of the Indian Act. While in principle we do not oppose this amendment, in practice it will create challenges if not considered as part of a more comprehensive approach to nation rebuilding.

There is a real question as to how a nation makes its laws in the first place, and the legitimacy of the institutions under the Indian Act making them, and the scope of the law-making powers. There are no procedures in the Indian Act for how nations develop, consider, and make bylaws or laws, perhaps because it was not considered important or necessary due to the minister's power of disallowance. However, our citizens demand that before law-making powers are expanded and exercised by their governments there is an open and transparent process with proper consideration of the policy rationale behind any law. This is good governance.

In contrast to this bill, the approach taken in Bill S-212 is that a first nation will develop its law-making procedures as part of its constitution and this will be part of the self-government proposal that the community, the citizens, will ratify when voting whether or not to move beyond the Indian Act.

The debate we should be having is on what areas of jurisdiction do first nations want or, indeed, need to exercise. Considering the existing Indian Act bylaw-making powers should be part of such broader discussion or debate.

Clause 9 repeals the intoxicants bylaw-making powers in section 85.1 of the Indian Act. In British Columbia, for example, there are 32 first nations who have made bylaws under this section. If you remove this section, the existing bylaws of our nations in this area would be invalid and our nations would lose this power. I am sure this is not the intent of the drafters. This is a power that we need. In fact, we need it expanded. All self-government agreements consider governance over intoxicants. Clause 9 should therefore be deleted.

Clause 10 deals with the publications of bylaws and replaces section 86 of the Indian Act with a requirement that a first nation publish its bylaws on the Internet in the *First Nations Gazette*, which is not a defined term in the bill, and in a local newspaper. Again, the intention is good but the execution is lacking. All comprehensive self-government agreements and sectoral governance arrangements provide for the publication of laws respecting the principle that those who are affected by the law need to have access to the law and can rely on it.

● (0855)

There are different policy considerations for different types of laws, depending on who is subject to them. A number of approaches for publications are used currently. This is one of those areas that our nations need to address when they are rebuilding their institutions of government post-Indian Act. Today there are thousands of first nations bylaws and laws. In B.C. alone, our nations have enacted over 2,500 laws or bylaws. In the future, there will be thousands more.

The suggestion that all these bylaws and laws can be published in a newspaper is, of course, unrealistic. Similarly, whether or not it's appropriate for all first nation bylaws to be published in a single *First Nations Gazette* published by a university law centre under the authority of the tax commission also raises a number of serious policy questions.

Further, clause 10 requires that a bylaw come into force either when it is published on the Internet in the gazette or in a newspaper. Again, this is too simplistic. Laws may come into force on the date set out in the law itself, and not all sections of the law may come into force at the same time. Some laws may require publication before they come into force, and some indeed may come into force when they are published. The rule will depend on the particular law and policy objectives of the government making the law.

Clause 11 repeals section 92 of the Indian Act, which sets out that certain people acting in a fiduciary capacity cannot trade for profit with an Indian unless the minister has given them licence to do so. This section should be repealed and all self-government agreements do this.

Clause 12 is a consequential amendment respecting the seizure of goods. This section would need to be amended if the bylaw on the power to make intoxicants is kept.

Clause 13 deals with fines. I'm not sure why the drafters have the fines going to Her Majesty for the benefit of the band, and not simply the band itself. I would change this, and this is how it is dealt with in self-government agreements.

Clause 14 repeals the offences in section 105 of the Indian Act.

The remaining clauses of the bill, clauses 15 to 19, deal with schools.

The amendments proposed in clauses 15 to 17 would remove all references to religious or charitable organizations, and the operation of residential schools. In my opinion, these amendments should really have been made immediately after the residential school apology.

Clauses 18 and 19 deal with sections 117 to 121 of the Indian Act and address attendance at schools, and truant officers. It conflates these provisions, simply saying that a child is not required to attend school because of sickness, or that they are being home-schooled. We would not object to these changes; however, these are matters that are properly addressed in our own laws dealing with education, and should be considered as part of a broader conversation about how schools and first nations lands are governed and administered.

In conclusion, the bill may be well intentioned, but for the reasons I've set out, it's flawed. If this bill is to proceed further, I would recommend strengthening the preamble. We should also consider more closely with whom the government is consulting in developing its report on progress in moving beyond the Indian Act. Is this a consultation with Parliament or a committee? It should not simply be a progress report on federal legislative initiatives.

As I have stated, I would amend or delete clauses 2, 4, and 13, as discussed. I would delete clauses 3, 5, 7, and 10, as the policy considerations are far more complicated than the solutions suggested in this bill. Changes need to be developed with our nations.

This leaves clause 8, with my caveat that there will be work required by our nations to develop procedures for law-making. Clauses 11, 13, 15, 16, 17, 18, and 19 of the bill for the most part get rid of sections of the Indian Act that should be removed.

Those are my comments, and I look forward to questions from members of the committee.

● (0900)

The Chair: Thank you so much.

We'll begin with Ms. Crowder.

Ms. Jean Crowder (Nanaimo—Cowichan, NDP): Thank you, Mr. Chair, and I want to thank Chief Wilson-Raybould for a very thorough presentation. Is that presentation going to be made available to the committee?

Ms. Jody Wilson-Raybould: It certainly can be.

Ms. Jean Crowder: Great, because that actually outlines a number of proposed changes and deletions, and it's a very thorough analysis.

Just so I understand, if the proposed deletions and amendments are made, there are certain parts of this bill that you do support, as you've outlined.

One of the things you mentioned in your presentation is that there are many examples of nations that have developed their own solutions or that are currently governing outside of the Indian Act. My understanding of what you were saying is that it would be useful to be able to provide those very good practices to other first nations. Is that correct?

Ms. Jody Wilson-Raybould: Absolutely, I would agree with that.

In terms of moving beyond the Indian Act in a meaningful way, while there can be from the federal government legislation that is enabling in nature, to substantively and concretely move away from the Indian Act based upon priorities of individual communities, that work has to and must be directed by the citizens of the individual nations.

What we've sought to do at the BCAFN and at the Assembly of First Nations is to share the information between and among our nations about what nations are doing practically to move beyond the Indian Act.

Yes, I agree with your contention.

● (0905)

Ms. Jean Crowder: In terms of supporting nations around sharing those practices and governance models, is there something we could recommend?

Ms. Jody Wilson-Raybould: I think sharing that information is the biggest opportunity we have, not only between and among our nations, but as Canadians generally.

In terms of a recommendation from this committee, it would be to have a clear idea of what options are available out there and what first nations are actually doing, and whether this be by way of a study or a recommendation of a study across the country, be open to those recommendations and the voices and initiatives first nations are bringing forward.

I think the comprehensive work, in terms of an analysis of what we're doing in British Columbia as first nations, has without question proved entirely useful to our communities and the broader public. Such a comprehensive study across the country would, in my view, certainly advance this work in a really substantial way.

Ms. Jean Crowder: You're absolutely correct. There are a number of nations that have very high standards of practices in place.

I want to touch on the part on the changes to special reserves, which I can't find right now. One of our previous witnesses had pointed out that because of the slow process around additions to reserves and the complications around them, one of the suggestions was that this particular section of the act needed to be carefully considered before it was repealed. It is another mechanism to allow nations to add lands under the special reserve category rather than under the additions to reserve, and it could be less cumbersome.

Have you had a chance to analyze it from that perspective?

Ms. Jody Wilson-Raybould: To answer your question, no, not from that perspective, but that's an interesting reflection.

To repeat, I'm not exactly sure what the intention was here in terms of special reserves, but what this seeks to do is limit the special reserves that exist, and limit it only to those reserves that existed prior to this bill coming into law, if it does. They wouldn't carry on into the future.

The challenge with this particular piece is that on reserves there are many ways in which the lands are held or how title is held, whether it be through Her Majesty or the provincial governments. The reality, or what we're seeking to do—and special reserves weren't contained within the framework agreement on first nations land management, for example—is we are looking to establish governance mechanisms over that land, in terms of what's appropriate for first nations.

It's an interesting question, in terms of what you pose around additions to reserves. Certainly it has been a challenge for our nations to ensure that when land is either purchased or achieved through a settlement, there be the ability to add lands to the reserve that doesn't take some two to fifteen years.

Ms. Jean Crowder: We heard from Mr. Calla on Tuesday that one thing the committee might want to look at is the mechanism by which municipalities publish their bylaws. Have you had an opportunity to look at that, because you're right, the requirements in this legislation are something that no other level of government is required to do in that fashion. Have you had an opportunity to look at municipalities?

Ms. Jody Wilson-Raybould: Not specifically municipalities, but we recognize there are provisions on how they notify and provide to citizens or constituents the laws. In terms of what first nations have done, whether it be in sectoral arrangements or comprehensive self-government arrangements, the mechanisms are quite different. They may be available on a computer in a government office for citizens to come in and download; they may be as they are in the First Nations Land Management Act, the First Nations Fiscal and Statistical Management Act. Laws that are passed there, i.e., a land code or a financial administration law, are in fact published in the *First Nations Gazette*.

For our part as individual first nations we have differing ways about how we go about ensuring that our constituents, that are subject to the laws, are provided with the ability to have access to them. That might be by way of having them in our government offices available for the taking and publishing on our website. For the most part, that has proved effective in many of the first nations communities that I represent.

● (0910)

Ms. Jean Crowder: Thank you.

The Chair: Mr. Clarke, for seven minutes.

Mr. Rob Clarke (Desnethé—Missinippi—Churchill River, CPC): Thank you very much, Mr. Chair, and thank you to the witnesses for coming in to testify today before the committee.

The true intention of my private member's bill is to bring public awareness and bring this to the forefront, and to have an honest and open debate. The intention of my private member's bill was never to be partisan, but to really discuss how outdated the Indian Act is.

What I've seen throughout the history of the Indian Act, or in a good 20 or 30 years when I've been exposed to it, is I've seen first nations leaders.... At the most recent AFN election, all the candidates for the national chief stated the need to move beyond the Indian Act.

National Chief Shawn Atleo has even stated that the “Indian Act is a 19th century relic which continues to hold us back in delivering better lives for our people.” That was back on December 6, 2011 on the CBC.

As a first nations person, and for a lot of other first nations people, if you're not a first nations person, you really don't understand what a person goes through, the hardships or the barriers that first nations face. You can be exposed to it and you can see it, but if you're not a first nations person, it's difficult to live the day-to-day lives and be treated as a second-class citizen, especially in today's more modern, respectable Canada. As first nations we're not treated the same.

With regard to your testimony today, you've mentioned some of the barriers that first nations face. I'd like to get some clarification. I know you don't speak on behalf of Chief Shawn Atleo, but can you mention some of the barriers he has mentioned or what he has brought up in the past?

Ms. Jody Wilson-Raybould: Thank you for the questions. I'll seek to address the points you raised.

I hear you on how you reflect on the true reasons this bill was brought forward, to increase public awareness and assert that this is not a partisan issue. I subscribe to that same philosophy. I recognize the outstanding question of self-determination and regard the settlement of the land question, whether you have a treaty or not, as the biggest unsettled policy issue in this country. I look to members of Parliament to recognize this as a hugely important non-partisan issue that must be resolved.

I have sought in my career as a politician to move forward not for political gain but for the sake of rebuilding our nations and securing the necessary support and public awareness that this requires. In that sense, I recognize the effort, and it has created dialogue. The dialogue, however, has been going on for a significant amount of time. A tremendous amount of hard work has been undertaken by our first nations. In that work, we are looking to members around this table, as well as to the Prime Minister and his cabinet, to support our nation-rebuilding work. We have raised public awareness and agreed to work in collaboration, without imposing or enforcing provisions that define our post-colonial world for us. We are committed to employing various means and mechanisms such as enabling legislation that will allow first nations to perform the hard and necessary work themselves.

You say you can't understand the situation first nations are in unless you are a first nations person. I find that an interesting comment. While I agree in part, I think we need to ensure there is a broader understanding of the historical realities and the impact of colonialism and colonization on our people. Our people are undertaking the hard work necessary to move forward. The only people who can move us beyond the Indian Act are our own citizens. They are the ones who must direct the change. There's no question about it, though, that decolonization is hard. It means recognizing our national chief and his leadership and supporting our nations in creating the space for them to do what it is they want to do as rights holders and the signatories of treaties. This is our job. He has entrusted me with the portfolio of first nations governance, and it is in that capacity, as a member of a team at the AFN, that I am sitting here to reflect on these important issues.

The barriers are tremendous, but the opportunities far eclipse the strength of the barriers. I hope these issues have been addressed in some of the statements I have made today.

● (0915)

The Chair: Thank you very much.

We'll turn to Ms. Bennett.

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

It seems the government is going to put this bill into law. I guess our job is to figure out what we can learn from the process when a private member's bill comes forward.

To start with, was the AFN consulted on this bill?

Ms. Jody Wilson-Raybould: No.

Hon. Carolyn Bennett: In your vast experience, regional chief, coming to parliamentary committees, do you think a consultation after second reading, when the bill has been voted on in principle, is adequate?

Ms. Jody Wilson-Raybould: Thanks for the question. I'll try to be brief.

Certainly, I do not believe it's adequate consultation. As we know there are legal requirements to consult with our nations, recognizing any potential impact on us by actions of other governments, legislative or otherwise. So there are grades of consultation.

In terms of first nations-led initiatives or legislation, or legislation that seeks to enact a final agreement or a treaty, there is a different level of consultation, a lower level, because those initiatives are developed in partnership with first nations.

For legislation that's government led—I recognize that this is a private member's bill, the member coming from the Conservative Party, and that this bill is and has been publicly supported by government. The provisions within this bill are not optional to our nations, and therein lies the way that consultation requirements are increased, and increased substantially to the point where there is a requirement for deep consultation with our nations, given that there will be a direct impact on each of our individual communities.

Again, to speak to your question, there has not been adequate consultation.

● (0920)

Hon. Carolyn Bennett: In what we could learn from this...and I think most of us on this side feel that this is unfortunately prescriptive and that it is, in fact, paternalistic to actually prescribe what needs to be done without adequate consultation. It is tinkering, as you stated.

I guess there are two things. Could you outline, in terms of what the national chief has described in creating a space to do this properly, what that would look like, and how you would suggest this go forward in replacing this colonial document?

Second, based on your testimony, and seeing that we're stuck with this thing anyway, would you help create the amendments that would at least get rid of the egregious parts of this bill?

Ms. Jody Wilson-Raybould: Thank you for the question.

Again, I recognize there is quite a significant level of prescription contained within this bill, in terms of very substantial and fundamentally complicated areas of law that our nations have considered over the course of decades. As I said, and you reiterated, it is tinkering. It's looking at creating amendments to the Indian Act in a piecemeal fashion.

Whether it's this bill or other bills that have been government led, it certainly raises issues and the reality of certain areas that need to be addressed by our nations, but not in a piecemeal or a tinkering way. What our nations are doing right across this country in varying ways is looking comprehensively at moving beyond the Indian Act, not specifically at jurisdictions that we could potentially decide to draw down or not, but at the ability and having success in creating the institutions of government that we need but don't exist right now, that are not defined in any way, shape, or form within the Indian Act. That's a lot of hard and tough work we're undertaking that we all need to know and recognize.

To your question about how we move forward, I view governance and governance reform along a continuum, and this is reflected in our governance tool kit. There are ways that first nations are moving forward with governance by way of sections in the Indian Act that provide for the power to make bylaws. There are substantial examples of how first nations are doing that right now sectorally, whether it be with respect to lands, financial arrangements, or in the area of education, to moving down the continuum in terms of self-government arrangements, whether they be inside a treaty or a stand-alone bilateral self-government arrangement.

There are many examples that exist out there. The way forward, in my view, and how we've sought to structure the work of our organization to support those nations, is to ensure that when a first nation is ready, willing, and able to do something to move down that continuum, whether it be sectorally, or to create their own constitutions through the direction of their citizens, that the mechanisms are available to create the space to enable them to do that.

Currently with sectoral arrangements, although recognizing the government has provided for new entrants into the framework agreement on first nations land management, the federal government still, for the most part, acts as gatekeepers to our liberation, as I call it, when a first nation wants to do *x, y* or *z*. Our role, and the national chiefs' role as leaders, as not being the rights holders, is to create that space. That is what we're certainly doing here today, and we're looking to our crown partners to assist us and collaborate in that.

In terms of your last question on helping to create amendments, recognizing and with the caveat that there are serious challenges within this bill, there are some sections, as I referenced, that clearly do not belong in the Indian Act in this day and age. I would be pleased to assist in making those necessary amendments. However, the context of moving beyond the Indian Act must and should be considered through the lens of what our nations are actually doing and not be prescribed.

● (0925)

The Chair: Thank you.

Mr. Boughen now for seven minutes.

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

My thanks, along with my colleagues, to you folks for being with us this morning and sharing part of your day with us. We appreciate that.

One of the clauses of Mr. Clarke's bill deals with publication of bylaws in the House. There are about three questions around that.

Do you think the clause of the bill that removes the ability of the minister to avoid wills helps to restore the responsibility to where it belongs?

Ms. Jody Wilson-Raybould: No. I think the provision dealing with wills and estates simply transfers that ability to another level of government, without the consent of first nations, and invokes section 88 of the Indian Act to referentially incorporate provincial law. That may be the choice of a first nation, but the first nation must be provided with the options to decide. In doing so, if this bill were to become law, it would create many interjurisdictional challenges beyond actually determining who or if anybody should approve a law.

I think what you're leading to is the reality that first nations should decide, based upon their culture, their priorities, their laws, that they've created around residency or land tenure systems on reserves. They should create those laws, bearing in mind their specific geographical realities, their culture, etc.

Mr. Ray Boughen: Another provision of the bill would see first nations publish their bylaws in a conspicuous place, like a newsletter or a website.

What's your feeling on that?

Ms. Jody Wilson-Raybould: If Bill C-428 were passed, first nations would have to publish their laws in the local newspaper, on the Internet, and in what is called the *First Nations Gazette*.

As I stated, publishing bylaws or laws, which could be 10 to 20 pages long, in a newspaper is simply not practical. There are very overwhelming costs associated with it. I agree that...and many first nations have undertaken to publish their laws and their bylaws on the Internet and make them available to their constituents.

Again, as I referenced in terms of the *First Nations Gazette*, first nations publish their laws right now in that gazette. But the reality, and the optimism I have for our post-colonial transition or our nation rebuilding is that there are going to be tens of thousands of laws made by our nations. Prescribing that they be put in newspapers or in one place would certainly be unmanageable.

Mr. Ray Boughen: As a part B to that question, would you say this measure reflects the national chief's statement of the first nations creating accountability between first nations government and their own citizens?

Ms. Jody Wilson-Raybould: I'm not sure of the context of that comment that the national chief spoke about. It could have been in many contexts, whether in terms of first nations developing financial transparency and accountability, which we have committed to do and are doing through the development of financial administration laws, or otherwise.

I know that our nations, although it's not prescribed within the Indian Act, ascribe to the principle of fairness, that those who are subject to the law should be able to access a law and know what it says. In that sense, our first nations are already undertaking to ensure there is that transparency of the law. Quite frankly, our citizens demand it of leaders.

Mr. Ray Boughen: All right. Good show.

How do you imagine the publication of bylaws working? Right now the bill would require first nations to publish the bylaws on the first nations website, in the *First Nations Gazette*, and in a newspaper that has general circulation.

Would it be sufficient to publish the bylaws in only one of those recommended places?

A voice: Is that someone's cellphone?

● (0930)

Ms. Jody Wilson-Raybould: I think that was *The Empire Strikes Back*. I don't know what that means about your question, sir, but....

A voice: He's putting it to music.

Voices: Oh, oh!

An hon. member: I'm a *Star Wars* fan; I'm sorry.

Ms. Jody Wilson-Raybould: To your point, and I recognize the importance of the question, the first nations ability to create laws and determine how they do that should also, and do, provide the means or the mechanism for which those laws are published. They could be on the Internet, and for a lot of first nations that is the medium that is used.

But the choice should be, given the state and the knowledge of a community, the choice of that individual community in terms of what is the most impactful and transparent and accountable way to ensure that it's disclosed to those people who are subject to it.

Mr. Ray Boughen: How's my time, Chair?

The Chair: You're pretty well done, so we'll move on.

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

[*Translation*]

Mr. Jonathan Genest-Jourdain (Manicouagan, NDP): Good morning, Chief Wilson-Raybould.

During your presentation, you said that the negative effects could be associated with the fact that provincial rules are being applied to the reality of communities governed by the Indian Act—more specifically in the area of wills and estates.

Could you elaborate on your position?

[*English*]

Ms. Jody Wilson-Raybould: Thank you for the question.

This is a fairly complicated area of law which first nations have considered over years and decades. The complication arises in imposing the transfer of jurisdiction or authority from the federal government to the provincial government. While that may be a decision that a first nation makes, imposing it creates tremendous challenges, in that to isolate a specific jurisdiction, such as wills and estates, does exactly that: it isolates it from the important matters that first nations have also considered and that must be considered together, involving their laws over land and how they deal with non-members on their reserve lands and how land is held and transferred. Issues such as matrimonial real property which is contained in Bill S-2, come into play here as well and certainly can't be considered in isolation.

The impact of transferring this jurisdiction to the provinces creates a challenge for enforcement of provincial jurisdiction or of a provision that does not address the reality of how the land is still held on reserve under federal jurisdiction. It brings up the interjurisdictional wrangling that will have to be resolved, on top of the challenge we have that there isn't any clearly defined way for first nations to do this under the Indian Act right now and the challenges that this creates.

There are additional challenges in terms of access to appropriate persons, whether they be lawyers or others, to assist in wills and estate areas. There is an added challenge of getting access to adjudication around those challenges as well.

[*Translation*]

Mr. Jonathan Genest-Jourdain: How many minutes do I have left?

[*English*]

The Chair: You have about two minutes.

[*Translation*]

Mr. Jonathan Genest-Jourdain: Okay. I will share my speaking time with my colleague.

[*English*]

Ms. Jean Crowder: Have you had an opportunity to look at the analysis the Canadian Bar Association did? Their particular section on wills and estates is very thorough and points to a number of very serious problems with regard to this section, including the lack of recognition around customary adoptions.

Have you had an opportunity to take a look at the impact on nations of the customary adoption section?

Ms. Jody Wilson-Raybould: To a certain degree I have, yes, and I have read the analysis by CBA. Quite rightly they point out many of the challenges contained within these provisions or that will result when this bill comes into law.

Questions around customary adoptions and this particular area of jurisdiction really highlight the reality that first nations are unique, in spite of our commonality of approaches and of viewing ways forward. They have traditions, cultures, and differing approaches to exercising our right of self-determination. There must be mechanisms in place to support our first nations in moving down the road of defining how laws will be made and how they will be reflective of the realities we have and the priorities that our communities direct.

Customary adoptions, although recognized in certain regions of the country, aren't recognized in others. This issue really highlights the prescriptive nature of the Indian Act and the challenge of dismantling it and putting in place our own laws, reflecting our own culture and traditions. This is the challenge that we have, and certainly the challenge that has been taken up by many first nations.

● (0935)

The Chair: We'll turn to Mr. Rathgeber now for the next five minutes.

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

Thank you for your attendance here this morning and for your very interesting testimony. I want to follow up regarding some previous comments you made with respect to consultation, specifically consultation regarding this bill, Bill C-428.

The courts and practice have indicated that consultation with first nations is a requirement. From your perspective, when has that duty been complied with?

Ms. Jody Wilson-Raybould: Of course, the duty of consultation, as I said, comes in many different forms, and the requirement for consultation has a range.

In terms of fundamental aspects impacting upon first nations from bills such as this that are imposed upon our first nations, the requirement for consultation is extremely high and deep, as they call it. While it may be difficult to speak to every first nation in the country, there is a need to ensure that first nations' voices are heard and that every effort is made to speak with those first nations who hold the rights and will be impacted.

Mr. Brent Rathgeber: I agree with all of that, but with over 600 first nations, as you indicated in your last comment, it's impractical to consult with all 600-plus first nations.

Is it sufficient that consultation take place with the Assembly of First Nations, or, if you have to consult directly with chiefs and first nations, when has that duty been fulfilled? What does “high and deep” mean?

Ms. Jody Wilson-Raybould: I would submit that it's not sufficient simply to consult with representative organizations; however, representative organizations, as is expressed within an article in the United Nations declaration, have a role to play.

Certainly I recognize, as a leader myself who has been elected by a significant majority of first nations in my province, that I have the opportunity and the responsibility to provide my first nations with information that is out there. At the same time, I never move forward, in my role, to purport to speak on behalf of individual rights holders, but recognize that there must be engagement mechanisms that respect the high duty of consultation enjoined upon our first nations.

I know that you're looking for a specific answer about when consultation is enough. This is something that must be determined by first nations and must be determined—and can be determined quite easily, if the initiative or piece of legislation is developed in concert with our nations.... If it is developed in partnership from the very beginning, then the consultation, as mechanisms or requirements, is significantly reduced, because there is a partnership collaborative approach, in that sense.

Mr. Brent Rathgeber: You hold the office of regional chief for British Columbia with the AFN. Is that correct?

Ms. Jody Wilson-Raybould: Yes.

Mr. Brent Rathgeber: Are you aware that consultation with the Assembly of First Nations was conducted by Mr. Clarke in the preparation of this bill?

● (0940)

Ms. Jody Wilson-Raybould: There was no consultation with the AFN with respect to this bill, and zero consultation is simply not legitimate.

Mr. Brent Rathgeber: I understand that the policy adviser for the AFN has met with Mr. Clarke, in fact twice. Do you have information to suggest that my information is somehow faulty?

Ms. Jody Wilson-Raybould: I hear what you're saying. As the portfolio lead for governance, and being accompanied here by some policy staff from the Assembly of First Nations, I can say that simply is not the case.

Mr. Brent Rathgeber: Who is the policy adviser for the Assembly of First Nations? Is that person a recognized office holder?

Ms. Jody Wilson-Raybould: We have several of them. One is sitting to my left right now.

Mr. Brent Rathgeber: You have several. Okay.

I also understand, and you may or may not have information, that an invitation was sent to Grand Chief Atleo, but that the invitation was never taken up.

Do you know whether or not that's true?

Ms. Jody Wilson-Raybould: As I said before.... Maybe I'll just step back a bit.

Consultation, in the question that you raise, is certainly a question of degrees and a question of the relationship that we have between and among ourselves as first nations and with other governments. To speculate about whether or not something took place with the national chief, honestly, you'd have to ask him that.

The reality, as I've stated, is that I sit in this seat as not only the regional chief for British Columbia but as the national portfolio holder for governance for the Assembly of First Nations. Certainly, as elected leaders and as a national executive, we take direction from our chiefs in assembly. We have been provided with direction in terms of lots of different areas, including governance and governance reform, and certainly with respect to imposed pieces of legislation that come before this committee or others.

Mr. Brent Rathgeber: Thank you.

The Chair: We have Mr. Bevington for five minutes.

Mr. Dennis Bevington (Western Arctic, NDP): Ms. Wilson-Raybould, it's great to see you here again. I always appreciate your testimony here.

I think you've characterized this bill correctly the way you've laid it out. There are a number of antiquated things that could be taken out of the act, and no one would complain at all. My question on that is: are those statutes in use in any way? Have you heard of them being used to inhibit first nations activities in any way, or are they simply parts of laws to which no attention is paid any more?

Ms. Jody Wilson-Raybould: There are provisions, some problematic provisions in the legislation, certainly, that our nations are seeking to remove themselves from by exercising self-government or creating self-government. One example would be wills and estates. There are provisions contained in there that restrict trade and barter of produce. Those provisions have fallen into disuse by virtue of the fact that the minister is providing a blanket exemption to those provisions. Essentially, although they remain on the books, they are of no force and effect. First nations in Alberta, Saskatchewan, and Manitoba are of course exercising that ability.

Mr. Dennis Bevington: The one that kind of bothers me, and not just the only one—and we haven't talked much about it—is the prohibition of intoxicants. In the Northwest Territories and Nunavut —I'm not too sure about Yukon—all communities, first nations communities as well as others, have the ability to declare themselves through plebiscite to be dry communities, or any gradient of that from wet to dry. This is a very, very important part of the legislation for those communities. There's no question about it. If this bill passed, does that mean reserves across the country are going to completely lose the ability to say what level of intoxicants are permitted in their communities?

Ms. Jody Wilson-Raybould: Yes. In British Columbia, as I said, we have 32 bylaws around intoxicants. I know the number surpasses 250 across the country. If this bill is passed in its current form, that would render those bylaws essentially of no force and effect or invalid.

● (0945)

Mr. Dennis Bevington: What on earth could have driven this particular provision to be included in this? Have you heard any discussion that says why somebody would have put this into the bill?

Ms. Jody Wilson-Raybould: To be honest with you, I can't speak to the intentions with respect to the drafters in this regard. Regulation or laws around intoxicants are contained within every self-government agreement and, in fact, go beyond the prohibition thereof to regulation and looking to expand that jurisdiction around the issuance of allowances and licenses.

Mr. Dennis Bevington: Wouldn't somebody drafting a bill like this talk to some of the communities that have bylaws about intoxicants? That would be sort of the basis of consultation, where you actually understand what's being done under the law right now. Wouldn't you think that one of the prime elements of consultation would be to actually understand what's going on with these types of laws in the communities?

Ms. Jody Wilson-Raybould: I couldn't agree more with that proposition. The challenge that I have, and I know certainly that first nations have, with respect to this tinkering or piecemeal approach to amendments to the Indian Act is the cavalier nature this bill takes in terms of defining my future for me when there has been so much hard work done by our nations in the area of intoxicants, in the area of substantial governance reform and building institutions that could benefit anyone who is, and in particular first nations, interested in moving beyond the Indian Act. Certainly, any reform in this regard should take that into account.

Thank you for the question.

The Chair: Thank you very much. Your time is up, Mr. Bevington.

We do want to thank you, Jody Wilson-Raybould and Karen Campbell, for joining us this morning. We certainly appreciate your testimony as well as your willingness to answer questions.

Folks, we'll suspend for a few moments to allow the next witnesses to join us at the table.

The meeting is suspended.

● (0945)

(Pause)

● (0950)

The Chair: Colleagues, we'll call the meeting back to order.

We had planned to have two witnesses for the second hour. Unfortunately, we haven't been able to locate Professor Settee. If, in fact, she does arrive, we'll make sure we accommodate her and allow for her opening statement.

Mr. Lonechild, thank you so much for joining us. We appreciate your attendance and your willingness to bring forward testimony and your perspective. As you know, we'll allow you an opportunity for an opening statement, and then we'll have some questions for you. Thank you again for being with us this morning.

We'll turn it over to you.

Mr. Guy Lonechild (Former Grand Chief and Vice Chief, Federation of Saskatchewan Indian Nations, As an Individual): Thank you to all who are gathered here, the members of Parliament and all the staff, and so forth.

My name is Guy Lonechild, and I guess if you were to ask me what my title is, it would be recovering politician, former chief and vice-chief of the Federation of Saskatchewan Indian Nations.

I'm pleased to be here to provide comment on Bill C-428, the Indian Act Amendment and Replacement Act.

I'm very happy that we're on the traditional territory of the Algonquin nation.

As former chief and vice-chief and now being a private citizen, I would restate that our leaders past and present have long held that the Indian Act is wholly inconsistent with our inherent treaty and aboriginal rights as self-determining nations. In fact, the Indian Act has long been recognized as violating our human rights, recognized as such by Canadian courts, international forums, and academic discourse, each reaching that obvious conclusion.

Above all, the Indian Act was unilateral legislation forced upon first nations citizens without their consent, creating catastrophic results.

The most critical message I bring today is that any unilateral changes to the act circumvent Canada's legal and constitutional obligations to consult with first nations. Any amendment or replacement that is not led by first nations people will perpetuate Canada's colonial, unilateral, and at times disastrous relationship with the first people.

I'd like, however, to have the committee ensure that there is full consultation, as outlined at the Crown-First Nations Gathering, to fully consult on any bills concerning the Indian Act.

Treaty first nations assert that the passing of any legislation, particularly the Indian Act, is in direct violation of the treaty relationship. It was, and still is, a complete abrogation of the consensual partnership between our respectful sovereign nationals. Settlement in Canada was facilitated only through the mutual consent of the treaty signatories, each of whom were sovereign and consenting nations.

The relationship between indigenous treaty nations and the crown was premised on mutual consent between sovereigns. It is critical to understand that consultation and consent are implicit in the original treaty order, as a natural command to consensual agreements made, and the relationship between two sovereign nations. The treaty order was to be one of consensual nation-to-nation relations, where the indigenous nations delegated certain responsibilities to the crown in a reciprocal arrangement of a shared territory, with the crown's assistance.

The relationship was not an agreement to relinquish sovereignty, nor was it an assent to domination. Instead, the indigenous nations entered into a nation-to-nation, federal-like arrangement with the crown, whereby the jurisdictions and responsibilities of the signatories were established, with sovereignty and jurisdiction maintained. The Indian Act was a result of unilateral government action that was designed for colonial approaches to first nations, based on the crown's belief of the inferiority of first nations to that of the crown, which only reinforced colonial law and ideals.

The Indian Act created devastating economic barriers. Indians were prohibited from making claims against the crown for the purposes of land claims and were also prohibited from benefiting from their land. The Indian Act has controlled for too long first nations land tenure systems, property, and economic initiatives.

So in this move to improve the lives of first nations people, I would come to the conclusion that the Indian Act is still an avoidance of treaty implementation This is evident in sections 32 and 33, where Canadian law may not have adequately recognized certain rights, benefits, or protections to treaty Indians, and in fact has further defined and has since limited these treaty rights.

Sections 92 and 105, more specifically, would state.... In section 105, where the act refers to “in any manner by which he may be identified.”, it seems also redundant, if not offensive.

● (0955)

Section 114 of the Indian Act that allows government to enter into agreements with religious or charitable organizations to educate Indian children, residential schools, should obviously be repealed.

Repealing section 82 of the act and replacing it with proposed section 86.1 will be a very positive step in empowering first nations to have more authority over decisions made by band councils. Once passed, it will allow for much more timely decision-making and planning by first nations.

Where there is caution is in repealing sections 42 through 47 which deal with wills and estates. That proposes to apply through the operation of section 88 of the act. If section 43 is repealed, the minister and AANDC will stop making decisions. Where otherwise it may have been helpful administratively, families will then be left to bear the legal costs for making application to the courts themselves. This process is expensive and very complex when families have to deal with the Canadian court system. Sections 45, 46, and 47, if repealed, would result in a substantial change and Indians may choose not to seek a lawyer or to put together a will altogether, because of the cost.

On section 47, again, for rural and remote communities it may be very difficult and not economically feasible to pursue wills. Removing this section leaves individuals with less protection and it would be detrimental to those living on reserve.

One of the key questions that has been raised most recently that I have heard in my discussions with other residential school survivors is, given that many first nations people who went through residential school processes may or may not have constructed a will, will they be grandfathered in if the legislation is passed?

Lastly on section 85.1, it's important to note that for communities who wish to maintain the authority to ban alcohol from reserve, repealing this section will have a negative impact on those who wish to employ it.

The proposed amendments under Bill C-428 are properly characterized as historical housekeeping of archaic and little-used provisions of the Indian Act. The amendments proposed under clause 7 of Bill C-428 will increase costs and complexity and there will be confusion over the applicable laws that apply to on-reserve estates across the country.

Finally, the AFN and other first nations organizations would like to ask that this portion be tabled until there is more consultation. This may or may not be so, but again, consultation with our first nation peoples, their organizations at all levels, should be encouraged.

I'd like to thank you for this opportunity to provide some comments and suggestions and to field some questions from the committee.

● (1000)

The Chair: Thank you so much.

We'll begin with Ms. Hughes for the first seven minutes.

Mrs. Carol Hughes (Algoma—Manitoulin—Kapuskasing, NDP): Thank you very much. I greatly appreciate the fact that you took the time to be part of the discussions here today.

The bill in its present form, if passed, you've already indicated there would be a financial hardship on individuals. I'm wondering if you think the bill would actually result in the government going before the courts with respect to litigation because of the problematic areas.

Mr. Guy Lonechild: I would expect there could be further backlog. There could be confusion. I would think that provincial and federal governments would have conflicting viewpoints on what laws were applicable on reserve, so ultimately, yes, I think it would be challenged.

Mrs. Carol Hughes: I have another question. At the beginning of your speech you indicated that the Indian Act was forced on first nations without consultation and you spoke about the impact that has had. I know there are many people who still want to be part of the discussion on this piece of legislation. I can tell you that Chief Shining Turtle in my riding has even invited Mr. Clarke to his community as a willing partner. He wants to be part of the process, but he hasn't heard whether or not Mr. Clarke would be willing to go there to have a discussion about this as part of the consultation with his community.

I spoke to Chief Duke Peltier yesterday from Wikwemikong First Nation, which is an unceded first nation, and he has some grave concerns with respect to the language on special reserves in there.

Do you think the chief is right to have some concerns about that with respect to the special reserves?

● (1005)

Mr. Guy Lonechild: I can't speak specifically to the special reserve section; however, any changes or amendments to the Indian Act would require direct consultation at the very least with the chief of the community. I've had an opportunity to go back and work at my own first nation. Living it and on the ground is the only way to get the viewpoints most adequately from the elected leadership and of course the people who live under the Indian Act.

Mrs. Carol Hughes: Earlier, in the response that we had with Chief Wilson-Raybould, there was a question by Mr. Rathgeber with respect to consultation, and that basically, it's difficult to consult with over 600 first nations. I don't know about you, but I'm of the view that this is possible.

For example, let's look at the amount of money the government has invested in advertising for their economic action plan. If that money were redirected to ensure there were appropriate and accessible meetings for first nations, would that not be a better direction for that money for consultation in addressing and trying to find the solutions, which first nations certainly have a lot of input on and are willing to share?

Mr. Guy Lonechild: I could say with great certainty that many first nations leaders look to and would provide an opportunity to consult and reprofile any kind of federal initiatives to look at rolling out a pretty comprehensive consultation plan.

I look at it this way. There have been many years where we've been attempting to provide a better way of life through changes to the Indian Act, providing discussions about soft government right across the country. If there's anything this bill could do, it could ensure there is some dialogue around this issue.

There have been many discussions around the Penner report in 1983 and the Royal Commission on Aboriginal Peoples. Let's get to the heart of what it is first nations people want. They just want to be more self-determining. I think the AFN and its organization and its regional chiefs would welcome those dialogues, but I don't speak for them.

Mrs. Carol Hughes: How much time do I have left?

The Chair: You have one minute left.

Mrs. Carol Hughes: Jean, do you have anything?

Ms. Jean Crowder: Thank you, Mr. Lonechild, for coming before the committee. Thank you very much for your opening comments with regard to consultation.

One of the things that is in line with consultation is accommodation. With this legislation, it doesn't appear there will be accommodation, as I mentioned to an earlier witness, for things like custom adoptions. The provinces aren't set up to provide accommodation for cultural and legal practices within first nations communities.

Could you comment on that?

Mr. Guy Lonechild: I think the environment and the confines within the child welfare system would allow for a varied range of what is applicable to custom adoptions, kinship care, and issues around who would be able to be the beneficiary of a will. That's different from the province of British Columbia to Saskatchewan, as you know.

I wouldn't want to see further confusion about that. I think there needs to be at least in clause 7 and in the whole entirety of those sections a little bit about uniformity. Those are the areas where I think it would not be beneficial to change, where we'd have some uniformity coast to coast regarding custom adoptions. The quick answer to that is that we would view it as very problematic if it were to go forward.

The Chair: We'll turn now to Mr. Clarke, for seven minutes.

Mr. Rob Clarke: Thank you, Mr. Chair, and I'd like to thank the witness for coming in today and travelling here to provide his feedback on my private member's bill, Bill C-428.

We've heard from witnesses on how the current Indian Act affects first nations in their day-to-day lives and on the decision-making processes made on first nations reserves.

I am wondering if you could provide some input or feedback, and some personal experiences, that you believe the Indian Act affects first nations uniformly. Are there regional differences as well?

● (1010)

Mr. Guy Lonechild: There are probably numerous sections where the Indian Act has been very limiting. There's the ability to obtain a mortgage on reserve, of course, home ownership opportunities. This is something I feel very strongly about. I believe that first nations should have the ability to have a range of opportunities, not just in social housing but in home ownership.

The Indian Act itself has been problematic for every community across the country. We could be here all day. What I would like to say is we need to move this discussion forward. We would be one community that would be very interested in having a discussion about self-government, at least among our membership.

We don't like living under the Indian Act; however, those are the cards that have been dealt to our first nation, like many others. I'm sure I'm in the same boat with many private citizens at our first nation living either on or off reserve. They will also want to be consulted. We look forward to this discussion wholeheartedly.

Mr. Rob Clarke: We've seen how the Indian Act has hampered the economic opportunities for first nations. We've seen how the First Nations Land Management Act has gotten rid of a third of the Indian Act to provide those economic opportunities.

What I'm trying to do is remove the minister from making day-to-day decisions on economic opportunities overall for all first nations across Canada. What I'm also trying to do on my private member's bill is.... Currently, there's no legislative process that would require any government to meet with first nations in consultation to look at the Indian Act on a year-by-year basis.

I'm wondering, one, in terms of economic opportunities how the Indian Act affects first nations. Two, should there be some type of mechanism that will require the minister to report to the standing committee, or to Parliament, on the progress, in consultation with first nations, on a year-to-year basis to review the Indian Act?

Mr. Guy Lonechild: I'd back up a little bit. Of course, it's important that we get this right from the start. It's important that we consult with first nations people, first nations leadership, and of course, affected organizations, AFN, and other regional organizations.

Removing barriers within the Indian Act in terms of the turnaround time for the minister to sign off on certain bylaws and so forth are important. They're important for economic growth, for our timely decision-making where we have quite a diversified economy on the reserve and in the area. Yes, in fact we do need some legislative changes that would ensure that band councils are empowered to make decisions and can take things to their membership so we can have that discussion among ourselves as opposed to waiting for sign-off on certain bylaws and so forth.

I see those as benefits. Again, I think first nations would welcome that.

Mr. Rob Clarke: Chief, when we look at, for instance, residential schools, do you feel that clause of allowing or keeping residential schools or that language in the Indian Act..... Should that terminology still be in place or should it be removed?

Mr. Guy Lonechild: I think you're going to get consensus that it should be removed, that residential schools in itself should be removed.

● (1015)

Mr. Rob Clarke: When we talk about bylaws, we heard how the AFN thinks there could be problems for first nations in drafting up their bylaws, and also with technology, in publishing the bylaws for the band membership and making it open.

Right now you personally are working for a first nations community. How do you address the needs or meet the mandate to publish any types of meetings that take place on the first nations community? How do you let the membership know what's taking place?

Mr. Guy Lonechild: We just had a recent discussion with our member of Parliament, our MLA, and chief and council. We talked to them about the transparency of our financial statements and so forth. We welcome that. We post them on our website. I think as long as it's defined, not enforced by someone else.... If we look for ways, maybe there are best practices for a first nation to provide disclosure, transparency, of all their bylaws, and that would be the next step we could do. I don't think we would post all our bylaws on our website, but it would be a step I think we would consider.

The cost effectiveness, as she had mentioned, I think might be an issue. If there is some opportunity to make any amendments, it's to ensure that at the very least there is some kind of a public posting and that it's on a website if it's available.

Mr. Rob Clarke: So it should be public. It could be through a band website, a newsletter, a locally owned first nations newspaper, or it could just be from a locally published paper that hits all the circulation in that first nations community.

Mr. Guy Lonechild: Sure.

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

We'll turn to Ms. Bennett now, for seven minutes.

Hon. Carolyn Bennett: Thanks very much.

The issue of consultation is huge in terms of the duty to consult. As you know, we even have concerns that this comes as a private member's bill rather than a first nations led process that would be presented to the crown and to the Prime Minister, and the changes would be made in that way, not this way. The consultation also has to be, I would assume, before something's tabled. Is that correct? Once it's tabled, we have difficulty at second reading. Unless something comes to committee after first reading, as I think a lot of us have hoped in many other issues, it has already been passed in principle before it comes to this committee.

I'm concerned on two fronts. One is that the duty to consult didn't take place before it was tabled, or before it was even conceived, and two, there's the duty to consult, because what we're hearing time and time again on this bill is unintended consequences. The duty to consult is so you can get it right. As you've pointed out, whether it's section 7, or whether it's the intoxicants piece, it's just not thought through if you haven't talked to the people affected by it.

I would like your opinion. As members of Parliament, we've got lots of other ways to promote dialogue on an issue as important as the Indian Act without putting forward a private member's bill without consultation. How would you describe a proper process to begin to deal with this issue of the Indian Act?

Mr. Guy Lonechild: To address the point you made in terms of unintended consequences, I think there's a deep mistrust from first nations toward any type of federal legislation. The Indian Act is just one piece. There are others.

We really need a good, thorough, and honest discussion about the relationship itself, what state we're in. We saw in the last few months with Chief Theresa Spence and other leaders across the country and the Idle No More movement that people are ready to have a dialogue. If this private member's bill moves that along, then I'm supportive of any type of consultation that includes first nations people.

I can't turn back time. This is not my bill; it's the Government of Canada's, so we need to work with that the best way we know how. I heard some suggestions earlier that we should have some very bright people like Regional Chief Wilson-Raybould, who would be happy to add some value to this, based on consent from first nations people.

It's important for us to move this discussion along. We've had far too many studies tabled. I'd like to see some level of government in Canada, both past and present governments, take the duty to consult seriously. The federal government as a whole has been absent in many cases, whereas provincial governments have been struggling with this issue right across the country. I don't think it's fair to first nations. I think the federal government must come to the table when it comes to access to land and resources.

Pretty significant discussion is going on around the country about resource revenue sharing. The national chief talked about that. Our own premier, Brad Wall, said there will be no resource revenue sharing with first nations. Somewhere, at some point, we have to expand this discussion so lives are improved. If this bill moves that discussion along, then so be it. I'd be happy to participate.

● (1020)

The Chair: Thank you.

We'll now turn to Mr. Seeback, for the last seven minutes.

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

Mr. Lonechild, thanks for your testimony. I found it interesting and informative.

When we are talking about the Indian Act, there seems to be some consensus that the Indian Act needs to be reformed or redone. It seems that there's great difficulty in getting consensus on things like this.

When I hear that you have to have consultation with all 631 first nations, I think you'd find great difficulty in getting consensus on a new Indian Act or significant changes to the Indian Act. Would you agree with me on that?

Mr. Guy Lonechild: Yes.

Mr. Kyle Seeback: In a practical sense, it would seem to make sense that if you were going to make changes, making incremental changes might be a better approach. I don't know if you agree with that or have comments on that, certainly in the context of the difficulty of getting consensus on replacing the entire act.

Mr. Guy Lonechild: Yes, there have been some great leaders in the past, who have even passed on, leaders of the AFN, leaders at the community level, who have long advocated for some meaningful changes to replace the Indian Act with something that's more suitable for them and their self-government and self-determination.

At this point, given that this dialogue is longer than 40 years, we have to find a way to approach it incrementally. As long as these committee sessions, these dialogues around the country with the AFN and so forth result in something, and incremental is the way to go, then I would be supportive of it.

I don't think we can make changes to the whole system in the next year or two. It's going to take some time.

Mr. Kyle Seeback: Moving along from that, with respect to this particular piece of legislation, I want to make it clear which sections I think you support. From my listening to your testimony, I think you support the repeal of the sections that deal with bylaws, ministerial approval of bylaws. Am I correct?

Mr. Guy Lonechild: Yes, there are some sections where it just doesn't make sense for the minister to be signing off on them and then having the band and council wait on those.

There are some of them, however, as mentioned, where we would like the minister to stay involved, in terms of wills and estates. That's important.

● (1025)

Mr. Kyle Seeback: Right. That's a different set. I'm just talking about it section by section. On the bylaw section, I think you support that.

Mr. Guy Lonechild: Yes.

Mr. Kyle Seeback: To be fair, I think you might have some reservations with respect to wills and estates.

Mr. Guy Lonechild: That's right.

Mr. Kyle Seeback: I think you support deleting the sections that deal with residential schools. Am I fairly clear on that?

Mr. Guy Lonechild: That's right.

Mr. Kyle Seeback: I think you probably support reporting by the minister on progress in developing new legislation.

Mr. Guy Lonechild: Yes.

Mr. Kyle Seeback: Do you have any recommendations, then? You support those sections. Do you have any recommendations you'd like to see included in the bill, in addition to the sections you've said you support?

Mr. Guy Lonechild: I think the piece we're missing here is how to consult. I would be open to supporting a process that outlines very clearly to first nations and Canadians the level of consultation that needs to be defined. If that's the case, then I would support this annual reporting back to Parliament on progress made on legislative changes.

We're going to get into a whole host of discussions about treaty implementation. Yes, I would support that if those parameters were put in place clearly.

Mr. Kyle Seeback: To talk about the wills and estates section, would your concerns about that be alleviated if, for example, there was a transition period for coming into force? Would that be something you think would be helpful on those sections?

Mr. Guy Lonechild: That probably would be one option. However, at this point, I couldn't say that should be the only option explored. I think there needs to be a range of recommendations on whether that not be included, to be repealed, amended, or a range of options, but transition is one of them.

Mr. Kyle Seeback: What other options do you think would be helpful?

Mr. Guy Lonechild: As mentioned before, there is going to be a tremendous amount of cost. I think there are going to be questions, such as whether our wills that are currently done up are going to be grandfathered. Are they going to take effect once the legislation has changed? Is there going to be additional financial support from any other agency outside the minister's office in the government? I don't know that and there is no certainty.

This is very cost prohibitive. There's not a whole lot of first nations taking up and doing wills anyway. I think the Canadian Bar Association has outlined some recommendations, and I'd like to refer to them. Those are some of the suggestions that I think are worthwhile discussing.

Mr. Kyle Seeback: That's what I was looking at, actually. I take it you think that those would be helpful, the Canadian Bar Association's recommendations, specifically those dealing with wills and estates.

Mr. Guy Lonechild: I think that those would be helpful in laying out what the issues are and what the unintended consequences may be. After having reviewed that document, I further think that changes to it may not be in the best interests of first nations people.

Mr. Kyle Seeback: Do you have any last comments you'd like to make?

Mr. Guy Lonechild: I'm very pleased to come back and talk with each of you about first nations people, their development around the country. I've been a long-time advocate for our people. I'm supportive of anything that will truly provide meaningful dialogue with first nations people about our relationship. I don't think we've really got that right yet. We've been studied to death. We need to have an opportunity to gain some meaningful traction. We have a leader in the national chief of the AFN who can provide some space for that growth to happen as a country. I would wholeheartedly encourage the Government of Canada and its members of Parliament to work collaboratively with the national chief to ensure that this takes place.

Thank you.

The Chair: Thank you.

We'll turn to Ms. Crowder for final questions.

Ms. Jean Crowder: Thank you once again, Mr. Lonechild.

I want to summarize your position. If there were changes to the bill—you mentioned the clauses you support and those you don't—then overall you would support the bill.

● (1030)

Mr. Guy Lonechild: The short answer is, as long as there's meaningful consultation with first nations people, I would support the bill.

Ms. Jean Crowder: That leads me to my next question.

In the preamble it says that the "Government of Canada is committed to continuing its work in exploring creative options for the development of this new legislation in collaboration with the First Nations organizations that have demonstrated an interest in this work."

It doesn't say "consultation", nor does it in any way indicate a process to get to that place. I'm not suggesting that the preamble should include every single detail, but it seems to me the government is still far too much in the driver's seat with respect to how this should proceed.

Do you have any specific recommendations on how we could change that so it would be more reflective of what needs to happen?

Mr. Guy Lonechild: First nations organizations can and do play a critical role in facilitating consultation, and so if the offer is there for the Government of Canada to consult with a first nation in British Columbia, or a first nation in Saskatchewan, about these changes, then that should be clearly articulated to the local leadership. It's the local leadership that has demanded that the AFN and other groups ensure there's adequate consultation. If that is done, then I would be supportive of the bill.

Ms. Jean Crowder: If we couldn't amend clause 2, the clause that outlines the reporting to the minister on the work undertaken by his or her department, would you then not support the bill?

Mr. Guy Lonechild: You're asking me some complicated questions.

Ms. Jean Crowder: Well, the principle of consultation seems to be essential. We've heard this consistently from first nations' representative organizations, from first nations themselves, and from leaders in first nations communities. If we can't sort out the details around consultation—because it doesn't say "consultation", but says "collaboration"—that failure would seem to me to undermine the whole premise of the bill.

Mr. Guy Lonechild: I think that to do this right, instead of "collaboration" it should say "consultation". That's the legal requirement: that first nations be consulted by the Government of Canada. If "consultation" were put in there, then I would support the bill.

Ms. Jean Crowder: Perhaps we could even talk about consultation in the context as defined by the Supreme Court, because that has been fairly clear, and it would give us some guidance in terms of how we would move ahead.

It's interesting that this bill has been touted as moving away from a colonialist approach, and yet in clause 13, it continues to state that a "fine imposed under a by-law made by the council of a band under this Act belongs to Her Majesty for the benefit of that band."

I wonder why we wouldn't just say "belongs to the band". If we could amend that, would this make sense?

Mr. Guy Lonechild: Sure.

Ms. Jean Crowder: I have one final comment. Mr. Clarke and I have a different understanding of what the Assembly of First Nations said about the bylaws. Unfortunately, I don't have Chief Wilson-Raybould's presentation before us, but I wasn't understanding her to say that bands do not have the capacity to develop their own bylaws. In fact, I understood her to say just the opposite. First nations are very capable of defining their bylaws.

The sticking point is that the bylaws must be published in a newspaper. My understanding of the argument is twofold: first of all, that it's cost prohibitive, because some of these bylaws can be pages long, and to pay for them to be published in a newspaper doesn't seem to be a good use of resources; and second, that this is a standard that other levels of government aren't held to. I heard her suggesting that we look to first nations for best practices as to how they publish it.

Mr. Guy Lonechild: I would share that viewpoint. There are best practices out there that we could rely on.

Ms. Jean Crowder: So we don't need to look at newspapers. In fact, many would argue that newspapers are not the most effective way of getting information to members.

Mr. Guy Lonechild: Sure.

Ms. Jean Crowder: That's my last question. Thank you.

The Chair: Mr. Lonechild, we want to thank you for your testimony today and for answering the questions that committee members had.

Committee members, we have a little bit of business that we need to work through. We'll suspend for a moment and then we'll move in camera to address that committee business. Then we'll complete our meeting.

[*Proceedings continue in camera*]