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**EVIDENCE**

**Tuesday, December 3, 2013**

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**Chair**

**Mr. Chris Warkentin**



## Standing Committee on Aboriginal Affairs and Northern Development

Tuesday, December 3, 2013

•(1145)

[English]

**The Chair (Mr. Chris Warkentin (Peace River, CPC)):** Colleagues, I'm going to call this meeting to order. We're running late already and I'd like to get started.

This is the seventh meeting of the Standing Committee on Aboriginal Affairs and Northern Development. We have with us this morning witnesses who have already joined us. We have by video conference, Mr. Gary MacIsaac, and we have Mr. Murry Krause, who's a councillor from the City of Prince George.

My understanding, Mr. Krause, is that you have to get going, so we do apologize for our late start. We'll turn to you first to begin with your opening statement, and then we'll structure everything moving after that.

**Mr. Murry Krause (Councillor, City of Prince George):** Thank you very much, and my apologies for having to leave, but this is a meeting that's been set up for a while. I'll get on with the presentation. I hope to at least be able to take one or two questions. When I leave, you will be left in very good hands with Mr. MacIsaac.

Thank you, and good morning, Chair and committee members. We appreciate the opportunity to be before you this morning. I am Murry Krause, City of Prince George councillor and chair of the Union of BC Municipalities First Nations Relations Committee. Joining me, via video conference from Vancouver, is Gary MacIsaac, the executive director with the Union of BC Municipalities—UBCM.

We've been asked to speak today by the Federation of Canadian Municipalities—FCM—owing to UBCM's ongoing work and knowledge of federal policy on additions to reserve and reserve creation, as well as the relevance of this issue to our membership.

UBCM is a provincial organization with 100% local government membership in B.C., and it is a member of FCM. Our organization is a member-driven organization with 194 local government members, including seven self-governing first nations members. I'm pleased to be here to convey our position and concerns regarding the proposed revisions to the federal policy on additions to reserve and reserve creation.

First, I'd like to emphasize that UBCM members have an established policy of expressing support for first nations endeavouring to increase economic development activities in their communities. UBCM recognizes the potential for positive outcomes of economic endeavours for both local governments and first nations.

As such, UBCM understands the real and substantial need for the federal government to support first nations growth and development in an expedient, straightforward manner.

That said, the 2013 draft ATR policy, as currently written, has the potential to affect local government operations extensively. Areas of concern raised by our membership include local government consultation, expediency at the expense of clarity, facilitation and dispute resolution, implication of non-contiguity and transfers of jurisdiction—including service concerns—land use compatibility, and community growth and fiscal implications.

I will do my best to give a short overview of these issues today, but I would ask you to review our written brief, which conveys these concerns in detail. This brief is based upon our October 2013 submission to the federal government during the formal ATR policy comment period and is based on UBCM policy as well as solicited member feedback. I believe you also have, or will have shortly, an FCM submission on the revised ATR policy, which speaks in support of UBCM's position.

I also understand that a delegation from metro Vancouver, a long-standing UBCM and FCM member will be sharing their perspective following my presentation and will comment further on these points. Their perspective, as a local government service provider, will be especially pertinent to your study.

The first and perhaps most pressing point of concern I would like to raise is local government consultation. UBCM has been monitoring the ATR policy for a number of years. Since October 2010, we have expressed interest in the ATR review process several times, contacting the Minister of Aboriginal Affairs and Northern Development Canada to request updates and an opportunity to provide feedback on the policy, as well as the Standing Senate Committee on Aboriginal Peoples during its ATR review in March 2013. We expressed disappointment that local governments had not been consulted during the ATR policy review thus far.

UBCM arranged for a teleconference with AANDC staff regarding the ATR review in July 2013. However, this update was provided less than two weeks before the draft policy was released for public comment. Because UBCM members expressed significant concern regarding the ATR policy review, we also invited AANDC staff to participate in the session at the UBCM convention in September 2013. The level of member concern expressed in this session underscored the need for much more substantial local government engagement on the revised ATR policy.

The lack of government perspective in this review speaks to an underlying issue in the draft policy itself—the absence of a clearly defined and recognized role for local authorities within the ATR process. The importance of early, meaningful consultation with local government cannot be understated when a federal initiative affects local government operations. Local governments do not aim to obstruct first nations prosperity. Ensuring early and ongoing local government participation provides an outlet for discussion and problem resolution.

- (1150)

As noted, a key issue identified by our members in regard to the revised policy involves lack of clarity resulting from efforts to expedite additions to reserve. Reducing the ATR policy length substantially, condensing category criteria, redrafting sections, and relying on resources external to the policy have created a vagueness that could counteract attempts to expedite the process. Our brief identifies sections of the policy that could be revised to clarify local government's role within the ATR process, including strengthening the language regarding local government collaboration, local government consultation prior to a letter of support issuance, and recognition of local government timelines and structures within the policy.

Another concern I would like to raise is on dispute resolution. The ATR process is built upon a good neighbour approach to negotiating agreements. This is the preferred approach for any type of discussion or negotiation between adjacent communities. However, constructive dialogue can become strained when financial and other implications are anticipated by one of the negotiating parties.

In its report “Additions to Reserve: Expediting the Process”, the Standing Senate Committee on Aboriginal Peoples recommended “Support mechanisms, including dispute resolution assistance, to First Nations in their negotiations with municipalities and third parties”. In its response to the report, the government states that it will better support productive negotiations between first nations and local governments and/or third parties through improved guidelines, tools, and resources under the ATR policy.

Ultimately, the only way of resolving outstanding disputes within the 2013 draft ATR policy is via a unilateral decision by the regional director general, based on his determination of whether the parties are negotiating in good faith. In our view, adequate dispute resolution measures should be outlined in the policy itself, and AANDC should provide facilitative and technical assistance to both first nations and local governments as needed.

Another aspect of the policy that concerns B.C. local governments is the relaxing of contiguity requirements. UBCM policy supports selections of contiguous parcels of land rather than dispersed and

unconnected lands in order to preserve jurisdictional clarity and uniformity and to allow for the efficient use of public facilities and services.

The draft 2013 ATR policy stipulates that the proposed reserve lands should normally be located within a first nations treaty or traditional territories. But they may also access lands that are not adjacent to existing reserves and are outside of their traditional territories. However, as one of UBCM's members has stated, serving non-contiguous reserve lands presents a major problem for local governments, considering the existing jurisdictional and legislative barriers to servicing non-treaty first nations lands.

Loss of land and tax base, jurisdictional fragmentation, land use inconsistencies or conflicts, and bylaw coordination are some of the key concerns for local governments. The concerns around servicing non-contiguous lands emphasize broader concerns around local government's exposure to liability as a result of the existing regulatory gap, which directly impacts service provision for non-contiguous reserve lands.

Land use compatibility is another area of concern for UBCM members. The 2013 draft ATR policy requires that first nations and local governments discuss issues of mutual interest and concern, and it requires that where the proposed reserve land is within, adjacent, or abutting a local government, the first nation notify the local government. In our view, the broad requirements for discussion notifications are not adequate, given the complexity of issues at hand.

B.C. local governments have well-established land use processes and structures that often involve extensive community engagement, some of which are entrenched in provincial legislation. As such, early, meaningful engagement that is outlined clearly within the policy should commit all parties to considering potential impacts of the ATR proposal on land use plans and acting as needed to address these issues.

The last item I would like to raise today is one of local government fiscal implications pursuant to additions to reserve. The budgetary process designed by the Local Government Act requires local governments to recover costs and balance their budgets. Maintaining financial stability is of critical importance to local governments in order that they continue to be able to provide services expected by the residents at a reasonable cost.

• (1155)

Significant or unanticipated changes to any of their revenue resources may result in revenue shortfalls and tax increases unless there's a corresponding decrease in expenditures. The draft ATR policy has the potential to increase the number of ATR proposals, and as lands are removed from a local government tax base, the loss of existing tax revenues for some local governments may be significant.

In that regard, we note that the 2001 ATR policy includes guidelines for the negotiation of reasonable compensation for local government tax loss. These guidelines are not contained within the 2013 draft ATR policy, and it does not stipulate what formula or cost-recovery mechanism is appropriate or over what timeline adjustment payments can be expected. It has been indicated by AANDC staff that guidelines for negotiating net tax loss payments will be expanded and developed in a separate guideline document. However, it is our view that local governments should be provided with a tax-loss framework so that they may be better equipped to mitigate potential losses. To this end, clear provisions formalized within the policy are needed.

In summary, I would like to reiterate that the federal government must recognize local authorities as participants in processes and policies that impact local jurisdiction, such as the additions to reserve policy. More work is needed, and we hope to have the opportunity to work with first nations and the federal government to ensure that the revised ATR policy is as strong and as clear as it can be to support all parties working within the process.

Again, thank you very much for listening to us. We'll take some questions.

**The Chair:** Mr. Krause, how is your time? Do you have some time?

**Mr. Murry Krause:** I probably have just a couple of minutes. I'm sorry.

**The Chair:** Colleagues, if you need any clarification or you have questions for Mr. Krause, I think now would be the time. I know it is unconventional to have questions now, but if there is something you need clarification on from Mr. Krause, get it before he leaves.

I'm not seeing anyone.

Thank you, Mr. Krause. We appreciate you waiting for us and giving testimony today.

**Mr. Murry Krause:** You're very welcome. It's my pleasure.

**The Chair:** I will turn to the other witnesses now.

We'll begin with Mr. Hildebrand, and then Mr. Daykin and Mr. Gailus, if that works.

**Mr. Ralph Hildebrand (General Manager, Corporate Counsel, Corporate Services, Metro Vancouver):** I will be deferring to Mayor Daykin to do the presentation for Metro.

**The Chair:** Mr. Daykin.

**Mr. Ernie Daykin (Director and Chair, Aboriginal Relations Committee, Metro Vancouver):** Thank you, and good morning, Mr. Chair, committee members.

My name is Ernie Daykin, and I'm the mayor of the District of Maple Ridge in British Columbia. I will say, it was a bit of a challenge getting here this morning. I didn't realize that Ottawa got fog.

I'm also a director on the Metro Vancouver board and the chair of the Metro Vancouver aboriginal relations committee. Mr. Hildebrand is general manager of corporate services and corporate counsel for Metro Vancouver, and one of Ralph's responsibilities is the Metro Vancouver aboriginal relations committee.

Just at the outset, I will tell you a little bit about Metro Vancouver. We're a federation of 22 municipalities and one treaty first nation who work together collaboratively to ensure that we have a liveable region, and we work on a variety of issues. I want to also say at the outset that we appreciate the work you're doing. We also recognize and acknowledge that we want what is best for our community, or for Metro Vancouver, while respecting the fact that first nations also want what is the best for their communities. We have, I think, very similar goals.

As I said, Metro is a federation of local municipalities. We work together to deliver regional services that include drinking water, waste water treatment, and solid waste. Metro Vancouver also regulates air quality, plans for urban growth, manages a regional park system, and provides affordable housing.

Metro Vancouver currently serves 2.3 million residents. Over 50% of B.C.'s population live in the Metro Vancouver area. We are home to 11 first nations communities, 22 Indian reservations, and one treaty territory. The regional district is governed by a board of directors, who are elected officials from each local authority, including the Tsawwassen First Nation.

As I mentioned a couple of minutes ago, I am the chair of the aboriginal relations committee, a standing committee of the Metro Vancouver board of directors, which was established to provide treaty negotiations and aboriginal relations to the Metro Vancouver board and individual municipalities—in short, to be a resource. One of the committee's endeavours over the past couple of years has been to monitor the progress of the federal government's development of the revised additions to reserve, ATR, policy. A Metro Vancouver policy paper was presented in March of 2012, and that was communicated to the federal department of Aboriginal Affairs and Northern Development Canada. It identified a number of local government issues related to the existing ATR policies that we feel need to be addressed.

First, local governments would like to work cooperatively with the province, the federal government, and first nations governments with respect to ATR. We have to work together. No one body has the answer. As we work together on this, we'll come to a solution that we feel works. Local governments, however, were only asked to provide written comments. Moreover, regional districts were not acknowledged or recognized in the ATR legislation and process. This approach does not ensure that local government issues and interests are understood so that a proper decision can be made by Aboriginal Affairs and Northern Development Canada.

Secondly, we feel strongly that there should be a timeline to review and comment on ATR applications. The process should include multi-party forums to further observe, inform, and discuss the respective and possible competing interests, such as land use designations.

Third, the ATR application process does not recognize the cost of the process to local governments or to first nations. The ATR application process requires the expenditure of time and human and financial resources by both local government and first nations. This issue is exasperated by the impact that an addition to a reserve has when it involves lands within a local government's boundaries. Local governments can be financially impacted in a negative way by the ATR. Therefore, funding from the crown is essential for ensuring that local governments are properly engaged in the ATR process.

• (1200)

Fourth, the ATR process can work to undermine the treaty process. Additional ATRs mean potentially fewer incentives for first nations to pursue treaty negotiations. For example, the Squamish First Nation has not negotiated treaties since 2000, but instead has pursued ATR both within and outside the Metro Vancouver region. Additionally, the Musqueam Band has not negotiated treaties since 2005 and is currently pursuing ATR.

And lastly, it is also not clear under the current ATR process how local governments and first nations can and will resolve their disputes, including land use issues. In 2012, Metro Vancouver identified the need for an appropriate mechanism for resolving these disputes resulting from ATR or disputes that impede the progress of the ATR application.

Moving forward to 2013, I would like to address some of the local government concerns with the revised policy. The draft ATR policy allows first nations to add to an existing reserve for economic development purposes. Metro Vancouver recognizes the potential for

market development on first nations lands to be mutually beneficial to aboriginal communities and their neighbouring governments.

I think that's important to note. Metro Vancouver recognizes that the potential market development on first nations lands can be mutually beneficial for aboriginal communities and their neighbouring local governments. Again, we can be in it together.

However, the federal government and first nations applying for ATR need to be made aware of the multiple barriers local governments face in providing services to Indian reserves, including legal, physical, and fiscal capacity related to utility servicing. Regional and municipal interests must be recognized in the ATR approval process to ensure that if an applicant first nation receives approval to add lands to its reserves, utility services will be available and an alignment exists between the first nation's objectives and regional and municipal interests.

Further, the draft ATR policy allows first nations to add lands to reserve even when those lands are outside the first nation's traditional territory, as long as the majority of the first nation's existing reserve land is located within the province or territory. This policy change may result in a significant increase in the number of ATR applications in Metro Vancouver, where first nations from across B.C. could potentially purchase and add lands to reserves for the purpose of pursuing economic development opportunities close to highways and urban centres. These economic development opportunities may not align with local governments' obligations under statute. For example, in B.C., the Local Government Act requires that all works and services provided by the regional district be consistent with Metro Vancouver's regional growth strategy. All bylaws adopted by the board and all services undertaken by Metro Vancouver must be consistent with that regional growth strategy. Metro Vancouver may therefore be precluded from providing services to lands added to reserves that first nations intend to use in a manner inconsistent with the regional growth strategy. This is because pursuant to the Local Government Act, Metro Vancouver must conform to that regional growth strategy.

Further, providing services to non-contiguous reserve lands presents a major challenge for local governments, considering the existing legislative and jurisdictional barriers to servicing non-treaty first nations lands, such as established regional and municipal policies and regulatory requirements, bylaw adoption and enforcement on Indian reserve lands, and environmental and financial liabilities.

When an ATR has been approved, local government land use bylaws, zoning, and related enforcement are no longer applicable on that land. The first nation has the authority to determine how to use its reserve lands according to the needs and interests of its community. At this present time, as a prerequisite to ATR approval, first nations must negotiate areas of joint land use planning and bylaw harmonization with neighbouring local governments. However, that requirement, which is contained in the current ATR policy, is no longer clearly stated in the revised policy.

● (1205)

Local governments are required to recover the full costs of all local services, including the costs of regional services and regional transportation services. The provisions of the regional growth strategy limit the exposure to develop, and ensure that regional taxpayers do not end up paying for the costs of projects not contemplated in the regional growth strategy.

Regional servicing issues, including the collection and remittance of all requisite Metro Vancouver property taxes and development cost charges....

Harmonization and servicing agreements with neighbouring local governments should be included in the policy as a condition of ATR proposal approval.

Further, the ATR policy should be amended to ensure that long-term uses of the proposed ATR lands are compatible with municipal and regional land uses and consistent with the land use proposed in the original ATR proposal. This amendment would serve to protect agricultural lands and ensure that any non-contiguous additions will not lead to conflicting land use for local governments. Planning proposals and structures developed under the official community plans and regional growth strategies are entrenched in provincial legislation. Local governments are required to adhere to these processes.

The revised policy no longer reflects the 90-day review period. Instead, the applicant first nation is required to notify the affected local government in writing of the reserve creation proposal to give the local government an opportunity to assess any potential impacts of the proposal on their existing land use plans and service delivery.

In the absence of a specific timeline, it is unclear whether local government input will be considered in the review process. In order for regional districts and municipalities to consider a proposal for ATR, it is necessary to process the proposals in accordance with the procedures imposed on local governments by applicable legislation.

Those procedures include notice requirements and time limitations that must be adhered to by the local government. As a result, the institution of any time periods included in the ATR must take those restrictions into account. It is therefore critical that the federal government amend the draft policy to require early, meaningful, and timely consultation with the impacted local governments. A new ATR policy should provide local governments with the 90-day review period similar to what is afforded to the province. This amendment would provide certainty that local governments will be fully considered during the ATR proposal process.

Dispute resolution mechanisms also need to be included in the policy, including dispute resolution assistance from Aboriginal

Affairs and Northern Development Canada to assist first nations and local governments in resolving disputes that may arise between them during these negotiations.

The guide titled *Communities in Cooperation: A Guide to Alternative Dispute Resolution for First Nations & Local Governments in BC*, prepared for the B.C. First Nations Summit and Union of British Columbia Municipalities, outlines a dispute resolution process that we feel may benefit the revised ATR policy. As well, the dispute resolution chapters of the recent treaty final agreements in B. C. can also provide some examples of clearly outlined dispute resolution processes.

As reserve lands are exclusively federal land, they are outside of local governments' regulatory and taxation authority. Any outstanding legislative and jurisdictional concerns relating to local governments' inability to apply and enforce utility bylaws on Indian reserves may hinder the progress in negotiations between local governments and first nations. Without effective regulatory tools, local governments are exposed to financial, environmental, and public health liability if a problem arises with a local government service provided to reserve lands. These regulatory and jurisdictional complexities need to be taken into consideration when revising language around the consultation and dispute resolution process.

Thank you for your kind attention. That concludes my presentation.

As time allows, I'd be happy to answer any questions.

● (1210)

**The Chair:** Thank you, Mr. Daykin.

We'll turn now to Mr. Gailus for his opening statement.

**Mr. John Gailus (Partner, Devlin Gailus Barristers and Solicitors):** Thank you, Mr. Chair. I want to thank the committee for inviting me back...[Inaudible—Editor]

**The Chair:** I think we're having some technical problems.

Okay, go ahead.

**Mr. John Gailus:** I want to thank the mayor for being so kind as to offer me his chair. I am not Ernie Daykin; I am not the mayor of Maple Ridge.

My name is John Gailus. I'm a member of the Haida Nation of British Columbia. I worked for almost five years with the Department of Indian Affairs and Northern Development, as it then was, doing economic development as a senior lands and management leasing officer. I also did a number of additions to reserve. In 1999 I went into private practice. I thought it was going to be easier than working for the department, but it turns out it's not the case. I've been practising exclusively in aboriginal law since then.

I'll keep my comments brief, given the time. I would recommend to the committee, if you haven't read it already, to read the CBA submissions on the additions to reserve policy.

I want to make two comments today. One of the questions that's come up and one of the recommendations that came out of that report was the possibility of enacting legislation dealing with additions to reserve, and in particular putting in pre-designation procedures, so looking at the claim settlements acts in Manitoba, Alberta, and Saskatchewan and at whether or not that's something we should consider doing nationally.

I think there is merit in looking at that as a model and in looking at possibly doing pre-designation procedures. But as this committee is well aware, there have been recent changes to the Indian Act that have made designations much simpler. I think that making these changes, although they're worth looking at, doesn't really solve the systemic problems with the current system. You've probably heard a lot about that already.

So what needs to change? I think that although AANDC has proposed changes to the ATR policy, it's the first nation that remains responsible for satisfying all the elements of the policy and funding it themselves. This is a fairly substantial burden that the first nation has to shoulder, and in my view, AANDC needs to take a more active role in all aspects of the ATR process by providing human and financial resources, and, more importantly, by obtaining a mandate early in the stage. It often seems to be the case that it's up to the first nation to approach the department and say, "Well we think we're ready to go on this. Can you get a mandate?" Then they wait 6 months, 9 months, 18 months for the department to get a mandate to actually negotiate a claim.

There are also challenges dealing with the province. I won't speak for the municipalities, but that's certainly a challenging process as well. There are also third-party interests that lead to the substantial delays that we're seeing in the ATR.

So we can make changes in terms of legislation at the back end, but we really need to do a lot of work at the front end, in my view.

In British Columbia, where I do most of my work, the province may be prepared to offer lands for settlement, but they want to reserve all the natural resources. They don't want to give the trees; they don't want to give the mines and minerals; they don't want to give the oil and gas. To use the analogy of the giant carrot that my property law professor taught me, they don't get the carrot; they just get the dirt the carrot is growing in. It's particularly galling for my first nations clients when we're doing specific claim settlements, for instance, for lands that they ought to have gotten, and the province comes to the table and says, well, we'll give you this patch of dirt,

but you can't have the trees, you can't have the oil and gas, and you can't have the mines and minerals.

• (1215)

I was going to say something about municipalities, but they're here; they can talk about their issues.

Third parties want security of tenure, either under the Federal Real Property Act or under the Indian Act. That's always a challenge. When you're acquiring land, you've got to deal with these third-party interests. And now we've got the duty to consult, which adds another layer. So if a first nation selects reserve lands in a particular area where there's an overlap with another first nation, the crown now has to go out and consult with that other first nation. That's going to add to your delays as well. I don't have a solution to that one. In my view, Canada has a significant role in these negotiations, but they prefer to sit on the sidelines. Unfortunately, my friends from the department aren't here to defend themselves.

One solution I'd like to see would be for AANDC to have agreements with particular provinces regarding how they'll deal with ATR; that is, having a memorandum of understanding or some sort of agreement, for instance, between Canada and B.C. to say this is how we're going to approach additions to reserve and these are the things we're going to do, rather than doing it in a piecemeal fashion, constantly going back and forth in terms of getting mandates to negotiate on an ATR proposal.

Those are my comments. If there are any questions, I'd welcome them.

• (1220)

**The Chair:** Okay. It seems we've lost Mr. MacIsaac. He was scheduled to speak earlier, but because of the delay....

Mr. MacIsaac, there you are.

**Mr. Gary MacIsaac (Executive Director, Union of British Columbia Municipalities):** Thank you. I have no further comments, Mr. Chair.

**The Chair:** Thank you so much.

We'll begin with our rounds of questioning, and we'll start with Ms. Crowder.

**Ms. Jean Crowder (Nanaimo—Cowichan, NDP):** Great. I want to thank all of the witnesses. Unfortunately, I only have seven minutes and I probably have about an hour's worth of questions, so you'll have to forgive me. I'm just going to try to ram them through.

Mr. Gailus, I want to start with you for a moment. One of the reasons we are having some additional testimony is we wanted to specifically talk about pre-designation. Could you talk about the merits, the pluses or the minuses, around pre-designation?

**Mr. John Gailus:** Absolutely.



Obviously there is some merit there if there is a proposal that's time sensitive. If Canada has agreed to set such lands aside as reserve and the nation comes together and votes on that proposal...when the order goes forward, there's the addition to reserve order—whether it's an order in council or a ministerial order—and that would be followed obviously by the designation order.

You can certainly collapse those timelines, but as I pointed out, given the recent changes to the Indian Act, you might save three or six months. I'm not sure how fast the designations are going through now as opposed to before, given the changes, but I think my key point was that you may shave six months off the designation process at the end, but if it's taking you 16 years to get to that point—and I have a file that I'm dealing with on that issue—what's another six months?

Certainly it would have to be in legislation, and we have the model there. We have the two acts from the Prairies that we could use.

So while I think there's merit in looking at that, I don't think it's going to make a substantial difference to the first nations.

**Ms. Jean Crowder:** We've had all three sets of witnesses talk about consultation—Mayor Daykin, Mr. Krause from Prince George, and Mr. Gailus. It's interesting to hear municipalities call for meaningful consultation when that is certainly a call that has come from first nations for decades, and first nations have not been able to get an agreement around meaningful consultation, despite numerous court decisions reaffirming the duty to consult. Now we have municipalities and regional districts adding their voices to a consultation.

Quickly, to take on this thorny task, could I ask each of you to talk briefly about a couple of elements that you see as being essential in meaningful consultation?

Mr. Gailus, I'll start with you, and then I'll go to Mayor Daykin.

**Mr. John Gailus:** In the first nations context or...?

**Ms. Jean Crowder:** In the first nations context, because it has to be included in an ATR process.

**Mr. John Gailus:** Absolutely. Obviously, the court cases talk about early engagements, sharing of all relevant, available information. The courts speak of doing a preliminary assessment, so the challenge for first nations is this issue of overlapping territories and first nations filing these maps that claim extensive territories, which therefore gives them rights to be consulted. Coming from British Columbia, you'll recognize this.

It's ironic that the first nations have gained this duty to consult but may end up thwarting their neighbours by using it if a reserve has been requested in an area that's particularly important to another first nation. I'm seeing this happening now in the context of treaty land entitlement—how the first nations are going to deal with one another on their land selections. The reality is, there's only so much real estate, and you're going to want to choose the most valuable real estate that's available when it comes to additions to reserve.

The crown's approach has been to try to have those first nations work it out among themselves, rather than being a referee and bringing it down.

●(1225)

**Ms. Jean Crowder:** Mr. Gailus, I think you're aware that the BC Treaty Commission has constantly called for additional resources around dispute resolution, even in the treaty process.

Mayor Daykin.

**Mr. Ernie Daykin:** At the local level, in every application that comes our way, we talk about early and ongoing consultation. That's the way we're used to doing business, and our citizens expect it of us at the local government level. As I said earlier, we're in it together. The more we can talk and understand each other's challenges or approaches, the better chance we have of success.

From my perspective, local government and our role in it hasn't been acknowledged by the other levels of government. I think a good example of how we've made that consultation in Metro Vancouver, and that working back and forth, is that 24 local governments have come together with a regional growth strategy through a whole bunch of discussion and debate on land use and made it work. I think we have a bit of a track record there.

Mr. Hildebrand, do you want to add to that?

**Ms. Jean Crowder:** If you don't mind, could I get Mr. MacIsaac? I've got less than a minute left.

Mr. MacIsaac, could you comment?

**Mr. Gary MacIsaac:** It's important to reflect on what Mayor Daykin said: early and ongoing consultation. One of the methodologies we used in B.C. in the past was a memorandum of understanding on local government participation in the new relationship with first nations. We had an agreement with UBCM, with the province, and the Government of Canada that identified UBCM's role in the treaty process, and more recently in the non-treaty process as well.

We certainly have an ongoing MOU that's current with the province. That agreement with the Government of Canada has not been renewed; it has lapsed, and we think one of the ways to ensuring early and ongoing communication would be to look at the formal memorandum that talks about the local government role in the process.

**The Chair:** Mr. Storseth, we'll now turn to you for the next seven minutes.

**Mr. Brian Storseth (Westlock—St. Paul, CPC):** Thank you very much, Mr. Chair. I want to thank all the witnesses for their excellent testimony.

I hope the committee takes the time to explore this further. I know the AAMDC and the AUMA in Alberta have also been seized with this debate and would have a lot of input that I think would be very good to hear from.

Mayor Daykin, thank you for your comments. Under the new ATR policy, what is the role for municipalities? What are the mechanisms in the policy that will ensure consultation and ensure that your municipalities have a say in the ATR?

**Mr. Ernie Daykin:** I think what's key for the municipalities is to be involved in the conversation and to be able to comment on the implications for our local governments, but also for the region. In Maple Ridge, if we want to have a development that's outside of our urban boundary, we need to go to the region, explain what the benefit is to the region and why we feel it's important, as the District of Maple Ridge, to move forward on that. I would see that we would be able to have those similar conversations with our first nations groups if they wanted to have an addition to a reserve: what does that look like as part of the region?

• (1230)

**Mr. Brian Storseth:** Do you feel, under the new ATR proposed policy, that this is enshrined in that, so you will be guaranteed that?

**Mr. Ernie Daykin:** I don't think we're guaranteed that. I think there's some work to be done on that yet.

**Mr. Brian Storseth:** If an ATR goes through in Maple Ridge, say, what guarantees do you have on land use once the addition to reserve is completed? Do you have any say in land use? Do they have to follow your guidelines whatsoever?

**Mr. Ernie Daykin:** No, my understanding is they're beyond our regulatory....

**Mr. Brian Storseth:** How about environmental standards that are set aside? Do they have to follow any environmental standards?

**Mr. Ernie Daykin:** Again, I think once it becomes an addition to reserve, we have limited ability to impose that those lands come under regulations.

**Mr. Brian Storseth:** Mr. Hildebrand, would you like to comment at all?

**Mr. Ralph Hildebrand:** Once they are ATR lands, we don't have any authority to have any control over the environmental issues, which is of course one of our concerns as a provider of services like sewer services.

**Mr. Brian Storseth:** As Mr. Gailus rightfully pointed out, when first nations communities are going to look to ATR, or something, they're going to want the most valuable land they can get their hands on. How will that affect your municipality if your most valuable land falls outside of your land use framework, outside of the environmental standards, of yours and the province?

**Mr. Ernie Daykin:** I think at the most basic level, if it's commercial, industrial land, and our tax rate is \$12.30 per thousand of assessment, and that land is now out of our tax base, we've lost that revenue.

**Mr. Brian Storseth:** There's also the issue of fairness, I think, when it comes to this, too, for the other individual businesses that will be in the surrounding areas. Would you agree there's an issue of fairness when it comes to that?

**Mr. Ernie Daykin:** There could be an impact.

**Mr. Brian Storseth:** Is there anything that stops first nations communities right now from buying this land in fee simple and

operating it as a business, as they would under the current guidelines, as any other business would?

**Mr. Ernie Daykin:** Actually, we have an example in Maple Ridge right now where we have a great working relationship with Kwantlen First Nation. They acquired an old provincial gravel pit as fee simple, and they've gone in partnership with a local developer. They're building houses and doing quite well. It's remaining fee simple. Again, they're working with the local business. I'm assuming it's part of their economic model that's helping their first nation, and it's worked well.

**Mr. Brian Storseth:** Would you suggest this as an example of successful economic development?

**Mr. Ernie Daykin:** Yes.

**Mr. Brian Storseth:** I just have a couple more questions, if the chair permits.

In regard to consultation from the federal government, in the role the federal government has of consulting with municipalities such as yourselves and those that you represent, has there been extensive consultation when it comes to this new policy? Have you had a say in the new policy development?

**Mr. Ralph Hildebrand:** We're grateful for the opportunity, obviously, to appear here in front of the committee, and we have had previous discussion—well, one previous phone call—and we have had the opportunity to obviously submit our positions on the ATR policy. I wouldn't say that we've had extensive dialogue over some of the nuts and bolts.

**Mr. Brian Storseth:** Would you say that the government or AANDC, the department, has developed a social licence to move forward with the wider community, your constituents?

**Mr. Ralph Hildebrand:** I would say that in the context of this particular policy, more work would have to be done before that social licence would exist.

• (1235)

**Mr. Brian Storseth:** I have one final question. When it comes to the actual definition of traditional lands, this is something that I have concerns about. We have examples in my area, Vermilion River, where we have first nations communities from Saskatchewan buying commercial land in Alberta to make it ATR. Do you have concerns about how widespread the definition of traditional lands could become and how people could be buying land across jurisdictions?

**Mr. Ernie Daykin:** I made note of that, I think, in the presentation. That is a concern. On both sides of the equation, if uncertainty can be taken out, it's better for all parties.

**Mr. Brian Storseth:** Do you feel the proposed policy takes the uncertainty out or adds uncertainty?

**Mr. Ernie Daykin:** I think it adds uncertainty.

**Mr. Brian Storseth:** Thank you.

**The Chair:** Thank you.

We'll turn to Ms. Bennett.

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

Over the last couple of years, the ATRs were top of mind for many communities and municipalities. The Canadian Bar Association has said that without legislation there won't be any policy on ATR that will give certainty. If there was to be legislation, what would be the elements that would create certainty?

I am a little concerned that this is being treated as though it's an either/or. What we've learned is that if first nations are successful, that's good for everybody around them. It's not that the economic engine goes one place or the other. It's two and two makes five, if there's good stuff happening.

To focus, what would ATR legislation look like? What would be the elements that would give you the certainty you want in order to go forward?

**Mr. John Gailus:** This is where I part ways with my colleagues at the CBA. I think any legislation is going to have to be limited in scope and probably based on the model that we see coming out of the Prairies—a process for adding land to reserve and a process for pre-designation. For anything beyond that, given the systemic issues and the number of parties that may be involved in a particular proposal, the legislative drafters would have a hard time coming up with an additions to reserve act.

**Mr. Ralph Hildebrand:** I don't know if my friend in B.C. wishes to address this question.

**The Chair:** Mr. MacIsaac.

**Mr. Gary MacIsaac:** Thank you, Mr. Chair.

I will comment on this policy with respect to what we would see as clarity. One of the things we're seeking is local government engagement in the process. I'll give you an example of one of the areas of concern for us. Currently, a change from the 2001 to the current draft would be the issuance of a letter of support. The issuance of a letter of support in this instance could be done by the regional director general in advance of local government consultation or discussion. It could be a condition thereof, but in a good consultative framework and process, we would suggest that it needs to be done beforehand.

Whether it's legislation or policy, one thing that adds clarity is timelines. The 2001 ATR policy contained a three-month review period for local governments. The 2013 draft ATR policy does not. If you ask for certainty, we would think that timelines are a fairly important thing to have.

We've stated at the beginning, Councillor Krause stated at the beginning, as has Mayor Daykin, that we're here to have a policy that supports economic development and growth and facilitation. We're trying to make this as clear as we can.

Another area would be on dispute resolution. We're not advocating disputes, but we are suggesting that disputes with land transfers and land discussions that are this complex, impacting this many groups, will eventually lead to differences of opinion, and there needs to be clarity, whether it's policy or legislation, on what a dispute resolution mechanism would look like.

● (1240)

**Mr. Ralph Hildebrand:** I guess my comment, in addition, is that you referred to two plus two can equal five, and our primary concern is that two plus two will equal one. We want to have a process in place that would ensure the concerns and needs of both sides of this equation are dealt with sufficiently in advance to ensure that we have the synergies that get us to our five rather than resulting in our one.

**Mr. Ernie Daykin:** I'm going to go back to our metro model, with our regional growth strategy and 24 municipalities trying to come together. We had one that had significant challenges with that strategy. We had a process in place. It was clear. Both parties worked through it over a period of time and came to resolution.

I think it's having that clearly defined outline of what that process looks like so that both parties know going in, and knowing the expectations of both parties. At the end of the day, a resolution was reached.

The rules weren't made up as we went along. They were there at the front end.

**Hon. Carolyn Bennett:** There has been some concern that maybe the timelines aren't being met, or even attempted, because of a lack of resources in the department. There's too much going on and too few people to do it.

Has that been one of the reasons that you would want to see timelines or service standards or some goals set for how long this ends up unresolved, and to make sure the government has put people in place to make it happen?

**Mr. Ernie Daykin:** I think at the local government level we run into that as well. Folks want applications put through in a timely manner. We have certain resources to work with, and if those timelines aren't met, people are going to go somewhere else.

I think it's the same in this case. We all need timelines. We all need targets. Otherwise, I think it can very easily go askew.

I think I saw Mr. MacIsaac going to speak.

**Mr. Gary MacIsaac:** Mr. Chair, if I may, my comment regarding timelines was with respect to the timelines for local governments to respond.

As I said, the 2001 policy had a three-month review period for local governments; the current draft version does not.

It has been indicated by AANDC staff that this is an unintentional omission that will be corrected going forward. We're pleased to receive a letter to that extent.

But to your question about what could add more clarity, there is an issue that would add more clarity. I was specifically referring to the ability of local governments to have a defined period of time in which to respond.

**The Chair:** Thank you.

We'll turn now to Mr. Strahl.

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

Thank you to all the witnesses for appearing on relatively short notice.

Mayor Daykin, we're glad you made it through the fog, and we hope there hasn't been too much here today.

I did want to talk briefly...and this is something that I've been contacted about by many of the local municipalities in my riding. They have concerns, not only with the proposed ATR policy, but with the current policy itself.

Obviously there's no intention to give local government a veto, but certainly I've heard there is a kind of after-the-fact ATR notification when a municipality is brought in. It's almost a *fait accompli*, and there isn't a lot of opportunity at the early stage, as you said.

What do you think should be implemented? I know we have talked a bit about dispute resolution, but where there is a fundamental lack of agreement on whether land should come out of one taxing authority and go into reserve, how do you envision those disputes being resolved? Has UBCM, FCM, given any thought to what a dispute resolution mechanism might look like?

• (1245)

**Mr. Ralph Hildebrand:** With respect to dispute resolution mechanisms, as Mayor Daykin indicated, our local legislation has in process a mandated mediation process. We have a third party present to assist in the mediation of a dispute between the parties. That's how this dispute that he referred to over the regional growth strategy was resolved. We have found success there.

Our concern, I would say, in the context of an addition to reserve is that if the disputes aren't dealt with in advance, they can undermine the success of the project at the end of the day. For instance, the hint was made about conflicting uses within an ATR and outside an ATR. But as we all know, if you have a bad mall in the midst of a successful mall, that doesn't mean that the bad mall will necessarily succeed; it may be that it brings down the malls around it and you create a depressed area.

We want to ensure that when something is added to a reserve, all the elements are there to ensure the success of the project. If there are conflicts between use, they need to be ironed out in advance, not once they're discovered and the businesses are in place and have invested.

**Mr. Mark Strahl:** Anyone else?

**Mr. Gary MacIsaac:** Mr. Chair, to Mr. Strahl's question, I don't have the silver bullet in terms of the one method. But I would follow up on Mr. Hildebrand's comments that there are methodologies that exist within our own local government framework that we could use to build off from.

The other comment, picking up on the sort of after-the-fact piece and things that can provide clarity along the way, is that the 2001 policy included guidelines for the negotiation of reasonable compensation for local government. The 2013 draft does not.

So it's clarity that's lacking in there. I think there's a discussion that this would be worked on separately, after the fact, and I think that raises a number of questions for local governments.

It's inevitable that when additions to reserve happen, there could be the potential for net tax loss. That's understandable, but there needs to be clarity around and discussion about what those guidelines might look like.

**Mr. Mark Strahl:** Clearly there are some examples of ATR, where there is no local government concern, dragging on too long. I think the committee has certainly heard those.

In terms of the draft policy, how much of the angst, if I can call it that, of local government, especially in British Columbia—I'm from there, so I've heard it most there—is coming from this proposed removal of the contiguous nature of an ATR? That's where I've heard the most concern. I think some of the rhetoric has been a little overheated, but it certainly has raised concerns about, as Mr. Storseth said, first nations nowhere near a municipality coming in and purchasing land and taking it out of that tax base.

If that issue were resolved, if that stayed with the 2001 policy, how much of your concern would be resolved? Or are there enough problems with the current proposal that it's a bit of a side issue and there are still significant concerns?

Mr. Daykin or Mr. Hildebrand.

**Mr. Ralph Hildebrand:** With respect to the non-contiguity aspect, that is obviously of prime concern, particularly for a metro Vancouver area where you have over half the population in the province in one particular area.

If there is a lack of continuity, or there are no guidelines as to how or when these things will occur, there are obviously, as we've indicated in the past—we've also presented papers to the department—concerns with the existing policy as well.

• (1250)

**Mr. Ernie Daykin:** There are also concerns around servicing agreements, both regionally and local government, and how that fits in as well.

Going back to your first comments, if local government is part of the conversation right at the get-go, right at the outset of the conversation, I think a whole bunch of potential misunderstandings or challenges could be de-escalated rather than the other way of having escalated challenges. It's laid out at the outset instead of being an afterthought.

**Mr. Mark Strahl:** Thank you.

**The Chair:** Thank you.

Ms. Crowder has a short question.

**Ms. Jean Crowder:** I have one brief question, Mayor Daykin. I believe you appeared before the committee when we were talking about the first nations water act. The City of Vancouver had raised some concerns with regard to servicing, specifically, and to liability.

I'm hearing this come up again around servicing. Could you just say a bit more about that? I think it's partly liability, but it's partly other issues as well.

**Mr. Ernie Daykin:** Sure. Let's take drinking water that's coming into the system. If it's in Metro Vancouver and, in our case, Maple Ridge pipes, it would come to the border of the first nations. Then it goes into their system. We have no control over that and no ability to monitor it. If there are challenges with that water, they're difficult to address once it leaves our system.

Conversely, if we're taking waste water from a first nations system, and it comes into ours and there are things in it that we don't want in it or shouldn't be in it, if it's a District of Maple Ridge business that's putting in the inappropriate substances, then we can ticket them. There are abilities to have some consequences of that action. Again, if it's coming off first nations lands, we just don't have that ability.

**Ms. Jean Crowder:** Thank you.

I want to thank you for mentioning the regional districts as well. It's something that's peculiar to British Columbia, and it needs to be included.

Thanks, Mr. Chair.

**The Chair:** Thank you.

Gentlemen, we thank you for coming today. We appreciate the fact that you've been willing to accommodate our sometimes uncertain schedules. We do appreciate that, and we want to thank you for coming and giving testimony.

Colleagues, we do have some committee business that needs to be taken care of. We'll suspend, go in camera, deal with that, and hopefully get out within the timeframe.

*[Proceedings continue in camera]*

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