



HOUSE OF COMMONS  
CHAMBRE DES COMMUNES  
CANADA

# **Standing Committee on Aboriginal Affairs and Northern Development**

---

AANO • NUMBER 022 • 1st SESSION • 41st PARLIAMENT

---

**EVIDENCE**

**Tuesday, February 7, 2012**

—  
**Chair**

**Mr. Chris Warkentin**



## Standing Committee on Aboriginal Affairs and Northern Development

Tuesday, February 7, 2012

• (1530)

[English]

**The Chair (Mr. Chris Warkentin (Peace River, CPC)):** Colleagues, I will call to order this 22nd meeting of the Standing Committee on Aboriginal Affairs and Northern Development.

Today we are on the continuation of our study with regard to land use and sustainable economic development. Colleagues, today we have two witnesses here and one witness on teleconference.

Ms. Bennett, I will....

**Hon. Carolyn Bennett (St. Paul's, Lib.):** I noticed that on the agenda, Mr. Chair, it says that we will go in camera. I just wanted to make sure that my motion would not be dealt with in camera.

**The Chair:** We do have committee business towards the end. As per normal, we have actually several subjects that we have to discuss, and your motion is one of them.

**Hon. Carolyn Bennett:** I would like my motion to be dealt with not in camera.

**The Chair:** Okay. Well, you of course can move that as per your pleasure. Right now, though, we do have witnesses waiting and we do want to make sure that we hear from them.

Today, colleagues, we have Chief Whiteduck here in our committee room.

Chief, thanks so much for joining us. You have somebody with you, and I understand you will introduce him at the start of your submission.

As well, we have Christopher Alcantara, who is remote.

We will first turn it over to Chief Whiteduck, who will make his submission. After that, we'll have Mr. Alcantara bring his submission. Then we'll turn it over to committee members to ask both of you questions.

With no further ado, Chief, we'll turn it over to you. Try to keep your opening statement to around ten minutes, and then we'll go from there.

**Chief Gilbert W. Whiteduck (Algonquin Anishinabe Nation, Kitigan Zibi Anishinabeg First Nation):** *Kwey kakina. Bonjour. Bon après-midi.* Hello.

I wish to begin by thanking you for the invitation to address the committee today. I am Chief Gilbert Whiteduck, from the Kitigan Zibi Anishinabeg First Nation, about 130 kilometres north of here. I'm accompanied today by Councillor Wayne Odjick, who has been on the band council, just as I have been, since 2008, although I have

served on band councils all the way back to the seventies. I've served at different times.

The community I represent is one of the ten Algonquin communities that make up the Algonquin Nation on whose lands the Parliament of Canada sits. The Kitigan Zibi community I represent was created in 1853. The KZ reserve lands total some 18,438 hectares of land, or approximately 45,600 acres. The initial discussions were that the reserve would be 60,000 acres. There was obviously some funny business in the 1850s. We have a total population of approximately 2,900, with 1,600 members living on reserve. We project that our population will grow to well over 2,000 over the next ten years. We have some 530 households built throughout the community. Homes, with the exception of 20, are owned individually by community members. Some 46% of reserve land is held by certificates of possession, with the remaining 54% considered to be commonly held land for which we have management plans or on which the school is built.

The community has always had a well-structured environmental protection plan for its commonly held lands. We have well over 5,000 CPs registered with the Indian land registry. Some 50% of the reserve was surveyed in the 1880s, with land being divided, even in those years, into individual lots. This process accelerated the movement towards a designation of CP lots.

The reserve has been surveyed, but in the late 1800s there was a strong push by settlers and lumber barons to have the membership surrender some 50% of the community. It was felt at the time that the red man would not make good use of the land. Although well over 1,000 acres of land was taken or stolen in one form or another, with large pieces located in the town of Maniwaki, over 500 acres of this land, or what has now become 23 specific claims, are presently the subject of negotiations with the Department of Aboriginal Affairs. Our goal is to have a speedy and beneficial result for the membership. We are approaching this as what we hope will be a global settlement.

I wish to also note that we initiated discussion with Quebec to add some 24 square kilometres of land to our present reserve, with the land really located in our backyard where our elders grew up. We are hoping that this process will move forward quickly, and subsequently to the federal level with the additions to reserve. This land will allow us to add to our management area and allow us to begin international tourism opportunities. We can only hope that the addition-to-reserve process works to support our efforts and not to create a barrier. We are having a unique discussion with Quebec, because it's not tied to a land claim. It's a discussion we've had with them. They've agreed in principle to making the reserve bigger for a variety of reasons. That is moving forward. We're hoping to have a decree from the Quebec government with regard to these lands by early summer of 2012.

I want to be clear. The attachment we have to the land is at the core of our identity and birthright. Wayne and I and all who have lived in the community were raised and educated to respect the land because the land will always take care of us. Even though CP land designations were in place in the 1800s, the concept of owning land as a commodity has always felt foreign because doing so does not identify with our values.

The Kitigan Zibi community has worked diligently over the past 30 years to develop a long-term management plan for its commonly held lands, and to initiate and assist business development on commonly held lands as well as on individually held CPs. I must say we have been modestly successful, but no doubt much more needs to be done.

I also want to share that I recently worked in a collaborative manner with the Business Development Bank in the development of a project on CP-held land. The development of an agreement took six months but allowed the project to be funded. All parties feel and know that there was a detailed arrangement, which came to entrench an important level of understanding and security. This was done without Department of Aboriginal Affairs involvement, directly with the Business Development Bank.

• (1535)

The analysis of our present land regime by our Kitigan Zibi lands staff concluded that there are many challenges to business development, but it would appear that the Department of Aboriginal Affairs and Northern Development is a bigger challenge than the regulations in the Indian Act. This is not a slight to any individual, but the Department of Aboriginal Affairs machine is slow, often unresponsive, and not helpful. Bottom line, it is more worried about liability than true progress. It is our contention that it is possible to have speed of business under the present system. All it takes is a little vision and creativity.

It is our position that Canada, as the crown, and the provinces do not recognize or respect first nation rights over our ancestral lands. If we were to endorse privatization of reserve lands under any scheme, then this would mean that we are recognizing the present system as legitimate.

The Kitigan Zibi Anishinabeg has endured centuries of lies and thievery by governments and individuals wanting to take the little land we hold according to the crown. There is no doubt that we have reason to not trust government, and also to not trust prophets

disguised as first nations who preach from the mountaintop that privatization will turn our lands into heavenly fountains of prosperity. These prophets are walking in their own heavenly clouds and know only the realities that are their own.

I do respect individual first nations communities that decide they want to move forward towards private land ownership. This is obviously their decision to make. But this discussion is forgetting the more inclusive, community-level reality, and questions around lack of resources, capacity for land-use planning, resourcing for land surveying, collective versus individual rights, and how commercial land changes would come to protect and not harm the environment.

Finally, I wish to state that we can't limit our discussion to only our reserve lands, as I firmly believe we must include the unavailable—at least for now—ancestral lands of our community and nation. If development is truly to take place, there needs to be visionary thinking, and that must be founded on respect, honesty, and accountability.

The words I have shared are a very small part of what I have learned growing up and living all of my life in the community. This is but a grain of sand of what was handed down from the teachings and what was recorded in our nation's wampum belts.

All of our efforts must be for the present and future generations, so that they may have opportunities that I and others never had. This I hope for my own children and my own four grandchildren, who all live in the community, and for all Kitigan Zibi children and future generations.

I firmly believe that much is possible with collective willingness.

*Kichi meegwetch.*

• (1540)

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

Mr. Alcantara, we'll hear from you now. After that, we'll turn it over to committee members to ask questions of both of you. Thank you for joining us, Mr. Alcantara. Please bring forward your opening comments and then we'll follow up with questions.

**Dr. Christopher Alcantara (Assistant Professor, Department of Political Science, Wilfrid Laurier University, As an Individual):** Thank you for the opportunity to speak on the issue of first nations land management and sustainable economic development. In general, my research examines how existing land tenure regimes on Canadian Indian reserves limit or facilitate economic development.

A common misconception is that indigenous peoples living on reserves have no individual property rights. Although it's true that ultimate legal title to reserve land resides in the crown, and that Indian bands collectively administer these lands in accordance with the Indian Act, band members, as Chief Whiteduck indicates, actually have access to three types of individual property. The most common are customary rights. The second, less common, are certificates of possession, and then there are a wide variety of different types of leases.

Today, due to time constraints, I'm going to focus my comments on customary rights and CPs, certificates of possession, since I think they create the most drag on development in terms of land tenure regimes, and therefore are in need of possible reform.

The most common form of individual property rights on reserves is the customary right. This type of property right has no direct statutory basis, but instead emerges as a result of either the historical usage of lands by individual members or families, the community recognition of those usage rights, or band council resolutions that either create or affirm these types of usage rights. Once a member gains a customary right to an individual parcel of reserve land, they can do a number of things with it, like build on it, improve it, farm it, sell it to another band member, and in some cases devise it in a will.

However, because customary rights have no statutory basis in Canadian law, their existence is entirely dependent on the support of the band council. In short, this means that the band can determine how the individual uses the land. It also means that the band council can at any time repossess the land for community purposes, like building a school or building another type of community building. Now, if the band council does expropriate the land and expropriate the customary right, the band member has no legal recourse to prevent the band council from doing so.

One of the implications of customary rights for economic development on reserves in terms of advantages is that indigenous communities like them because customary rights are seen as being consistent with their cultural norms. In my interview work with first nations communities in British Columbia, Alberta, and Ontario, members have told me that some communities feel that the band as a whole, rather than the individual, should benefit from the land. The lack of security of tenure of these rights is in fact an advantage in some ways, since if the community needs the land and if it privileges communal ownership of the land, it can easily reacquire it and use those lands for community purposes.

Band members also seem to value customary rights because it gives them a direct connection to their cultural heritage, so there's value there as well. Recall that many of these rights emerge out of historical practices and usage.

Finally, customary rights are advantageous because they're only subject to one level of government, which is the band council. So band members, when they want to use these customary rights, don't have to deal with multiple levels of government and bureaucratic procedures.

Despite these advantages, there are some disadvantages with customary rights. For one, they are not enforceable in Canadian courts. Second, the fact that the band council is the sole authority over customary rights is a potential problem, especially in small communities where politics and personal connections can more easily collide. It's not to say that they always collide, but it's more likely in smaller communities. Third, the lack of security of tenure, because they're not enforceable in Canadian courts, can discourage band members from pursuing on-reserve economic development, since the band council can revoke a customary right at any time.

A second type of property right available to band members is the certificate of possession, and unlike customary rights, CPs in fact do

have a statutory basis. They're actually found in the Indian Act, and as such, they are in fact legally enforceable in Canadian courts, so they have much stronger security of tenure. To get a CP, a band member usually applies for one from the band council. Once the band council decides to allot the CP to the band member, the CP must be approved by the Minister of Aboriginal Affairs. Once approved, the band member is basically issued the CP and gains, in the language of the Indian Act, "lawful possession" to an individual tract of reserve land.

● (1545)

Much like customary rights, CP holders can use their land for a variety of purposes—build a house, build a farm, or put up any other building on their property—but unlike customary rights, they can actually use their land without any fear of squatters, or the band council, or any other third party interfering with their lands. So the security of tenure is much stronger than the customary right.

Besides creating positive incentives for individuals to maintain their land and use it to generate economic activity, the security of tenure that's inherent in CPs provides other important economic advantages.

Some of the obstacles to economic development on reserves are sections 29 and 89 of the Indian Act, which constrain band members from mortgaging their reserve lands, or to obtain mortgages on the basis of their reserve lands, to build housing or start a business.

Now, a number of first nations have found innovative ways to get around these obstacles by transferring their CPs to the band council, for instance, for the life of the mortgage or the loan. The band council will hold the CP for the life of the loan. In the event of a default by the individual member, the band council will then either absorb the monetary loss, if the band was the one that lent the money to the band member, or it will pay off the bank, if the bank provided the mortgage or loan. Then the band council would sell the CP to another band member to sort of help make up for the money lost in the defaulted loan.

The key to success here in getting around these major obstacles—sections 29 and 89 of the Indian Act—is the security of tenure provided by the certificate of possession.

Now, CPs, despite their many advantages, also have disadvantages. For one, they can only be transferred between band members, meaning that the property markets on these reserves tend to be relatively small. Second, and more importantly, CPs are subject to what are called "significant transaction costs". In other words, the amount of red tape attached to using CPs can be actually quite staggering because of the need for due approval. You need to get the approval of the band council, but you also then need to get the approval of the aboriginal affairs minister.

At Six Nations, for instance, in Ontario, the average time to process a CP transfer between band members—this was four years ago, when I did this research—could range anywhere from three months to a year. In some instances, transfers have taken much longer, ranging from a year to, in one case, eleven years. The delay at this point was in Ottawa.

So although CPs provide members with more economic tools, with stronger security of tenure than customary rights, they are still limited by significant transaction costs as well as by restrictions on to whom CPs can be transferred. They are limited to being transferred between band members.

In short, aboriginal peoples on reserve do have access to a range of individual property rights, and all of these property rights have advantages and disadvantages. My analysis has been a very narrow one, which is to look at the security of tenure of these regimes and the transaction costs involved in using them. I just want to make it clear that this is the frame I'm using.

In general under this frame, the property rights, in my view, pose a significant constraint on sustainable aboriginal economic development, either because the security of tenure is weak, in the case of customary rights, or the transaction costs of using them are high, in the case of certificates of possession.

Based on this analysis, I would make the following recommendations. I've grouped them in terms of two categories. One is a set of recommendations on how to strengthen and improve existing property regimes under the Indian Act. The second grouping would be on how to create new property regimes that are separate and perhaps more efficient and effective than the current Indian Act regimes.

The key to all of these suggestions, however, is not to impose these reforms on first nations. I think history has taught us about the negative impact that has and how well that works. The key is to listen to what first nations want and need, what individual first nations want and need, and to work with them to develop appropriate solutions to their individual contexts.

In terms of the first category of reforms that I'm suggesting, in terms of improving existing property regimes under the Indian Act, my first suggestion is to work with those first nations who want to in order to strengthen the security of tenure of customary rights. So first nations that want to strengthen the security of tenure of customary rights should be given government support in the form of money and in the form of expertise to more fully document their customary rights.

Right now, the way in which customary rights are recorded across the country really varies, from very formal documents with all sorts of surveys and detailed information to places where there is no documentation at all, except for whatever the community holds as an informal collective memory of "who owns what".

• (1550)

Along with better documentation, I would suggest the federal government consider helping interested first nations to develop band council resolution models that treat customary rights as binding written contracts that list comprehensively all the information about the land: who owns the land, a survey of the land, the types of activities that the band member is permitted to do on the land, and a clause that specifies under what conditions the band can expropriate the land and revoke the customary right.

Then the federal government should also support interested first nations in developing band-created or, perhaps better yet, regional first nation land adjudication committees, or first nation courts so

that land allocation decisions and land dispute resolution decisions are made by an impartial legal body created by first nations rather than by political bodies.

That's for the customary rights. In terms of improving the certificate of possession system, I would suggest eliminating ministerial and perhaps band council involvement in CP transactions, not in terms of allotting but certainly in terms of using the CP, and being able to sell it and subdivide it. In my view, these restrictions are unnecessary and create significant drag on the time it takes to transact a CP. As well, I would suggest working with those interested first nations to allow band members to be able to transfer CPs out of the band to other band members from selected different reserves, in the hope of creating perhaps a more efficient and larger marketplace. The first nation would obviously decide which other first nations those lands could be transferred to, but the land would stay within first nations.

Finally, I would consider changing the land registry system that we use right now for CPs in Ottawa, which is an awful system, quite frankly, to a Torrens land registry system, which is much more secure and searchable than the current one.

So those are my suggestions for improving existing regimes in-house within the Indian Act, but I would also suggest that we consider proposals for alternatives to the Indian Act regimes. I think the federal government should encourage first nations to work with the crown to develop parallel land management and parallel land tendering legislation that would sit alongside the Indian Act and which first nations could voluntarily opt into, which would mean that those first nations who did so would no longer be subject to the land management provisions of the Indian Act.

A good example of this that's already in practice is the First Nations Land Management Act, which was an initiative of 11 and later 14 first nations. The first nations wanted this parallel legislation, and under this legislation the first nations are allowed to develop their own land codes for managing their property rights in more culturally and locally sensitive ways.

Another example that's currently working through the system is legislation being developed by Chief Manny Jules. The First Nations Property Ownership Act would involve first nations voluntarily opting in to this legislation to gain first title and jurisdiction to the reserve lands. So the crown would transfer title and jurisdiction to the first nations, who would own these lands forever. Then the first nations would have the ability to allot fee-simple ownership rights to their members. They could allot 10% of the land, 50% of the land, or none. It's up to them. And then these rights would be registered in a new national Torrens land registry system controlled and administered by first nations.

In short, I think two of the main obstacles to economic development on Canadian Indian reserves is the lack of security tenure and/or the high transaction costs inherent with the property rights under the Indian Act. Solutions should try to address these two problems, not only by strengthening the property rights in the Indian Act for those first nations that want to, but also encouraging first nations to develop and opt into parallel legislation that provides them with new forms of land tenure to pursue economic prosperity in this country.

Thank you.

**The Chair:** Thank you, Mr. Alcantara. I appreciate your brevity. I know there's more that all our witnesses could go into. So thank you so much for being concise.

Ms. Duncan, we'll turn it over to you for the first seven minutes.

• (1555)

**Ms. Linda Duncan (Edmonton—Strathcona, NDP):** Thanks, Mr. Chair.

I'd like to welcome Chief Whiteduck and Councillor Odjick and our other guest, at a long distance, and I'd first like to recognize that we are holding this meeting on Algonquin-claimed territory.

My first question is to Chief Whiteduck. We're doing this review in stages, looking at economic development opportunities, barriers and constraints, opportunities for reserve lands and then I hope, soon, in the second phase, I'll call them traditional territories.

I'm aware that you are seeking resolution of a land claim and self-government agreement, and I'm wondering if you could elaborate. You spoke very briefly in your introductory comments about what you saw as some of the barriers and constraints to your first nation moving toward economic opportunity. I wonder if you could tell us what your thoughts are, what you think about the current mechanisms, and perhaps what you thought of the other gentleman's comments about mechanisms for economic development. What would you like to recommend to the committee?

**Chief Gilbert W. Whiteduck:** Obviously there are many layers to this. Of what we've been able to manage in the community developing a certain level of economic activity, from private enterprise to community enterprise, I can say that, really, economic development on a territory is location, location, location. We are located near a town that is having a hard time because of the forestry industry downfall at this point. Being in control of our lands or not in a different way would not give us any more economic development. The area is depressed, and there are opportunities down the line.

The big difficulty has always been the bureaucracy of Indian and Northern Affairs Canada—the slowness of the machine to provide responses to questions, approvals, and that kind of thing. We're often ready to move very quickly. It's really the machinery. Usually what we get back is that they are overloaded and overworked. All of these things are told to us. Then they tell us they don't try to deal with issues in terms of months, but are looking at issues in terms of years. That's very alarming, because business has to move forward. That's one of those barriers that somehow could be quickly removed to allow communities to move forward.

We are very concerned, no doubt. We don't want to lose any more of our reserve in any way. Whether it's the concept of fee simple with underlying title being kept by the nation being advanced.... Our people don't buy into that at all, whatsoever. We will not accept it. We think there are other ways to get to the issue of economic development at the community level that can work. Our recent discussion, even though it was small—it may have been a \$1-million-plus project that got going in the community with the Business Development Bank—demonstrated what is possible when both parties can develop a good working relationship and really

develop a level of trust. It was the level of trust that we developed that allowed this to move forward.

**Ms. Linda Duncan:** Thanks.

Chief Whiteduck, do you see any inherent risks with the proposals for further “fee simpling” or transfer of title to individual band members or non-aboriginal people?

**Chief Gilbert W. Whiteduck:** There are certainly challenges. Behind every challenge will be an opportunity. For us, we believe that we could end up losing and become a checkerboard reserve, which is a little bit like what occurred to our community in the 1800s when lands were surrendered for lease. Later on they were surrendered for sale. Our community lost a lot of land. Over the years, through specific land claims, we have been able to get a lot of these lands back. We're still fighting—I mentioned 23 specific claims right now. We believe that would occur all over again. We would be reliving the story of the late 1800s that our community once faced.

Our community in many ways is struggling like all other first nations communities. If people are able to mortgage their land—for the most part, I don't want to overgeneralize—they will be going to the bank and putting up for collateral their lands, maybe the house they built, and maybe the house the community helped them build, towards getting some resourcing they need right away. They might get into business not being as prepared as they can be. We'll have a checkerboard reserve. Until the issue of all of our ancestral lands is dealt with, because there's a bigger picture than just the reserve here.... I believe those two are really attached. They are not just velcroed together; they are welded together. We need to be able to deal with the two of them to truly move towards new land regimes and, more importantly, economic development based on our traditional territory so that the resources, or a portion thereof, are coming back to the community, to allow for that development to take place.

• (1600)

**Ms. Linda Duncan:** Thanks.

I have a few more seconds?

**The Chair:** You have a minute and a half.

**Ms. Linda Duncan:** I'll turn to Mr. Alcantara. Thanks for your presentation. I'm going to throw three questions at you. I'm sure others will follow up because we have so little time.

I read some of your articles, and you are raising an argument that the inability to sell first nations property is a problem. If the first nation holds the idea under customary law that the lands are held in trust for all of the first nation's interest, is it more a question of mentality? If they believe they want to hold the lands in trust—I noticed Chief Whiteduck is going in that direction.... National Chief Shawn Atleo suggested that it may also be possible to move forward and have better interests, interests all in whole, not for individuals. I'm raising that it may be the mentality of the first nations and their attitude to the first nations.

Secondly, you raised a number of ideas of reforms. Who are you suggesting should ultimately make these decisions? Is it the band councils? Is it the band council members? Is it the Government of Canada?

Thirdly, we had provided to us—I was trying to find it to get the quote—an analysis of moneys that could be made from the opening up of lands and opportunities on reserve lands, a good portion of the potential to non-aboriginal people. I'm curious to know whose interests you are thinking of when you are making these proposals. Does it also include the possibility of non-aboriginals benefiting from those developments?

**The Chair:** I'll have to hold you there, Ms. Duncan.

**Dr. Christopher Alcantara:** Thank you for the questions.

On the first one, concerning selling the land versus collective rights, I will echo what Chief Whiteduck says, which is that the proposed First Nations Property Ownership Act is not for all first nations. That's clear. We're not saying this is a panacea that all first nations are going to want; it's going to be for those first nations that want it. This is something Chief Jules has found. He has found that there are ten first nations that are interested.

I think there are going to be some first nations that want to use it, and we should not get in their way. We should help them towards attaining it; we shouldn't force other first nations to adopt it. There are going to be strong cultural reasons for their not wanting the proposed First Nations Property Ownership Act. Also, in remote areas fee simple rights aren't going to be a solution, as Chief Whiteduck says. I fully agree.

That deals with the first question.

Concerning the second question, on who decides about reforms, I was trying to make clear in my presentation that it's the first nations. This is not something the crown should be suggesting, and certainly not academics. Instead, the crown needs to work with first nations and leave the ultimate decision up to them. That's why I like the idea of the First Nations Land Management Act. I like the idea of the proposed First Nations Property Ownership Act. It is different groups of first nations that have come up with these ideas and have approached the federal government about creating this parallel legislation.

This is the approach the crown needs to take: it needs to be open to different proposals coming from different groups of first nations. You could conceivably have three or four or five competing, parallel pieces of legislation all on the same issue, which would allow all sorts of choice for various first nations in differing contexts to make decisions.

In terms of the fee simple interest, the proposed First Nations Property Ownership Act is again not my idea; actually, it's an idea of Chief Manny Jules. Indeed, when I wrote those papers with Tom Flanagan, our research was basically critiquing the existing Indian Act property rights. We had no proposal for what should replace it, except for the first set, wherein I suggested we strengthen the property rights.

Some of the proposal for this type of fee simple model, whereby title and jurisdiction would be transferred to the first nation and fee

simple rights could be granted on small portions of the land, was not our idea; it was Chief Jules's idea—it's a first nations idea.

We believe it can benefit both first nations and non-aboriginal people. Creating larger markets, in some instances and some contexts, can be a very beneficial thing for first nations.

Thank you.

**The Chair:** Thank you very much, Mr. Alcantara.

We'll turn it over to you, Mr. Rickford.

Keep in mind, colleagues, that if we take all of our time to ask the question, I will in the future have to not allow for the answer.

Ms. Duncan, you fully expired your time on the questioning, but of course you had asked a lot of important questions, so we wanted to ensure there was time for something to be on the record. But if that continues in the future, we'll be taking time away from your colleagues' allocations. The same will go for all sides.

Mr. Rickford, it's your turn.

• (1605)

**Mr. Greg Rickford (Kenora, CPC):** Thank you, Mr. Chair.

Welcome, Chief Whiteduck. It's great to be back with you again. We had a couple of meetings at the crown and first nations gathering, and we had a chance to visit your community in a previous version of this committee. It was great to be up there with our colleague from the Bloc.

To you, Mr. Alcantara, welcome to our study. I just want to say that your literary contributions to this subject are relevant and highly regarded. I look forward to your forthcoming book, *Negotiating the Deal: Comprehensive Land Claim Agreements in Canada*. It seems to me you may be back.

Gentlemen, in the spirit of fair use of time, my colleagues have evenly and fairly allocated our time to different witnesses.

Chief Whiteduck, I'm going to go into something rather specific with you around additions to reserves. You alluded to the subject in your speech, and indeed we spoke briefly about it. I was struck by a couple of things in your speech. One concerns your discussions with the province affected. This wasn't tied to a land claim. We deal, as you can imagine, with these in other jurisdictions.

The second thing was that cooperation is important. We heard Matthew Coon Come speak about the importance of this, particularly as it pertains to the province of Quebec and the success you've had with the Plan Nord, etc. This collaborative exercise with the private sector, BDC, the province, and now the federal government is important.

I'd like you to reflect, if you would, sir—and I'll leave you the time to do so—your experience and your observations about ATR, additions to reserves. There has been plenty of discussion here at committee. It hasn't all been good, I have to say, but it hasn't all been bad. Can you reflect and share your experience to this point and reiterate some of your important observations about this process?



**Chief Gilbert W. Whiteduck:** There is no doubt that the additions to reserve policy we've had to work with have been challenging, but they've also been rewarding. It was quite a struggle for what we would consider to be significant pieces of land. For example, in the nineties there was agreement for the return of the CPR railroad. It was returned to the community after much discussion with the Government of Quebec. Unfortunately, and I'm being frank in saying this, we seem to have to confront people and say, "If you don't come and sit with us, here's what's going to happen; here's what we might do." But we don't like to do that. That's not where we want to go. We want to remain positive. But somehow it takes a challenge to open up the door.

This was the case in the reference I made earlier to the 24 square kilometres that we're discussing with Quebec. It's a partner that came to the table reluctantly, but I hope we'll get to know each other at a different level, and things can move forward.

Another example is a recent ATR of an old burial ground in the town of Maniwaki, which was returned to reserve status. Then there was a third of an acre of land that was kind of held in suspense for four years—a third of an acre of land, four years to resolve. It has now finally been resolved; it's been signed off by an order in council. We often learn that it's the Department of Indian Affairs bureaucracy behind the additions to reserve, and that they don't seem to be able to handle it as quickly.

**Mr. Greg Rickford:** Chief Whiteduck, we heard the director general say it was time-consuming, expensive, and complex, when she was referring to the process. So we're going to ask for your perspective on how we could streamline this and make it more efficient. There have been recommendations, but we want to hear from the grassroots.

**Chief Gilbert W. Whiteduck:** I think the recommendation is that the regional offices of the Department of Indian Affairs, along with headquarters, just need to be more efficient in what they're doing. For example, they tell us that when they send something off to Ottawa it might take weeks, if not months, before they get a reply, so they cannot reply to us. The machinery just slows down.

**Mr. Greg Rickford:** In land claims nomenclature, then, we would establish when one could be fast-tracked, and where there were more complex issues.

•(1610)

**Chief Gilbert W. Whiteduck:** I would suggest that in planning there's a need for timelines to be set. We need to meet deliverables, and really stick to them, rather than just leaving it an open book—if it takes one year, we will, and if it takes five years, no. Here's the timeframe.

**Mr. Greg Rickford:** That makes sense, because we were talking about cost certainty for the nation, for the industry you're partnering with.

**Chief Gilbert W. Whiteduck:** Exactly.

**Mr. Greg Rickford:** And the government needs cost certainty as well.

**Chief Gilbert W. Whiteduck:** It forces everyone to be serious about what they're doing and getting it done on time. We're strong believers in planning these things out and living up to the obligations that all parties have.

**Mr. Greg Rickford:** There was a report in September 2010 called "Impact Evaluation of Contributions to Indian Bands for Land Management on Reserve". I'm taking this from some of the great work the Library of Parliament has done. It recommended that they incorporate an approval system to streamline processes and increase efficiency. You've already spoken about this, and you can share more insight if you'd like. I was just wondering, were you consulted in that process?

**Chief Gilbert W. Whiteduck:** No, we weren't. Certainly we would have had lots to say.

**Mr. Greg Rickford:** This is the place to do it, so keep going on those critical elements.

**Chief Gilbert W. Whiteduck:** We operate a very small unit. We have one lands officer who also substitutes as the membership clerk, so he's registering band members, doing all the land transactions, doing buckshee agreements, working on leases—we have some leases for businesses in the community—juggling all of those things, and really having difficulty.

A number of years ago we used to get funding to do surveying, because surveying is important. But that funding was removed. Without the funding, there are many pieces of land, CP transfers, that are going to be held in limbo because the holders of those CPs don't have the money to do the surveying.

In our community, we have a revolving loan fund for housing. The community participates by giving a base amount, and then the individuals borrow from the band's revolving fund. They have to find their own money. The community contributes about 42% of the actual cost of a house. When they get into a revolving loan fund, they put up their CP lot as kind of a guarantee until that is paid off. But once it's paid off, normally the land should be surveyed to make sure that this is the land agreed on. Unfortunately, the people don't have the means.

We have only 160 full-time employees in the community. We have a lot of seasonal people who depend big-time on EI, so it's difficult to be asking them. That's all catching up with us now, because we've had the revolving loan fund for years. People have paid back their loans—now what do we do? This is what we're struggling with. We believe if resources were allocated, certainly there could be more appropriate planning and finishing up of those surveys.

**The Chair:** Thank you, Chief.

Ms. Bennett, for seven minutes.

**Hon. Carolyn Bennett:** Thank you very much.

Thank you, Chief Whiteduck.

I know you reflect a lot of what we've heard across the country, that there is some concern. I think even the communities that have wanted to move forward and out from under the Indian Act have chosen to use the First Nations Land Management Act.

Like Ms. Duncan, I want your reflections on what Mr. Alcantara said. I think you've been very clear that for remote and rural communities this isn't a big advantage. That's the reason I've put forward a motion that this committee needs to travel to Attawapiskat. I don't think fee simple would help that community at all, so we hope we will vote in this meeting to visit that very troubled community.

What I understood from Mr. Alcantara is that people should be allowed to opt into this even without the permission of band council. I'm not sure how that could fit.

Do you think anything they're putting forward would work until you have proper self-government?

•(1615)

**Chief Gilbert W. Whiteduck:** Certainly we often hear that what's being brought forward is going to be for communities of the willing. The communities of the willing will get all the funding up front, or institutes will be created for them as long as they're willing to buy into something.

We respect that if a community as a whole wants to move forward in that direction and the membership has been informed, of course it's their decision. But for those communities who don't want that and want to attempt to move in a different direction, we need to also be supported with the necessary resourcing to put those mechanisms in place. That's what I haven't heard up to now.

**Hon. Carolyn Bennett:** In that First Nations Land Management Act, and the communities that are already outside of that are working towards it, a lot of their work is creating the laws of self-government that would confine the council to a set of rules that the community has agreed to.

**Chief Gilbert W. Whiteduck:** We don't believe we can truly speak about self-government at a very high level until the issue of our ancestral lands is dealt with. We can't speak about self-government on a small postage-stamp-size of a reserve. It's got to be much broader. The issue of the ancestral lands with the reserve lands has to be part of that larger discussion. Certainly in our case, in a territory that's never been ceded or surrendered and for which there is no treaty, we of course argue an inherent right to the land.

That discussion seems to be so far away from day-to-day lives. That's the other thing, these broad questions of the day-to-day lives of people in the community. I mean, unfortunately—and I have to state this—there are more pressing issues sometimes than some of these.

**The Chair:** I'm going to jump in. I think Mr. Alcantara was trying to respond to your statement as well. I'm wondering if you'd be okay with him jumping in.

Mr. Alcantara, it seemed that you were looking to respond.

**Dr. Christopher Alcantara:** Yes.

On the question of who decides, it's up to the first nation community as a collective to decide whether they want to opt into it. I'm not saying one part of the community should make a decision against the other. The community has to find a way to decide on its own rules whether or not to go into this.

Let me just talk a little about the First Nations Land Management Act. I agree with Chief Whiteduck: the Department of Indian Affairs

is extremely slow, and in every community I've spoken to it's the same story.

I don't think the solution is more money to make the Department of Indians Affairs more efficient. I think the solution is things like the First Nations Land Management Act, where the first nation takes responsibility for administering its property rights on reserve. Things like leases, customary rights, and CPs shouldn't involve Indian Affairs. It should be the first nation that is taking care of these approvals on its own. We should be giving the money to the first nations to undertake these activities, not to Indian Affairs to make them more efficient.

Let's transfer the decision-making powers. Get rid of the ministerial discretion and transfer decision-making to the first nations that are willing and interested in doing so, and provide them with the resources. That's what the First Nations Land Management Act does. The fact that more and more first nations are opting into it means there are more and more model land codes, more and more model processes and procedures that first nations can easily borrow and adopt as their own.

That's what I would say.

**Hon. Carolyn Bennett:** I guess my question would be, then, is it appropriate in terms of the proposed property ownership act? Is it appropriate that bands would choose to do that before they have formal self-government organized in terms of the way the community helps writes the laws before this fee simple could actually provide a checkerboard to the reserve?

**Dr. Christopher Alcantara:** Chief Jules will say that the proposed First Nations Property Ownership Act is in fact about self-government. By gaining title and jurisdiction, what you're in essence doing is giving the first nation the jurisdiction, the self-government, over its land to control it in a much more efficient and locally sensitive way.

The checkerboard analogy is not.... I would suggest that under this proposal, yes, there's that possibility, but you have to remember that by getting title and jurisdiction, the first nation will always own that land, which means that even if non-aboriginal people purchase this land, the land will still be subject to the laws and the regulations of the first nations, which can ensure that this land is still used as part of the community. This also includes provisions for expropriation under certain circumstances.

This is the last thing I'm going to say about the checkerboard thing. Is there a danger that non-aboriginal people will purchase reserve land? Yes, but it's also more likely that band members will go in and acquire this land before non-aboriginal people.

Remember that for the people who are selling this fee simple land, because it's fee simple you can choose who you want to sell it to. In a lot of these first nation communities, because they're postage-stamp-size communities, as the chief is correct to point out, there's usually not enough land for all the members, so there are going to be members who are off reserve who are going to want to purchase this land.

So is there a danger of the checkerboard solution? Yes, but I think the reality of the title and jurisdiction and the reality of how many off-reserve members want to return to the community—

•(1620)

**Hon. Carolyn Bennett:** Is there not a risk that this would prey upon some of the most vulnerable and poorest people, that the option of selling their land is a way out of poverty, without the band council really having any way of making that decision as a collective, as in their traditional ways?

**Dr. Christopher Alcantara:** Well, Chief Jules always talks about this legislation as being the freedom to choose. I think it's paternalistic to say to first nations people, "You're not responsible, you may be preyed upon by people who are seeking...". I think first nations individuals are smart, they're responsible, and they know how to exercise their rights within this country.

I think this legislation is about creating freedom for first nations members to—

**Hon. Carolyn Bennett:** Are there communities where this would not be appropriate?

**Dr. Christopher Alcantara:** Yes, absolutely. Yes, I agree. The proposed First Nations Property Ownership Act is not for all first nations. Neither is the First Nations Land Management Act.

There are going to be first nations that will want to remain in the Indian Act, and I think we should support them. If they want to stay in the Indian Act, or if they want to go to other parallel legislation, we should support them and make those frameworks work as best as we can for them.

**The Chair:** Ms. Bennett, I'll jump in now. I've been liberal with the time on the first opening round. We're going to try to be a little more concise with the time moving forward.

Mr. Alexander, we'll turn it over to you for seven minutes.

**Mr. Chris Alexander (Ajax—Pickering, CPC):** Thank you so much.

Chief Whiteduck and Councillor Odjick, it's a privilege to have you here. It's a particular privilege to have you so soon after the crown and first nations gathering, which we all followed very closely, including your own participation, and to have the Kitigan Zibi First Nation with us. I've been in and around Maniwaki many times. It's beautiful country, in no small measure thanks to the way it has been cherished by all of you for centuries.

Chris Alcantara, thanks for your presentation.

I think we all agree, Chief, that the only way to resolve and deepen and entrench property rights as a tool for creating success on reserves is as part of a larger picture that has to include comprehensive land claims, and so forth. I'd like to elucidate some of the forms of property rights Professor Alcantara was talking about to get a sense, for the committee and the broader audience, of what some of the features of first nations property ownership, in particular, might be and how it would change the land tenure situation on reserves.

We know from your testimony, Professor Alcantara, that it would allow land to be registered in a Torrens system. We know that first nations would retain full land management authority. And we know that it would build on the existing property rights provided for in the Indian Act and also in the First Nations Land Management Act.

Tell us more about the potential benefits of fee simple. You talked about transaction costs and the time it takes for band councils and the minister to turn these transactions around and about how costly they are. What kinds of projected benefits do you see for those first nations that embrace this form of property ownership? And tell us more about the zoning, planning, and regulating, which could go alongside this right to hold lands in fee simple, as engines for economic development for the benefit of first nations and the communities they represent.

•(1625)

**Dr. Christopher Alcantara:** Let me reiterate that this is not for all first nations. It will be for certain first nations, especially those that are in locations that can benefit from the use of fee simple. We're talking about places where there's demand and interest in a first nation's land within the first nation but also outside of it. They would be especially those reserves that are beside cities, for instance, or municipalities. These are places where fee simple ownership could be utilized in a lot of ways.

In many ways, fee simple ownership is simply the more improved version of certificates of possession. It gives stronger property rights on the land to the individual, and it comes with a lot more freedom in what you can do with it. You can transfer it. You can still do that as a CP. You can transfer it within the band. You can get mortgages or loans on the land. You can transfer it to other band members on other reserves from other first nations.

Again, it's not going to be for the entire reserve. You may decide to do just 5% of the reserve or 10% of the reserve. It creates more freedom for individuals to use the land as they wish in more economically sustainable ways.

The first nation will continue to be able to provide all sorts of bylaws and regulations on how they use it, much like how you or I buy a house in a municipality or in the country. We own that land with fee simple, but there are some regulations that ensure that the land is used for what it's meant to be used for. There are some broad regulations with respect to water quality and with respect to what the property should look like.

This is basically freeing up portions of reserve land, where appropriate, that can then be used in ways that are economically superior to the existing property regimes.

**Mr. Chris Alexander:** From your research to date, how many first nations do you think would initially be interested in this form of property ownership? Is it 10%? I agree that the proportion on each reserve might differ. But would it be 10%, a quarter, 50%? You obviously haven't polled everyone. But what are the early indications?

How great would the potential impact on access to credit be? This is obviously a big issue. There are mortgages and other forms of credit, as well, with the potential to unlock entrepreneurship in a lot of communities where we know there is potential demand. But without security of tenure, and bankable security of tenure, it's not going to be unlocked.

**Dr. Christopher Alcantara:** In terms of how many are interested, the initial number is ten. According to the last time I talked to Chief Jules, it was ten.

That number is quite normal. The First Nations Land Management Act, which has now 40 first nations, and with more getting more interested in it, started with 14 and then expanded to 40. We see the same thing. Right now we have ten, and that's a place to start. As these ten first nations go through the experience of this, we expect that other first nations, as they're ready and as they watch this experiment, may decide to join.

Actually, you know, this system already exists. The Nisga'a in B. C. are in fact the pioneers in Canada. Chief Jules's proposal is built off of that proposal. The Nisga'a signed a land claims agreement and now have created great fee simple interest in their land. So they're already doing that.

The Sechelt have this right to do it, but they have never done fee simple, mainly because they don't have that underlying title and jurisdiction. Without that underlying title and jurisdiction, they've been reluctant, but we've been told that perhaps with underlying title and jurisdiction, they as well would be interested.

So there are ten right now but there's the potential to grow, much like what happened with the First Nations Land Management Act.

In terms of credit, yes, first nations have shown extreme innovation in finding ways to get around the restrictions using CPs, such as using the revolving loan fund that Chief Whiteduck suggests, using band guarantees and ministerial guarantees. In Kahnawake they use a trustee system, a three-person trustee system.

So they've found very innovative ways to do that, and that's great. The fee simple process, the fee simple ownership, would streamline that process even more. It would increase the efficiency under which individuals would be able to access credit.

Again, this is all about empowering first nations individuals. In the words of Chief Jules, this is about unlocking the "entrepreneurial spirit" of first nations. In his foreword to our book, he talks about how his ancestors were great capitalists. If you think about the trade routes that existed among first nations communities pre-contact, these trade routes were extremely extensive and extremely economically efficient and beneficial.

So with this legislation, he wants to unlock—and this is one way, not the only way, but one way—this entrepreneurial spirit again. And our analysis agrees: fee simple for some first nations will have this effect of unlocking the economic entrepreneurial spirit that already exists and will make it easier for first nations individuals to go out and leverage their lands into economic wealth.

**The Chair:** Thank you very much, Mr. Alcantara.

**Dr. Christopher Alcantara:** But like all—

• (1630)

**The Chair:** No, I have to jump in, just because we're running out of time here.

We'll turn it over now to Monsieur Genest-Jourdain, for five minutes, please.

[Translation]

**Mr. Jonathan Genest-Jourdain (Manicouagan, NDP):** Chief Whiteduck, good afternoon.

If I understand correctly what you said in your presentation, currently your community does not adhere to a land tenure arrangement, as presented by government authorities. Are there some environmental considerations justifying your reluctance?

**Chief Gilbert W. Whiteduck:** Our reluctance stems more from the fact that we want to manage ourselves and develop our local capacities for doing things. This is why we sometimes go beyond what the Department of Aboriginal Affairs and Northern Development Canada is prepared to grant us. We have always taken care of ourselves, just as our ancestors took care of themselves. We want to do the same thing.

The environmental aspect is very important in all our discussions, whether at the community level or outside. This is always a major priority issue in planning what we are going to do, be it for economic development, land development or land management, because half of the land is held for the community. As a result, all the lakes, all the forests, all that is properly organized.

We have got a 25-year plan which has been renewed because we want to protect the land. This has been the goal we've pursued. We are doing this for future generations. We always consider the environment, economic development and opportunities that arise. We try to manage all this for the well-being of the community. We do not just think about the present, because it would be easy to cut everything down, make a lot of money and go. We take a long-term view.

**Mr. Jonathan Genest-Jourdain:** On the reserve, what are the environmental challenges facing you at present? What are the answers and what are the ways you've promoted?

**Chief Gilbert W. Whiteduck:** There are not a lot of environmental issues because we have put in place an internal system in which we try to make regulations. I will give you an example concerning the transfer of contaminated soil.

This year, we observed individuals who have lots in the community that went and got contaminated soil from the village of Maniwaki to put on their allotments within the community. So we wondered what we could do. We contacted Environment Quebec, Environment Canada and the Department of Indian Affairs, but no one wanted to do anything. The soil is now there and it is going to have an impact on the water. We are trying to introduce an administrative regulation to control this sort of situation. We expected that representatives of Indian Affairs, who are always concerned about responsibility issues, would intervene or even that Environment Canada would intervene, but no one wanted to act. That is unacceptable.

So we are going to put in place regulations that will be a bit tougher. We look at what Quebec has already put in place to figure out what we can introduce in the way of regulation. These are examples of what private individuals can do sometimes when they own lots. There have to be regulations.

**Mr. Jonathan Genest-Jourdain:** What sort of expertise have you developed over the years?

**Chief Gilbert W. Whiteduck:** We have not developed a lot of expertise for lack of funding. We have a biologist who works for us at the community level and we ask him to handle any environmental files where threatened species are involved. We do a lot of research in these areas. We are developing expertise.

As you know, there are environmental factors that may have impacts on the health of members of the community, such as uranium, contamination of the community's drinking water or radon. We really try to remain informed and do what we can with the funding available to us. We also work with the Department of Human Resources.

**Mr. Jonathan Genest-Jourdain:** Thank you.

Mr. Alcantara, I have a fairly short question for you.

I read your summary and I heard your previous presentation. You mentioned the difficulties for a member of the community to go to court to challenge a band council decision. I would like to know whether you know about or are acquainted with the subtleties pertaining to the legal review of band council decisions by the courts. Could you give us more information about to the possibility of a member of the community going to court to challenge an administrative decision by a band council?

• (1635)

[English]

**Dr. Christopher Alcantara:** The jurisprudence suggests that customary rights are only enforceable in Canadian courts if they mimic certificates of possession. If they mimic the certificates of possession in terms of how they were allotted and how they are administered and recorded, then the jurisprudence suggests that the Canadian courts will uphold them. Otherwise, customary rights are not enforceable in Canadian courts. In the end, it's up to the band council; the band council has final authority.

This is problematic, because a number of first nations in my research have developed first nation adjudication committees that are separate from and completely insulated from the band council. There have been elders' committees that ensure that you have an equal number of elders from competing families to make certain that decisions are fair. Some first nations have developed very good processes.

My suggestion is for the crown to support these initiatives to help first nations acquire and create the expertise to create legal bodies that insulate decisions from the political system. That means thinking about first nations court systems outside of self-government agreements—first nations court systems whose job is to adjudicate these types of disputes. You might be able to pool resources by creating regional first nations courts that are controlled by the first nations but that are at arm's length from them and would have experts—

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

I'm sorry, but we're running against the clock. I'm going to have to pass it on to Mr. Payne for the next five minutes.

We appreciate the information we're getting. This is always what happens when good information is coming: we run out of time.

Mr. Payne, I'll turn it over to you for the next five minutes.

**Mr. LaVar Payne (Medicine Hat, CPC):** Thank you, Chair.

Chief Whiteduck, it's good to see you again. I did travel with the committee, as my colleague Mr. Rickford talked about earlier. Welcome, Councillor Odjick. Welcome to you, too, Professor Alcantara.

Professor, I'd like to build on what my Chris Alexander was discussing with you and the questions he was asking you. In terms of our committee work here, it is extremely important that we get all the information from you on this particular study.

My question for you is how are comprehensive land claims different from first nations property ownership?

**Dr. Christopher Alcantara:** In principle, they're similar. The Nisga'a basically provides the model, because the Nisga'a gained title and jurisdiction through their comprehensive land claims agreement, and then they passed a law that allows for fee simple ownership to occur and that fee simple ownership is going to be registered in a Torrens system.

So our proposal is one that builds off that model and uses that same model, except without the comprehensive land claim. First nations communities could gain title and jurisdiction through this legislation, and then could do the same things the Nisga'a are doing.

**Mr. LaVar Payne:** Some of that usually includes land ownership, money, wildlife harvesting rights, participation in land claims—

**Dr. Christopher Alcantara:** I see what you're saying.

**Mr. LaVar Payne:** —and those kinds of things.

Have you any other comments you'd want to add to that?

**Dr. Christopher Alcantara:** This legislation shouldn't be thought of as similar to comprehensive land claims in that way. It's not comprehensive like modern treaties are, but it achieves in many ways the same purpose, which is to give entitlement, jurisdiction, and certainty of ownership to the first nation community on the reserve.

• (1640)

**Mr. LaVar Payne:** Yes, and many of those agreements do include provisions for aboriginal self-government.

**Dr. Christopher Alcantara:** Right, but ours would not. The proposed First Nation Property Ownership Act would not have a chapter that involves self-government; that would be something that continues to be negotiated under the current federal self-government policy. This simply focuses on property ownership in the narrow sense.

**Mr. LaVar Payne:** What are the advantages and disadvantages with respect to a loan under leasehold estate in comparison to fee simple estate?

**Dr. Christopher Alcantara:** We actually would argue that, first of all, leases are a very powerful and useful economic tool. The difference would be that the process for getting a leasehold interest and then turning that into a mortgage would be more onerous than getting a mortgage or a loan based on a fee simple ownership. The main difference would be simply the acquisition of a leasehold versus a fee simple, and then the leveraging of that. In terms of actually acquiring the mortgage, they both serve the same purpose.

**Mr. LaVar Payne:** So as I understand, the first nations tend to issue leasehold interests and do so much faster than under the Indian Act. I think you may have mentioned that earlier. I can't remember if it was Chief Whiteduck or you. So that's one other thing....

**Dr. Christopher Alcantara:** It should be noted that there are three types of leases under the Indian Act. There is the permit, under subsection 28(2); there is the land designation process, which Chief Whiteduck has talked a little bit about, under section 38; and people who hold CPs can get leases under section 53.

All of these leases, again, are very useful tools for economic development, but they also have problems with transaction costs. Depending on the type of lease, they require either one level of government approving it or two levels of government approving it. So that's one problem compared to the fee simple, where you wouldn't have the multiple levels of approval.

The second thing is that some of the jurisprudence suggests that leasehold interests are worth less than their off-reserve equivalents. There have been a number of cases in the last ten years where the courts have suggested that a discount of up to 50% should be applied to leasehold land on reserves, compared to its equivalent off reserve. That's a big discount. That means that the first nation or the first nation members are going to have to charge 50% less rent than the off-reserve equivalent, where the fee simple ownership wouldn't have that type of problem. The fee simple land ownership would avoid that potential discount.

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

We'll turn to Mr. Bevington for five minutes.

**Mr. Dennis Bevington (Western Arctic, NDP):** Thank you, Mr. Chair, and thanks to the witnesses.

Chief Whiteduck, I'm interested in what you say your problems are right now. Where do you go with your land issues with the federal government? Do you go to the regional level? Where would the office be located, and what kinds of people would be there?

**Chief Gilbert W. Whiteduck:** In our case, it is indeed the regional office, located in Quebec City. They have a very small office—you know, one person with multiple files. Her availability to respond varies. She may be dealing with a permit issue; she may be dealing with an additions to reserve at the same time; she may be dealing with the local municipality in regard to, for example, some other permit that may have been issued some decades ago. That's the kind of thing we're facing.

**Mr. Dennis Bevington:** Once the addition-to-reserve issue has been through her office, does it then go on to...?

**Chief Gilbert W. Whiteduck:** It goes to Ottawa. It goes back and forth until it's finalized, and then it gets to the minister for a sign-off

and then an order in council, for a final.... Certainly that's what we went through; it took four years for a very small piece of land.

**Mr. Dennis Bevington:** Yes.

We've had some evidence given to us from INAC that in their land division they have 36 people in Ottawa, and at the regional level they have 128 in total across the country. When you look at that number, and you think of the 640 reserves and the complexity of the issues you're dealing with.... How many ATRs are you working on right now?

• (1645)

**Chief Gilbert W. Whiteduck:** There are several that will be appearing on the scene.

I want to clarify one point raised early on about a statement I believe somebody made. My recommendation is not to give more money to the Department of Indian Affairs; my recommendation is that they need to work more effectively and efficiently, not receive more money. I agree that the funding needs to come down to the community to develop more capacity. But I believe they can do more internally. We're never called upon to offer advice to them about how to improve. That dialogue doesn't occur. They make those decisions.

**Mr. Dennis Bevington:** Is there any ability for a band to understand where the permits, the ATRs, are within the system? Is there some transparency within the department such that you can say, this is now on this desk or that desk?

**Chief Gilbert W. Whiteduck:** To some extent there is, but it took me four years to convince the regional office to provide me with a timeline chart so that I knew where a file was when it was out of their hands and they were waiting for a response. The representative finally did produce one. It was helpful, but it took four years.

**Mr. Dennis Bevington:** Yes.

I've had a lot of experience in municipal government, and I am thinking about 640 different first nations and the capacity there. Even in a smaller municipality, you'll have a lands branch to deal with very straightforward transfers of land under very classically laid-out municipal ordinances that are not difficult to deal with. To me, this capacity issue comes up throughout this whole equation that you're talking about: regardless of what system you have in place, there's a capacity problem. Is that...?

**Chief Gilbert W. Whiteduck:** I agree; there is a capacity issue on both sides. As I say, we have existing and new arrangements occurring, and then we have old, historical arrangements with local municipalities—I'm sure many first nations have those—that still remain to be examined. The Department of Indian Affairs still has a tremendous responsibility regarding permits that were issued, which in some cases—certainly in our case—have a tremendous negative environmental impact, because sewer pipes are being dumped into the community. There's a long story to that; there's a huge environmental impact, and we're trying to correct it. My response, and the point we made to the municipality, is that since it's going nowhere with INAC, we're going to call in the cement truck and are going to fill the pipe with cement, and that will be the end of that: let it flush the other way. Enough is enough. Our community and a huge part of our land is now contaminated.

**The Chair:** Mr. Bevington, you only have 20 seconds.

**Mr. Dennis Bevington:** Very quickly, Mr. Alcantara, how many cases are you familiar with of expropriation by first nations of their members' land?

**Dr. Christopher Alcantara:** In terms of customary rights, there are a number of cases in Alberta where that's occurred, where members have.... I can't remember which first nation it is now in Alberta, but land was expropriated from a member to build a school for the community. He looked into getting a lawyer to take legal action, but his lawyer said he had no case. The band expropriated his land to build a school. The band granted the individual \$20,000, which they didn't have to do, but they provided some financial recompense.

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

Mr. Clarke, for five minutes.

**Mr. Rob Clarke (Desnethé—Missinippi—Churchill River, CPC):** Thank you, Mr. Chair, and I would like to thank the witnesses for coming here today and providing us with some input.

Chief, I'm going to focus on you here. I want to get your expertise here in regard to your community and some of the challenges that you're facing here as well.

I am from north Saskatchewan. We've had the Land Measures Act. People came in last week to discuss the partnership that Saskatoon was having with the first nations communities in Saskatchewan. My question would be more or less on the approach your community is using for land use. How are you utilizing that?

**Chief Gilbert W. Whiteduck:** Could you clarify the question?

**Mr. Rob Clarke:** What type of planning are you doing in your community?

**Chief Gilbert W. Whiteduck:** We have really a number of approaches that we take. One of them, because our community is divided, with 50%, as I mentioned, held in common.... And those lands have lands management, environmental protection and selective cutting. It has also ensured that all of the waterways and lakes have borders where no cutting will ever take place. It's with the intent of sustainability. It is a territory that has fine maple. We have a maple syrup operation in our community. We have that stand of maple. We have a beautiful red and white pine stand that we're trying to keep. Again, we do selective cutting, as required, with old growth and what not. That's one thing.

The other part of the community planning that we're doing is because it's individual CP lots, we've maintained some common grounds within the core of the community for economic development purposes, and slowly those areas are developing. This allows individuals who may not have the appropriate CP lot to come to the band to make an arrangement to begin a business, whether it's a gas station, a hardware store, or whatever the case may be. We keep pieces of land along the highway for those purposes and close to town. That is part of the internal economic development planning that we have.

There is no doubt—and I am pleased by your question—that we need to do a lot more. Very often, it's capacity. Even as a chief, when I got elected, I didn't wake up knowing everything about land. My background was education and social services. I have been learning

as I go along. I speak to as many people as I can, but I'm far from being an expert in it.

We do know that planning is important, long term and short term. Environmental issues are important and economic development is important. We're trying to put those pieces of the puzzle together to strengthen the community.

• (1650)

**Mr. Rob Clarke:** How does land-use planning support economic development in your community?

**Chief Gilbert W. Whiteduck:** It ensures, as I said earlier, that key pieces of land are set aside for business development because of their location. Again, the location was key in all of this. That's how the Home Hardware store in the community came to be, and how gas stations and a sports equipment store have gone up. Mr. Odjick runs a printing business in the community—that kind of thing. Those things have sprung up because we kept those pieces of land or individuals made sure they could get their business going on their CP lots. We have been moderately successful in making that occur.

**Mr. Rob Clarke:** Are communities engaging in land-use planning? If they're not, what would get more communities involved?

**Chief Gilbert W. Whiteduck:** There are a couple of things, of course.

There's a bit of resourcing. I know that if we had a bit more resourcing, we could do a lot more. I'll very quickly say that we're about to align ourselves with Carleton University's faculty of engineering to do some land work. We're going to have a partnership. We were able to secure some funding from the Department of Aboriginal Affairs to make that happen.

We're doing long-term community planning. We're looking 25 years ahead. We can't make it 50 years, like the NCC, but we're trying to think about 25 years of really laying out how we view our community and what things need to be put in place. Again, we have a few resources to make that happen. As I said earlier, planning for us is very important.

The work that we'll be doing with Carleton University is unique, and I believe it will really help the community in that kind of planning.

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

You mentioned the NCC. In my experience with the NCC, they have a long-term vision and they change that plan every five minutes. So some flexibility would be understood in your planning as well.

It will be Ms. Hughes's turn now for five minutes. Ms. Hughes.

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

Again, thank you for your input today. You talked about your lands management officer. I'm just wondering what kind of education... Has this person been properly trained to do this, or has that been a hindrance for you? We heard from the National Aboriginal Lands Managers Association that they have trained. Is your lands manager one of those people who have been trained? If not, have you applied to be trained?

**Chief Gilbert W. Whiteduck:** He is indeed one of those individuals who has been following, on an ongoing basis over the years, all the training and all the meetings and he's able to exchange with colleagues across Canada. That is important because we're also learning from best practices occurring elsewhere and sharing our practices and our challenges. That's what he does, but he is alone in his office. As I said earlier, on any given day he has membership to deal with, he may have recurring CPs, he may be working on a permit, or many things. He does what he can.

• (1655)

**Mrs. Carol Hughes:** Just on that note, how detrimental would this be if this person were to leave? Would your community have the funds to retrain somebody else?

**Chief Gilbert W. Whiteduck:** I don't know what we would do. Once this expertise, this capacity, is developed and someone disappears on us like that, I don't know what we would do, to be honest with you. We would still carry on, obviously, but things would slow down tremendously. Other people with a bit less capacity and background would have to take up the load.

**Mrs. Carol Hughes:** Earlier you talked about the many challenges of northern development or economic development in your area and some of the challenges you've had with the Department of Indian Affairs. I'm just wondering, because you talked about the environmental stresses that your community is currently facing and has faced for a long time. Even with everything in place, would there still be challenges with respect to some of the environmental problems that you're experiencing right now to lure economic development to the area?

**Chief Gilbert W. Whiteduck:** I think those environmental challenges will always be there, because some of the portions of land around our community are contaminated soils. We have one area where there used to be an old logging mill. They tore it down and all the oil leaked out from the transformers and what not. At one point we were going to acquire that land for development, but it's so contaminated. It's in our backyard and it's seeping into the river and no one knows what to do with it.

So we have that on one end and then we have a sewer pipe from the town of Maniwaki that was built in the sixties and continues to be emptied into our community. It's now more a storm sewer pipe than what it used to be. It was raw sewage before.

Again, we're caught with all those lands.

We're trying to develop partnerships, we're trying to find solutions. It's capacity. We can only juggle so many things at the same time in the community. These things are huge and take time and very often there are only a few of us at many tables trying to carry this expertise to bring about change.

**Mrs. Carol Hughes:** Did you say you were getting some funding, or you weren't getting any funding at all and your requests have fallen on a deaf ear with respect to assistance with that?

**Chief Gilbert W. Whiteduck:** We're not getting any funding with regard to dealing with environmental contaminations and what not. We can speak to people and we can maybe get a response. So we're left on our own.

**Mrs. Carol Hughes:** Again, you talked about potable water and the infrastructure. Even if you have everything in order with respect to your land—and I have to take communities like Attawapiskat or some of the other remote communities—so even if you have everything lined up, if the infrastructure is not there it's going to be very difficult to be able to even move any project forward if you don't have housing for people to stay in, if you don't have potable water or electricity. So I'm just wondering if you have some comments as to what the package deal should be.

**Chief Gilbert W. Whiteduck:** There is no doubt that without the infrastructure there is a tremendous problem.

In our community, where there's uranium in the water, where only 40% of our community can now drink the water, last year there was a substantial investment. We recognize that the Conservative government invested some \$12 million in getting potable water to at least 40%. So it was a good start.

We now need to reach the remainder of the community, because 60% are still receiving bottled water. I'm one of those and so is Councillor Odjick. Also all the challenges behind bottled water for our elders: our women have to carry it outside; sometimes people are out of their homes, and the bottles freeze; in the summer mould sets in because you happen not to be home. So the infrastructure is key to developing housing and economic development in the long term. Some of that key infrastructure located in the centre of the community is now there, around those lands we set aside for economic development opportunities.

**The Chair:** Thank you, Chief.

Our last questioner of the second round is Mr. Boughen, for five minutes.

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

Let me welcome the panel. Thank you, folks, for coming and visiting with us this afternoon.

Chief, you mentioned that you're looking at balancing the environmental concerns you have on the reserve and some things that are happening which aren't conducive to good management of the environment. Could you expand on that a little for us? You mentioned the sewer line that was emptying into the reserve. Are there other issues, and if so, what are they?

• (1700)

**Chief Gilbert W. Whiteduck:** That is one of the key issues.

Of course I mentioned an old, large sawmill that was next to the community. We're in dialogue with the municipalities, we're in dialogue with the Government of Quebec, we're in dialogue with many people, but no one wants to move.



In the case of the sewer line coming into the community, it's been estimated that to replace it would cost at least \$7 million—a huge amount. Of course, the town doesn't want to raise its taxes; no one wants to invest. But in the meantime, it's still coming into our community. That is the problem and has been since the 1960s. The community agreed to a right-of-way usage in the 1960s, a kind of permit system. Many people were not aware, as we came to learn after digging through a lot of documentation. For us, it wasn't to create an obstacle with the town. We want to look for a solution. But at the same time, we need to protect our territory.

The issue is very frustrating, because it just doesn't move. People are just not attentive to our reality. It's as if “out of sight, out of mind”: it's being dumped on a reserve; let's dump it on the reserve.

We will not accept that.

**Mr. Ray Boughen:** No, I don't blame you.

Thank you, Chair. I'll pass it to Greg.

**The Chair:** Mr. Rickford, if you are splitting the time with Mr. Boughen, feel free to.... Why don't you jump in there, Mr. Rickford?

**Mr. Greg Rickford:** Thank you.

I had asked Ray as a friend and colleague to ask a specific question that I have, but maybe we'll go a little bit further with it and hear briefly from Mr. Alcantara on this.

Some of what we talk about is an environmental management gap, Chief Whiteduck, whereby we have particular environmental issues for which there is no legislation that applies on reserves or there are issues as a result of inadequate enforcement.

I appreciate what you're saying and your perspective, because in the great Kenora riding, of course, we have a number of reserves very close to the city. The minister and I recently took a trip to Quebec, where we saw good relationships around critical infrastructure between the first nation community and the city.

I believe you have some positive things to reflect on. Could you, as Ray would have said, expound on that just a little bit more? Talk about this gap and what things we need to do to address it, in terms of enforcement or what have you.

**Chief Gilbert W. Whiteduck:** You are right; there don't appear to be enforcement tools that could be readily used by the community or by band council to address this issue. Our relationship, I suppose, like those of many other first nations with the local municipality, is frigid at best. We have an invisible wall between the municipality and us. Yes, we share on certain services, such as fire services, and at one point water services. But the town has always been open when the federal government is willing to invest money in their infrastructure.

We continue to try to dialogue. For us, it's to find sustainable solutions that will protect, but solutions in which we're in control. It's very upsetting when our voice or our words are not considered at the same level as someone else's. We're always trying. We hold public meetings on a monthly basis. We meet with our community members. We're trying to reflect what it is they're telling us, to make sure that we're indeed bringing forward what it is they believe is important for the community.

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

I'm going to use the discretion of the chair and frustrate all my colleagues by taking as much time as I want in our closing.

There are a couple of things I've heard from committee members I want to touch on.

Mr. Alcantara, we've spoken to Chief Whiteduck with respect to his band's challenge and what seems to be the regulatory gap that exists on reserve under the Indian Act. Can you speak generally about how this might be addressed—first about whether there's a way to address it under the Indian Act, but moving forward, whether there are land codes and provisions in one form of management compared with another that might better or worse address that regulatory gap?

**Dr. Christopher Alcantara:** The solution is going to require a two-pronged approach. One is parallel legislation that allows first nations to develop their own land management regimes. That includes not only creating legislation, but also giving first nations tools and the capacity to make use of them.

The other thing has to do with the Indian Act itself, with making it more efficient. The question you need to ask the Department of Indian Affairs is why we have regional offices. Why do CPs have to be vetted by regional offices and then Ottawa? Why can't we streamline the process? Why do we use a land registry system that is completely outdated, impossible to search, and difficult to verify? Why don't we move to a modern Torrens land registry system? Half the provinces in Canada use it, and history has shown it to be an easily searchable and secure way of registering property.

It's a two-pronged approach: first, strengthen the efficiency of the Department of Indian Affairs, ask these types of questions, and think about ways of strengthening the Indian Act elements; second, facilitate parallel legislation.

• (1705)

**The Chair:** With regard to the First Nations Land Management Act, Mr. Alcantara, you've written about the challenge for smaller, or poorer communities to be able to buy into or be part of the First Nations Land Management Act.

First of all, I'd ask you generally about what makes a good candidate. We have now around 50 first nations that are either moved into or moving into the First Nations Land Management Act. Here, a couple weeks ago, the minister announced 18 new entrants. What characteristics make them good candidates for the regime?

Second, what about those first nations that really are not good candidates for this regime? Is there some other regime that would work better? Have you seen a new parallel system that would work better for them?

**Dr. Christopher Alcantara:** As to ideal candidates, I really don't know. My research hasn't looked at that, except to say it has to be a first nation that is interested in taking control and is willing to weather the costs of doing so. It really comes down to the community, whether they want to take control of this themselves.

I will say, though, that it's getting easier now for first nations. The conditions to get into it are relaxing. The more first nations do it, the more model land codes and model land laws will become available for emulation, and the larger their network for support will grow. Networks are very important. As more first nations opt into it, it will lead to more and more first nations being able to do it. The start-up costs will be much less.

**The Chair:** Mr. Alcantara, Chief Whiteduck, Councillor, I appreciate your testimony.

We appreciate your willingness to come and bring testimony on this important subject. I look forward to meeting you again. We will

be undertaking this study over the next number of months, and we'll be hearing from witnesses from across this country.

Thank you so much.

Colleagues, we'll break now and give you an opportunity to meet with the witnesses. We'll suspend for a few minutes, but I don't want to take too long, because I want to get into committee business as soon as possible.

We'll now suspend.

*[Proceedings continue in camera]*

---







**MAIL  POSTE**

Canada Post Corporation / Société canadienne des postes

Postage paid

Port payé

**Lettermail**

**Poste-lettre**

**1782711  
Ottawa**

*If undelivered, return COVER ONLY to:*  
Publishing and Depository Services  
Public Works and Government Services Canada  
Ottawa, Ontario K1A 0S5

*En cas de non-livraison,  
retourner cette COUVERTURE SEULEMENT à :*  
Les Éditions et Services de dépôt  
Travaux publics et Services gouvernementaux Canada  
Ottawa (Ontario) K1A 0S5

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

### **SPEAKER'S PERMISSION**

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.

Additional copies may be obtained from: Publishing and  
Depository Services  
Public Works and Government Services Canada  
Ottawa, Ontario K1A 0S5  
Telephone: 613-941-5995 or 1-800-635-7943  
Fax: 613-954-5779 or 1-800-565-7757  
publications@tpsgc-pwgsc.gc.ca  
http://publications.gc.ca

Also available on the Parliament of Canada Web Site at the  
following address: <http://www.parl.gc.ca>

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

### **PERMISSION DU PRÉSIDENT**

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.

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.

On peut obtenir des copies supplémentaires en écrivant à : Les  
Éditions et Services de dépôt  
Travaux publics et Services gouvernementaux Canada  
Ottawa (Ontario) K1A 0S5  
Téléphone : 613-941-5995 ou 1-800-635-7943  
Télécopieur : 613-954-5779 ou 1-800-565-7757  
publications@tpsgc-pwgsc.gc.ca  
http://publications.gc.ca

Aussi disponible sur le site Web du Parlement du Canada à  
l'adresse suivante : <http://www.parl.gc.ca>