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Chair

Mr. Chris Warkentin

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• (1530)

[English]

The Vice-Chair (Ms. Jean Crowder (Nanaimo—Cowichan, NDP)): We're going to start the meeting a couple of minutes early since everybody is here.

Everybody is well aware that we're going to have bells at some point. Everybody is in agreement that we would begin with the witnesses. Presuming that the bells are going to be between 3:40 p. m. and 3:45 p.m., we'll go a few minutes after that. I think everybody is in agreement that we will then adjourn. At some future point we'll ask the department to come back to respond to questions from the members.

Before we begin with the witnesses, I would like to remind everybody that Thursday's meeting, when the minister is coming for estimates, will be in Centre Block, but it will not be televised.

I want to welcome everybody to meeting number 25.

I'll begin with the witnesses. Welcome. I'm sorry that this process is going to be interrupted

Mr. Beynon, are you starting?

Hon. Carolyn Bennett (St. Paul's, Lib.): Why is it not televised?

The Vice-Chair (Ms. Jean Crowder): Because everybody and their dog wants a televised meeting. It wasn't possible to get it televised.

Mr. Beynon.

Mr. Andrew Beynon (Acting Assistant Deputy Minister, Lands and Economic Development, Department of Indian Affairs and Northern Development): Thank you, Madam Chair.

Chair and honourable members, thank you for the opportunity to appear today to discuss the challenges experienced by aboriginal communities and businesses in accessing capital, as well as some promising practices in addressing those challenges.

Private market capital, including debt and equity, is a key driver of economic activity. Market sources of capital acquired through mainstream financial instruments, such as bank loans, bonds, and venture capital, represent over 95% of the capital at work in the Canadian economy.

In the aboriginal context, and particularly in the on-reserve context, and even despite some remarkable innovations, access to market capital or private financing remains challenging. Despite these challenges, we also know that a growing number of aboriginal communities and businesses are achieving remarkable economic

success. First nations communities such as Membertou, Osoyoos, Whitecap Dakota, and Kamloops, amongst many others, are well-known examples.

Today we will try to use our time to describe for you: one, what we see as some of the major impediments to accessing capital; two, the steps that have been taken so far to address these impediments; and three, some concrete examples of success that may inform your deliberations in consideration of the access to capital issue.

My remarks today will focus primarily on the situation of first nations on-reserve because that's where we see the most persistent barriers to access to capital. Although I won't go into great detail today about the modern treaty environment, it is important to note that, although modern treaties remove many of the barriers to economic development and do provide access to financial and land-based capital, treaty groups continue to face issues regarding investment certainty and economic growth that are similar to those found on reserve.

The Government of Canada's recent thinking about addressing the barriers to aboriginal economic development falls under the federal framework for aboriginal economic development. The framework was established in 2009 and represents a whole-of-government approach that responds to new and changing economic conditions and emerging opportunities by leveraging partnerships to achieve sustainable economic development.

This framework also recognized the growing consensus on many facts about barriers to economic development. These include such matters as the legal and regulatory environment, access to lands and resources, skilled labour, deficits in infrastructure, limited financing options, and deficits in capacity.

With that introduction, I'd like to turn to major impediments to access to capital for communities.

Let me begin by providing an overview of some of the key issues affecting access to capital. On reserve, these challenges are largely the result of provisions of the Indian Act that can impede access to collateral and security, and prevent timely management of land transactions.

The legislative environment under the Indian Act can impede direct access to collateral and security, impose obstacles to direct management of reserve land by first nations, and create barriers to moneys management. All of these factors combined can deter investment. A lack of regulatory parity on and off reserve can also lead to investor uncertainty, further limiting access to market capital on reserve.

In addition, I will go beyond this to describe a number of issues that transcend the Indian Act or that go beyond the Indian Act challenges that also affect access to capital.

For a moment, just focusing on the Indian Act issue there is broad consensus that a comprehensive legislative and regulatory environment is necessary for economic development and business investment to take place.

This has been the conclusion, for example, of the Senate Standing Committee on Aboriginal Peoples, the Auditor General of Canada, and the National Aboriginal Economic Development Board. I would note that I believe that this committee, in its recent study of land management and sustainable economic development on first nation reserve lands, noted the very same point.

On reserve, the limitations of the antiquated Indian Act present particular challenges to creating an environment attractive to raising capital.

First, there are barriers to leveraging land and assets on reserve that are structural obstacles to accessing market capital. We know that off reserve many individuals and businesses choose to leverage the value of their property and assets in order to start, operate, and expand businesses. However, under the Indian Act, section 89 provides that the real and personal property of a first nation or an individual situated on reserve is not subject to mortgage, levy, or seizure.

This provision of the Indian Act was originally intended to prevent unscrupulous creditors from taking advantage of individuals. However, this provision in modern times can now pose an obstacle to raising capital. Under this provision, unlike other governments in Canada and entrepreneurs in the mainstream economy, neither first nation governments nor individuals can directly mortgage their land on reserve, and they're impeded from using their assets fully as collateral to access market capital without looking to the involvement of the federal government.

A second feature of the Indian Act is the Indian Act designation and leasing process on reserve. It also can be a possible structural barrier acting as an impediment to seizing opportunities and to the development of relationships with investors on reserve. Leases are possible under the Indian Act, but the procedure requires both a community vote to designate the land, and as a second step, the approval of the minister for the designation of land.

This has the advantage of serving in one sense as a rough equivalent to the community participation in land use planning and zoning processes off reserve, where community members, not just the government, are allowed to engage in deciding what will be the future leasing and development activities. However, I wouldn't want to take this comparison on and off reserve too far, because the Indian Act falls far short of the comprehensive systems off reserve for land use planning, zoning, and enforcement and control of restrictions on land use.

The designation provisions of the Indian Act were recently streamlined in the Jobs and Growth Act of 2012 by changing the community vote threshold to a simple majority and by granting to the Minister of Aboriginal Affairs and Northern Development Canada the authority to accept designations, rather than the

Governor in Council. This has assisted some first nations in speeding up the development process for reserve lands, but the Indian Act system remains a process that often requires lengthy and complex lease negotiations involving the department, first nations, the federal Department of Justice, and other stakeholders. This can still result in delays, added costs, and missed opportunities compared to land development off reserve.

A third example is legislative barriers to moneys management under the Indian Act, which can impede first nations' ability to leverage their own-source revenues to access market capital. Sections 61 to 69 of the Indian Act deal with Indian moneys and state that all Indian moneys will be held in the consolidated revenue fund and can only be expended for the use and benefit of a first nation, as determined by the Governor in Council. These provisions set up protections but also delay and restrict the disbursement and use of a first nations' moneys, particularly the capital moneys that are generated from activities such as natural resource extraction or the sale of reserve lands. Revenues from leasing do not carry the same restrictions as these portions on Indian moneys, but they are often of practical importance to first nations.

Here is a final example. Off reserve, local governments can use cash financing from significant tax bases and have access to public debt borrowing, for example, turning to the bond market, and can project finance major opportunities. So often they will turn to public-private partnerships, for example. However, on reserve, first nation governments have limited uptake of tools comparable to those used by other local governments in Canada to get access to financing and to raise capital. So, for example, members here will be familiar with the fact that first nation governments can levy property taxes under section 83 of the Indian Act, and under the First Nations Fiscal Management Act.

However, only 122 of 617 first nations are actively collecting some form of property taxation. The First Nations Fiscal Management Act includes innovative tools for bond financing or for pooled borrowing regimes based on future revenues. However, this is relatively new legislation and it's only just now, likely next month, in June 2014, that we expect the First Nations Finance Authority will be able to issue its first-ever bond under the First Nations Fiscal Management Act.

So it is moving forward. It just is relatively new.

Having identified some of the barriers under the Indian Act to raising capital, I'll turn to deal with some of the barriers that arise beyond the Indian Act. In addition to these structural barriers that I've described, a number of non-legislative barriers also represent obstacles to getting access to private financing.

● (1535)

First of all, for aboriginal governments, particularly first nation governments on reserve, a lack of financial management capacity is often cited as an impediment to acquiring and managing debt. Further, a lack of access to financing options contributes to deficits in public infrastructure, service delivery, and government operations. These, in turn, further deter private sector investment.

For aboriginal businesses, many studies have identified gaps. Examples include studies by the Public Policy Forum, the Aboriginal Business Service Network Society, and Toronto Dominion Economics. These studies cite difficulties in accessing private market capital, including perceptions by mainstream lenders of higher risk, limited entrepreneurship and management experience, lack of financial literacy, a lack of high-quality financial assets, and legal and legislative impediments to obtaining collateral for loans, as well as the remote locations of many communities.

According to the think tank, Fiscal Realities Economists, doing business on reserve can cost four to six times as much as off reserve. This creates further private sector reluctance to engage in doing business on reserve.

We also observed different barriers on and off reserve. Small aboriginal businesses, both on and off reserve, face many of the same challenges that are faced by other emerging or small-scale Canadian entrepreneurs. However, entrepreneurs on reserve must also overcome obstacles presented by the Indian Act. According to the 2011 aboriginal business survey by the Canadian Council for Aboriginal Business, on-reserve businesses are smaller, less likely to be incorporated, and are experiencing less growth than off-reserve aboriginal businesses.

Having set the stage by describing these issues both on reserve faced by first nations, and more broadly off reserve by other aboriginal communities and entrepreneurs, I'll take a few moments to describe some steps that have been taken to address these impediments.

Some key elements of legislative program changes as well as institutional arrangements have been taken to help address some obstacles to gaining access to market capital. Let me begin with strategies that have been developed to address structural challenges to gaining access to market capital on reserve, and then move on to strategies developed to address other challenges.

One of the key strategies the federal government has undertaken to address structural barriers has been the development of a number of optional legislative tools. These optional regimes include, for example, the First Nations Fiscal Management Act, the First Nations Land Management Act, the First Nations Commercial and Industrial Development Act, and the First Nations Oil and Gas and Moneys Management Act. These provide first nation governments with the ability to remove themselves from many of the restrictive provisions of the Indian Act, which I referred to earlier.

Together these acts provide ways for first nation governments to leverage on-reserve property taxation, own-source revenues, and a strong land base to gain access to capital markets and gain control over financial management as well as lands management. Also, the First Nations Oil and Gas and Moneys Management Act in particular allows first nations to develop and control oil and gas revenue moneys, as well as oil and gas development on reserve.

In total, looking at these opt-in legislative models, first nation communities can now use opt-in legislation to remove themselves from 48 sections of the Indian Act that are recognized as barriers to economic development.

For communities currently operating under the Indian Act, the department is working to improve the leasing environment on reserve to create a more attractive climate for investment. So even with the Indian Act limitations, we're trying to make the system more effective by, for example, introducing a new standardized commercial leasing template, a new leasing policy for locatees or those who hold certificates of possession on reserve, and a directive that streamlines the process, including new environmental insurance and other provisions including fire protection as part of leases.

In addition to this, the government has also been working to mitigate barriers beyond the Indian Act. One key success story is the robust network of aboriginal financial institutions that support small-scale aboriginal entrepreneurs. Through these institutions the federal government provided \$205 million in loan capital investment from the late 1980s through to 2012, generating over 37,000 loans of close to \$2 billion, that being a very important matter to smaller-scale entrepreneurs across Canada.

Federal efforts to increase the number of aboriginal suppliers bidding for and winning federal contracts—the procurement issue—are also enabling aboriginal businesses to raise income that can be further leveraged in growing their businesses. We have a federal procurement strategy for aboriginal businesses that has set aside contracts exclusively for aboriginal businesses to bid on.

● (1540)

Yearly increases in the value of aboriginal procurement, and the rising number of success stories of aboriginal businesses, demonstrate that the procurement strategy for aboriginal businesses is advancing the cause. For instance, the number of set-aside contracts under the strategy increased from \$49 million in 2009 to \$109 million in 2012.

● (1545)

The Vice-Chair (Ms. Jean Crowder): You have about three minutes left. I might ask you to highlight the recommendations or the successes, without too much detail on it.

Mr. Andrew Beynon: Okay.

I'll skip ahead to say one last point, that I would highlight for the committee, on strengthening land use planning, which can contribute to economic development and create new opportunities.

There are some examples of success that we would identify. The First Nations Land Management Act and the First Nations Fiscal Management Act have been taken up, very actively, by first nations and are reported by first nations to be useful tools for enhancing access to capital. A recent KPMG study of the impact of the first nations land management regime, for example, affirms that the first nations operating under that legislation view their ability to borrow money for capital investment as a significant economic advantage. They report that banks find them more attractive, in terms of investment.

We've also noted that some first nations, which are operating within the Indian Act, remain successful because of their strong leadership, despite the barriers imposed by the Indian Act. I think it is important to recognize that the barriers I talked about before are very important, but many communities have still been able to break through.

In conclusion, I would highlight that the National Aboriginal Economic Development Board has undertaken a benchmarking report and has identified a number of remaining issues to study. I would suggest that, for this committee's benefit, it may be helpful to hear from the board itself, in terms of recommendations regarding access to capital in the future.

I would also like to suggest some further areas of inquiry that you may wish to consider. First would be financial management and financial literacy. Communities are telling us that they require support to develop their financial management capabilities to engage in large and complex commercial transactions, which are becoming more and more the norm, particularly on reserve.

According to recent studies by the National Aboriginal Economic Development Board that I referred to before, and others, financial literacy remains a significant barrier for the creation and growth of

aboriginal businesses, particularly on reserve. Exploration of the extent of these issues and next steps for targeted intervention would be useful to inform a forward policy and program agenda.

Second, you may also wish to explore ways to build on the success of the First Nations Fiscal Management Act to ensure that the regime remains as responsive as possible to the evolving reality of aboriginal communities in Canada. For example, it may be valuable to examine the institutions created by the act and whether their current powers and mandates, provided for in legislation and regulations, are sufficient to support aboriginal government participation in the full range of activities undertaken by other local governments in Canada.

The Vice-Chair (Ms. Jean Crowder): I'm going to have to end it there. My apologies.

Thank you for a thorough presentation. Certainly the briefing notes the committee will be left with are something that we can perhaps use to formulate some questions, bring you back, and allow you to finish your conclusions in a less hurried manner.

Committee members, we will adjourn this meeting because we have to go to a vote. This meeting is adjourned.

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