



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

43rd PARLIAMENT, 2nd SESSION

Standing Committee on Indigenous and Northern Affairs

EVIDENCE

NUMBER 036

PUBLIC PART ONLY - PARTIE PUBLIQUE SEULEMENT

Tuesday, May 25, 2021

Chair: Mr. Bob Bratina



Standing Committee on Indigenous and Northern Affairs

Tuesday, May 25, 2021

• (1110)

[English]

The Chair (Mr. Bob Bratina (Hamilton East—Stoney Creek, Lib.)): I call this meeting to order, acknowledging first of all that in Ottawa we're meeting on the traditional unceded territory of the Algonquin people.

Pursuant to Standing Order 108(2) and the motion adopted on April 29, 2021, the committee is continuing its study of enforcement on first nations reserves.

To ensure an orderly meeting, I will go through some best practices.

Participants, you may speak and listen in the official language of your choice. At the bottom of your screen, on the globe icon, you can select “Floor”, “English” or “French”. As you present your testimony or answer questions, you can switch languages without having to touch that button again. When speaking, ensure that your video is on. Please speak slowly and clearly. When not speaking, your mike should be on mute.

Pursuant to the motion adopted on March 9, 2021, I must inform the committee that as of 8 a.m. this morning, Robert Louie, Michael Anderson, Leroy Denny and Doris Bill had not completed the technical pretest.

With us today for just under two hours by video conference are the following witnesses: Robert Louie, chairman, First Nations Lands Advisory Board; Chief Heidi Cook and Andrew Beynon, director, First Nations Land Management Resource Centre; Chief Leroy Denny, Eskasoni First Nation; Chief Doris Bill, Kwanlin Dün First Nation; and Chief Garrison Settee and Michael Anderson, policing and public safety adviser, Manitoba Keewatinowi Okimakanak Inc.

I am informed that Chief Louie and Chief Cook are appearing jointly and will be splitting their six-minute opening statement time. Accordingly, we will begin with them and go on through the rest of our witnesses.

Chief Louie, you have the floor for six minutes.

Chief Robert Louie (Chairman, First Nations Lands Advisory Board): Good day, Mr. Chair and honourable committee members.

I am Robert Louie, chairman of the Lands Advisory Board. My colleague is Andrew Beynon, who works in the First Nations Land Management Resource Centre. He will also be presenting.

We represent the first nations that are self-governing and pass laws under land codes. Some of our first nations have been operational with law-making powers since the turn of the 2000 millennium on January 1, 2000.

We have a serious problem with enforcement and recognition of land code law enforcement by the courts, RCMP and policing authorities. Law-making and self-determination is meaningless without enforcement. Currently, there is a gap. We urge this committee to recommend immediate federal action to resolve these enforcement issues.

The most important message to this committee is the need to solve the crisis in enforcement of first nation laws now, this year—not next year or years later, but now.

This committee has heard about complexity, risks, funding, re-sourcing, federal-provincial considerations and the need to build partnerships. The focus must turn to answers instead of questions. We urge this committee to sound the alarm by pointing out how much damage is being caused by the failure to enforce first nation laws.

First nations are suffering harm because trespassing, family violence, illegal dumping, violations of COVID-19 restrictions and other offences are occurring right now, and there is no clear enforcement in place. Chief Rempel of K'ómoks First Nation spoke with this committee about the challenges she has faced in dealing with trespassers. Other land code first nations have had to deal with similar trespassing problems, including alleged drug dealers, bikers, homeless encampments and residents of trailers without proper water and sewage hookups. Many land code first nations have faced challenges with illegal dumping and difficulty controlling some environmentally harmful businesses on reserve. The Framework Agreement on First Nation Land Management has included matrimonial and real property provisions for decades, but there are major and risky gaps in the enforcement system intended to protect spouses and children.

Land code first nations have tried to control the COVID-19 pandemic on their lands. There has been nothing but failure on this front, with federal and RCMP officials suggesting that old colonial Indian Act bylaws should be used rather than land code authority. Federal officials do not seem to understand that many first nations consider the Indian Act offensive. Land code first nations are past the bylaw phase of the Indian Act. Land code laws are passed by the first nation, not bylaws under the jurisdiction and legislation of the Indian Act.

The crisis in enforcement of first nation laws has consequences for all Canadians. The cost to clean up environmental damage is far more than prevention. Family violence has social costs far beyond individual families. Well-regulated communities contribute to economic prosperity.

We urge this committee to call for a more serious and focused federal report. This committee has heard from five federal agencies. Who has the lead role in the federal bureaucracy for solving the enforcement of the first nation laws crisis? There is a circular firing squad of inaction in the bureaucracy. Questions such as these are asked: What is the source of authority for police officers? What about risk of liability? Too often, the bureaucracy has stopped at questions without driving to answers.

We recommend the appointment of a special federal adviser to help lead the bureaucracy and report to this committee within the next six months. Canada's guidelines for enforcement of Indian Act COVID-19 bylaws excluded the framework agreement and self-government. In our view, this has accidentally sent a perverse message that only the colonial Indian Act works.

We urge this committee to call for federal-provincial solutions. We are seeking to prosecute offences in the provincial courts. The committee should call on federal experts to advise within the next six months on what is needed to unlock provincial co-operation. Federal-provincial discussions will inevitably raise funding concerns, but this should not delay figuring out how to make this work.

Federal funding for land code first nations has increased over the years, but there is still not enough funding to support an adequate enforcement system comparable to other governments in Canada. Funding for enforcement of land code laws should be looked at and increased. Land code first nations understand federal and provincial concerns over resources and funding. We also want an effective and low-cost system and we will work hard to achieve that.

• (1115)

In conclusion, several land code first nations are pursuing pilot projects that we hope will be major successes in the near future. Committee members may be interested in registering at www.indigenouseenforcement.com for tomorrow's May 26 discussion of a pilot project led by the Muskoday and Whitecap First Nations in Saskatchewan.

Thank you for your consideration, honourable committee. I will be pleased to answer any questions the committee will have at your leisure.

Thank you.

The Chair: Thanks so much, Chief.

Chief Cook, were you going to add on to Chief Louie's presentation?

Chief Heidi Cook (Misipawistik Cree Nation, First Nations Land Management Resource Centre): Good morning. I apologize. There was a mix-up on the time zone.

Thanks for the invitation—

The Chair: I'm sorry, Chief; I don't think we can hear properly.

Mr. Clerk, do we have a technical issue with Chief Cook?

The Clerk of the Committee (Mr. Naaman Sugrue): I'll have some people get in touch to make sure that the device is set up, but we won't be able to proceed with the audio as is.

The Chair: Chief Cook, we'll get you sorted out, and in the meantime we'll move on to Chief Leroy Denny for six minutes.

Chief, go ahead for six minutes.

Chief Leroy Daniel Denny (Eskasoni First Nation, Eskasoni Band Council): Good morning. It is my pleasure to join you here from the Eskasoni First Nation community. It's a sunny day here in the beautiful territory of Unama'ki, located on the east coast of Canada. Eskasoni is the largest Mi'kmaq community, with a population of almost 4,700 people.

My name is Chief Leroy Denny, and I am the chief of the community of Eskasoni. I thank you for the invitation to appear before your committee on the motion to study enforcement on first nation reserves.

I was born and raised in Eskasoni, here in my community. My grandfather was also chief of my community. Also, my godfather was a Vietnam vet and a police chief for Eskasoni for many years, and one of the key people who started a police department, the Unama'ki Tribal Police, which I'm going to talk about.

I'm here to address the current policing practices and enforcement in first nation communities.

There is no denying that the impacts of colonialism continue to reverberate in all of our indigenous communities across the country. The costs of policing on reserve remain a source of conflict requiring resolution. Canada's position to hold policing on reserve as a joint responsibility with the provinces has created a jurisdictional confusion that results in inefficient and under-resourced policing, and our community members are the ones who suffer at the end of the day. A special constable program continued on the first nation communities throughout Nova Scotia in the seventies, a program that was underfunded and under-resourced. Since this time, because of these issues, the Mi'kmaq lobby for control over policing in their communities.

As a response to the Royal Commission on Aboriginal Peoples and the Donald Marshall inquiry, the Unama'ki Tribal Police was created in 1994, under the umbrella of the federal first nation policing policy, to provide policing to all five Mi'kmaq communities in Cape Breton, which are Eskasoni, Membertou, Potlotek, Wh'koq-ma'q and Wagmatcook. I was formerly a employee as a jail guard, and also as a part-time dispatcher at the time, which was one of my first jobs when I was really young.

Attaining control over our policing was a key component in achieving self-determination and enhancing control of enforcement in our communities. This was a decolonized method of offering police services. In it, cultural methodology was used and implemented in community police methods to resolve problems and promote community healing and trust, using our language. In the late nineties and early 2000s, this essential program was defunded, and the RCMP established the Community Aboriginal Diversity Policing Service to serve first nation communities.

Presently, we have RCMP serving our community. I commend their efforts in policing our community, because we have some Mi'kmaq police who are on the force. My own brother served both in the Unama'ki police and the RCMP for our community, and he retired a couple of months ago.

However, as a leader and a community member, I cannot help but see the injustices that we continue to face, not only in becoming self-determined but also in our health and safety on reserve.

When the global pandemic hit last year, there was a directive that the police in indigenous communities and the judiciary would assist indigenous communities to enforce their COVID bylaws, which are the lockdowns we have. However, the reality was not this. What happened was that they didn't respect our bylaws. We had our own curfews, our own lockdowns, and they weren't respected. We had our own restrictions, and we had issues with the police. I ended up calling my MP, to the top office, to make sure our bylaws were respected, but it was very difficult for us for our security and to make sure that the lockdown to keep COVID out was respected.

This issue also hinders our ability to enforce laws made on reserve. Bylaws are not respected and are not honoured by current policing authorities. It makes becoming self-determined within our communities difficult. It was very difficult.

Before I end my submission to the committee today, I would like to discuss the issue of health and safety on reserve in policing. Due

to personal experience, I can attest to the issue we face regarding this issue.

• (1120)

At the end of February, February 28, one of my directors, the CEO for Crane Cove Seafoods, was shot. He's my neighbour and also my family member, my first cousin. He was shot next door. To this day, we don't know who shot him.

The first person he called was me because I was next door, down the road. He called me, and I called 911. There was a sound of distress on the phone. He had been shot; there had been two shots.

My family and I all heard gunshots here. I was on 911 for at least a good four minutes. When I got there, 911 told me not to go in, but my family member was in distress, so I had to go in. It had already been 10 minutes, and we were still waiting for the police and still waiting for the paramedics. I had to go in. God knows, I didn't know if there was a shooter there, but I had to sacrifice my own life to save my family member.

After 20 minutes, I had to take him to my vehicle and drive him to the ambulance station. There were no police yet. To this day, I don't know why. I'm still dealing with the trauma. There was a lot of blood I had to deal with. Luckily, he survived. He's recovering.

After 30 minutes—I counted the minutes when I made my statement—the police ended up going to the house to start an investigation. It was poorly done.

He relied on the police and the paramedics. He relied on me. I was the first person to get there. I took him to the ambulance. That shouldn't be. Community members shouldn't be doing that, saving lives in the line of fire. It's the police. We rely on our police and we trust them. That's in the agreements. I shouldn't be doing it; it should be them. I still have a lot of questions about that, and it's not the end of it.

I'll end right there.

• (1125)

The Chair: Thanks, Chief. Thank you very much for your testimony.

I will go to Chief Doris Bill from Kwanlin Dün First Nation.

Please go ahead.

Chief Doris Bill (Kwanlin Dün First Nation): Good morning, everyone, and thank you for the invitation to be part of this important conversation. I hope you are all well.

My name is Doris Bill and I am chief of the Kwanlin Dün First Nation. We are a self-governing first nation, an urban first nation. Our traditional territory is located in and around the city of Whitehorse, Yukon.

We settled our self-government and final agreements 16 years ago, in 2005. These modern treaties empower us to manage our settlement lands, to enact legislation and to make our own decisions in the best interests of our citizens—to be self-determining.

I am here today to share some information about our first nation and our journey to create a collaborative, community-driven approach to addressing safety, support and enforcement in our traditional territory.

Many indigenous people and indigenous communities in Canada have a complicated relationship with the RCMP. Our first nation is no different. History has made it difficult to trust. People sometimes need to be reminded that the police were involved in the trauma that came with residential schools, the sixties scoop and the forced relocation of our people. These events are still a part of our people's living memory, and that trauma continues to be passed down through generations.

We cannot change the past, but we can look forward to a brighter future, one in which we can work together for mutual benefit.

I do not support recent calls to defund policing services. Here at home I am sure our police department could use additional resources. In some cases, increased demands and inadequate resources have had a trickle-down effect, especially as this relates to prioritized calls and response times. At one point, citizens reported that at times it would take an hour or more for officers to show up, and there were occasions when no officers attended at all.

To provide some insight into where I am coming from, as a former journalist I am aware of the crime in our area. However, the reality of the situation truly hit home when there were two murders in our community shortly after I was elected in 2014. These tragedies struck at the very core of our people, and they were a catalyst for change.

The first step towards healing is to admit that there is a problem. In our case, we chose to listen, learn from one another and put what we heard into action. Through many discussions, we learned of numerous break-ins and other crimes in our area. We saw that most of the violent crimes were committed by people who didn't belong in our community. We heard from single moms who were sleeping with baseball bats beside their beds, from elders who didn't feel safe going out for a walk, from citizens concerned with bootlegging and drug houses and from parents wanting reassurance that their children would be safe playing outside in the neighbourhood.

Together, under the community's direction, we created a comprehensive community safety plan; established an inter-agency working group of partners, including the RCMP, bylaw services, SCAN, Public Safety and Investigations and the Correctional Service of

Canada; and built an innovative community safety officer, or CSO, program, which launched in 2016. It is the CSO program that I wish to highlight today.

The program is centred on the concept that the safety, health and well-being of Kwanlin Dün citizens would be significantly enhanced through the intensive and consistent presence of safety officers who come from the community itself. Therefore, all of the four full-time and two on-call CSOs who work on our lands are citizens or have a strong connection to the community.

CSOs help mediate disputes, they provide safe rides to safe places, and they connect citizens to other services, such as the RCMP, family and child supports, and legal services when needed.

● (1130)

They patrol our streets. They are visible and they are known. They do not replace the RCMP or any other service in our community. We understand the value and need for policing and bylaw services and other government services from partner organizations, but the CSOs help to bridge the gap between our citizens and those necessary services, and they help our citizens to achieve better outcomes from their interactions with those services. In fact, it is the strength of our partnerships that make this program possible and successful. The support we receive from the Yukon government, Canada and the RCMP is essential, and we have seen that it is working. Kwanlin Dün is proud of this program and how citizens and elders report feeling safer with the CSOs on patrol. We see fewer calls to the RCMP; as a result, they can focus on dealing with the things they really should be dealing with.

We remain committed to the process of building community-driven, culturally relevant services for our citizens.

Another step forward came last summer when we signed a historic letter of expectation with the RCMP. It promotes positive and co-operative relationships and defines policing priorities, goals and strategies that are specific to the needs of Kwanlin Dün. I won't say it has been an easy process, but it has been extremely rewarding for our community as a whole. Ultimately, it is about choosing a path forward where strong partnerships allow us to create and steer the kind of policing we know we need in our community.

I think we can agree that together we can bring about change.

Shāw nithān, gūnālchish, māhsi'cho and thank you. I welcome your questions.

The Chair: Thank you very much, Chief Bill.

We'll go to Chief Settee and Michael Anderson together.

Chief Garrison Settee, you have six minutes. Go ahead, please.

Grand Chief Garrison Settee (Manitoba Keewatinowi Okimakanak Inc.): *Tansi, boozhoo, edlanet'e.*

On behalf of the 26 MKO first nations nations under our administration and at least 73,000 people, I am pleased to have the opportunity to share with the committee some of MKO's views on enforcement on first nations reserves.

I will also be making a few references to the MKO book of documents that MKO has provided to assist the committee.

With the help of Mike Anderson, MKO has seven key points.

First, Indian Act bylaws under subsection 81(1) and section 85.1 of the Indian Act are federal regulations under section 2 of the Interpretation Act, subsection 2(a) of the Statutory Instruments Act and subsection 7(1) of the Statutory Instruments Regulations. The B.C. Court of Appeal has confirmed this at paragraph 12 of its 1987 decision in *R. v. Jimmy*.

Second, and most fundamentally, Canada has failed in its duty to enforce and prosecute these valid laws of Canada. First Nation bylaws under subsection 81(1) and section 85.1 of the Indian Act have not been enforced by policing authorities or prosecuted for 25 years in Manitoba. This is a quarter of a century.

The protocol relating to the enforcement and prosecution of bylaws adopted pursuant to sections 81 and 85.1 of the Indian Act, mentioned by government witnesses before this committee, confirms that the Indian Act bylaws are not being enforced or prosecuted in Manitoba. Except for the 11 very recent protocol agreements, this has been the case across Canada.

Particularly in remote first nations communities served by periodic RCMP patrols, communities are in crisis due to the uncontrolled bootlegging and drug dealing fuelled by long-term non-enforcement of section 85.1 bylaws.

Communities are also unable to see or ensure that COVID-related emergency measures are being enforced by police and that charges are being laid and offences are being prosecuted. There is no deterrence, and compliance is undermined.

Third, we are making some important progress after a concerted months-long campaign carried out jointly with the First Nations Lands Advisory Board, the Land Management Resource Centre and the Manitoba Public Interest Law Centre.

MKO has been working with the Public Prosecution Service of Canada and the commanding officer of RCMP D Division to develop and support operationalizing a protocol that can be applied by all 26 first nations in our territory. The protocol applies only to the enforcement and prosecution of Indian Act bylaws in response to the COVID-19 pandemic; the protocol is not a long-term fix of enforcement and prosecution issues.

The Manitoba Department of Justice very recently committed to adopting an MKO recommendation to revise the 2021-22 first nation safety officer programming. These amendments will include a recognition that FNSOs have peace officer powers when enforcing

all subsection 81(1) and section 85.1 Indian Act bylaws. These revisions to the FNSO operating agreements are important to clarify the powers of FNSOs when enforcing COVID-19-related bylaws under the protocol.

Mr. Anderson will continue.

• (1135)

Mr. Michael Anderson (Policing and Public Safety Advisor, Manitoba Keewatinowi Okimakanak Inc.): Fourth, although we've made some progress regarding the recognition, respect, enforcement and prosecution of band bylaws, First Nations Land Management Act laws have not been enforced by policing authorities or prosecuted by Crown prosecutors for 20 years, since the coming into force of Bill C-49 in 1999.

As to the enforcement of land code emergency laws, the RCMP says, "The RCMP recognizes First Nations' authority under the FNLMA. However, there are concerns as to whether the FNLMA Land Codes provide the legal authority to enact COVID-19 related laws." Please see page 13 of our documents.

ISC says, "I appreciate the frustration felt by First Nations who have taken on such fundamental aspects of their governance through the enactment of a Land Code, only to be forced to rely on Indian Act authorities". Please see the MKO's book of documents, page 16.

The Public Prosecution Service of Canada says the role of PPSC set out in the Director of Public Prosecutions Act is inapplicable to FNLMA land codes and FNLMA first nation laws.

Fifth, there's a harmful uncertainty related to the appointment and empowerment of first nation safety officers to act as peace officers. Simply put, you have to be a peace officer to stop, search, seize and detain, and you need those four powers in order to effectively enforce first nation bylaws under subsection 81(1) and section 85.1 of the Indian Act.

Sixth, PPSC and the RCMP do not accept the validity of Indian Act bylaws enacted after December 15, 2014. Parliament repealed the ministerial power of disallowance and approval of Indian Act bylaws effective December 15, 2014, with the coming into force of Bill C-428. However, as PPSC witnesses have advised this committee and MKO, PPSC will not recognize the validity of bylaws enacted on or after December 16, 2014, unless reviewed by “an appropriate federal government department.”

PPSC, Indigenous Services Canada and the RCMP have each advised this committee and MKO that they will not review bylaws enacted after December 15, 2014. Therefore, there is no federal department that will review existing Indian Act bylaws enacted after December 15, 2014. This means that the protocol will not apply to any existing post-Bill C-428 bylaws, including the health and safety bylaws and their related health orders that have been specifically enacted to address the COVID-19 pandemic. PPSC's acceptance of MKO's proposal to conduct a third party review along with the Public Interest Law Centre appears to be the principal, if not the only, pathway to ensuring that the protocol will apply to the existing first nation COVID-19 emergency laws in the MKO region.

Seventh, the gaps uncovered by the COVID-19 pandemic, including those highlighted in evidence recently presented to this committee, reveal that the legislative framework, the federal civil service and policing authorities are incapable of supporting or are unwilling to support the exercise of first nations' self-determination and law-making powers enacted by Parliament through Bill C-428 and the First Nations Land Management Act.

Grand Chief Settee has a concluding comment.

• (1140)

The Chair: Well, we're at seven and a half minutes. We'll just stop it there, and hopefully more points will come out through the rounds of questioning. It's so important that we get committee members to respond to the statements.

Mr. Clerk, how is Chief Cook doing technically?

The Clerk: She is doing better, I hope. What I'll ask Chief Cook to do is introduce herself and say where she's testifying from. Then interpretation will let me know if we can proceed with testimony.

Chief Heidi Cook: Good morning. It's Chief Heidi Cook. I am in Misipawistik Cree Nation, Treaty 5.

Was that good?

The Clerk: I hope so, Chief Cook. I'm just going to wait for feedback. It will be just a moment.

Chief Heidi Cook: I see a thumbs-up.

The Clerk: Yes. We can proceed, Mr. Chair.

The Chair: Chief Cook, thanks so much. Sorry about the technical issues, but we do want to hear your testimony.

You have six minutes. Please go ahead.

Chief Heidi Cook: Thank you for the invitation, Chair, on behalf of the Misipawistik Cree Nation. As I mentioned, we are signatories to Treaty No. 5.

I would like to describe our experience with the COVID-19 pandemic and our difficulties enforcing our land code law.

From the beginning of the pandemic, MCN regularly enacted measures over and above the provincial health orders. They included closing our VLTs, putting up a highway checkstop, introducing mandatory isolation for non-essential travel past city limits, and mandating hand-sanitizing stations and masks in our businesses.

At our checkpoint on Highway 6, we monitored non-essential travel into northern Manitoba. At first we benefited from the perception that the checkpoint was tied to the enforcement of provincial northern travel restrictions. In reality, our first nation safety officer had no ability to ticket anyone on the provincial highway. When people would pull off onto the reserve for gas or a break, he would provide some warnings to travellers, but the checkpoint eventually became very hard to operate. People realized it was the band doing it and not the province. We started to get a lot more dangerous driving complaints and racist insults directed towards our workers. Eventually we just had to take it down.

We enacted our first public health order on October 20, 2020, and then our land code COVID emergency law on November 5, 2020. Our public health orders pursuant to that law included controlling non-essential travel, requiring isolation and putting in gathering and occupancy limits in public and private locations on reserve. Our first wave was in October and November of 2020. We maxed at four cases. During our second wave, which started in January 2021 and extended into February 2021, we needed help enforcing some public health orders. It wasn't forthcoming. People started to know that the RCMP would not do anything to help, so they were much more brazen in defying the public health orders.

We could have had help from the RCMP using the drunk tank, using laws that they could enforce, to stop people, who in some cases were positive, from going house to house looking for a party or a bed. We could have used some RCMP presence on our roads and at the checkpoint just to show support for our curfew and our lockdown measures.

The lack of support from the RCMP got so ridiculous that one of our nurses went to a home to do contact tracing and found herself interrupting a domestic dispute where a woman was being beaten up. The RCMP did not respond. They said it was a public health matter and they wouldn't respond. Our safety officer attended. The RCMP responded only when the second call came in with information, I guess, from somebody who wasn't in the middle of the situation.

During that time, it was expressed by the members of our pandemic emergency response team, our health team and our enforcement team that we felt abandoned. We were struggling to control the spread. Our second wave reached 155 cases and close to 300 contacts. We all suffered personal fallout. I feel that we all have PTSD from the situation we found ourselves in.

We have not enacted any laws after the expiry of our emergency law. The decision was, basically, what good is the law if it's not enforceable? As a result, we haven't done anything since then.

● (1145)

We're now starting our third wave. This time it's the U.K. variant. We might exceed our second wave. It's in our school and our day cares already, and contact tracing or "contact chasing" is under way. If we do better this time, I feel it will be due to our vaccination efforts, not necessarily the enforcement of our laws.

I will end it there. Thank you very much for listening.

The Chair: Thank you very much, Chief, and thank you to all our witnesses.

Now we're going to our rounds of questioning. In the first six-minute round, we will have Gary Vidal, Jaime Battiste, Sylvie Bérubé and Rachel Blaney.

Gary Vidal, please, go ahead for six minutes.

Mr. Gary Vidal (Desnethé—Missinippi—Churchill River, CPC): Thank you, Mr. Chair.

I want to start by thanking all our witnesses today for your excellent testimony. It's going to help us as we formulate some recommendations that will come out in our report on this study.

I'm going to start with Chief Bill this morning.

Chief Bill, I don't know if you remember, but I had the privilege of participating in the public safety committee meetings last summer when you were there. I remember some of your testimony then very specifically. I want to follow up a little bit on what we talked about last July and also some of your comments today.

First of all, you spoke last summer of your community safety plan and specifically the community safety officer program. Again today, you spoke of it very highly. You were elected in 2014. You identified an issue. You listened to people and you started to act. You created some pretty significant partnerships, by the sound of it. One of the outcomes was this community safety officer program, which you said consisted of four full-time and two part-time members by 2016.

I want you to share a little bit more. It sounds like, potentially, a real solution to the issue. I experienced this myself as the mayor of

a small city. I know the first nation next to my community has begun that journey as well. It seems like an option to create some really significant solutions. Could you expand a little bit on the journey from 2014 to 2016 and how you got to the place where you enacted that CSO program?

● (1150)

Chief Doris Bill: Thank you for the question.

We developed the program after the murders of several people in our community. That really plunged our community into a crisis, and we realized and understood that we needed something a lot more. The circumstances I described were that people were feeling unsafe. You could just see all of the issues bubble to the surface during that time, issues that had been there for a long time but were below the surface.

When we built the program, we built it after months and months of conversations with our citizens. The program really came out when we put people out there into the community, just to keep an eye on the community, and our people said they felt safe. That's when it really started to take off. The conversations we had with our citizens really helped to guide the program.

In addition to the safety officer program, we also focused on the infrastructure in our community. We would clear trails for line of sight for safety. We improved lighting on our buildings. We improved the infrastructure in our community, which had been neglected for a very long time.

We went to work in building relationships and partnerships, partnerships that really helped us to deal with some of the issues in our community. The relationship with the RCMP was not a good one, and we realized that had to change. Today, I can say that I have one officer here, for instance, who had been here many years ago prior to the community safety program, and he said that the change is just unbelievable. People drive through our community now and say that they actually feel the difference. It's not just seeing the difference; they feel it.

There are so many good things that have come out of this. We just recently completed an evaluation, and that evaluation has really documented the evidence that it has saved money, both in calls to service and from the bylaw end. We just keep working to improve it and on improving the relationships we have.

It's a program, though, that is tailored to the community. Each community is different. It may look a bit different in other communities, but I do know that we've been contacted by first nations across the country about this program. I wish we could help. We're only a small nation compared to some of the others that I've heard on this call.

Mr. Gary Vidal: Thank you. By participating here and sharing your experience, you can help many others, so I'm going to encourage you to keep speaking.

The chair is going to cut me off very soon, so I'm going to ask a very quick question.

We've talked a lot about jurisdictional challenges as we talk about building relationships and finding solutions. You seem to have found your way through some of that with the partnerships with the territory and the federal government and your own self-governing urban first nation. Can you quickly talk about some of the key things you learned about overcoming the jurisdictional issue and building those partnerships with the many people you talked about?

Chief Doris Bill: It starts by building those partnerships and really creating space for the program.

For example, our traditional territory spreads throughout the city, and we talked with and sat down with the City of Whitehorse. We created an intergovernmental forum and we meet formally with the City of Whitehorse. We also sit down with the Yukon government. We have those conversations and work out any problems or issues that we have. Because of our successes here in Whitehorse, we have the City of Whitehorse, the larger City of Whitehorse, asking us to extend our program within the city, and I—

• (1155)

The Chair: We'll have to leave it there, Chief.

Chief Doris Bill: Okay.

The Chair: I'm sorry about that.

Chief Doris Bill: That's okay.

The Chair: We have a lot of questions to come, maybe on the same theme.

Mr. Battiste, you have six minutes.

Mr. Jaime Battiste (Sydney—Victoria, Lib.): Thank you, Mr. Chair.

I'd like to start my questioning with Chief Denny.

Thank you for joining us, and thank you for your testimony. As you mentioned in your testimony, the Unama'ki Tribal Police operated between 1994 and 2000. It was one of the remedies or recommendations from the Donald Marshall Jr. inquiry that looked at racism within the justice system.

I'm wondering if you could tell us a little bit about what you felt were some of the successes or challenges around the tribal police. Also, over the last 20 years, it's been under the RCMP, so I'm wondering if you can tell us, in your view, how you believe the local policing has changed on reserve since the RCMP has taken over. Could you elaborate about what you've experienced in that time?

Chief Leroy Daniel Denny: As an employee at the Unama'ki Tribal Police, as a jail guard—I was a young, young man—and also as dispatch, I did witness good things first-hand.

When we used to have the Unama'ki Tribal Police, the majority of the force were Mi'kmaq officers. Before the tribal police started, there were over 10 Mi'kmaq-speaking officers sent to Depot in Regina to train under the RCMP. They came back to Unama'ki, and we policed all five Mi'kmaq communities. It was very underfunded, and they were dealing with a lack of resources. However, the good thing about having our own Mi'kmaq-speaking officers was that they played a large role in community policing.

We indigenized. We decolonized our police at that time, but after years of the lack of funding and covering five bands, they were just exhausted. We exhausted our police officers. We ended up picking up partners with the provincial police at that time. Then, finally, the funding didn't pick up. There was less and less. Then we had to go to this new approach with the RCMP.

Since then, we've never had any new Mi'kmaq officers. That just stopped. Now all the Mi'kmaq-speaking officers who came from Unama'ki and joined with the RCMP are starting to retire. One of them is my brother Walter.

All of them were in the beat, meaning that while they were doing calls and going to the major incidents that happened, the Mi'kmaq officers played a large role, speaking Mi'kmaq and being there and visiting elders. They were doing all these things. They were visiting the elders. They were involved in community events. That doesn't happen anymore. We don't know these officers.

I've been pushing for Mi'kmaq-speaking officers and indigenous officers anywhere in the country. I want indigenous officers in my community. It doesn't matter if they're Mi'kmaq or another indigenous person; they're really hard to find.

Many, many Mi'kmaq youth have been trying to get into policing, and they're just denied and they fail. I wonder why their submissions are not being respected or approved to enter policing when these 10 Mi'kmaq officers, plus two others, were able to enter.

Right now, we're having a lot of issues. Our Mi'kmaq youth are not being accepted in policing. Now most of our Mi'kmaq officers are retired. We're not going to have any more Mi'kmaq-speaking officers, and to me, that's a big issue. We need more indigenous officers, especially those who speak their own language. That's the most crucial and most important thing that we need here if we want to indigenize policing. I really want to return indigenous policing to our communities.

We're the only ones. We know our people. We know exactly how to defuse. We know exactly how our people.... We have anger issues, language issues. Just as a witness, I always witnessed how our indigenous officers defused situations without any violence—without any weapons, tasers, pepper spray or stuff like that—just by using our language. In a way, we'd just understand. We'd know their background. We'd know their families. We were able to already understand the background when we dealt with individuals. That's really important.

We need our own indigenous officers to be respected and helped, and we need to find many ways to get them through this program. That's what we need.

Right now, the RCMP is so colonized. That's why our Mi'kmaq officers can't get in there. It's because we don't meet their requirements. Our indigenous ideology should be respected. I think that's the approach we need to take.

Thank you.

• (1200)

Mr. Jaime Battiste: Chief, I think I only have time for one short question.

You put in significant measures to protect your community during the first phase of COVID. What was the experience like with the RCMP, in terms of helping you enforce some of the laws that you created to keep your community safe from COVID in the first wave? Can you give us a sense of what the RCMP told you?

Chief Leroy Daniel Denny: We had our own lockdown. The RCMP didn't want to get involved. They kept saying we were violating rights because we had a curfew and we locked our community down because there were a lot of cases in the town area. We did a lockdown using our health and safety bylaw. The RCMP didn't work with us.

Our poor security guards were policing it, and they were getting stressed out. They've been after.... They were going after them, and the police didn't do anything. They wouldn't do very similar.... As the chief mentioned here earlier, they didn't really play a role. They said they couldn't use these bylaws because it was violating the rights of people to enter. They didn't want to touch it.

I kept asking with emails to the top officer and even the minister, saying we need the RCMP to work with our people, with our security guards, to keep people safe, saying this is a deadly pandemic happening in our community and we're trying to protect our people and you're not helping.

Once this COVID hits our community, because of the high number of health issues we have in our community, it's going to affect many of our community members, like what's happened to many other first nations across the country where COVID hit. There were a lot of deaths. That's one of the main reasons I'm really upset to this day about how the—

The Chair: We'd better leave it there. That's seven minutes.

We'll go to Madam Bérubé, please.

[Translation]

Ms. Sylvie Bérubé (Abitibi—Baie-James—Nunavik—Eeyou, BQ): Thank you, Mr. Chair.

I am on the Cree and Anishinabe territory of Abitibi—Baie-James—Nunavik—Eeyou in Quebec.

My question is for Chief Louie of the First Nations Lands Advisory Board.

In your brief you wrote that in terms of policing, many first nations communities with land codes have been turned away by police when they've asked for help.

Could you provide the committee with concrete examples of this type of situation and explain in more detail the consequences of these refusals for first nations communities?

[English]

Chief Robert Louie: Thank you very much, honourable committee member.

We did have these examples. I guess the most prevalent is Chief Heidi Cook. She has a community with a land code, and I believe you heard some of her testimony. That was a prime example that really started the spark about the RCMP not acknowledging our laws. That was a serious matter.

We also have the K'ómoks situation. It took place a few years ago. The community had an unwanted trespasser on its land. It had its laws in place and wanted an eviction. It called upon the local RCMP to assist in that eviction. The RCMP refused. The community went to court, and there were difficulties with the prosecution. The end result was that the community had to go to private prosecution for the unwanted trespasser.

Eventually, the unwanted trespasser was dealt with through the prosecution. However, that process was very expensive. Private prosecution cost the community about \$178,000. It is something that is far too costly to continue, albeit much of that cost was attributed to the court to understand the meaning of the land code, understand what it's about, and all of the background and history.

In future, the cost of private prosecutions, I think, can be reduced quite significantly, but it's an example of what needs to be done. There has to be education and training in the court system. There has to be an understanding with the RCMP that these are federal laws being passed. The federal laws are equal to the laws of the federal government. They're paramount and they have to be recognized.

These are two very valid experiences we've encountered.

• (1205)

[Translation]

Ms. Sylvie Bérubé: I have another question for you.

What are the advantages for the first nations to have their own police force when it comes to maintaining order or enforcing community regulations?

[English]

Chief Robert Louie: I think the benefits would be significant, in the sense that we would have a system whereby the community would rely on their own policing system. However, the problem with that, of course, is the cost, and you've heard from the chief, who gave testimony, that the costs there are prohibitive.

In my community, I was the chief for 24-plus years. During my term as chief, we explored setting up our own policing department. We came very close to having it implemented. The biggest problem was the cost of it and how to properly run it. After we examined all of the requirements of setting up that police force, we decided that the cost was just too prohibitive.

Today, if I were faced again with that situation, our own police force would be instituted. We would have set that up. There are all kinds of issues with training, and that's costly. There is the issue of carrying sidearms and having the police and justice system authorities agree that sidearms could be carried. However, in hindsight, with proper funding and the will of the people, we would have set up our own police force. In the long run, I agree that having community members involved in the policing system is a huge benefit. I think people look more towards prevention as opposed to actual punishment and seeing police officers appear.

That said, we do have good relationships here. Most of the relationships depend on how the police forces deal with the communities. Relationship is very important. It's always a struggle. It's always a part of the process to keep up those relationships. With better relationships, you have improved services and better community protection.

In our case, I think that we need to work on a more adjudicated system, not only with the courts but also having peace officers or enforcement officers with the authority and the power to implement what they need to do, so that there is no misunderstanding as to their authorities and their powers.

• (1210)

The Chair: I'm sorry, members of the committee; I think my Internet disappeared.

We're now past time, and it is time for Rachel Blaney's six minutes.

Rachel, please go ahead.

Ms. Rachel Blaney (North Island—Powell River, NDP): Thank you, Chair. I also had a weird Internet moment there as well, so maybe it was something happening in the system.

My first question is to Mr. Louie.

I really appreciate your testimony. You talked about this as a "crisis in enforcement". I think that's what you said in your initial statement. One aspect that concerns you is that the colonial Indian Act seems to be what is being promoted as the only thing that works. Of course, that undermines self-determination, aboriginal rights and title and so forth.

You said also that we need answers instead of more questions and that there are some good pilot projects that are happening. I'm wondering if you could tell us anything about good steps forward that we should hear about and that we could add to our recommendations in this report.

Chief Robert Louie: Thank you very much, Ms. Blaney, for your question.

We do have some things happening that are positive. I think the positiveness is the willingness by provinces, territorial governments and the federal government to listen and to want to work on some solutions. We've started that situation with MKO in Manitoba. The attorney general and those who are in charge of the various ministries have been active.

We have a pilot project taking place in Saskatchewan with the Muskoday community and Whitecap. They are working now with the Saskatchewan attorney general's office to look at how there can be better enforcement. We are hoping that these discussions will lead to an understanding by the Province of Saskatchewan that it will recognize first nations land code laws and that enforcement is a joint process, and that there needs to be collaboration and support of that.

If we can do that there, we can do it in Manitoba, in Alberta, in British Columbia, right through the country. I think this is where we need to be. The discussions are happening right now. This committee and the recommendations you make are hopefully going to be pressing. The recommendations will say, and hopefully support, that this has to be done now. We cannot afford to wait. The laws that are taking place are being done now. We have laws in force. We are a government. We are recognized as a government. We have the authorities and the powers of government, yet the laws are not being recognized and enforced. We cannot wait for this.

We have matrimonial issues. We have trespass issues. We have pollution, contaminants, and matters of such great importance that they have to be dealt with now. The more that this is understood, the more the collaboration that takes place, and the more direction that this committee can give towards the various provinces—to all the ministries—that this is an important matter, the more quickly we're going to find solutions.

I much appreciate your question and this committee's work. Thank you.

Ms. Rachel Blaney: Thank you so much.

If I could come to you, Chief Cook, what we've heard in previous testimony is that self-determination is so important, but the lack of enforcement is really limiting access to that and has a big impact on leadership having the ability to lead. I think you talked about it so well.

You said that you're in the third wave, and I'm really sorry to hear about the impacts on your community and how stressful that is for leadership and for all the workers there.

You made the choice to not make any laws or have any public health care announcements because there's absolutely no ability to enforce. I'm wondering how that impacts the ability of leadership to do their job. Also, what does it do in the community when there are no consequences for behaviours that are not helpful?

• (1215)

Chief Heidi Cook: I think the hardest part is not having consequences. We rely on our experience from the second wave to try to curb behaviours now. We've gone through a lockdown together and experienced an outbreak. We hope that most people will just govern themselves accordingly, I suppose.

It's very difficult to also have demands from people who are asking leadership to lock down and to do things that they know worked. It was just so difficult to manage that I'm not sure we can do those things again. Based on how much we struggled the second time, I'm not sure how many people are willing to put themselves through that, knowing what we know about what is required.

Ms. Rachel Blaney: You also talked about the RCMP not being able to enforce them and then trying to find ways to make the rules fit into RCMP enforcement roles. I'm just wondering about that very strange way of trying to govern.

Chief Heidi Cook: Basically we needed help, and we were told that neither the public health orders the band has or the land code laws the band has were enforceable. However, there were provincial public health orders, and simple acts like driving around rather than sitting in the station all day could have helped create the perception that things were being monitored or enforced without the RCMP actually having to enforce them.

We asked for things like that, but they weren't as forthcoming as we felt they could be. It did have an impact on the spread of COVID-19 in the community. It spread a lot more than I think was necessary. If we had—

The Chair: I'm sorry to interrupt. We need to get in all our rounds of questions. We're well over on that six minutes.

For the witnesses, we now go to a five-minute round of questions. The first questioner will be Mr. Melillo for five minutes.

Go ahead, please.

Mr. Eric Melillo (Kenora, CPC): Thank you very much, Mr. Chair.

I want to start with Grand Chief Settee.

As I understand, you had an additional comment you wanted to make, but you weren't able to. I just want to give you the opportunity to add that comment, if you'd like to.

Grand Chief Garrison Settee: Thank you very much. I appreciate that.

I just wanted to conclude our discussion with how COVID-19 has brightly illuminated the gaps and barriers and the urgent need to uphold the rule of law. The COVID-19 pandemic also highlighted important opportunities to amend federal, provincial and first na-

tion legislative frameworks to recognize and develop the capacity of first nations. First nation enforcement and justice officials and first nation lawyers need to make, enforce, prosecute and adjudicate first nation bylaws and laws.

That was what my concluding statement would have been.

Thank you.

Mr. Eric Melillo: Thank you.

Now that I have you on the hot seat, I'll ask you a question as well.

If I was understanding you correctly—and please correct me if I am wrong—part of the issue your organization sees is that first nations safety officers aren't considered peace officers when enforcing band bylaws. I'm just wondering if you could speak to that in a little more detail, and on how that framework, for lack of better word, impacts the day-to-day life of the safety officers.

Grand Chief Garrison Settee: Thank you so much.

Can I defer this to Mike Anderson, who has been working on that file, please?

Mr. Eric Melillo: Sure.

Mr. Michael Anderson: The first nations safety officers whom we have today originated as band constables under the former Public Safety Canada band constable program in or around 1965, so they've been providing first responder—in some cases, as the only responder—public safety services in our remote first nations particularly for all that period of time.

Between the onset of the program and the repeal of the Provincial Police Act in Manitoba on June 1, 2012, in their later years they had the powers and protections of a peace officer to do their duties. With the coming into force of the Police Services Act in Manitoba effective June 1, 2012, their peace officer authority was limited to only prescribed provincial enactments, and not even all of those enactments, so there was no clear authority for them to act as peace officers to enforce band bylaws, which became quite an issue.

Similar to the discussion on land code laws, RCMP officers would say that the first nations safety officers didn't have authority to enforce their band bylaws. Eventually the operating agreement—not the statute, but the operating agreement—was amended to recognize peace officer authority only when enforcing a paragraph 81(1)(c) bylaw, which is the observance of law and order. Of course, paragraph 81(1)(a) is the prevention of spread of infectious diseases and so on.

Grand Chief Settee firmly presented to Minister Friesen that we needed to have clear peace officer authority for our bylaw enforcement officials in order to enforce the full suite, the robust suite, of authority under subsection 81(1) and section 85.1 in particular.

The Manitoba government has, just within the last two weeks, agreed to amend the safety officer operating agreement to make it clear that they have peace officer authority when they're enforcing all band bylaws. We pointed out that it was necessary so that when the protocol is rolled out in Manitoba—which is happening today, by the way; there's a press conference after this session—it will be clear that the safety officers have full authority to enforce band bylaws for the first time since the dissolution of the band constable program in 2015.

Essentially, as I mentioned in my comments, you have to have peace officer authority to stop, search, seize and detain, and under section 103 of the Indian Act, only a peace officer can seize goods related to a violation of a subsection 81(1) or a section 85.1(1) bylaw, including an intoxicants bylaw, so if first nations safety officers seize alcohol, they have to be a peace officer. It's required by the Indian Act.

We wanted to bring all of this into alignment so that the actual duties they provide are protected.

I'd also point out that the former D Division commanding officer, Bill Robinson, described the role of our band constables at the time as first responders in the absence of the RCMP, so they were providing a policing function in the often extended absence of the RCMP, who only served some of our communities on periodic patrols that might be monthly. They're there the rest of the time, so it's essential that they have the proper authority to do their jobs and to uphold and enforce the law.

• (1220)

The Chair: Thank you. I'm surprised that our recommendations are being put into effect before we've even finished the study.

Mr. Michael Anderson: I would just add, Mr. Chair, that it's due to Grand Chief Settee's insistence and his personal relationship with Manitoba's Minister of Justice, Cameron Friesen. We've been able to collaborate very closely with them with open and frank dialogue. They heard the Grand Chief clearly, I'm happy to say.

The Chair: Thanks so much.

Pam Damoff, you have five minutes.

Ms. Pam Damoff (Oakville North—Burlington, Lib.): Thanks, Chair.

I'll start by acknowledging that I'm on the traditional territory of the Mississaugas of the Credit First Nation here in my riding of Oakville North—Burlington.

Chief Louie, if I'm not mistaken, the pilot project you mentioned deals with environmental protection laws, and we haven't heard anything about that. I wonder if you could talk a little bit about that pilot.

• (1225)

Chief Robert Louie: Thank you very much, Ms. Damoff.

I would like to defer this question to my colleague Andrew Beynon, if that's all right. He's been working quite a bit on this project.

Ms. Pam Damoff: Yes. That's fine.

Chief Robert Louie: Thank you.

Mr. Andrew Beynon (Director, Land Governance, First Nations Land Management Resource Centre): Thank you, committee members, and thank you for the question.

The Saskatchewan pilot project led by the Whitecap Dakota and Muskoday First Nations is really quite interesting. As Chief Louie mentioned, tomorrow we'll be holding our national online conversation, a recorded event, for which MPs, the public, federal officials, first nation officials, provincial officials—everyone—is welcome to register. As part of that, individuals who are directly involved will be speaking to what they are achieving right now. I don't want to take away too much of their thunder, but having said that, I would offer two points.

One is that there is a lot of work somewhat similar to this issue of first nation safety officers in the pilot project. In Saskatchewan, they're referring to them as community safety officers and are trying to work out with clarity the scope of their authority to enforce the first nation laws of Muskoday and Whitecap Dakota and to work in partnership with provincial authorities.

In terms of environmental issues, I know that there has been concern expressed, particularly at Whitecap Dakota Nation, which is very close to the city of Saskatoon, with regard to environmental issues that affect the community. They have direct experience with situations of individuals carrying on businesses on the lands and causing significant contamination to reserve land.

Unfortunately, at least one of those situations was very difficult to control, and rather than it being prevented from happening, the environmental damage occurred on the lands. The Department of Indian Affairs, as it then was, provided some assistance to deal with the cleanup of the toxic damage on reserve lands. This was a failure in the enforcement of laws and a failure in being able to control and avoid environmental harm. We could ask Whitecap Dakota First Nation to follow up with you if you're interested.

Ms. Pam Damoff: Yes. I was actually going to ask about that. Since your meeting is tomorrow, perhaps they could submit something to the clerk so we could include it in the report.

Mr. Andrew Beynon: Indeed.

Ms. Pam Damoff: Chief Bill, it's nice to see you again.

Obviously your community safety officer program is a model for the country. As my colleague Gary Vidal mentioned, you've come to the public safety committee, and I know you're doing a terrific job.

I think all of us sat horrified as Chief Denny talked about waiting 20 minutes or half an hour for the police to arrive on the scene to help a loved one, and he was forced to go in there himself as a result.

Chief Bill, I guess your community safety officers would not be responding to the kind of gunfire situation that he described. You would still be relying on the RCMP. Where is the disconnect between his experience in his community and what you're experiencing at Kwanlin Dün?

Chief Doris Bill: Well, the CSOs don't have enforcement power—

Ms. Pam Damoff: It's hard to hear you, Chief Bill.

Chief Doris Bill: I'm sorry. This is better. I was drinking coffee.

The CSOs don't have enforcement power. When we surveyed our citizens recently, they didn't want them to have enforcement power. It was interesting. I think that otherwise that trust would dissipate.

Ms. Pam Damoff: Do you experience the same issues that Chief Denny described?

Chief Doris Bill: We do. What happens with us, because we're right in the city of Whitehorse and we're a small community, is that the RCMP do respond very quickly to those kinds of incidents. However, the CSOs work alongside the RCMP.

For instance, if a murder or something of that nature happens, the RCMP would focus on what they have to do and the CSOs would focus on the community, such as keeping the community away, keeping the area cordoned off and keeping the area safe.

Ms. Pam Damoff: There would be mental health supports for the families, too, probably.

Chief Doris Bill: Yes, and they ensure.... When the RCMP go, there's often a gap between the services, between the community and the RCMP. For instance, let's say a woman is sexually assaulted. The CSOs would ensure that they would get the services they need, the culturally relevant services they need.

The trust between the RCMP and the CSOs has really improved. The RCMP were very skeptical in the beginning, but now they see

the value in it, and they give the highest recommendations when we talk about these services—

• (1230)

The Chair: Thanks, Chief. We're well over time.

Ms. Pam Damoff: Okay.

The Chair: We will move to Madame Bérubé for two and a half minutes.

[*Translation*]

Ms. Sylvie Bérubé: Thank you, Mr. Chair.

My question is for Chief Louie again.

In your brief, you propose identifying the federal Attorney General as the lead minister responsible for leading the federal government's commitment to tackling the enforcement of laws. What concrete changes would this lead to?

[*English*]

Chief Robert Louie: Thank you very much, honourable member.

We believe the changes would be more immediate, more urgent, with the Attorney General directly involved. This is the ministry with perhaps the highest recognized designation, and I think it would command a lot more immediate attention, particularly as other attorneys general from each of the provinces are concerned and as the matter proceeds.

We believe that in itself gives a lot more credibility and more urgency to the situation. That's what we would hope to achieve by having the Attorney General directly involved at that level.

[*Translation*]

Ms. Sylvie Bérubé: Among the recommendations made in your brief, could you tell me which ones are an absolute priority?

[*English*]

Chief Robert Louie: We have several recommendations, and in our opinion they're all equally important.

Having the Canada indigenous justice strategy express commitment to tackling the enforcement of laws as a short-term priority is important. Having the federal Attorney General as the lead minister responsible for leading the federal government's commitment is important. Requiring the various departments and agencies to take a strong lead at the bureaucratic level and appointing ministerial representatives or senior bureaucrats with credibility on these matters is significant. Matrimonial real property laws require special consideration by Canada on the goals of protecting women and children. This is very significant.

The Indian Act legacy of environmental mismanagement and the understanding that it is woefully unregulated and underenforced and having support for enforcement of first nation environmental laws within broader strategies in environmental management concerns is absolutely critical. There is so much contamination that's taking place. This is a high area of concern and needs immediate attention—

The Chair: We should leave it right there. I'm sorry. We have to move along to Ms. Blaney for two and a half minutes.

Ms. Rachel Blaney: Thank you.

Chief Bill, you talked about having four full-time CSOs and two on call. I have just a couple of questions.

Do they patrol 24 hours a day? How do they manage the collaboration with the RCMP? You indicated that they fill a specific gap between the RCMP and the community needs. You talked about that a little, but how do they manage it? What sort of mechanisms do they have to make sure that this relationship, which sounds as though it is very collaborative, is successful?

Chief Doris Bill: At the beginning, we got real-time bylaw statistics from the RCMP. We really analyzed those statistics. We figured out when the peak hours were in our community. The CSOs' hours are built around those times. We review it every now and then as well.

In terms of the RCMP and the relationship with the CSOs, we had to figure out a way to build that relationship. The best way to do that was to just work alongside them. We were there whenever things happened. I think they just watched our CSOs and really, as our people began to gravitate towards them when serious things happened, they understood that there was something there.

We don't have any formal agreement or anything with the RCMP. We do have formal meetings with them. Through the letter of expectation, we sit down with the RCMP once a month. We also have different meetings through the inter-agency working group. We work out any issues that arise through those avenues.

I've watched the relationship with the CSOs just blossom. It's absolutely wonderful. The RCMP now will call on our CSOs when issues arise and they need help from our citizens, such as when they're looking for someone or something of that nature.

• (1235)

The Chair: Thanks so much.

Mr. Schmale, you have five minutes.

Mr. Jamie Schmale (Haliburton—Kawartha Lakes—Brock, CPC): Thank you very much, Chair.

This has been an amazing conversation today. There has been so much content here.

Maybe I'll pick up with our friends at the First Nations Lands Advisory Board. We were talking about the Indian Act and the challenges to, in some cases, life and safety on reserve. Maybe we can talk a bit more about that. If that were to be scrapped, what, if anything, would replace it, or what would need to come in to ensure a smooth transition?

Chief Robert Louie: Andrew, would that be something you'd want to tackle first?

Mr. Andrew Beynon: Well, maybe I could get a bit of clarification on the question.

I would start, though, by saying that land code laws assist in driving and supporting safety in the community. By dealing with trespassing, by dealing with problematic situations on reserve, overall community safety can increase. In the absence of enforcement systems, in the absence of a police response, in the absence of being able to find prosecutors, you have damage to the rule of law. As many of the witnesses have spoken about today, when you have a breakdown in the rule of law on such issues as trespass or matrimonial real property or violence or illegal dumping or disrespect for the law, it has a corrosive effect in terms of abiding by federal and provincial laws. I would suggest that it makes it more difficult for the RCMP and other police forces to uphold the rule of law with respect to federal and provincial laws.

I would suggest that what a lot of the witnesses have offered, and many of the submissions to this committee that underscored the importance of immediate action to solve this issue of enforcement of laws, is not only a matter of improving the respect for and compliance with first nation laws; it will have positive consequences beyond that in upholding the rule of law of Canada.

Mr. Jamie Schmale: Perfect. Thank you very much for that.

I have a second question. I don't know who to direct it to. Maybe I'll just look at my screen to see whoever puts up their hand. It's about a number of potential solutions to the enforcement and policing issue on reserve. What has worked quite well in many cases in parts of Ontario is the restorative justice aspect.

I don't know if anyone would like to comment on that.

Mr. Andrew Beynon: That's an excellent, excellent question. Restorative justice is an approach that involves healing within the community and a focus on trying to resolve harm that has been caused. It very much reflects the culture and traditions of individual communities. There is no doubt that this is extremely important.

At the same time, a lot of what witnesses and submissions have dealt with is what I might call conventional or mainstream western justice, which focuses on offences, policing, prosecutions and punishment. What I would suggest to the committee is that in order for restorative justice to thrive, there has to be at the same time an avenue for dealing with conventional punishment-oriented justice available to first nations as well. Unfortunately, if some individuals think they can get away with ignoring first nation laws, they're probably going to ignore restorative justice efforts as well.

The last quick comment I would make about restorative justice is to say that it can work in partnership with the western legal system. If there's a well-understood, well-established system for policing, prosecution and going to the conventional courts, those judges have access, working with first nation partners, to restorative justice approaches. Maybe it's better not to punish an individual but instead to offer them an avenue to restorative justice and healing; but without an effective conventional system, too many individuals will thumb their noses at compliance with the law, whether it be through a restorative justice approach or a conventional approach.

• (1240)

The Chair: Thank you very much. That takes us to Mr. Powlowski for five minutes.

Mr. Marcus Powlowski (Thunder Bay—Rainy River, Lib.): This has been a very interesting study. We've seen this unanimity among chiefs from across Canada, who agree that it's been very difficult or impossible to enforce bylaws related to public health measures and control of COVID. In response, we have seen really a patchwork of approaches, with some chiefs preferring to use bylaws under the Indian Act while others have used the First Nations Land Management Act. PPSC entered into an agreement with some first nations in order to try to enforce the bylaws. Manitoba today has talked about, I believe, a protocol to enforce bylaws under the first nations policing program, and Chief Bill has CSO programs, so we see that every community has a different response. Chief Bill said each community is different, which is true.

I think many would say it's colonialist to impose solutions and that each community has to come up with its own approach to its problems, but I have to ask our witnesses what they say about this: Is it realistic for a community of 300 or 400 people to come up with a system of law enforcement and to come up with a system of dealing with their water problems, their transportation problems, and their housing problems? On this problem of enforcement, of laws in first nations, should there be a global solution for the whole country, or should this be a solution that is particular to each community? That's the first thing.

The second is that I think it was Chief Louie who stated that the use of the Indian Act is offensive. He doesn't want to use that. However, I would suggest that under section 107 of the Indian Act, there is a process to appoint justices of the peace to enforce bylaws made under the Indian Act. Although it may be offensive, I would suggest that the process of law-making is slower than continental drift, so it's going to take a fairly lengthy period of time to change the laws on policing. Wouldn't it be better, perhaps, to use the existing laws and to reinstitute the section 107 court?

I throw that out to all of you. Whoever wants to can start.

Chief Robert Louie: Mr. Powlowski, if I may, it's Robert Louie.

I want to just refresh people's thoughts here with regard to the force of law with regard to land codes.

We represent our constituents, who are self-governing. To look at the Indian Act, to rely on the Indian Act.... Any of the sections for governance are quite offensive.

With regard to our land codes and the way the legislation was set up by Parliament to recognize our communities as self-governing first nations, I remind you of subsection 15(1) of the land code, which says that a land code has a force of law, and judicial notice shall be taken of the land code in any proceedings from the date the land code comes into effect. That's very significant.

Also, it's coupled with subsection 20(3) of the land code legislation, which says that it "may provide for enforcement measures, consistent with federal laws...such as the power to inspect, search and seize and to order compulsory sampling, testing and the production of information." Of course, the justices of the peace section, subsection 24(1), says that we "may appoint justices of the peace to ensure the enforcement of First Nation laws including the adjudication of offences for contraventions of First Nation laws."

My point is that we have the authority. It was recognized by Parliament. What is lacking is the direction to all of the various ministries and to the provincial governments and so forth that these laws are valid and that they must be recognized, so that when laws are put in place, it's a matter of education and simply, in many respects, informing the policing authorities that they must respect them. There's paramountcy in the federal law, which this now has, so I think this is very important.

For us to rely on something that we do not have to rely on, especially under the Indian Act, is not acceptable to our land code self-governing communities.

• (1245)

The Chair: Chief, thanks so much.

Members of the committee, we will have to suspend to do some business in camera with regard to other matters of the committee. In view of that necessity, I'm going to thank our witnesses and our committee members, because it's been just an excellent give-and-take and cross-examination. It's really impressive.

Witnesses, I wish that more Canadians could hear the kinds of presentations that we're hearing as committee members, beyond the simple confrontations at blockades when there's anger and misinformation going on. It's so impressive to hear the studied points of view, rather than the simple "Darn it, why is this happening?" situation that is beloved of the media but really doesn't help sometimes to move issues forward. I want to thank you all for that very valuable testimony.

I'm going to ask for a suspension as we leave the meeting and then come back again to reconvene in camera.

Thanks to everybody once again. This meeting is suspended.

[*Proceedings continue in camera*]

Published under the authority of the Speaker of
the House of Commons

SPEAKER'S PERMISSION

The proceedings of the House of Commons and its committees are hereby made available to provide greater public access. The parliamentary privilege of the House of Commons to control the publication and broadcast of the proceedings of the House of Commons and its committees is nonetheless reserved. All copyrights therein are also reserved.

Reproduction of the proceedings of the House of Commons and its committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the Copyright Act. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the Copyright Act.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Also available on the House of Commons website at the following address: <https://www.ourcommons.ca>

Publié en conformité de l'autorité
du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

Les délibérations de la Chambre des communes et de ses comités sont mises à la disposition du public pour mieux le renseigner. La Chambre conserve néanmoins son privilège parlementaire de contrôler la publication et la diffusion des délibérations et elle possède tous les droits d'auteur sur celles-ci.

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la Loi sur le droit d'auteur. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre des communes.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la Loi sur le droit d'auteur.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

Aussi disponible sur le site Web de la Chambre des communes à l'adresse suivante :
<https://www.noscommunes.ca>