HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Aboriginal Affairs and Northern Development

AANO • NUMBER 003 • 2nd SESSION • 41st PARLIAMENT

EVIDENCE

Tuesday, November 19, 2013

Chair

Mr. Chris Warkentin

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● (1105)

[*English*]

The Chair (Mr. Chris Warkentin (Peace River, CPC)): Colleagues, I will call this meeting to order. We have delayed starting because we're looking for one witness who was intending to be here. Hopefully she'll show up partway through.

Colleagues, today we continue our study of Bill C-9. Today we have the privilege of having at this point two grand chiefs with us. We have Derek Nepinak, who is a grand chief, as well as Craig Makinaw.

Thank you so much for being here. We appreciate your both coming and your being willing to testify on behalf of your communities with regard to this particular piece of legislation.

What we'll do which is common to our committee is turn it over to our guests and hear from them for about 10 minutes each. Then we'll begin with rounds of questions.

To begin, we'll turn to Grand Chief Nepinak.

Again, thank you for being here. We'll turn it over to you for the next 10 minutes.

Grand Chief Derek Nepinak (Grand Chief, Assembly of Manitoba Chiefs): [*Witness speaks in Ojibwa*]

My name is Derek Nepinak. I'm grand chief of the Assembly of Manitoba Chiefs.

As grand chief of the AMC, I act pursuant to legitimately established mandates of the member chiefs of 60 first nations in Manitoba. I am obligated to adhere to that direction now, as were former grand chiefs of the AMC.

I make this point because it's apparent to me that politicians have been asked to provide personal political opinions as former grand chiefs on the merits of the draft bill, or to add the appearance of legitimacy and process and consultation to the draft bill. For the purposes of accurate reflection, however, it's important to understand that I, Derek Nepinak, am the grand chief of the AMC today, and I'll provide you with an informed opinion unencumbered by personal political agendas.

While I represent the AMC, there are distinct treaty groups or aggregates of treaty communities that wanted to make their views known to this committee. I will say that these communities have a right to be consulted on the intentions of government to create policies or laws that impact or could potentially impact, their exercise of section 35 aboriginal or treaty rights, more specifically, aboriginal or treaty rights to self-government or the pursuit of self-determination.

Within the membership of the AMC, there are approximately 37 first nations communities that hold Indian Act elections, which I'll refer to as section 74 bands, while the remaining communities hold their elections pursuant to custom codes. As I'll explain a little bit later, however, this point is not material, because under the draft legislation the minister has granted a broad discretion under ambiguous terms to bring both custom code and section 74 bands into the purview of the proposed legislation.

It is apparent from our review of draft Bill C-9 that it does not reflect the purpose of the mandate supported and advanced by the Assembly of Manitoba Chiefs throughout the engagement period. As we have become accustomed to witnessing as indigenous people, the federal government of the day is demonstrating a lack of good faith by setting aside our recommendations and its own representations and substituting a unilaterally developed bill that includes unwanted provisions and omits key recommendations.

As the bill stands, it includes essentially only one of our recommendations and fails to incorporate all others. The magnitude of variation between the Manitoba recommendations and the draft bill is such that it continues a breach of the trust that the first nations invested in the process and further undermines an already tenuous first nations and federal relationship.

More troubling to us is the federal government's repeated attempts to hold out the proposed legislation as something the AMC agreed to. This is simply false and misleading to the public. In 2010, the AMC chiefs in assembly supported specific limited recommendations with respect to election reform.

During the 2010 assembly, the chiefs reviewed presentations made by INAC officials at the time and passed a resolution supporting a four-year term, a common election date, and a local dispute resolution process. The discussions among the chiefs also included the development of a common first nations election code, developed by the first nations themselves, which could be adopted by each first nation that so chooses. The code in this context is not synonymous with federal legislation.

The resolution also contemplated referenda in each first nation, not federal imposition. This is critically important, because it is by way of referenda that community members have the opportunity to exercise a right of free, prior, and informed consent to the process. The option selected by the chiefs is the only option supported by the Manitoba chiefs, and only as described in our resolution form.

Beyond the omissions and the selective set-aside of recommendations in the draft bill, there exists a fundamental problem with revision, manipulation, or amendment to Indian Act terms or regulations. The fundamental problem lies in the continued denial of the existence of inherent rights of self-determination and self-governance of indigenous people. The premise that the Indian Act or any other legislation developed by federal governments presents the only solution is an affront to the original jurisdiction of first nations people and is an implicit denial of the treaty-based relationship.

In asserting this truth, I propose that indigenous first nations communities do not need, nor are they required to accept, federal legislative initiatives to effect improvement to election systems under the Indian Act if they so choose. Rather, if communities want to run a common election day with other communities, or extend their terms from two to four years, or develop local election appeal mechanisms, they can do so of their own accord, at their own pace, and within their own defined limits.

● (1110)

For the Government of Canada to create, amend, impose, and implement any law pursuant to section 91, class 24, that attempts to manage the relationship between Indians is beyond the scope of section 91 and is not only paternalistic, but it's a perpetuation of the unique brand of colonialism that Canada has now become too well known for.

For many first nations people, elections are equated with Indian Act governance systems. Many band governments continue to operate on the basis of the authority granted in the Indian Act because practical management administration and band moneys are tied to the Indian Act elected chief and council. Customary governance. in contrast, recognizes traditional social organization and means of selecting leaders and provides for broad community input for decision-making.

It is a fallacy to conclude that first nations communities face an either/or proposition on matters of contemporary community governance. In Manitoba there are 37 first nations who hold their elections under the Indian Act while 26 hold their elections pursuant to their own custom election code outside the Indian Act. This is, however, not the plenary of options to communities who invoke self-determining initiatives to effect self-government according to their own terms.

AMC did pass resolutions starting in 2009 specific to this exercise. AMC specifically stated in one of its resolutions that notwithstanding other Canadian jurisdictions, we develop a common election code that respects the authority and jurisprudence of each first nation and ensures our inherent right to self-government and to work in partnership with first nations communities to prepare referenda options for a province-wide referendum with potential timelines to be brought to the next chiefs in assembly in September 2009 for deliberation and decision.

Again, in 2010 we came together and AMC, through resolution, said to request the Minister of INAC fund and take the necessary steps to remove the electoral provisions of the Indian Act that apply to the election of chiefs and implement a new legislative election system affording four-year terms, a common election day and include flexibilities that can be adapted to community needs.

Bill C-9 does not reflect the discussions and the decisions made by the first nations leadership in Manitoba as it purports to grant authority to the minister to subjugate a first nation to the act without the consent of the people. We believe this to be ultra vires with respect to the minister, beyond the powers of the government to legislate. We find that in clause 3(b) of the draft legislation. This discretionary authority defeats the objective of the AMC recommendation that first nations retain their right to opt in. The clause would allow the minister to subjugate those bands that have previously opted out of the Indian Act to custom election procedures. This clause would allow the minister to subjugate bands to the Indian Act who have never been subject to the act, in violation of their inherent and constitutionally protected rights under section 35.

“Protracted leadership dispute” is not a defined term and leaves broad discretion to the minister. The AMC did not make such a recommendation.

The draft bill also purports to grant the authority to the Governor in Council to set aside an election on a report of the minister that there was a corrupt election practice in connection with that election. We believe this also to be ultra vires with respect to the minister. The AMC did not make such a recommendation. This preserves a broad discretion for the minister to determine that there were corrupt practice methods and criteria not outlined under the proposed legislation.

This is a key point. I will reference a recent case that happened in the Federal Court, Woodhouse v. the Attorney General of Canada, Bernard Valcourt representing the ministry of aboriginal affairs. The Federal Court judge found that Minister Valcourt did not establish guilt in terms of a corrupt election practice and his decision was set aside.

Although it's purported that the minister may hold the discretion to set aside an election, that is not clearly defined in law. For the minister to exercise that type of discretion requires certainly a step-by-by step process that he is clearly trying to clean his hands of by delegating or removing himself from the election appeal process, which is another thing that we did not agree to or recommend as the assembly.

The legislation purports to grant the authority to the Governor in Council to set aside an election on a report of the minister that there were corrupt practices in connection with that election. I make this comment as well in contrast to established Canadian law in the Norway House Cree Nation case, Balfour I believe is the case name, where a community finding of a corrupt election practice in the Norway House Cree Nation was upheld at the Federal Court.

● (1115)

On the one hand, we have the minister setting aside a decision on a corrupt election practice and losing in Federal Court, and on the other hand, we have a community code defining what a corrupt election practice is and having that upheld in the Federal Court. The idea that the minister can purport to have the best interests of communities in mind in exercising a discretion that he has, that he retains under the act, to me is a fallacy because we have already proven in the Canadian courts of law that the minister may not have the mechanisms in place to effect the decision according to Canadian law. We believe that was proven in October 2013 in the Woodhouse case in Manitoba.

Another challenge with the draft law is it does not provide Manitoba first nations with the policy of adopting a common election day and an extended term of office. The bill has a quasi common election day that does not mirror the recommendation of the AMC. It also restricts appeal processes to external courts, and this denies access. Referring appeal processes in elections to Canadian court systems denies access to those people who cannot afford to bring an application into a Canadian courtroom under Canadian jurisdiction. That is a truth. Statistics are out there that people who are forced to go to Canadian court systems are denied access on the basis of financial resources.

The bill also does not provide for the creation of a Manitoba chief electoral officer or provide for the appointment of electoral officers by band councils without requiring the minister's approval. If this bill is purported to create self-government or enhance self-determination, why are so many checks and balances in place that need to be vetted through a minister? That seems to be the opposite of what we're trying to achieve.

In conclusion, Bill C-9 is easily characterized as an extension of limited delegated authorities under a paternalistic Indian Act. It is apparent that notions of self-determination and self-government are viewed by the drafters of the legislation as powers that are given or granted to first nations by the federal government.

Manitoba first nations view self-determination and self-government as inherent rights and selection of leadership as fundamental to self-government, included in the suite of self-government rights.

Our right of self-government is self-evident; moreover, it is entrenched in section 35 of the Constitution. Notwithstanding, the federal government continues to propose legislation that is designed over the long term to terminate the existence of status Indians while confining first nations governments within narrowly construed delegated authorities and powers at the discretion of the minister.

Imposing legislation on first nations people pursuant to the Indian Act in this manner perpetuates the federal government's unilateral interpretation of first nations self-government. This approach is inconsistent with our inherent rights, international law, and declarations endorsed by Canada.

The proposed legislation is simply an addition to the Indian Act, citing the same authority and the same definitions granting broad additional powers and discretion to the minister and his office. The legislation mingles only one recommended change from the AMC and the illusion of another. The resulting product is another piece of federal government-owned legislation that perpetuates Canada's self-proclaimed authority over indigenous people.

We live in an age when we should be beyond this type of thinking, ladies and gentlemen.

Thank you.

● (1120)

The Chair: Thank you very much, Grand Chief Nepinak.

Grand Chief Makinaw, we'll turn to you now for your submission.

Grand Chief Craig Makinaw (Grand Chief, Confederacy of Treaty 6 First Nations): Good morning.

[*Witness speaks in Cree*]

Today I am speaking for the Confederacy of Treaty 6 on Bill C-9.

I am pleased to appear today on behalf of the Confederacy of Treaty 6 First Nations as well as my home nation, the Ermineskin Cree Nation.

As grand chief of the confederacy, I'm tasked with advocating for the protection of our treaty rights which have been enshrined in section 35 of the Constitution Act, 1982, as well as in the sacred agreements themselves. As grand chief I advocate for the 18 member nations and speak from a unified position.

Today I've been tasked with outlining our concerns with Bill C-9, the first nations elections act, and the continued imposition of supposed Canadian authority over first nations and our governance. The problematic sections of Bill C-9 are as follows.

Overall Bill C-9 can be seen as a slight modification on the current default election system outlined in section 74 of the Indian Act. These slight changes, although minimal, have great implications for first nations that rely on their own custom laws or those encountering some leadership issues. According to INAC numbers, out of 617 first nations in Canada, 238 hold their elections according to the Indian Act, 343 hold custom election systems, and 36 are self-governing.

The changes proposed by the bill may be of interest to the 238 that hold their elections in line with the Indian Act, but they will also have implications for those 343 that hold custom elections.

Our specific concern is with clause 3 of the bill in which the opt-in legislation can be applied by order in council to a first nation for which a protracted leadership dispute has significantly compromised governance of that first nation.

Interpretation of this provision could lead to the imposition of the new act on a first nation that is following a custom election system and that is involved in a dispute. By empowering the minister to impose the act, the Government of Canada once gain is overstepping its bounds in regard to first nations governance.

Disputes in leadership are commonplace in politics, yet first nations are the only bodies of which the leadership can be unilaterally changed, be it through the Indian Act or through Bill C-9.

Further to this intrusion on first nations governance, the minister and INAC are given the ability to define who an elector is. Although some first nations have come in line with Corbiere, the onus falls on the government to determine who these bands are and to deal with them individually. There is no unilateral blanket definition of elector.

These intrusions of the federal government continue to serve as a detriment to leadership and to relationship building, and they seem to impose changes that fit the government agenda.

Compounding the definition of elector is the provision that empowers the electors to petition for a change in leadership. This petition exists and is unique to first nations in a very discriminatory fashion, and as well may lead to the attempted application of the provincial judicial system, which is a violation of section 91, class 24, of the BNA Act, 1867.

These issues must be taken into full consideration by the minister and government.

On the right to self-determination, attempting to impose new provisions regarding first nations elections is a violation of their rights as laid out in section 35.

There are also internationally recognized inherent rights of first nations. A UN declaration outlines the rights of first nations in regard to governance. I've referenced four articles in my presentation. I'll just give the numbers, because there are four different sections, as you all know, in the declaration: article 3, “Indigenous peoples have the right to self-determination; article 4, “Indigenous peoples, in exercising their right to self-determination...”; article 5, “Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social, and cultural institutions...”; and article 6, “Every indigenous individual has the right to a nationality.”

● (1125)

The chiefs of Treaty 6 call upon the INAC minister to respect and enact these provisions of the UN declaration, and not simply recognize, but affirm them through practice.

Bill C-9 is not to be construed as a respecting of first nations governance. The reality is that Canada is attempting to define the rules by which first nations govern themselves, and this is not self-determination.

With respect to the contradictory actions of the government, once again we have an example of the government acting contrary to the statement made by the Prime Minister at the crown-first nations gathering in 2012.

Unilateral imposition or altering of the Indian Act was targeted by Harper as a step in the wrong direction, yet we have been provided with numerous alterations and changes through Bill C-45, Bill C-27, Bill C-9, and finally with Bill C-428.

Chiefs call upon the continued attacks on our sovereignty to cease and for the Prime Minister to stand by his words. Archaic provisions of the Indian Act and perhaps the entire act itself must be scrapped. However, the replacement legislation must be created by first nations and embody the relationships that serve as a foundation for this country. A treaty must be fully implemented and enshrined.

In closing, I would like to state that the provisions that allow for a unilateral imposition of the act on those first nations that follow custom election systems must be re-examined as this is a direct violation of our treaty and their inherent rights enshrined in section 35 as well as in section 91, class 24, of the BNA Act, 1867.

The government appears to be making a habit of violating these foundational documents, including the breaking of the treaty with little recourse or penalty. This continued approach will only hamper progress not only for first nations, but for the country as a whole.

The chiefs of Treaty 6 call upon the government to retract all bills that are unilateral in nature and demand that meaningful consultation begin at the nation-to-nation level.

Thank you for your time and consideration today.

I have another paper besides my confederacy paper from the Treaty 6 chiefs. It's from Ermineskin. They are pretty much the same, so as you read them both, the arguments are the same.

Again, thank you for your time and consideration in my being here today.

The Chair: Thank you, Grand Chief.

We'll turn now to Ms. Crowder for the first round of questioning.

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

Thank you, Grand Chief Makinaw and Grand Chief Nepinak.

I want to start with the process. I think you are well aware that the government is claiming it fulfilled its duty to consult because of the process with the Atlantic Policy Congress and the Assembly of Manitoba Chiefs.

A briefing document that was provided to us indicated there was a Senate report, and the government tabled a response to that report which indicated “a strong commitment to dialogue and work with first nations regional organizations who are asking for legislative alternatives for first nations elections.” That was in October 2010. In March 2011 the AMC and the APC submitted their report to the minister on the national engagement effort on electoral reform.

When was it that you first saw the actual legislation, Grand Chief Nepinak?

Grand Chief Derek Nepinak: To answer your question specifically, the first draft of the legislation, I believe, came across our desks in mid-December.

Ms. Jean Crowder: Of 2011?

Grand Chief Derek Nepinak: Of 2011.

Ms. Jean Crowder: At that time my understanding is the recommendations AMC made were only partially included in the draft legislation, and the rest of the legislation did not reflect the input from the AMC.

● (1130)

Grand Chief Derek Nepinak: That would be accurate.

Ms. Jean Crowder: At any time did the government provide you with feedback on the recommendations the AMC had made?

Grand Chief Derek Nepinak: In my tenure as grand chief I have not received feedback. I have only received a letter from Deputy Minister Wernick, about five to six pages in length, telling me why I should be supporting the provisions that find themselves in the draft bill.

Ms. Jean Crowder: At no time at that point were you asked for feedback, other than in the general process they laid out around providing feedback. The AMC, as one of the main consulting organizations, was not asked specifically for feedback with regard to the draft legislation.

Grand Chief Derek Nepinak: No. Actually, in contrast, we were asked to support the draft legislation even before we actually saw the draft legislation in hand.

Ms. Jean Crowder: Of course, we all know how irresponsible it is to support legislation before we've actually seen it.

Grand Chief Derek Nepinak: Yes.

Ms. Jean Crowder: In your view, this supposed consultation process.... I mean, a consultation process from many points of view means that you engage, provide information, and take the recommendations, but then include the consulting people in the drafting of the legislation. That didn't happen.

Grand Chief Derek Nepinak: That did not happen, no.

Ms. Jean Crowder: In your view, does this constitute a meaningful consultation process when the legislation ends up being something that was not in the original recommendations?

Grand Chief Derek Nepinak: I think that at certain times political organizations will act as agents for federal policy or legal initiatives, such as the community engagement sessions that the AMC took forward.

In saying that, engaging in a community engagement process without knowing the outcomes of the recommendations, or the implications of putting those recommendations together to arrive at someone's office here in Ottawa without knowing what the implications are, I believe warrants a further degree of consultation with community members, to determine the appropriateness of the draft bill and whether or not they believe it furthers the efforts of self-determination and self-government.

I think there is a very significant component of consultation that is missing in where we are with this bill today.

Ms. Jean Crowder: I want to turn to Grand Chief Makinaw for a moment.

Grand Chief Makinaw, you talked about one of the more troubling aspects of this piece of legislation, which is the fact that the minister can unilaterally put a first nation into this new legislation. Part of the challenge with this is that the reasons for allowing the minister to do that are ill-defined in the legislation. As Grand Chief Nepinak rightly pointed out, in the Woodhouse case, the minister's decision, in fact, was overturned.

You also pointed out that only first nations will have this unilateral imposition of the minister's will. In fact, unfortunately we are seeing in Toronto right now all kinds of allegations about a politician and there is no mechanism to remove that politician from office. We've seen it in a number of other cases as well, where there are allegations of misdoing and people can't do anything.

In your view, would you like to see that section of the legislation removed?

Grand Chief Craig Makinaw: Yes, I think it would be good to take that into consideration. I know that a lot of the tribes have their own internal way of dealing with issues. I think it would be a good step if they did that. I see more problems if we're not going to be sitting at the table discussing these issues. That would be a good first step if they did that.

Ms. Jean Crowder: Grand Chief Nepinak, you indicated that part of the recommendation that came from the AMC was with regard to a local dispute resolution mechanism. There have been a number of other reports, including a Senate report, that recommended an independent dispute resolution mechanism.

In your view, would that be community by community, or for example, could there be a Manitoba first nations electoral officer?

Grand Chief Derek Nepinak: I think referring to best practices might be appropriate in that consideration. I believe that the Norway House Cree Nation custom Election Procedures Act establishes a best practice in defining a local appeal mechanism. That local appeal mechanism, as I mentioned in my presentation, has been exercised, and it has been upheld in the Federal Court. I believe it was the Balfour case, going back I think to 2009.

● (1135)

The Chair: Thank you.

We'll turn now to Mr. Strahl, for the next seven minutes.

Mr. Mark Strahl (Chilliwack—Fraser Canyon, CPC): Thank you very much.

Thank you, Chiefs, for your presentation.

Obviously there is a wide variance of opinion in Manitoba even, and across the country. We've heard from chiefs, elected by their members, who are very much in favour of this. It's good to get all different perspectives on it.

My question is for both of you. In your own home first nations, are you under a custom code or the Indian Act?

Grand Chief Derek Nepinak: I'm from the Minegozhiibe Anishinaabeg and we do Indian Act elections under section 74.

Grand Chief Craig Makinaw: We're under custom.

Mr. Mark Strahl: Under this proposed legislation, of course, one of the things we have talked about is the opt-in option for first nations. There is no imposition of it from the outset. Certainly in both of your cases, custom election would continue. The Indian Act election for Chief Nepinak would continue as well.

The main concern that we've heard, even from others, is that there is the ability to be opted in. That is a major concern.

I understand that has been done only three times, where a first nation has been taken out of custom code and placed back into the Indian Act. So it certainly isn't something the minister does willy-nilly, to use a term that probably isn't in Hansard a lot.

Because this is opt in and because the discretion is hardly ever used, do you not see there is an advantage for first nations that want this? Why would you be opposed to letting first nations that want to opt in to this new legislation to do so?

Grand Chief Derek Nepinak: I think it's appropriate to recognize that, as the grand chief of the Assembly of Manitoba Chiefs, I work under a mandate of the chiefs and the constitution of the AMC to uphold and protect aboriginal inherent treaty rights.

Ultimately, the decision is vested with the community to decide what type of system they would like to participate in, under the Indian Act, under custom code, or under some other manifestation that they so choose.

The challenge we see with the bill is that the opt-in provision does not require consultation with the community members. It requires the resolution by the chief and council to move forward. Resolution moved by chief and council does not imply that the community has been consulted. Certainly, in this exercise of moving to the draft bill as it is now, as I mentioned before, a very key piece of consultation is missing. That consultation, I think, goes to a point of required free, prior, and informed consent of community members.

I'm not here to deny the existence of the opportunity for indigenous people across Canada to opt in to the paternalistic bill. That's entirely up to them. What I'm here to say is that there are key pieces in the process that are missing and people should not be denied those processes.

Mr. Mark Strahl: As Jean has pointed out, and we've certainly seen the circus in Toronto recently, we know there are cases in municipalities where there are governance issues. There are also cases in first nations where there are questionable practices, where there are prolonged leadership disputes, to use the language of the legislation.

If there is not the ability of the minister to step in, in the interest of the grassroots first nation members on reserve who may not be getting the services they need and who may be the ones who suffer when there are governance issues, what alternate mechanism...? For instance, we've seen cases where there are two chiefs and councils who claim to be the elected group in a single first nation. What should be the response, then, of the minister or of that first nation if there is no mechanism in place to address that issue through legislation? In your view, what do you think should be done, if not this?

● (1140)

Grand Chief Craig Makinaw: Speaking for my own reserve of Ermineskin, we have an election appeals board. We have a timeframe in between elections that deals with issues. When those issues do come up, it goes to the appeals board and that's where they are dealt with.

It has been working for us the last few elections and we haven't had any problems with it. That's the process we take, as Ermineskin. I think that other bands do the same process. They have their own—

Mr. Mark Strahl: They have their own custom.

Grand Chief Craig Makinaw: That's true. They have their own appeal board sitting there dealing with the issue.

Speaking for Ermineskin, that's how we do ours, when it comes to the appeals.

Grand Chief Derek Nepinak: Certainly, I would also share a similar thinking along the lines of the grand chief in that appeal mechanisms can be developed under customary codes. The resources would need to be allocated to that type of initiative.

I know there are concerns about the costs associated with setting up appeal mechanisms or tribunals, but the cost would need to be compared with the hundreds of millions of dollars that have been spent by this government in taking indigenous issues to court.

Last week we saw a publication come out recognizing that Aboriginal Affairs is the first one to the courtroom when it comes to government positions.

When we argue about resources and establishing local appeals committees or tribunals, I believe this has to be weighed against what the current practice is.

Mr. Mark Strahl: Do you believe that an election conducted under section 74 of the Indian Act allows for that independent, local appeal mechanism, or is that only available through custom election codes?

Grand Chief Derek Nepinak: I think that, not to be too narrowly confined to what the Indian Act may purport to allow for, there are inherent rights and treaty rights to self-determining initiatives and self-government, which allow communities to move in any direction or manifestation of elections or governance that they chose.

The Chair: Thank you.

We'll turn now to Ms. Bennett.

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

I think at the beginning we thought this was a piece of legislation that was led by first nations and was supposed to be a no-brainer. This was something that the Atlantic Policy Congress, together with the AMC came forward with, and people thought we should just move forward.

My understanding is that in what was put forward and what was consulted on, paragraphs (b) and (c) of subclause 3(1) were not part of the original proposal from the AMC or the Atlantic Policy Congress.

I have to say that the phrase used by the parliamentary secretary, "ability to be opted in", is one of the finest pieces of political correctness that I have ever heard. I think this is fantastic as opposed to the minister's ability to force a first nation in under this kind of an election. The ability to be opted in is similar to "was quit".

The Atlantic Policy Congress was here two weeks ago, very much encouraging this committee to approve the bill even in its imperfection.

Jody Wilson-Raybould said before the Senate that if these clauses were removed, it would be simpler in that not as much consultation would be required because it would be a truly voluntary opt-in approach of a first nations-led initiative.

Unfortunately, with the bill as it's written now, that's not possible. Way more consultation would be required. We heard from the Atlantic Policy Congress that when they tried to do consultation, they heard very little back from Ontario and Quebec, even on the original proposal.

We just need advice. If the government was prepared to remove these parts that are upsetting everybody, do you feel that the bill would be characterized as totally optional? Would you be comfortable with the bill if the government removed those two parts?

● (1145)

Grand Chief Derek Nepinak: If the government were to remove the clauses respecting the broad discretion of the minister, there is still an onus on community governments, chiefs and councils, to take this to the community by way of a referendum. This would be necessary to meet the threshold of free, prior, and informed consent of the people who are most affected by the implications of continuing in an Indian Act structure.

With that said, I think it does become a little more palatable if you remove that broad discretion of the minister.

Grand Chief Craig Makinaw: I don't want to say too much more. I agree with what the grand chief is saying.

I guess the problem I have, having been here before and again today, is that when I talk about these bills and we bring in our concerns, the concerns aren't addressed. That's my main concern again today, that our concerns aren't addressed, but if they are, this will be a good start.

As the grand chief said, if those changes were made, we'd have to bring it back to our people anyway to discuss it further. There's not going to be an answer right away. It would be a work in progress, but the onus is on the government to do that. That's what I'd like to see and I hope to see that they take it into consideration.

Hon. Carolyn Bennett: Without the clauses being removed the bill is a non-starter for your chiefs.

Grand Chief Derek Nepinak: I believe without any amendments to the bill it would be a difficult proposition to expect that I as the grand chief of the AMC, working under my mandate and the constitution of the AMC, could support it. I simply couldn't.

Grand Chief Craig Makinaw: I, too, would have to agree that until I get that direction from my chiefs, it would be hard to decide on it.

Hon. Carolyn Bennett: In the consultation in terms of bottom-up communities being able to decide, are you describing what would happen if this bill was passed without those clauses, and that this would be the kind of consultation that would have to take place for our community to decide whether to participate or not? Do you think it even predates that and that even discussing any bill requires free, prior, and informed consent by all the communities?

Grand Chief Derek Nepinak: I think it's important to recognize that we're living in the age now where the Indian Act, and the provisions under section 6, are now starting to exclude individuals from falling under the Indian Act. We are seeing the extinguishment of the status Indian by way of legislation. I think that's a fundamental problem with moving forward with any type of amendment, or slight adjustment, to election provisions under that umbrella.

I think that we are approaching the point where any type of alteration to a piece of legislation that extinguishes the existence of the status Indian requires the free, prior, and informed consent of the people who are most impacted.

I think that we did start out right in this exercise. The Assembly of Manitoba Chiefs did start out right in approaching it from a bottom-up process. Community engagements cannot be argued with. They're unarguable. No one is going to argue with the opportunity to go to the community and talk to them about how best to proceed, but as we moved up the chain of process, we lost the ball. We lost the handle on this somewhere and then out came a piece of legislation that fundamentally alters the messaging that was carried to the communities. Now we end up with this draft bill. We're sitting here today and are expected to support a draft bill that alters what the community has asked for.

It's bottom up and now it has to come back down again, and it has to come back down to a point of free, prior, and informed consent of community people.

● (1150)

The Chair: Thank you, Grand Chief.

We'll turn now to Mr. Hillyer for the next seven minutes.

Mr. Jim Hillyer (Lethbridge, CPC): Thank you to the witnesses for coming today. I'm hoping to get some better understanding of this.

I'm happy to have some people who don't see this as a slam dunk because that's the only way I can learn. If we are just surrounded by yes-men, then we don't really learn that much.

I do have a couple of questions about some of the concerns that were brought up, and maybe you can help me figure them out.

One of the concerns is that under this change, even though it's not as much discretion as in the original Indian Act, the minister maintains more discretion than you would prefer. Sometimes when I talk to the minister, it sounds like it's more discretion than he would prefer too.

If there is a concern about a corrupt election or corrupt leadership and so on, for which the ministerial discretion is maintained so that there's something to appeal to, maybe I misheard, but it said the onus will fall on the leadership of these various first nations.

Wouldn't that be the leadership whose very legitimacy or corruption is being called into question by that leadership's people? If it falls to the leadership of a first nation to resolve a complaint of that first nation's people, how could we resolve that concern?

Grand Chief Craig Makinaw: Speaking for myself and Ermineskin, we have our constitution. We have our election code. We have our code of conduct that we follow at Ermineskin. When we have election disputes, we have a mechanism there that we follow.

That's how we deal with our issues when it comes to election concerns or concerns throughout the year. We have checks and balances that we follow based on our constitution and our council code of conduct and the election system that we have.

Grand Chief Derek Nepinak: If I may further comment as well, I believe there has to be a recognition and respect to the customs, traditions, and protocols of community leadership, not just in the manifestation of the Indian Act chief and council, but also in the customary leadership that's provided by elders and the wisdom-keepers in the community. Local appeals committees are struck under custom codes, as we mentioned earlier, with the recognition at the community level.

It's maybe not at this table, and maybe not at any other government table, but at the community level at least, there is legitimacy of process and legitimacy in the respect and the decision-making that goes to an elder or community member who is designated to sit at a local appeals tribunal or committee to make decisions that are binding.

Ultimately, at the end of the day, I think we have to recognize that the best people to make decisions over arguments and conflicts of decision-making at the community level is us. We need to take ownership of our own challenges in our communities. I believe that the local appeals process establishes that, notwithstanding that there may at times be the appearance of a conflict with existing or previous leadership.

Mr. Jim Hillyer: Thank you.

I agree with you when you talk about each nation. Whether or not each nation's sovereignty is respected by the federal government, it's a sovereign nation anyway. It's a nation that existed before and treaties were made with these nations. When the treaties were first made the language was not set up as, “We'll call it a treaty, but we're really the boss and you're not separate sovereign people.” That's not the language of the treaty, but it's a little different from the way we treat other countries, like France, Tahiti, the Congo and Rwanda. Whether it was right or not, over the past several hundred years the Canadian government has taken a paternalistic approach, which has led to certain results and certain dependencies. Not only that, when I talk to most first nations people, my understanding is that they also love being Canadian and being part of this country. They don't seek to be treated separately like Rwanda. They also want to be part of this nation.

When we talk to Rwanda, and let's say we want to support Rwanda and Rwanda says they don't want our help, at the end of the day, we say that's Rwanda's choice. They're a sovereign nation and if they sink into poverty, despair, ruin, and chaos, we'll say that it's sad, but it's not our fault and it's not our problem. If we were to do that in Canada, say, to a first nation that didn't have leadership in place, and we said that we'd leave it to that individual band or tribe or nation to make all their decisions, and things fell apart and there was poverty, would we not be culpable in letting them do that?

● (1155)

The Chair: You only have time left for a short answer. It was quite a lengthy question.

Mr. Jim Hillyer: Sorry.

The Chair: Either Grand Chief, do you care to respond?

Grand Chief Derek Nepinak: I find the context of the question to be a little difficult to understand in referring to indigenous people in the context of Rwanda or some other country in a different part of the world. Certainly a unique context results out of treaty. Many great leaders and people I've learned from have tried and pushed and dedicated their life's work to creating certainty for indigenous people in Canada's Constitution.

I have brought to the crown-first nations gathering the concept of a constitutional meeting on first nations issues not to make or propose amendments to the Constitution, but to help create understanding about where the boundaries between decision-making exist in a treaty context. Certainly, as indigenous people, we did not sign away our decision-making at the governance levels of our people. We did not include that in treaty and what was left silent in treaty remains vested in indigenous people.

At times it might be difficult to reconcile that with the good intentions of people who have become prosperous on the wealth of the resources of the ancestral lands of our people, but the truth is we still need to be recognized for who we are, the original people here. There are jurisdictions intact that need to be revitalized, that need to be renewed in a post-residential school era, because that's what we're in now.

The Chair: Thank you very much.

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

[*Translation*]

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

In 2009-10, when you first worked with the Department of Aboriginal Affairs and Northern Development in order to carry out community consultations, how did they present the process for making election regulations that would follow the bill's passage?

[*English*]

Grand Chief Derek Nepinak: When the community engagement sessions were initiated, there was no forewarning as to how the recommendations would be rolled up and presented in a solution format, whether by way of changes to regulations within the Manitoba region, or by way of a new law that would apply in Manitoba only. There was no contemplation that it would be rolled up and projected across the nation as a new legislated solution. I recall specifically sitting at the AMC having a discussion as to the implications of the exercise and what the government was going to do with the information once it received it.

● (1200)

[*Translation*]

Mr. Jonathan Genest-Jourdain: In light of what you experienced in 2009-10 and the fact that your concerns and recommendations were given very little consideration, what measures do you think the department will take to ensure a high level of participation by the first nations when it comes to developing election regulations?

[*English*]

Grand Chief Derek Nepinak: I would suggest that we take a look at the bill. In my submission, I've included recommendations to invoke the recommendations of the AMC and nothing more.

The AMC also recommends that the provisions offending the right of first nations to govern themselves be stricken from the proposed legislation, which would include clause 3.

I also believe that, perhaps as an alternative, a national referendum should be held at the community level to engage community citizens on the appropriateness of the new law. I think that drawing a distinction between custom code communities and section 74 is inappropriate, because at the end of the day, the minister still retains the broad discretion to pull everybody in. I think it's important, on that premise, to include everybody in that national engagement. That would, I believe, establish and reach the threshold of a free, prior, and informed consent exercise for indigenous people.

[*Translation*]

Mr. Jonathan Genest-Jourdain: Thank you.

As I understand it, between 2009 and 2010, you consulted 37 communities on your own initiative in order to produce recommendations.

How long did it take you to carry out that consultation process, to obtain consent and ascertain the position of Manitoba's 37 communities?

[*English*]

Grand Chief Derek Nepinak: It happened, I believe, within a fiscal year. I cannot speak to the exact timeframe as I was not the grand chief of the Assembly of Manitoba Chiefs at the time. It was prior to my election in August 2011.

[*Translation*]

Mr. Jonathan Genest-Jourdain: Thank you.

I am going to share my time with my colleague, Ms. Crowder.

[*English*]

Ms. Jean Crowder: I have a quick question. We have a current member of Parliament sitting in the House of Commons who is under investigation for alleged misspending in an election, but that person is still sitting in the House of Commons.

Why do you think that first nations are being treated differently? I'm talking about alleged election misspending. We're talking about elections here.

The Chair: I think we may be getting off track here.

Ms. Jean Crowder: No, I'm absolutely not. There's a unilateral ability—

The Chair: Order, order.

I'm saying that we're getting off track with conversations that are happening across the table.

Let me be clear. Let's direct the question to the witnesses. If the witnesses desire to answer, we'll hear from them. Colleagues, if you direct your questions through the chair, that may diminish the responses that we're getting from one side of the table.

Ms. Jean Crowder: Thank you, Mr. Chair. My apologies.

Why do you think first nations are being treated differently in terms of the potential for first nations to be masters of their own destiny with respect to elections?

Grand Chief Craig Makinaw: Speaking for Ermineskin and Treaty 6, I'd say it's a good question. We follow our systems, our customs and bylaws. Corrupt election practices and all that is addressed in our codes. That's where the issues are dealt with, when they come to the table and we deal with them. I don't see a problem when there are concerns brought up, especially the alleged corrupt practices. Those are dealt with. We have people who deal with them.

The government's acting like Big Brother to us is a concern. We'd like to have and show more authority for ourselves, to have more decision-making power. Speaking generally on all of these bills in the last year or two, there is supposedly, on some of the bills, a two-year discretionary period during which you're supposed to exercise the right to put them in play. What we're seeing now is that the bill is put into force even before we have the two years to discuss things. That's another concern.

● (1205)

The Chair: Thank you.

I'll turn now to Mr. Seeback for the next five minutes.

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

I recognize and hear your criticism of the legislation with respect to the sections dealing with, as my colleague would call it, and I'm not going to use the exceptional phraseology, because I can't remember it, but a sort of mandatory—

Hon. Carolyn Bennett: It's the ability to be opted in.

Mr. Kyle Seeback: Yes, the ability to be opted in.

That's right. Thank you.

I know you don't like that aspect of the legislation, and I think "don't like" is probably too soft a term, but we've had other first nations representatives come to the committee who have said that they support the legislation despite that section being there.

You can see the dilemma this committee could face when you say that you don't think we should proceed with the legislation, while other communities are saying, "yes, please do", and it is opt in.

Are you suggesting that we shouldn't proceed with this legislation, even though it's opt-in legislation, in the face of other communities saying that they like this legislation and probably want to opt in?

Grand Chief Derek Nepinak: I think it's a question of recognizing that the ultimate decision-makers in the discussion are at the community level. Being decision-makers, they vet their decision-making through their elected chief and council.

Now, I will say that as an organization the Assembly of Manitoba Chiefs can put a lot of resources towards a review of a draft piece of legislation. It can balance draft legislation with the mandates that are established through the constitution of the organization. I think with a very thorough understanding of sovereignty, inherent rights and treaty rights, of the Constitution and of aboriginal rights jurisprudence that has developed over the last 30 years, we can come out with a very informed perspective as to what we're viewing coming out of the legislative offices here.

When you engage a community chief, there is the potential that the chief may not have an expert legal analysis provided to him before he comes to sit before you. I only suggest that because I know, as a former chief of my community, the 3,500-strong Anishinabe people from the Minegozhiibe territory in west central Manitoba,that oftentimes I'm dealing with one crisis right after another, to the point that my ability to put my mind to a task at hand, such as reviewing legislation written in the English or French language, is not there. I'm not saying I don't want to, but I'm saying that different capacities are brought to the table, depending on what position a person sits in within our political infrastructure.

Mr. Kyle Seeback: Are you suggesting that the people who previously came to the committee didn't understand the legislation when they said they supported it?

Grand Chief Derek Nepinak: I'm suggesting that I can bring perspectives on the implications of the legislation that perhaps are not going to be shared by others who may not be able to put the resources behind the review that I can.

Mr. Kyle Seeback: My colleague, Mr. Strahl, said that according to his information, only three times in history under the Indian Act section has that power of the minister been exercised.

This is similarly worded discretion. You used the term "broad discretion". I don't think it's broad discretion if it has only happened three times. We have members of first nations communities supporting the legislation.

In the context that it has only been used three times, does it not make sense to proceed with the legislation and let people who want to opt in and who have come to the committee and said they want to opt in be able to do so? Does that not make sense?

Grand Chief Craig Makinaw: Well, I guess, based on the region or the area, that would be up to their discretion. I can't speak for them. They have different decision-making powers, so I can't comment on that.

I'll just leave it at that. I won't say too much more, because a lot of it has being discussed.

My other concern is with the minister acting at his discretion. That is far too general, too open. He could come in and, from reading the act as written, enforce those rules on us without our even having our opinion. That's one of the concerns we would have. That's where the minister has way too much power over us.

● (1210)

Mr. Kyle Seeback: It has only been exercised three times under the Indian Act. Sometimes I use the expression "don't let the perfect be the enemy of the good". To me, this is something that may do a lot of good but might not be perfect.

I compare it to some extent to the First Nations Land Management Act. It was opt-in legislation, not generally supported when it first took place, but now we have an enormous number of first nations who want to opt in.

This seems to have a lot of good in it, and there may be some flaws, such as all legislation might have, but does it not make sense to let it go through, let those who want to opt in do so, while the ones who don't want to don't? I don't think this is going to be an area in which the minister is exercising discretion frequently, based on the past practice of three times ever.

Grand Chief Derek Nepinak: I've heard an assertion that the minister has exercised past practice to take a community out of custom code and put them in an Indian Act election on three occasions since 1876. I would recommend to anybody hearing this that they get specific reference points to those three occurrences, because I do still maintain that the minister does hold the broad discretion.

I also question whether it makes sense that a duly vetted, legitimate custom code that has received the consent of the people be subjected to an opt-in band council resolution from the chief and council of the day to accept the new legislation. Does that make sense? I don't think it does.

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

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

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

Thank you, Grand Chief. I appreciate your testimony today. It certainly in some ways changes some of the things that were brought forward at the last meeting by the minister. Certainly to my mind it calls into question the procedure that's been followed here.

Did your election occur prior to the draft legislation being put in front of the Assembly of Manitoba Chiefs?

Grand Chief Derek Nepinak: Yes.

Mr. Dennis Bevington: In other words, the prior grand chief didn't see the legislation in his role as grand chief.

Grand Chief Derek Nepinak: That's correct.

Mr. Dennis Bevington: Okay. I just wanted to make sure we understood that this was the process that occurred here.

In your capacity as grand chief, having seen the proposed legislation, you're more likely to have actually determined whether that's appropriate with your board, with all the membership of your first nations.

Grand Chief Derek Nepinak: Yes. I would agree that having been duly elected in an election at the Assembly of Manitoba Chiefs, and having the ability to review the draft legislation, I do have a perspective to share.

Mr. Dennis Bevington: Okay.

This whole issue of the minister having the ability, under some method of disturbed leadership, of disenfranchising elected members is an issue that I'm struggling with right now. In some ways, it's contrary to what....

Allegations do not prove the case. The principle, I think, is that the people who elect someone should have a choice about that person and should actually have to live with that choice, to some extent. That's how we grow up in a democracy. The choices we make are the ones we have to live with. They're not choices that are simply determined after the election. People have a responsibility to make a decision before an election about the character and about the likelihood of the leadership achieving their goals.

Is that similar in first nations? Do you think that principle follows in first nations?

● (1215)

Grand Chief Craig Makinaw: Yes, it does.

Mr. Dennis Bevington: So what we have here is a very tenuous opportunity.... I'm not saying this government or any other government would abuse it, but it could well be abused, because what we're talking about is no definition of a requirement for the disenfranchisement of an aboriginal leadership; it's simply the choice of the minister.

Is that the way you read this as well?

Grand Chief Derek Nepinak: Yes, I would agree with that.

I think that observation ties into Ms. Crowder's question about why there are different standards in place for duly elected indigenous representatives of their community versus allegations that may stand against an MP or a senator.

Mr. Dennis Bevington: We could go on with this one, but I want to go back to what you said earlier, that we need a new Indian Act.

What would be a correct process to draft a new Indian Act? What process would actually respect the history, the ownership of first nations, the rights of first nations? How would that work?

Speaking for perhaps the next government that may have a different attitude about this, how would you see it?

Grand Chief Derek Nepinak: I think that's a very broad question.

I would suggest that when we went to the crown-first nations gathering in January 2012 the Assembly of Manitoba Chiefs brought forward a perspective that would, I believe, have provided a constitutionally legitimate avenue to engage in some of the very difficult discussions around the existence of legislation that denies self-determination and self-government towards moving towards recognition of what section 35 really means, towards empowering those indigenous people across Canada that want to create certainty for their existence within the Canadian Constitution. It was dismissed as blue-sky thinking by the Prime Minister and by others.

I do believe that attachment to your resource base is critical to be able to experience organic processes, to renew indigenous institutions of government, indigenous institutions of education, social programming, and health. As long as the vast wealth of our resources is being extracted from our ancestral lands right out from underneath us while we remain confined in our reserves or go through the transition to the urban environments that we're living in now, we're not going to be able to build that or rebuild it. It's going to require a constitutionally based discussion that's going to involve the government of the day as well as the provincial jurisdictions that purport to have jurisdiction over our natural resources.

That's the starting point. I'm sorry for being overly blunt.

The Chair: We appreciate that.

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

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

Let me add my voice of welcome to the two grand chiefs sharing part of the day with us. We appreciate your involvement here, gentlemen.

Going back to the presentation, I got kind of a mixed message. I need some help in understanding what we're looking at in terms of....

Grand Chief, you said there was a first draft in 2011. You saw a draft of this bill. It was either typed or by fax. It got into your office?

Grand Chief Derek Nepinak: Yes.

Mr. Ray Boughen: At that time did the chief and council have a chance to look at that document and say, "We like this. We don't like that. We're kind of lukewarm to this part. Here's our input. We'll send it back to whence it came and see that those ideas that we had are introduced in that bill."

Did that happen or not?

Grand Chief Derek Nepinak: I cannot speak to the process at the community level in terms of how much they engaged in the draft legislation. I can say that at the offices of the AMC we did receive it; we did review the legislation, and observations were made and shared with the executive council of AMC chiefs.

● (1220)

Mr. Ray Boughen: So there was a chance for some input on the bill. It wasn't entirely just dumped on you to live with it or do another thing.

Grand Chief Derek Nepinak: Well, we did review the bill. We were invited to the Senate committee in 2012. We did provide recommendations similar in nature to the ones we've made today. We're aware that none of the friendly amendments we proposed were actually incorporated and were discussed very briefly.

Mr. Ray Boughen: Okay.

Apparently in the bill, part of it has found favour with the community and the chief and council. I refer to the four-year term and the common election day. Is that a fair assessment from what you folks have heard? People are saying that the four-year term makes sense rather than two years, the overall assessment of the candidates, the election call would be better if we did it this way or that way.

I ask the question in light of Elections Canada. We have a whole lot of different elections that happen from coast to coast to coast. The whole thing is governed by Elections Canada. Is there an opportunity in the first nations to have a similar operation that goes across Canada? Is that desirable or not desirable? Does the act allow that to happen? What are your thoughts on that?

Grand Chief Craig Makinaw: Based on every individual band's election system, whether it's a two-year Indian Act term, a three-year custom law, or a four-year term, it would have to be taken into consideration. At band level, I know that at Ermineskin we've talked about it a few times over the years, talking about four-year terms, but there have only been general discussions. It would have to be brought back to our own band levels to see what we decide. From there we'd know.

Grand Chief Derek Nepinak: If I may supplement that answer, I think that we have to at some point make a recognition that there are unique and diverse cultures of indigenous people, clear across Turtle Island, as we call North America now.

I think that the customs and traditions of unique indigenous communities need to be respected. In saying that, it's hard to justify the existence of a pan-aboriginal or a pan-Canadian approach to asserting legislation on indigenous people. There are organic processes that need to happen at the community level where decisions are made, whether or not there's going to be a local decision-making appeals tribunal or committee, or whether or not that should aggregate to a regional representation. I believe that to be an entirely organic process that has to be left to the community to decide.

Mr. Ray Boughen: So you don't see a movement that would say we'll go with four-year terms and we'll run it like Elections Canada runs its elections? No? Maybe? Don't know yet; haven't asked the community?

Grand Chief Derek Nepinak: I think the four-year term issue is not something worth arguing over. I think that the Manitoba chiefs for a long time have said a four-year term would be preferential under the existing structure.

The Chair: Thank you very much.

We'll turn to Ms. Hughes now for the next five minutes.

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

As you said, I don't think it's the four-year term that's the big piece in this legislation. I think that there is much more.

You talked about the process that you went through and specifically how a question was posed to Aboriginal Affairs during this process about what they were actually going to do with the information, because it was specific to the Manitoba chiefs. I'm just wondering what the answer was. Did they say they were looking at doing legislation across the board? Was it, “This is the discussion that you had wanted us to have so we're having it”? I'm trying to get a sense of it because you did mention that in your answers a while ago.

Grand Chief Derek Nepinak: The record of the AMC process indicates that notwithstanding other Canadian jurisdictions, we wanted to identify a process that would lean towards self-determining efforts to election reform. I think that the record speaks for itself in many respects. I can say that the legislation that landed on our desk was not pre-empted with a warning or any type of comment that they were going to roll up our recommendations and try to give them to the rest of Canada. That was never part of our discussion, as far as I know.

● (1225)

Mrs. Carol Hughes: Grand Chief Makinaw, could you elaborate on the process that took place with you? Did you have the understanding that this was going to be a blanket approach as well?

Grand Chief Craig Makinaw: I can only speak for when I came in, in December 2012. My time has been brief, so I can't speak for other grand chiefs or previous chiefs. From when I started until now, we have just looked at the bill. We've seen it and studied it. That's where I'm coming from, because I just got into the process within the last year.

Mrs. Carol Hughes: Thank you.

On the other question I had, you mentioned the cost of court cases and how some first nations wouldn't be able to go forward on that, and they may be forced into a court case that would be very costly to the first nations. When we're looking at the fact that a lot of first nations don't have the resources and tools, I think that's something that needs to be taken into consideration.

We heard Mr. Seeback a while ago talk about how even if there might be flaws in the bill, don't you think this is better than what's out there right now, but to me, we're having the discussion now to fix any flaws that there are in the bill. Wouldn't it be better to fix the flaws now than to have the government find itself spending taxpayers' money in courts? That taxpayers' money could be better invested in building schools on first nations or addressing the poverty issues or the diabetes issues on first nations.

Grand Chief Derek Nepinak: I mentioned a recent finding that this government has spent in excess of $100 million in litigating indigenous issues in the last year or so, and it far surpasses the next federal department. When we look at the existing structure, we look at cases such as Woodhouse in 2013 and Balfour in 2009. In one case, a local appeals committee made up community members of the Norway House Cree Nation had their finding of a corrupt election practice upheld by the Federal Court. In Woodhouse, we had the decision of the minister to allege a corrupt election practice and set aside an election overturned by the Federal Court.

Certainly, you look at those two scenarios and they're not ideal because the discretion is not being left to the communities for the final solution. Certainly, you can never deny access to a Canadian court. If someone feels the need to take a local decision made by legitimate representatives of the community and a local appeals committee to a courtroom, then that should be left to the discretion of that person. I believe it to be the better of the two processes than allowing for the minister this broad discretion to set aside an election.

Mrs. Carol Hughes: Is there more time?

The Chair: You have 15 seconds.

We'll turn now to Mr. Clarke for the final questions.

Mr. Rob Clarke (Desnethé—Missinippi—Churchill River, CPC): Thank you, Mr. Chair, and thank you to the witnesses for coming.

Grand Chief Nepinak, with my RCMP background, I had to investigate a lot of allegations of voter fraud at the band level. I'm curious. Currently in Manitoba how many investigations or how many elections are being protested with first nation communities that you sit over?

Grand Chief Derek Nepinak: I'm certain that every election in Manitoba is protested by at least one person.

Mr. Rob Clarke: Protested by one person.

Grand Chief Derek Nepinak: Whether or not it fits into the criteria or falls into a scenario where the department would acknowledge that is another question.

Mr. Rob Clarke: At the grassroots level, do the band members come forward and ask you for assistance? Do they show you letters or ask for your help with these allegations of misguided elections?

Grand Chief Derek Nepinak: The Assembly of Manitoba Chiefs is a chiefs organization. We never get involved in local election concerns.

● (1230)

Mr. Rob Clarke: What do you direct them to do if they come to you and ask these questions?

Grand Chief Derek Nepinak: We will receive the information, often acting as a sounding board, and refer them to the appropriate mechanism, the Indian Act process.

Mr. Rob Clarke: Do you ever recommend that they to go back to the first nation chiefs who are elected where this controversy is taking place?

Grand Chief Derek Nepinak: Often the allegations are brought to bear against the existing chiefs and councils that are in decision-making positions in the community.

Mr. Rob Clarke: The grassroots band members don't elect you; the chiefs elect you. Is that correct?

Grand Chief Derek Nepinak: That's correct.

Mr. Rob Clarke: Going back to 2009, with regard to the consultation process, did the AMC receive any funding, and if so, how much funding was provided for the consultations?

Grand Chief Derek Nepinak: The AMC received band contribution agreements that allowed a flow-through of federal dollars to help the process. I can't speak specifically to the amounts today; I don't have that information.

Mr. Rob Clarke: Was that filtered down to the bands' grassroots members or was that held in trust by the AMC at the meetings or during the spring at the regional meetings taking place at the AMC?

Grand Chief Derek Nepinak: The regional meetings would have been funded by the federal government.

Mr. Rob Clarke: Would the bands be able to get that funding so they could do the proper consultations at the grassroots level?

Grand Chief Derek Nepinak: I can't speak to that; I don't know the flow and I don't have that information directly in front of me.

Mr. Rob Clarke: Okay. Thank you very much.

The Chair: Thank you very much, Grand Chiefs. We appreciate your coming in today and making your time available, also for coming prepared to answer questions with regard to this legislation.

Colleagues, we'll now suspend this meeting and we'll do some committee business after we return.

[*Proceedings continue in camera*]