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Chair

Mr. Andy Fillmore

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• (1530)

[English]

The Chair (Mr. Andy Fillmore (Halifax, Lib.)): We'll come to order now. Welcome, everyone, to the indigenous and northern affairs standing committee. We are meeting today to hear testimony on Bill S-3, an act to amend the Indian Act, specifically the elimination of the sex-based inequities in registration.

We have two panels today. The first panel is with us right now. We are welcoming four officials from the Department of Indigenous and Northern Affairs Canada: Joëlle Montminy, assistant deputy minister, resolution and individual affairs sector; Candice St-Aubin, executive director, resolution and individual affairs sector; Nathalie Nepton, executive director, Indian registration and integrated program management; and Effie Panousos, senior policy adviser and manager, treaties and aboriginal government. You are joined today by Martin Reiher, general counsel, from the Department of Justice. Welcome to you all. We're very pleased you're here with us.

We are happy to offer you 10 minutes to use among yourselves as you see fit.

If you are ready, we'll get right into it. Thank you.

Ms. Joëlle Montminy (Assistant Deputy Minister, Resolution and Individual Affairs Sector, Department of Indian Affairs and Northern Development): Thank you very much. I'm Joëlle Montminy.

[Translation]

I am the assistant deputy minister of the Resolution and Individual Affairs Sector at Indigenous and Northern Affairs Canada. You have already introduced my colleagues.

I would like to thank you for the opportunity to be here today to provide this committee with information on the government's response to the Descheneaux decision. As you know, the response involves amendments to Bill S-3, an Act to amend the Indian Act, aimed at eliminating residual sex-based inequities in Indian registration, which will be followed by a collaborative process with indigenous groups on broader related issues.

[English]

I would like to say a few words on the Descheneaux decision.

In August 2015, the Quebec Superior Court ruled that the provisions of the Indian Act violated the equality provisions of the charter because they perpetuated residual sex-based inequities in Indian status.

The Descheneaux case dealt with the differential treatment between the male and female lines in the acquisition and transmission of Indian status relating to first cousins of the same family and siblings. As a result, the court declared several key provisions of the Indian Act invalid and suspended its decision for 18 months to allow time for the necessary legislative amendments. Canada originally filed an appeal, but the decision came down during the election, and the appeal was withdrawn in February 2016 by the new government.

In order to comply with the decision, legislation must be passed by February 3, 2017. In the absence of a legislative response by this deadline, Canada will be unable to register the majority of individuals seeking status in the province of Quebec and possibly in other jurisdictions as the key provisions in the Indian Act will be inoperative.

Last July the government launched a two-stage approach to respond to the Descheneaux decision. As part of the first stage, the government started holding information sessions with indigenous groups and introduced legislative amendments to the Indian Act through Bill S-3 to eliminate residual sex-based inequities in Indian registration.

The second stage will be a jointly designed, collaborative process with indigenous groups to examine the broader and systemic issues relating to Indian registration, band membership, and citizenship. The purpose of this process will be to identify areas for future reform.

Before examining the proposed amendments in more detail, I'd like to provide you with some background on Indian registration to better understand the context of Bill S-3.

Under section 6 of the Indian Act, the federal government exercises exclusive authority in the determination of who is an Indian. Eligibility for Indian status is determined on the basis of an individual's descent from a person registered or eligible to be registered as an Indian.

Prior to contact with European settlers, we know that first nations had diverse ways of identifying their citizens, including clan, kinship, and hereditary systems. These were displaced as a result of the introduction of the concept of "Indian" in colonial and then Canadian legislation.

Starting in 1869, patrilineal descent rules and sex-based criteria for Indian status and band membership were entrenched in federal laws, and continued under successive changes to the Indian Act. Under these rules, Indian women who married non-Indian men lost status, as did their children, and through enfranchisement, individuals and their descendants lost Indian status if they became a doctor, a lawyer, Christian minister, joined the military, or earned a university degree.

In 1985, the Indian Act was amended through Bill C-31 to comply with the charter. This was the first step in addressing sex-based and other inequities in Indian registration. As part of these amendments, Indian women who married non-Indians no longer lost status, and those who had previously lost status could be reinstated, as were their children. Enfranchisement was also abolished, and individuals who had previously lost status could be reinstated, as could their children.

The 1985 amendments also introduced categories for Indian registration through subsection 6(1) of the Indian Act, and also limitations on the transmission of Indian status after two consecutive generations of parenting with a non-Indian through subsection 6(2). That's commonly known as the second-generation cut-off. It's important to note that the second-generation cut-off rule was implemented in direct response to concerns raised by first nations during consultation on Bill C-31.

• (1535)

Finally, Bill C-31 also reinstated first nation authorities to control their membership through section 10 of the Indian Act.

Despite these amendments, some residual sex-based inequities stemming from the past were carried forward. New issues arose as a result of the introduction of categories of Indian registration—I've mentioned subsections 6(1) and 6(2)—that resulted in an increase in legal challenges.

The first case that was significant was the *McIvor* case, which was decided by the B.C. Court of Appeal in 2009. In response to that case, Parliament passed Bill C-3, the Gender Equity in Indian Registration Act, in 2011. Bill C-3 amended certain registration provisions to ensure that eligible grandchildren of women who had lost status as a result of marrying non-Indian men could then become entitled to registration, which is basically extending the eligibility to one more generation.

Following Bill C-3, the government also launched an exploratory process to gather the views of indigenous groups regarding issues related to registration, membership, and citizenship. Over 3,500 individuals participated in this initiative, and the findings revealed a myriad of perspectives.

This brings us to Bill S-3, which proposes amendments to Indian registration to comply with the *Descheneaux* decision and to eliminate all known sex-based inequities. Bill S-3 would amend subsection 6(1) of the Indian Act to extend eligibility for Indian status to descendants of the female line. These changes would specifically address issues relating to cousins, siblings, and removed or omitted minors.

This is a bit difficult to describe just in words, so later on you can consult the deck that we've provided to you and the comparator

charts on pages 22, 24, and 26, where you'll be able to see the effect of the changes that I will describe.

The cousins issue relates to the differential treatment in the acquisition and transmission of Indian status that arises among first cousins of the same family depending on the sex of their Indian grandparents in situations where the grandparent was married to a non-Indian prior to 1985. This results in different abilities to acquire and transmit status between the maternal and paternal lines.

The siblings issue concerns the different treatment in the ability to transmit Indian status between male and female children born out of wedlock between the 1951 and 1985 amendments to the Indian Act. Indian women in this situation cannot transmit status to their descendants, unless their children's father is a status Indian. Indian men in similar circumstances can transmit status to their children, regardless of whether they parent with a non-Indian woman.

Guided by the advice of the court to not take a narrow approach in our legislative approach, a third issue has been included in the bill. It deals with removed or omitted minors.

Prior to 1985, registered minor children who were born of Indian parents or of an Indian mother lost their status, as did their mother if she married a non-Indian man after their birth. This is in contrast to their adult or married siblings, who retained their status.

While Bill C-31 restored Indian status to women and their children in this situation, it did not make eligible the children of the reinstated minor. The proposed amendments in Bill S-3 would address this issue and extend eligibility for Indian status under subsection 6(1) to the children of the reinstated minor child.

[*Translation*]

As would be expected, the proposed legislative changes will result in an increase in the number of individuals who will become entitled to Indian status. There will also be a change in the status category for some already registered individuals.

Based on demographic analysis, between 28,000 and 35,000 individuals will become newly entitled for Indian status as a result of Bill S-3. This increase will impact the costs of two federal programs that are directly linked to registration: INAC's post-secondary education program, and Health Canada's non-insured health benefits program for first nations and Inuit.

The government's fall economic statement released on November 2 identified approximately \$149 million for the implementation of Bill S-3. In addition, the department is continuing its evaluation of the potential costs of the post-secondary education program.

Changes to entitlement for Indian status may affect funding over a longer term for other programs. INAC will monitor the impacts over time on the mobility of first nations who may decide to move to reserves.

• (1540)

[English]

As previously mentioned, starting in the summer of 2016, information sessions were held with indigenous groups, and we heard a multitude of perspectives. Some concerns that were expressed related to the short time frame for information sessions, the limited scope of the proposed changes, the impacts of accommodating newly entitled members, and the narrow focus on technical amendments that perpetuate colonial Indian structures.

Recognizing these concerns, the government is committed to the second stage of this initiative. The deadline of February 3, 2017, imposed by the court is insufficient to allow us to conduct meaningful consultations with indigenous groups to address all these complex issues in a short time frame, so in considering this, the government will launch the second stage in February 2017, which will be joint work with indigenous groups to address broader issues with a view to future reform.

Thank you.

The Chair: Thank you very much, Ms. Montminy.

We'll move right into questions now. These are seven-minute rounds of questions, and the first question is from Gary Anandasangaree, please.

Mr. Gary Anandasangaree (Scarborough—Rouge Park, Lib.): Thank you for the presentation and thank you to the panellists who are here.

I have some very specific questions with respect to the Descheneaux decision. You discussed the issue of omitted minors. I'm wondering if you could give us a sense of what other issues may be in the legal pipeline that could potentially have us revise the Indian Act again in the near future. Are there any pressing ones based on the Descheneaux decision?

Mr. Martin Reiher (General Counsel, Department of Justice): Mr. Chair, I will try to provide the information that I have. I do not have in front of me a list of the various challenges that we are aware of. I can point to a situation that we know about that is very complex to address: when mothers do not know the identity of the fathers of the children. This presents difficulties for registration of children. This is one issue that will need to be considered and could potentially lead to changes.

We are also aware of a proposed class action challenging one provision of the bill that amended the Indian Act in 2010 with respect to the possibility of claiming damages for the lack of registration prior to the enactment of these amendments.

At the moment these are the issues that come to mind. They are challenges to the act based on the Canadian Human Rights Act, which are similar to those presented under the charter, some of which will be addressed by these amendments.

Mr. Gary Anandasangaree: There is some mention here of the cost of \$130 million, and I think the numbers we're looking at are

anywhere from 25,000 to 30,000 potential registrants. Would that include the cost of resolving a class action, or is that outside the scope? What are the underlying data behind these numbers?

Ms. Candice St-Aubin (Executive Director, Resolution and Individual Affairs Sector, Department of Indian Affairs and Northern Development): It's outside the numbers that Joëlle mentioned in her speech and that you see before you. The \$130 million from the fall economic statement was around programs per individual and it was related to the demographics. We did hire one of the top demographers here in Canada, Stewart Clatworthy, who was a witness in the case at the time and looked into things such as fertility and mortality rates, etc. He provided us with the numbers going forward, both in the immediate future, which was the 28,000 to 35,000, as well as across coming generations for 50 years.

• (1545)

Mr. Gary Anandasangaree: What's the range of responses you're getting from many of the communities, and what seems to be the prevailing sense with respect to this issue?

Ms. Candice St-Aubin: The information sessions have provided a variety of responses. There are those who are obviously quite happy to see us moving forward on this issue, having been denied from the previous round of amendments. Then again on the flip side we have those who feel that we've perhaps gone too far, that we're taking our own ability to have sole authority over identifying and registering Indians without having some meaningful conversation.

From what I've heard, the prevailing response has been the need to look at broader complex issues outside of only those identified in the case. That, I think, has been a consistent theme throughout our conversations to date.

Mr. Gary Anandasangaree: With respect to any resistance from communities in terms of accepting those who are newly registered, what are the mitigating issues you will have in order to deal with those challenges? If a community is not willing to accept a new registrant, what are the mitigations? What kinds of mitigations have you thought about?

Ms. Candice St-Aubin: That would be membership. We have two groups of membership. Section 10, where they have authority over membership codes, and section 11, those who are registered automatically for communities under section 11 will be included in the band membership. However, for those under section 10, that is outside the purview of the federal government, because we have devolved that authority and control to the communities themselves. If there are any challenges, it will be between the individual and the communities themselves, because they own their membership.

Mr. Gary Anandasangaree: Going back to what other issues may be there, I know the Daniels decision is also something that is not directly related, but I know it's in the department's hands. What changes, if any, can we expect, or can we anticipate, with the combination of the Daniels and the Descheneaux decisions, where those parents who may be covered under the Daniels decision would...? Do you see any implications to that?

Ms. Joëlle Montminy: Not directly. As you know, the Daniels decision dealt with the division of powers, saying that non-status people fall under section 91(24), so there's no correlation to registration.

The connection might be that a lot of these individuals may decide to seek registration under the Indian Act, and if they were to be made eligible by these amendments, we would then be dealing with the same group of people.

Mr. Gary Anandasangaree: Thank you.

Ms. Joëlle Montminy: You're welcome.

The Chair: Thank you both.

The next question is from Cathy McLeod, please.

Mrs. Cathy McLeod (Kamloops—Thompson—Cariboo, CPC): Thanks for the presentation.

First, in terms of your statement on page 7 that this would eliminate all known sex-based inequities, are you confident that we're not going to be looking at another court case and another piece of legislation coming down the pike? Are you confident that we have now taken care of this as an issue?

Ms. Joëlle Montminy: We are confident. With these amendments, we are dealing with all known sex-based inequities in Indian registration. That's not to say there are not other types of inequities that are going to be brought forward by various groups. We do have active litigation on this. It could relate to other types of issues. I mentioned, for instance, the second-generation cut-off. This is not sex-based. It's a policy choice that was made over the years to address the balance between individual rights and collective rights, and also maintain.... The concerns with respect to this particular issue will be ethnocultural erosion. For instance, at what point do you have to go back in order to address this?

In terms of your specific question for sex-based discrimination, yes, this bill is addressing everything that is wrong.

• (1550)

Mrs. Cathy McLeod: Thank you.

You said you started holding information sessions with indigenous groups. Over the summer I met with a number of bands in the riding I represent. They showed me a letter that indicated the department would be reaching out to them very early in the summer. I think it was September and they hadn't heard a word.

Can you tell me what your process was for reaching out? How many sessions did you have? Where did you have them? I know they were very concerned that they had this letter saying they would be contacted early, and then they were left hanging.

Ms. Candice St-Aubin: I remember seeing the email coming in on that issue.

We started pre-engagement with the national organizations in early June, as well as disseminating information through the regional organizations. Given that there are so many individual communities, it was quite challenging to figure out the best way to do it.

Following the announcement of our two-stage approach, we worked with our regional offices as well to ensure that we were going to the right regional organizations. In a province such as British Columbia, there are three or four organizations themselves. We found that because of the number of engagements and consultations on indigenous issues under way in the federal government, we were trying to find the right balance and timeline.

Some came online a little later. British Columbia, I believe, happened about three weeks ago. We went back two more times, and we're continuing to go out over the course of the winter.

In addition, we also try to share information from the minister herself with the amendments posted, attached to the letters, as well as posted online so that we can try to figure out the best way to get the right information to those who are most impacted and open to conversations and open to information and questions coming in. We still are doing that. Again, that started in the very late summer. We're continuing on in the same way of posting as much information as we can online, as well as trying to email and mail—any way we can to get information out.

Mrs. Cathy McLeod: I know this one particular band was very concerned that this is an important piece of legislation that had a very significant impact on them. It went into a great void over time. I think, rightfully, they were very concerned in terms of what the engagement process was, what the timeline was, and what they were led to believe it might be.

The technical briefing did not include numbers, but I see that there are some numbers that have now been attached to this proposal. I'm glad to see that, and that this \$149 million has been identified in the economic statement.

If you look at the \$19 million over five years to process and register, you see that works out to about \$700 per applicant. I'm hoping that you can explain why \$700 is going to be the ballpark of how much it will cost to process the applicants and what you're going to be doing.

Ms. Nathalie Nepton (Executive Director, Indian Registration and Integrated Program Management, Department of Indian Affairs and Northern Development): The money isn't just to process the applicant. It involves the additional cost of, for example, opening up the envelopes, whatever additional costs are involved with processing the actual application.

As registrar, when I came on board, one of the things that fascinated me the most, both as a bureaucrat but also as a registered Indian myself, is the level of work that's often required in terms of doing the research. People send in the application, and hours and days are sometimes required to do genealogical research as well as assessing the individual's application, making sure all the necessary documentation is there.

Mrs. Cathy McLeod: With the McIvor decision, you've had experience. I would hope that will help in terms of, if this legislation passes, how that will proceed. How many were impacted with McIvor? How many then became registered with the bands and how did you accommodate the bands that had this increased registration relating to that particular decision?

Ms. Nathalie Nepton: In terms of individuals who were registered as a result of McIvor, Bill C-3, it comes out to, as of today, 38,467 individuals.

What I should say is that this only includes individuals who were actually registered. There's a whole other factor of applications that still has to be looked at, who weren't registered. We still have to go through with the whole work of assessing the file on an individual basis.

I'm sorry, I forgot—

Mrs. Cathy McLeod: How many of them then became registered with the bands, and how did you adjust the bands' base funding to reflect that increased costs that they had if they registered with the band?

• (1555)

The Chair: Sorry for the interruption, but I'm afraid we're out of time on that one. Perhaps the answer could come as an adjunct to another question. Thank you.

The next question is from Niki Ashton, please.

Ms. Niki Ashton (Churchill—Keewatinook Aski, NDP): Thank you very much for being here today to speak to such an important piece of legislation. I'd like to begin by relaying concerns that I'm sure have come to your attention, concerns from the Assembly of First Nations from Quebec and Labrador, who wrote a letter to the Prime Minister at the end of October. They indicate:

The AFNQL considers that the provisions announced by [the] government in reaction to the Descheneaux decision contravene the obligation to properly consult with First Nations, which rests with the Crown.

They go on to say that the approach taken by the government “seems to us contradictory to the commitment of the present government to work in the context of a nation-to-nation relationship.”

As you probably know, they are highlighting the lack of consultation with communities. They are also highlighting the fact that many of the first nations that they represent hold the position that they, in fact, ought to be playing the role of recognizing who is or is not part of the nation. Clearly, the major piece is lack of consultation.

I know it came up from my colleague, as well, but I'm wondering if you have some concrete figures. How many first nations were consulted? How many people were consulted? Also, you may have heard from them not just on a nation-to-nation basis. I did hear the response earlier, but it was quite general, and I'd like to hear some figures on that front.

Ms. Candice St-Aubin: Building from Ms. McLeod's comment, too, we can provide you with information on paper, but just as an overview, we've had, to date, 11 sessions across Canada, with a variance of 50 to 150 participants. I hesitate to provide a ballpark number because people were coming in and out. Because of privacy issues, we don't collect direct information. A lot of these individuals were not registered members at that point. That is really our key target, as well: to register those who are unable to participate.

That said, we have had sessions across Canada, with sessions coming up in the two territories most impacted, Yukon and the Northwest Territories. We do have a chart with a breakdown of the numbers—and it's chief councillors registering administrators on the ground as well—which we're more than happy to submit to the committee for your reference.

Ms. Niki Ashton: I appreciate, obviously, that for privacy reasons individuals may not want to be named, but I think what we're hearing here is that first nations feel as though they were not consulted. It would be important for us to hear which first nations

you did hear. That kind of concrete information is critical for the work that we need to be doing here.

My next question relates to resources. In 2010, for example, with the changes at that time, many witnesses registered significant concern regarding the fact that proposed changes to membership were not accompanied by increased resources to process these changes. This is something that has been flagged by leaders in this go-round, as well. Is this something that is being dealt with by the government? Are resources being earmarked for first nations to deal with the processing at their end?

Ms. Candice St-Aubin: As my colleague was explaining, yes there are resources, and that was echoed again in the fiscal economic update. We took that into consideration in particular with the demographics and the cost of processing an individual application writ large, as well as the programming costs.

Ms. Niki Ashton: That's more broad, but in terms of the figures, how much of that money would go to the first nations themselves is more the question that I'm asking.

Ms. Candice St-Aubin: Just with regard to programming and the numbers we've provided, there are two tranches of programming. There are those that are federally led programming for registration. Those are the two we talked about: the non-insured health benefit, as well as the post-secondary education.

The other programs are the residency-based on-reserve programming. Based on the demographics and the trends analysis that we've done, the impact will be quite minimal for those programs delivered on the ground based on residency. We do not see mobility on and off reserve to be quite large based on the 1996 census data, the 2011 household survey, and, of course, the implications and trends we saw with Bill C-3. It's been pretty stable at about 49%, 51%, and then 48%. It's really quite consistent. We're not anticipating a large impact on programming on reserve.

• (1600)

Ms. Niki Ashton: Would it be possible to share more of that breakdown in terms of the on-reserve resources that are being allocated as a result?

Ms. Candice St-Aubin: Sure.

Ms. Niki Ashton: To the first part of the answer, and obviously it was echoed in the presentation, we know that the 2% funding cap continues to be in place and results in existing inadequacies in terms of services and infrastructure on reserve. Obviously, we did hear about some of the funds that will be allocated as a result of this change in Bill S-3.

Given the fact that the 2% cap is still in place, do you perceive there to be a challenge when you are now admitting so many more people to the membership of communities when, in fact, ongoing services are already being frozen in terms of funding and don't reflect the current population numbers?

Perhaps you could speak to that tension that's emerging.

Ms. Joëlle Montminy: As my colleague mentioned, a lot of these programs, where you're referring to the 2% cap, are programs delivered on reserve that are residency based. We will be monitoring the trends as to whether this particular set of amendments will lead to an influx of population moving on reserve. Historically, that hasn't been the case.

Again, depending...37% of first nations control their own membership, so they get to decide whether or not these people also receive membership as a result of this. Registration is only one step. We will be monitoring this. At the moment we do not anticipate that this will put additional pressure on these limited resources, but over time we will be adjusting, if need be.

The Chair: Thank you. We're out of time, but that was well timed.

The next question is from Michael McLeod, please.

Mr. Michael McLeod (Northwest Territories, Lib.): Thank you for your presentation. I have a couple of questions I want to ask.

I'm curious as to how far this goes back to correct all the different changes that were made over the years. Personally, in my family there were a lot of issues on registration, but that went way back when the script and the treaty were signed.

I've been approached by people in my riding on bringing this to justice, because a lot of decisions made at the time were influenced by the church, the people in Hudson's Bay, or fur traders as to who actually fit. Financial status was also considered. I have relatives who are status, and I have relatives who are not status. Some became status because of their gender. Some became status because of their financial state.

Now we're talking about reconciliation, but how far do we actually go to try to correct that? There were a lot of people who felt they should have been registered either through their local band council or band membership. Then there were others who felt they should have been registered as Métis. There are lots of questions, and there are a lot of people who were forced to register as Métis who feel they didn't cede or hadn't surrendered any rights to the land, but their great-grandfather got \$100 or something, and that was it.

I think it's a question that's going to come up, and I'm curious as to how we'll deal with that, or are we even going that far back? Is there going to be a side table or other discussions on issues that are not obvious through this?

• (1605)

Ms. Joëlle Montminy: On that, yes, stage two of these initiatives will allow us to have a much broader discussion around all kinds of issues dealing with registration, membership, citizenship, and belonging to communities, so we'll do that.

In terms of your question as to how far back we go, it's quite complex. I'll ask Effie to speak briefly to the history and this balancing act that has been taking place over the course of these series of amendments to the Indian Act, and how far back we've gone so far.

Ms. Effie Panousos (Senior Policy Advisor and Manager, Treaties and Aboriginal Government Sector, Department of Indian Affairs and Northern Development): The first statute that

appears in the history is in Upper and Lower Canada, pre-Confederation, in 1850. It was the first definition we saw of the concept of "Indian". Also, it wasn't about the definition of an Indian. Those statutes were about protecting the land base, or essentially what we now call reserves.

The definition of Indian in pre-Confederation legislation that we saw in both Upper Canada and Lower Canada was very sex neutral. It was more akin to the rules or criteria that the first nations themselves had in defining who belonged to them and who didn't. That continued until about 1866 or 1867.

Post-Confederation, we see the first law, which was the gradual enfranchisement act of 1869, which basically establishes very patrilineal descent rules and sex-based criteria. It begins to exclude Métis, or those folks who identify as Métis, from registration. It continued that way basically until 1985 and over certain amendment periods. The Indian Act back then was being amended every two, three, or four years.

The 1951 Indian Act amendments were very comprehensive and they essentially established the system of registration as we know now, with an Indian registrar and status and non-status. Subsequent to that, the other reform that happened was in 1985, with the charter being in effect and trying to address all the inequities that flowed, essentially, beginning in 1869 through the Indian Act all the way to 1985. There were massive amendments in 1985. I don't think folks could foresee how the charter would operate vis-à-vis the Indian Act, because it was all new to everybody. Also, we had the constitutional amendments in 1982 that introduced Canada's recognition of aboriginal and treaty rights, so the interplay of registration membership, individual rights, and collective rights became a much more complex endeavour.

Just in respect of Métis, we anticipate under stage two that we will be speaking with Métis individuals and communities and the Métis nation around deregistration. As a result of the amendments that happened in 1985 and in 2010-11, a number of Métis individuals became eligible for registration and registered, but because the authority of the Indian registrar to unregister somebody was removed in 1985, they can't deregister and join their Métis collectivity, as is happening now in Alberta, Manitoba, and whatnot. That is one area we'll be looking at specific to the Métis situation, and we hope to be talking with Métis folks under stage two.

Mr. Michael McLeod: I want to point out that the Métis in the Northwest Territories are not represented by any national organization.

Ms. Effie Panousos: No.

Mr. Michael McLeod: If you need any help, I'd be glad to provide you with some contacts.

Bill C-31 allowed people to register, and most people anticipated that they would belong to a band and be part of a membership. However, for a lot of people it didn't happen. They ended up on a general list and didn't belong anywhere. Then they couldn't pull out. Is the issue of unregistering going to be looked at, also?

Ms. Effie Panousos: In relation to band membership?

Mr. Michael McLeod: We have a whole bunch of people who are registered as members. The issue of being registered as a status Indian could happen again. However, you can't join a band, so then a lot of times people realize that they don't want to be categorized if they can't join.

Ms. Effie Panousos: No. That is a phenomenon that's happened since 1985, because before the 1985 amendments, eligibility for registration and eligibility for membership were one and the same.

•(1610)

The Chair: We'll have to leave it there, I'm afraid. Sorry about that.

We're moving into five-minute rounds of questions now.

The first five-minute round is coming from David Yurdiga.

Mr. David Yurdiga (Fort McMurray—Cold Lake, CPC): Thank you to the panellists for taking our questions today.

I want to continue on with the line of questioning of my colleague Michael McLeod.

We see that Bill S-3 potentially guarantees Indian status, but it's not clear how it will encourage bands to include these people within their organization. Are there any programs or consultations planned to encourage these new members of first nations to be part of whatever band they are linked to?

Ms. Joëlle Montminy: Currently, 37% of all Indian Act bands are under section 10, so 37% control their own membership. They make their own decisions as to who is a member of their band. Registration under the Indian Act as Indian status does not necessarily give someone automatic membership into a band.

This is an amendment that was reintroduced in 1985, when first nations were able to re-take control over the determination of their own members. The government would not necessarily impose our views as to who they should or should not recognize as members of their band. With respect to all the other bands that continue to be under section 11, it's automatic. Indian registration will give you membership into the community that you belong to.

Mr. David Yurdiga: Is there going to be money attached? Obviously, a lot of new first nations people are going to be moving onto a reserve. Is there going to be more money for housing and programming? Already, a lot of our budgets are stretched, and any more strain put on our budgets is not going to be a good situation. Can you comment on whether there's any funding? Is it a percentage? How are the numbers going to be calculated? I guess that would be a better way to ask.

Ms. Candice St-Aubin: That's a good question. At this point, though, what we've seen from the demographic trends of the last 30 years is that there isn't a massive influx of people moving back on reserve. That said, as Joëlle has mentioned, it is something that we are going to monitor. Because we don't see this influx of newly entitled or newly registered status Indians moving onto reserves, the impact of on-reserve residency-based programming is not anticipated to be very much—quite minimal in fact. We will continue to monitor. If there is a massive influx of people who do choose to

move back onto reserve, then that is obviously something that we will need to revisit.

Mr. David Yurdiga: In my riding of Fort McMurray—Cold Lake in Alberta, we have a Métis settlement. They have cousins and relatives on both sides. Obviously some of these people in the Métis settlement will qualify for status. Will there be additional funding for the Métis settlement to provide programming for the first nations individuals who have decided to stay in the settlement?

Ms. Candice St-Aubin: If they are registered and they choose to stay within the settlement, as status Indians they would still be able to access non-insured health benefits, as we have indicated. But there will not be more money for the settlement itself—the actual geographical location—for their programming. Residency-based programming is provided to those who move onto the reserve, so housing, infrastructure, and so on would remain for those on the reserve.

Mr. David Yurdiga: I have another question regarding the numbers we've seen here. There are 28,000 to 35,000 people who are anticipated to register for Indian status. How did you arrive at this number? That might be a little low from my perspective. Was there a scientific method used to achieve these numbers?

Ms. Candice St-Aubin: Yes. They use criteria such as rates of entitlement from previous amendments that we saw in the McIvor case, as well as in 1985. There were also specific cohorts based on age. We have a breakdown by amendment. Siblings would see approximately 3,000 potential new registrants. Cousins would see approximately 26,000 registrants. Omitted minors, which is the third one, would see approximately 500 people.

•(1615)

The Chair: The next question is from Don Rusnak, please.

Mr. Don Rusnak (Thunder Bay—Rainy River, Lib.): Thank you for coming.

I've travelled around my riding quite a bit and had been involved in Grand Council Treaty 3, in the southern part of northwestern Ontario, which abuts Minnesota and Manitoba. The Indian Act band first nation community of Buffalo Point has come up several times in my dealings with Treaty 3, in particular, the legitimacy of some of their members, and their duly elected chief and council.

I don't know what history has gotten the community into its current situation, but it would seem that if that's the leadership the government's responding to—and I don't know if the chief has the power or his council has the power to add members—it would seem they could essentially add voters.

Has there been any discussion in the department regarding problem communities, such as Buffalo Point? I only mention Buffalo Point because it's something that came up when I worked at Grand Council Treaty 3 and now it's coming up on my radar again as the member of Parliament for the adjacent area.

Ms. Nathalie Nepton: Regarding the issue of Buffalo Point and the history around elections and its membership, in the past, the department has reached out to offer support to the community in maintaining its membership list. The registration list and the membership list are two different things, as my colleague has explained.

In terms of the elections, as you pointed out, the election list is based upon the membership. The community itself doesn't conduct its elections under the Indian Act, if I'm not mistaken. They have their own election code, which further determines who has the right to participate in the election as a voter as well as a candidate. Those rules are definitely within the purview of the band to determine, but the department is always available to provide support when it's sought by the leadership.

I don't know if that answers your question in full.

Mr. Don Rusnak: It would seem to me that it's a mixed-up system. I don't know for sure what is going on there. I know there have been complaints by people from the community that their votes are being subverted and sometimes their membership is not being recognized because an individual or a group of individuals are purposely making sure they don't have an effect on the outcome of the election.

I know there were criminal charges against the current chief. I don't know how that ended. I've been told that perhaps they have been dealt with, but there are questionable things going on with regard to registration in that community. I know there are other communities across the country, but it seems the answer we get from the department is, "We're going to wash our hands of it. They have their own traditional system and they make the decisions." There may be really problematic inequities, in terms of who controls the finances coming from your department and how they use that to influence voters and influence power within the communities.

• (1620)

Ms. Nathalie Nepton: I understand what you're saying. When I look at my work when I was in governance and my work as registrar for communities that do control their membership under section 10, as well as those that have their own election codes, for anyone who feels that their rights are not being protected or not being valued, the courts are generally their best avenue for recourse.

Mr. Don Rusnak: On that, it's an—

The Chair: We're out of time, Don.

Mr. Don Rusnak: —expensive proposition, and a lot of the people who are in desperate need don't have the ability to do that.

I'll leave it at that.

The Chair: Arnold Viersen, please.

Mr. Arnold Viersen (Peace River—Westlock, CPC): Thank you to our guests for being here today.

Staying on the registration, you said that with the McIvor case, about 38,000 have been registered so far. What is the backlog from the McIvor case? Are there still more cases to come through with that one?

Ms. Nathalie Nepton: I'm sorry, a backlog for Bill C-3?

Mr. Arnold Viersen: Bill C-3, yes.

Ms. Nathalie Nepton: Okay. For registrants seeking to be registered under Bill C-3, the process, as far as I know, hasn't signalled that there is a sufficient or a significant backlog. I can confirm that in writing to the committee later and provide you with an exact statistic.

Mr. Arnold Viersen: Okay. How many people are you anticipating registering through the Daniels case?

Ms. Nathalie Nepton: With CAP-Daniels, as my assistant deputy minister indicated, it deals with jurisdiction, so anyone can apply to be registered today, regardless of whether the CAP-Daniels decision came with issue. Registration is there under the Indian Act to register within the legal parameters of the act.

Mr. Arnold Viersen: Okay. What is the current backlog right now? How many cases are you working on right now?

Ms. Nathalie Nepton: Active?

Mr. Arnold Viersen: Yes, active.

Ms. Nathalie Nepton: I'm sorry, I don't have that statistic, but we can definitely report back on it.

Mr. Arnold Viersen: Okay. We're anticipating 25,000 to 38,000 people applying. Are we going to be able to manage that coming through the office?

Ms. Nathalie Nepton: As indicated, \$19 million has been set aside for over five years to deal with the registration of those who will become entitled as a result of Bill S-3. Definitely, when we look at lessons learned from Bill C-3, we'll take what we've learned and apply that, because that process went very well, but that process can't completely be transferred. For example, as Madam McLeod indicated, \$700 I think is the figure she provided to process a file. When we process a file, we go from A to Z. We also look at genealogical research that's required, as well as other administrative issues. That means, for example, everything from requesting additional information of provinces to looking at what's required potentially for vital statistics, and trying as much as possible to assist the person who's seeking to be registered under Bill S-3.

Mr. Arnold Viersen: Mr. Chair, I'd like to share the rest of my time with Cathy.

Mrs. Cathy McLeod: Thank you.

I want to pick up on the preliminary registration and then the appeal process, and I'm going to give you an example. There's someone who was turned down through your preliminary process. There's an appeal, but she's 80 years old, and she's been told she has to wait for a year to have the appeal heard. I'm very concerned and very interested in hearing about this, as you have only so many people dealing with registrations as it is right now. Tell me about the appeal process and why the waiting time would be so long for an 80-year-old woman.

•(1625)

Ms. Nathalie Nepton: The protest period, of course, like the application files, varies on the complexity of the file, so it's difficult to provide a range within which a person can expect an answer. I can say that in the case of this woman you've cited, I do have the discretion to ask for files to be pulled to be dealt with on a priority basis for medical reasons, age, and so on. If she would consent to your acting, for example, on her behalf to get information, that would be something I would entertain.

Mrs. Cathy McLeod: For my clarity of purpose, because we will be having a lot of people, 25,000 plus, with McIvor, how many people applied, were turned down, and then entered into an appeal process? What kind of time frame did that have? How many were approved subsequently on appeal, and what length of time did it take?

Ms. Nathalie Nepton: I do not have the protest rates. I can undertake to provide them to the committee in response to your question.

The Chair: Thank you. We are out of time. In fact, we are out of time for this panel.

On behalf of the committee, thank you very much for your time and testimony. It was very enlightening, indeed. We'll see you again, I'm sure, as the days and months wear on.

We'll suspend briefly.

•(1625)

(Pause)

•(1630)

The Chair: Welcome to the next panel. Thank you for being with us today.

This panel comprises two speakers. The first is Mr. O'Bomsawin, chief of the Abénaki band council of Odanak. Welcome to you, Chief. Also, speaking as an individual is Stéphane Descheneaux.

I'm glad to offer you each 10 minutes to address the committee. I don't know if you've talked among yourselves about who would like to go first. Is there any preference? Mr. Descheneaux, if you are prepared to go, I'm happy to give you 10 minutes.

Thank you very much, and welcome.

Mr. Stéphane Descheneaux (As an Individual): Thank you.

First, I want to thank the chief, lawyers, and also the judge who took care of that case. It was kind of a funny....

Excuse my English. Sometimes it might be difficult. I learned it on the ships, and I cut some words off.

It was funny back then. Sometimes we would sit with my cousin. We would talk. I found out that I have some cousins and their kids were registered and mine were not. We started some drawings, started to look it up, and finally we found out that because some of them had dads instead of mothers, they had the cards and mine didn't. Before I started to think about going to the band to put the flag on that, they came to me, because they also found out that there was some kind of funny situation. The lawyers and the people, the band and I, proved that there was inequity with that.

I'm pretty happy with the decisions, but what I find sad today.... I found out last week that we were asked to come here to talk about that, but we've never been called or asked which way we saw that stuff. I found out earlier, having coffee with the chief and David, that there was even other stuff that we found out—well, they found out—that wasn't touched, or they didn't want to see it, because they were only going by the rulings.

That's the part I find funny. After, I understood from the judge's ruling that they wouldn't be in consultation. I was thinking that they would come to the band and meet us, and say that they're going to go that way, or they're looking to go this way. It doesn't seem to be like that. I don't feel great with that, and I guess the chief and the lawyer don't either. We find it funny that we have, "There you go. You go with that." I find that funny. We were the people involved first of all, and we just learned last Friday that they were right at the babies born, if I can say.

That's my point. I'm happy on one side but disappointed in another way, because I can't understand. We had it in our hands, or you had it, and we couldn't solve lots of problems. Again, we just went for a few cases. Maybe we didn't want to see them, or maybe the people didn't think there were other cases, other stuff, that would have been put away, or forgotten about, or they didn't want to be seen.

That's how I feel this morning. In my case, what I went through for lots of people and even for my kids so that they won't have to go through.... In just trying to figure it out, you spend 46 years of your life asking yourself, "What am I? Am I a white person, a native?" Then someone says, "Yes, you have the rules. You have that. The decision was made." My mom got it back. My grandmothers got it back. I got it back...the way for my own daughters? Then I find out there are people who are going to ask themselves those questions again, because it doesn't seem to be put on what we are going up to now.

I'm all yours.

•(1635)

The Chair: Thank you.

We'll go right into hearing first from the chief, for 10 minutes, and then we'll go to questions after that.

Chief Rick O'Bomsawin (Chief, Abénakis Band Council of Odanak): First of all, I'd like to thank you for having us here today. I know everyone is busy.

This is a very complex and complicated subject, and it gets deeper and deeper all the time. There are many cases. If we can show part of the power point presentation later, we'll show you the basis of how the status system works. Some of the major problems with the status system were based on families, on gender, but there was much more to it than just that.

In my own family, if I can just briefly tell you, I have four children. My oldest son was a 6(1); my second daughter was a 6(2); my third son was a 6(1), and my fourth child was a 6(1). I only had one child with less status than all the rest because I had two children prior to 1985, and I wasn't married. Yes, we tried to cover this in two cases: the McIvor case and in the Susan Yantha case, which solved this problem.

The reason I'm saying this is that there are several problems with the status system. When we took the cases to court, we understood the ruling was very clear, that we all wanted to solve this problem. We wanted to solve everything now. I had said several times there was no rush, that we needed to make sure we went through every case to see what the problems are. For some reason they seem to want to be in a very big rush. I told them that if they came to us and asked for an extension, we'd be more than willing because it's very costly to do all this, for all of us, for the government and for us. We don't want this to end up back in court again and to start over. It was very clear in the decision that this was not supposed to be based just on gender. We were supposed to look at all the cases and try to close the files. They put a time limit on it. I said to them several times that if they needed an extension, we'd be more than willing. They told me they weren't interested, that they didn't need an extension. I told them just yesterday on the phone that if we close this file in February, I will be back in court on March 1 on four other cases. The answer was, that's my prerogative, that I can do that if I like.

I don't believe that's a proper way for us to solve these problems. I think the door is open now. Why don't we all sit down and discuss and solve the problem we have? It's time to say that we'll put all this behind us and sort it out once and for all. We don't want to spend the next 10 years in court again. We don't want to keep bringing up case after case after case. We have the time to do it. Let's look at all the cases at this particular time, and we can try to solve this. They told us that we were consulted, that they consulted with chiefs last summer. I have not found one chief that they consulted. They've never consulted me, and it was our case. They never even called us. I'm trying to figure out how it all got to this point, and now they're saying they're going to close this file, that they're going to get it all solved by February 1. Again, I said we had other cases that we want to bring to the table and solve under this same thing. The answer was "No. We are only dealing with sexual gender at this time. We can go into another stage and we can carry this on later." I don't know about anybody else, but the door is open. We're at the table now. Why do we want to spend more court time, more money, more of all our time fighting the same argument when we're already at the table and we could solve these problems and put this thing to bed once and for all.

Thank you.

The Chair: Thank you very much.

We'll move into questions from the members now.

The first question is from Mike Bossio, please.

• (1640)

Mr. Mike Bossio (Hastings—Lennox and Addington, Lib.): Thank you so much, all three of you, for being here today. We really appreciate your testimony.

I'd like to throw it open. We understand the government wants to do a two-phase process, the first one coming in February 2017 and the second one being more of a consultative approach. I'm not going to argue the merits of one versus the other.

What do you view as proper consultation and consent in this process?

Chief Rick O'Bomsawin: First of all, today is the first day I've heard of stage two. I heard it because I was listening to the last session. What is their plan for stage two? I don't have a clue because we've never been told about it before.

I don't understand why we want to go into stage one and stage two. We have the opportunity now to solve these problems. It's just a matter of discussing it and saying where we are going. Let's close the file once and for all. I don't understand the point of saying, "Well, let's close this part and then we'll go into stage two." We've seen the impacts of 1985. We've seen the impacts of McIvor on our communities. How many more impacts do our communities have to go through before we close this?

Mr. Mike Bossio: What do you feel would represent a proper consultation process to go through? How do you see that unfolding, ideally?

Chief Rick O'Bomsawin: It would definitely work if they would come and consult us, but as I said, we've been consulted on nothing since day one. If you're saying that we're going into stage two and we're going to have a consultation, that would be nice.

Mr. Mike Bossio: That seems to be the intent, from what I've heard, as well as what you've heard, but once again, what does that look like to you?

Mr. David Schulze (Legal Counsel, Abénakis Band Council of Odanak): May I add something?

It's important for this committee to know that after the 1985 amendments, there was the 1988 review. That 1988 review specifically talked about the siblings case, Susan Yantha's case, that produces children of the same parents with different status. They said change that. That was in 1988. In 2015 I was still arguing about it in court with the lawyers of the people who just testified. In 2010, there were the amendments because of McIvor. Indian Affairs said there would be another stage, that they would consult broadly about membership and status. We asked their witnesses for the registrar of Indians on the stand in the Descheneaux case what happened to that. They said they didn't know. A few months ago they finally published their report. That was six years.

When the Department of Indian Affairs offers extra stages for broad consultation about all sorts of issues, I hope you understand why first nations communities are skeptical.

Mr. Mike Bossio: Oh, yes, I do. Given what we've heard in just the last year from a number of witnesses who have come forward, yes, we understand and appreciate the level of frustration that exists among indigenous peoples around long-term stable funding, around community-driven programs and priorities, and the whole consultation and consent approach.

I'd like to try and get it on the record what you feel that consultation process should look like and how extensive it should be. I don't know if that's a question you can even answer, but I'd like at least to get your opinion on the record as to what you think that should look like.

Mr. David Schulze: I don't have a mandate to speak for the 600 communities. I can tell you, in our power point we've given you, obviously we can't take you through all of it now—

Mr. Mike Bossio: Right.

Mr. David Schulze:—we've identified four other scenarios where siblings can have different status, where first cousins with the same ancestry can have different status.

That was what we thought, given the short timeline, was something that two Abénaki communities and their tribal council, the Grand conseil de la nation Waban-aki, had identified that they wanted to bring up with Indian Affairs and work through. That didn't happen because suddenly there was a bill before the Senate. That was also without notice.

If the committee would like, I can briefly explain it, but there are still situations that to us seem totally absurd. First cousins, siblings, different status—the system doesn't have any credibility if it produces those results.

• (1645)

Mr. Mike Bossio: We've also heard that indigenous nations should decide who's going to be a member and who's not going to be a member. You have band chiefs, hereditary chiefs, national chiefs, regional chiefs. Where do you feel the determination as to who should be registered as a status indigenous person in Canada should be made? I'd also like to get that on the record as well, to try to support your position.

Chief Rick O'Bomsawin: First of all, there's definitely a very big difference between status and citizenship. I think that's the first thing we need to clear up.

With the status system, yes, Indian Affairs determines who receives status and who does not receive status. Depending on the community and how that community operates, whether they have their own citizenship code, as you heard earlier, under section 11 or section 10, it's completely different. Some communities will turn around and say they will control their own citizenship code and they will say whether or not status members are members of their community. It's very complicated. Other communities say that people who are status are definitely members of their community.

I can only speak for my own community. In my own community, if you have status, no, we will not turn you down. You are definitely a member of our community. We also have a citizenship code of our community, so our citizens are also recognized in our community.

Mr. David Schulze: May I add something?

The Chair: I'm sorry, we're out of time here, but maybe in the next question.

Mr. Schulze. If I could just take a moment, I'd like to introduce you to the committee in your role, if you wouldn't mind.

Mr. David Schulze: My name is David Schulze. I was the lawyer for Mr. Descheneaux, for Susan and Tammy Yantha, and for the two Abénaki communities in the Descheneaux case that led to the bill that's before you today.

The Chair: Thank you.

I have to mention a rule in *House of Commons Procedure and Practice*, that we operate under, which is that if you're here as counsel, it's meant to be that you assist and counsel the witnesses, but you yourself are not testifying. I expect you would find some flexibility among this group, but I wanted to make sure we all understood the parameters there.

Thank you.

The next question is from David Yurdiga, please.

Mr. David Yurdiga: I'd like to thank the witnesses for participating today.

The first question is for Chief O'Bomsawin. When exactly did you find out about Bill S-3? I was kind of shocked to hear that it was like "Hello. Bill S-3 is here. Welcome. Come talk to us." That's shocking to me.

I'd like to get it on record exactly when you found out about Bill S-3.

Chief Rick O'Bomsawin: If I want to be really fair and really nice, I'll say two weeks ago, but I don't believe it was even two weeks ago. Even for this particular meeting, I knew about it on Friday at four o'clock—and I have a four-hour drive.

Mr. David Yurdiga: We appreciate your efforts in coming here on such short notice.

Prior to coming to speak to us, would you have liked to see a process where you were engaged before you even got to this level? Obviously, we want to hear not only from you, but from the perspective of your community and other communities. My line of questioning was originally going to be on the consultation part. That's out the window, so I'm going down a different avenue now.

Chief Rick O'Bomsawin: We definitely would have appreciated being able to discuss this beforehand, to talk about it. As a matter of fact, they met with us at a chiefs assembly, and we requested it. Then this was the next thing we heard. There hasn't been any communication whatsoever, and I think this is one of our biggest complaints about this whole thing.

In the chiefs meeting it was made very clear that they were just there to speak to us and give us an update. They didn't really give us much information. They basically just said well, they're working on it and here's where they are, and they'll get back to us.

The next thing we heard was, as I said, about a week ago—or I'm going to say two weeks, to be fair—that this was passed, and it made no sense to us.

● (1650)

Mr. David Yurdiga: We heard that there would probably be—I forget what the number was—potentially over 28,000 people seeking Indian status. Do you have a feeling of how your community will be affected? There will be people in the community who will want to become members of your band or your community. Obviously, there has to be money attached to it if you're going to have people relocating or.... They don't even have to live there, but they'll be seeking services, whether it's a school or recreational facilities, whatever it may be.

Do you think there should be a program to address the financial burden that potentially your community might face?

Chief Rick O'Bomsawin: Again, at the chiefs assembly we asked for this program several times. We're told that the winning of the case...that the case was based on status; it wasn't based on financial commitment.

What has this done to our communities? I figure within less than five years from now, I will be completely broke in education. Health care is going to take a very a hard hit. Although the members are gaining their status back, and we have new people applying to be in our band and we're accepting them all, we have no additional funding for these people, which is causing a very big financial burden on our communities. As I said, we've asked several times if there was going to be new funding, if there was going to be anything on it, and at this point we're told no.

Mr. David Yurdiga: Do you think Bill S-3 goes far enough? Are there some areas that are not being addressed? Obviously, Bill S-3 would address some of the issues, but are there going to be some complications as a result of it?

Chief Rick O'Bomsawin: I'm going to let David answer that.

Mr. David Schulze: With the chair's permission, I'll try to do this very quickly.

We have identified at least four scenarios where there will be very odd results even after this.

The first is where a woman lost her status. Either she gave up her status before marriage through what was called enfranchisement or, if she was under 21, her father could have given it up for her. For instance, there's a woman in Odanak who lost her status at 20 because her dad decided to enfranchise the whole family. She's a 6(1); her son is a 6(2), and her grandchildren and great-grandchildren have no status. Her older sisters lost their status through marriage. They benefited from McIvor. Their children are now 6(1)s; their grandchildren are 6(2)s, and post-Descheneaux, their great-grandchildren will be 6(2)s. The only difference between them is whether they were enfranchised at 19 or 21.

The second is men who chose enfranchisement. There's at least one family like this at Wôlinak. A man marries a non-Indian woman, has a few kids, chooses enfranchisement, and gets his status back in 1985, as do his children born before the enfranchisement. They're all 6(1)s. His child born by the same mother after enfranchisement is counted as having only one Indian parent, so that child's a 6(2). He

has some grandchildren with 6(2) status, some with no status, with the same degree of intermarriage.

The third is unstated paternity. Before 1985, if a woman didn't declare the father, he was presumed to be an Indian. Post-1985, he was presumed to be non-Indian unless it was proven. Before 1985 some women chose not to get married and not to identify the fathers to keep Indian status for their children. There's another family at Odanak, and that's what this woman did. Her kids born before 1985 are 6(1), and her kids born after 1985 are 6(2). Her grandchildren by the older kids have status; her grandchildren by the younger kids don't.

The fourth and final case is legal adoptions. Before 1985, when an Indian family adopted a child, that child was also an Indian only if their own natural, biological parents were Indian. Another family at Odanak had a natural child, and they adopted a child out of the orphanage, out of the cradle, and that son didn't have status until 1985. He got married before 1985, so his child is a 6(2), and the daughter, who was the natural-born daughter, her child, is a 6(1).

They are four scenarios where first cousins have different status with the same number of Indian ancestors, and two cases where you can have siblings, children of the same parents, with different status. Those are some of the scenarios we had hoped to raise with the registrar. Apparently, the registrar is not interested.

● (1655)

Mr. David Yurdiga: Really.

Chief Rick O'Bomsawin: So in answer to your question, does the bill go far enough? No.

Mr. David Yurdiga: No.

How much time do I have left?

The Chair: You're well over, so thank you for the question.

Mr. David Yurdiga: Thank you for the extra time.

The Chair: The next question is from Niki Ashton, please.

Ms. Niki Ashton: Thank you very much for your very powerful presentations. I almost wish we'd heard them first to really place just how serious the situation is that we're facing.

My question for you, Mr. Descheneaux, and for you, Chief O'Bomsawin, relates to the bigger picture that we're discussing here.

The UN Declaration on the Rights of Indigenous Peoples expressly forbids forced assimilation.

Mr. Descheneaux, you spoke about your personal questions and those of your children, about who you are and what this means for your identity.

We've heard the way in which this process around Bill S-3 in unfolding, heard about the lack of consultation, and heard about the fact that you heard about this—as you put it, being kind—two weeks ago. We're hearing from other first nations. We've heard from the AFNQL, and they are expressing serious concerns about the lack of consultation as well. Can you expand on how you feel about this process and how it relates to that question of forced assimilation?

[Translation]

You may answer in English or in French.

[English]

Mr. Stéphane Descheneaux: I'll keep going in English. It's not been too bad so far I guess.

In my own case, I got a phone call last Thursday asking me to be here today. Then I called David, and I started talking to David about what we were going to do. For me, in my mind, it was like the start of the machine. We're going to start to talk about things and stuff. You think you need money; you need this and that. David talked to me and asked me where I was going on Monday. I said, "I'm going to Ottawa." I sent him the email I had. They never had it, because we have the one for tomorrow morning. I asked David if that was going to be the start after the ruling. Are we going to sit at the table, and are we going to talk about that this and that. We shall cover this, and that stuff we don't, and then we ended up with the project almost done. I was like in shock. I figured those people who are higher than I am...

That was the feeling I had this morning when I got there. It's like something was cut off or was missed somewhere.

Rick.

Chief Rick O'Bomsawin: To be honest with you, the feeling I get is that one more time this is just going to be pushed down our throats and we're going to get whatever they give us. We've asked several times, as I said, to discuss the matters. We're told that there's really nothing to discuss. I was actually a bit blunt in the chiefs meeting. I said to them that they were trying to rush this thing too fast. They don't have the time to do what needs to be done. I asked why they didn't ask for an extension. She asked why I didn't ask for one. I said, "Well, I can't. The reality is we won the case. I would look foolish if I asked for an extension." But I would be more than willing to say that we need an extension. The feeling I get is that although we talk about the Human Rights Act, and although we talk of all these things, at the end of the day, it seems like Indian Affairs is going to say, "This is what it is. If you don't like it, take us back to court and fight again." I just find that process ridiculous.

I'm probably one of the chiefs at the table who is strongly known for negotiations. I'm a strong believer that we all sit down at the table and we talk. We're not going to solve all the problems of the past, and we never will, but it wasn't us who made these problems. It was our ancestors who made the problems. I think today we need to sit down and say, "What is the future and how are we going to work together?"

I feel once again that we're not working together. Indian Affairs is here; we're here, and there is no discussion. To hear of things last minute is ridiculous. As I said, I was told about a conference call last Friday, that we were going to discuss things. I thought it was a conference call where we were finally going to sit down and say

where we are going and what we are going to do. The call lasted all of about 15 minutes, and the call was to tell me to be here today. That's what the call was about. I said to her, "Hang on a second. What about all the stuff we discussed in the chiefs meeting? What about all the stuff we talked about?" Did you ask for an extension?" She said no. I said, "You know that we'll be back in court." She said, "Oh, that's fine."

I don't know. I just think it's the wrong way of approaching this.

We're here at the table and we're willing to talk. First nations communities are saying, "Listen. There's a problem." The government is saying there's a problem. Let's sit down and solve this problem once and for all. Let's stop going to court. Let's stop fighting with one another. It's ridiculous. We're wasting my time and your time, and it's all a matter of a group of people saying, "Let's do this right the first time." I don't understand.

How do I feel? I'm very angry about it. I know the other first nations chiefs are angry about it. We're saying that once again, it's the same story.

• (1700)

Ms. Niki Ashton: Thank you.

You may have heard, Chief, that in the presentation by government officials, there was a reference of the department continuing to assess the potential cost increases of Bill S-3 on the post-secondary education program and its funding approach. We know that the 2% cap with respect to sponsorship at the post-secondary level continues to be in place. A statement like this indicates that certainly there are no figures with regard to the additional needs. Does this statement concern you? Do you think this is a major concern that warrants an extension, but also is something that we need to take very seriously as parliamentarians?

Chief Rick O'Bomsawin: We definitely need to take this very seriously. I find it very hard to believe that she said that they don't have any figures. Well, I was a bit disappointed. I know I was only sitting in the audience, but I was a bit disappointed that she didn't have any figures. I think they should have come a bit more prepared. We know what the impact is. Each one of our communities has already felt the impact. We know how many. In my own community membership I have already over 400 new members. I'm expecting close to probably 1,600. It's not hard to do the math, and they're saying that they don't have any figures. I don't want to back up, but I also heard them say, "Well, we have so many members and we're behind in the registration of our status..." Behind? I have members applying for status today and it takes two years to get your status, and they're telling me that they're not really behind, that they have about 35,000 people who are registering. I think they're a lot further behind than they think.

The Chair: Thank you.

The next questioner will be Joël Lightbound.

Mr. Joël Lightbound (Louis-Hébert, Lib.): I'll start, Mr. Chair, and then I'll share the rest of my time with Mr. Rusnak.

[Translation]

I thank the witnesses for being here with us today.

My question has to do with the extension you spoke of, Chief O'Bomsawin and Mr. Descheneaux.

The Superior Court judge recommended to the government that it identify and settle all of the other discriminatory situations that could be problematic. So this concerned more than the ones targeted in Bill S-3.

Did anyone explain to you why the government is going to proceed in this rather restrictive manner regarding Bill S-3, and why they did not ask the court for an extension?

Mr. Stéphane Descheneaux: In my case, I would go back to what I said previously.

[English]

We were waiting for a call to sit with people to talk about that. The first call we got was to be here today, so someone, somewhere, lost the puck.

We end up here today finding lots of blind stuff, such as how come nobody talked to us about that, when nobody ever came to us to talk about it.

As the chief said earlier, how was it the case for me and my kids that my own brothers and sisters who filed after me got their cards before me?

Try to figure out what's wrong with the machine. Something is wrong somewhere, and we have an example again today.

I had the call last week to come in here to start talking about which way or from what angle we should have a look at this, not having a closed project that's almost done.

Chief.

Chief Rick O'Bomsawin: We brought this question up several times. We asked them several times for a direct answer on why they are not looking at other cases. This was brought up in the chiefs assembly. I had, I think, 14 chiefs there asking the same question. It is very clear that it said to try to solve all the problems, and not just gender. The reply from them on four occasions was that this is our interpretation, that they interpret it as just gender, and that those are the only cases they are going to look at, at this time.

• (1705)

[Translation]

Mr. Joël Lightbound: The department representatives indicated that with Bill S-3, they expected that 28,000 to 35,000 additional people would become eligible to registration as status Indians.

Can you evaluate how many people would be eligible if the bill applied to all of the categories you mentioned in your presentation?

Mr. David Schulze: One or two people in Canada would be able to make such an assessment, but we did not hire them.

That said, I would like to clarify one point.

[English]

Just as an extra piece of information, the Government of Canada got two extensions after the McIvor judgment.

[Translation]

Mr. Joël Lightbound: Thank you very much.

I am going to give the rest of my speaking time to Mr. Rusnak.

[English]

Mr. Don Rusnak: You've mentioned several times that you wanted to have a discussion. Who specifically in the department, or which department, has been pushing back?

Chief Rick O'Bomsawin: You had them sitting right here a little while ago.

Mr. Don Rusnak: It's all the same people.

Chief Rick O'Bomsawin: Yes, they're exactly the staff I've been meeting with. They're the same ones who met with us at the chiefs assembly and made it very clear that they were only looking at this particular case, and that was it.

Then again, today I heard about stage two, which, as I said, I've never heard anything about. The last time we spoke to them, which was Friday, they never mentioned anything about that. It's the same team that has been working on this from the beginning.

Mr. Don Rusnak: Were you engaged in conversations from the beginning about something that appeared to be a second stage?

Chief Rick O'Bomsawin: No. As I said, there has been no consultation at all.

Mr. Don Rusnak: Other than whatever conversations you say you've had...

Mr. David Schulze: Just to clarify, in the spring of this year I wrote to my opposing counsel once the appeal had been withdrawn, and I said that I hoped my clients would be hearing from her clients. She said, "Oh, yes. I'm sure you'll be getting a letter from the registrar." That was sometime this spring. The next thing I heard was that the proposal had gone up on the website of Indian Affairs. Then there was one meeting in Montreal with the chiefs, which Chief O'Bomsawin mentioned; that was September 8. Then it was silence again until someone mentioned to me that there was a bill before the Senate.

Just to be clear, there's still a case before the court. I'm still the lawyer in that case. The only contact I've had has been from the clerk of the committees of the Senate, but I did thank him.

Mr. Don Rusnak: It's almost a situation of what to do now in terms of where do we go. I'm an individual who likes conversation. If we have conversation, and we don't withhold information for whatever reason, we are open and sharing, and build relationships, there are things that can be done. Now that's just me. Over many years I have dealt with the department in the different roles I've held in my career. This is now a different role I play as a member of Parliament and sitting on this committee.

I find it frustrating what you say you've gone through trying to deal with the department. In previous roles I had been frustrated dealing with the department back then as Indian and Northern Affairs. I just don't know where this should go right now. I have an idea. I know where you would like it to go for further discussion. If I'm getting it right, the department is asking the court for an extension, so that we can do this right.

• (1710)

Chief Rick O'Bomsawin: Yes, exactly. I'm also a strong believer in communication. I really believe that if we discuss these things, we can solve the problem. A one-way discussion doesn't work. I know it sounds crazy, asking the people who won the case for an extension, but I don't want to do this again.

We have a perfect opportunity. It's not time to close the door and move on to stage two. The door is open. We're here to discuss. Let's sit down and see how we can solve this problem. How can we sort this all out?

There's no doubt about it. With the influx of status, I see the burden on Indian Affairs, and I can appreciate that, too, but we need to have communication.

The Chair: Ms. McLeod, please. We're into five-minute rounds of questions now.

Mrs. Cathy McLeod: Thank you to the witnesses.

Do you ever have anyone under your citizenship code whom you accept that is not status?

Chief Rick O'Bomsawin: Yes. Citizenship code isn't based on status. The citizenship code in our community is based on a family member. As the status system runs out, as we say, which I never did figure out how that ran out, but it does run out. If the status runs out, to the community, the individuals are still family members, so we'll bring them in as citizens.

Mrs. Cathy McLeod: In the case of, was it your daughter, Mr. Descheneaux?

Mr. Stéphane Descheneaux: I even went through that. When my mom got it back in 1985, I was on the first citizen code they had on the reserve. I was one of them. After that, I got status, and my daughters are under the code now.

Try to figure that out. I'm going to slide out and then pass the puck back to the chief. Every single day, I have new friends in Canada who write to me and ask me questions, to let them know when I am going to start to talk to the government about the new law, about the changes. Then, like a clown, I tell them that I will.

I'm going to tell them when. I'm going to tell them when the machine is going to be on. I told them last week that I was going to Ottawa to see what's been done. That's how we feel about that. For the citizen stuff, it was approved; they made it certain. You were there.

Mrs. Cathy McLeod: In your case, with your community, they've been very accepting regardless of this piece. I would say, Chief, that's probably not the case in all communities.

Chief Rick O'Bomsawin: Let me explain some of the problems with the citizenship code. In our community we're very open. In some communities, they are very closed. They're even closed to

some of their own status members. These are individual communities and I can't speak for them, but let me explain to you one of the problems with the citizenship code.

Under being a status member, a status member can own land and live on reserve and own a house, where a citizen doesn't really have the right to own land and have the same exemptions that a status member has.

Let me tell you how it went with my little girl. When she was very young, when we first came out with the citizenship code, she went to school and her friend said to her, "How come you're more Indian than I am?" Little kids don't understand what the difference is between a citizen and status.

The problem with the citizenship code is it creates racism and stereotypes within our own communities because children don't understand. This was the biggest question among the kids, "Why am I a citizen and you're an Indian?" There are the complications with it too.

At the beginning I remember that my community had thought that the chief who was in there at that time would issue cards for citizens. Some would have a citizenship card and the others would have a status card. This is the problem we created and that young children don't understand. We're trying to explain a real, complex system to children, when they just want to go to school and have fun and be who their first cousin is or even who their sister is and not understanding it.

• (1715)

Mr. Stéphane Descheneaux: That's what they were in my family. My own kids were playing with their own cousins who were status. We have the same grandmothers, but we have an uncle instead of an aunt. They were the same kids, like "I am more Indian than you are," exactly like Rick's. You try to explain that to them, but you can't because there's no logic to it.

Mrs. Cathy McLeod: You might have heard earlier I talked about one of the communities that I represent getting a letter—it was in June or July—but you didn't get that same letter talking about how there was going to be a consultation process.

Chief Rick O'Bomsawin: No.

Mrs. Cathy McLeod: Can we put that first slide up that talked about the actual decision? I think it was the original slide. Am I out of time?

The Chair: You're out of time, but it makes a nice backdrop for the next questioner.

We'll move to the next five-minute round, which is coming from Gary Anandasangaree, please.

Mr. Gary Anandasangaree: Thank you for joining us this afternoon. I take your comments and certainly appreciate the frustration that you expressed today.

I want to home in on the actual decision itself and I'm a little bit confused. Maybe there can be a little more clarity. My understanding of the particular case in question is that the issue for the court to decide was the issue of gender discrimination. Is that right, if I'm not mistaken?

Mr. David Schulze: Yes. There were two cases. I'll try to do this very quickly. It took me five weeks in court.

The thing you need to remember is that a 6(1)'s child is always status, but a 6(2)'s child is only status if the other parent is status. You also need to understand, and this is crucial, everyone who was on the list before 1985 is 6(1). There are two situations. We'll get to Stéphane's in a moment. In the Yantha case, Susan and Tammy Yantha, the son of an Indian man and a non-Indian woman born out of wedlock pre-1985 was entitled to status, but there was nothing in the Indian Act, because the Indian Act said an Indian depends on the male line, to make his daughter an Indian. We had this situation post-1985 that the sons of those men were 6(1) and the daughters were 6(2). That was the first thing that's being cured by this judgment.

Mr. Gary Anandasangaree: Right. In terms of the judgment itself, I'm trying to get an understanding, because I think we can agree that the Indian Act is problematic on a number of levels. I think there's a desire by many to, in fact, even eliminate the Indian Act or have it replaced with something else that would give the communities a lot more agency.

In respect to the actual decision itself, my understanding is that it was to deal with the issue of gender discrimination and the legislation to come forward as per the February 3 deadline is to redress any anticipated issues with gender discrimination. Is that right, if I'm not mistaken?

Mr. David Schulze: Justice Masse was very clear. She said, "I have three plaintiffs before me: Stéphane Descheneaux, and Susan and Tammy Yantha. I can only rule on their cases." Then she added the passage that we put up on the screen. She said nothing is stopping Parliament from playing its constitutional role to cure charter violations that it sees elsewhere in the legislation.

Mr. Gary Anandasangaree: Thank you for that clarity, and I did read that.

My understanding is that the bill before us, Bill S-3, addresses the issue of gender inequality in respect to registration. Any other issue is outside of the issue of gender, certainly perhaps charter related, but that is not specifically defined in the ruling. Right?

We have a deadline of February 3. My question for you really is, at this stage, what do you expect us to do? The court doesn't have to grant us additional time. At this point the court, based on the ruling if it stands, could basically not register anyone applying for registration. We don't want to have a state of confusion and, as such, the bill before us does address the comprehensive issue of gender discrimination from my understanding. In terms of going beyond that, I think that's where the consultation process probably may need to do a better job in reaching out and being proactive. But the second part of it is what we're really talking about.

•(1720)

The Chair: You have 30 seconds for an answer.

Mr. David Schulze: The problems we have identified aren't even in that consultation, and the second stage of consultation is a shopping list so long it will take years to get through.

My final point is, having been before it for five weeks, I really don't think that Justice Masse would mind if Indian Affairs came before her and said that they'd like a little more time to get it right.

The Chair: Thanks.

The final question for the panel is coming from Arnold Viersen, please.

Mr. Arnold Viersen: I think my question was answered earlier. You kept referring to "they" and that was the panel we had just before yours. When you said "they", was that who you were talking about?

Chief Rick O'Bomsawin: Yes. I apologize, because I don't remember all their names.

Mr. Arnold Viersen: Okay, that's my conundrum all the time. It's sometimes a little bit of a faceless organization, INAC. It's never easy to pin down who we're talking about or where the hard spot is to push on, essentially.

Then you said you met with a number of chiefs.

Chief Rick O'Bomsawin: It was a chiefs assembly that we had. They had asked us if they could come to talk to us at the chiefs assembly. We had made it very, very clear that it would not be a consultation, that it would be strictly an information session, and that's what she said, that it would be an information session. But at the time we didn't really get any information.

Mr. Arnold Viersen: Is the chiefs assembly part of AFN?

Chief Rick O'Bomsawin: It's part of the AFNQL.

Mr. Arnold Viersen: When we had the folks who were up here before you, they said that they've dealt with a number of the national organizations. In your opinion, is that considered consultation, or is it—

Chief Rick O'Bomsawin: Again, they stated that they had consulted with several communities and several chiefs, and even at the national level we've reached out and we can't find anybody they've spoken to. I asked them for a list of communities or people they had spoken to, or who they had consulted with. Being the people on the case, we would have thought we would probably have been the first people they would have consulted with. To this date they have still not got back to me on anything.

Mr. Arnold Viersen: Okay, that's interesting.

Getting back to my question. It's AFN and then regional chiefs and then also chiefs for individual treaties.

Chief Rick O'Bomsawin: Yes.

Mr. Arnold Viersen: I'm part of Treaty No. 8 and we have an individual chief for that. Would you say that speaking to those individual bodies is considered consultation, or were you looking for a sit-down with...? That seems obvious, but would you say that had they gone more to your regional chief or to the AFN Chief Perry Bellegarde, that would have been more appropriate?

Chief Rick O'Bomsawin: Normally, they would meet with a group of chiefs. Normally, they would meet with us all at the same time, at the chiefs meeting.

Mr. Arnold Viersen: Okay.

Chief Rick O'Bomsawin: But as I said, this has never been done. They didn't meet with us.

Mr. Arnold Viersen: Okay, so that—

Chief Rick O'Bomsawin: If they met with individual people, that defeats the purpose, doesn't it?

Mr. Arnold Viersen: Yes, but—

Chief Rick O'Bomsawin: They can tell me that person said anything.

Mr. Arnold Viersen: You said you met with a group of chiefs, recently.

Chief Rick O'Bomsawin: No, when we had the chiefs assembly, the Quebec chiefs came. We made it very clear, and they made it clear, that it was not a consultation. It was strictly for information to say what they thought or where they were at.

Mr. Arnold Viersen: Okay, so that was the assembly of chiefs meeting—

Chief Rick O'Bomsawin: Yes, of Quebec.

Mr. Arnold Viersen: They didn't organize it. You organized it, and they showed up.

Chief Rick O'Bomsawin: They called us and asked if they could come and have a few minutes to explain what they were doing and where they were going, and to see if we had questions. We had asked them several questions. We got the same answer that you guys got, which was, "We'll get back to you." We've never heard anything back yet. That was at the time when we explained to them that... I made it clear to her that they never consulted us, and they never asked us anything. Now they're telling me that they have this February deadline that they have to live up to, and there's nothing

they can do about it. I suggested at the time that they ask the court for an extension, so we could close all the files, instead of closing one, going back to court, and then doing it again. As of Friday, she told me that they were not asking for an extension. I find that very strange, because I made it very clear that if they didn't ask for an extension and if we didn't solve all these problems, then we were going to be right back in court again. She said that was fine.

● (1725)

Mr. Arnold Viersen: This meeting that you had was, in your opinion, the first date, and they thought you got married.

Chief Rick O'Bomsawin: That was the very first tip. Exactly, you got it.

Mr. Arnold Viersen: Interesting.

I don't really have any more questions, Chair, so I'll cede the floor.

The Chair: Thank you very much. I much appreciate that.

Well, that brings this panel to a close.

Gary did you want to say something?

Mr. Gary Anandasangaree: I would like to move the budget.

The Chair: Great. Thank you.

Let me just say thank you. I appreciate your testimony very much, as does the committee as a whole. We have two minutes of committee business to do while you pack up.

Chief Rick O'Bomsawin: I would like to thank you all for having us come here today. Thank you very much.

The Chair: We are in a situation where we're inviting witnesses and paying for them; we have more coming in the weeks ahead, and we need to pass a budget. That budget has been passed around.

Gary, put a motion to approve the budget, as presented.

Mr. Gary Anandasangaree: Yes, I so move.

The Chair: The seconder is David.

(Motion agreed to)

The Chair: Thank you very much.

The meeting is adjourned.

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