

MJ May 4, 2004

THE STANDING SENATE COMMITTEE ON ABORIGINAL

PEOPLES

EVIDENCE

OTTAWA, Tuesday, May 4, 2004

The Standing Senate Committee on Aboriginal Peoples, to which was referred Bill C-11, to give effect to the Westbank First Nation Self-Government Agreement, met this day at 9 a.m. to give consideration to the bill.

Senator Nick G. Sibbeston (*Chairman*) in the Chair.

The Chairman: Honourable senators, observers and witnesses, welcome to the Standing Senate Committee on Aboriginal Peoples. This morning we will begin deliberations on Bill C-11 in respect of the Westbank First Nations Self-Government Agreement.

Are there any preliminary comments or points that colleagues wish to make? Minister Mitchell, please proceed.

The Honourable Andrew Mitchell, P.C., M.P., Minister of Indian Affairs and Northern

Development: Honourable senators, I appreciate the opportunity to speak to the Westbank bill. I

would like to thank the Senate and Senators St. Germain and Fitzpatrick who spoke to the bill at second reading in the Senate.

In my view, this bill is important in that it works to achieve the government's objective of self-government in our First Nations community. I believe that this proposed legislation is in the best interests of all community members of the Westbank First Nation.

Generally speaking, in dealing with this First Nations file, I believe that a number of principles need to be applied. We must ensure that we have a collaborative and inclusive approach to the work; that proposed solutions reflect the needs and views of First Nations people; that we build a relationship with First Nations people based on a common vision, respect and trust; that we work toward bottom-up solutions made in the communities and not made in Ottawa; and that we build workable structures in the context of particular communities.

I believe that the proposed Westbank legislation meets all of these principles and objectives. I believe that it will give the people of Westbank an opportunity to make economic and social progress in their communities and an opportunity, in part, to help close the existing gap between Aboriginal Canadians and other Canadians. A couple of weeks ago we saw the importance of this at the round table held with Aboriginal leaders. The proposed legislation will help to define a more appropriate and effective relationship between the Government of Canada and Westbank First Nation in a way that I believe is far superior to the one available under the Indian Act. Bill C-11 will allow for the building of capacity within that First Nation and will allow the community to pursue economic and social development in ways that make sense for them.

This has been a long process, honourable senators -- 15 years in the making and in the working together of the community and the government toward a common goal. During that time, there have been extensive formal and informal meetings to receive input from both Aboriginal and non-Aboriginal individuals.

There is discussion in respect of how that input will continue. Upon reading the legislation, senators will know that the first order of business of the new First Nations government will be to create an advisory council to allow for input to the decision-making process. This formalizes something that, in practice, has been occurring in the community for some time.

The Westbank agreement respects Canadian law and recognizes that all members of the First Nation, like all Canadians, are subject to the Criminal Code and to the Charter. I want to make that point clear. The Charter of Rights and Freedoms applies under the Westbank First Nation Self-Government Agreement. The agreement is being negotiated under the inherent right policy that the federal government pursues. It allows for us to develop a solution that is specific to the reality of the Westbank community. It is not a specific recognition under section 35 but an agreement that is being struck under the inherent right policy.

The addition to reserve policy has come up in part of the discussion. Nothing changes between the way the system exists today and the way it will exist under a self-government agreement. The government has always pursued a good neighbour policy and has always worked in extensive consultation with all parties involved when we deal with additions to reserve. That has been the case in Westbank in the past and will be the case should issue arise in the future.

I believe that this agreement works well toward reflecting the local needs. Decisions will be taken locally by people who best understand the community and not by officials or politicians who may be thousands of miles away. Certain powers will be given and assumed by the First Nation in respect of governance, resource management, language and culture. Those laws and others will be the responsibility of the First Nation through an administrative process set up by them. As well, there will be dispute mechanisms to settle disagreements. Once all of those are exhausted. Individuals may request a judicial appeal from the British Columbia courts.

I believe that this agreement will provide good, enhanced local partnerships between the private sector, the local government, Aboriginals and non-Aboriginal citizens. Honourable senators are no doubt aware that the Westbank First Nation is one of the most successful bands in Canada. It is known as a fair land manager and good business partner. The band has worked diligently with the non-Aboriginal population living on the reserve and in the nearby community.

Bill C-11 will allow Westbank to continue progressing toward long-term economic success and to expand upon that success; and will work toward closing the gap that exists between Aboriginal Canadians and other Canadians.

(0910 follows – **Senator Mercer:** Minister, I am very supportive of the...)

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(Following Take 0900, Following Mr. Mitchell: and other Canadians)

Senator Mercer: Minister, first, I am very supportive of the proposed legislation, although I do have some questions to which I am sure you have the answers.

I am concerned about the consultation process that took place. A number of non-Aboriginals are affected by this, and some are supportive, some are not. However, some non-Aboriginal residents maintain that they are without representation and that their rights are not adequately protected under the agreement. How have these concerns been taken into account in this agreement?

I know we are short of time, so I will give both my questions to you at the same time. What happens in 20 years, Minister, when the good leadership that is at Westbank now is gone and bad leadership takes over and fails? What happens then? Does the band come back to the government of the day and say, "This experiment failed, we need your help again" and obviously money again as well?

Mr. Mitchell: Let me try to answer that in a couple of ways. In regard to the first question, there were -- and I may have the numbers a little off -- 17 public meetings. There was an advisory committee that had 44 or so meetings. There was an extensive process between 1998 and the ratification to allow for input from a broad audience.

There is a difference, senator, between having input provided and incorporating it. If you get a variety of views that are put forward and you come to a decision at the end of the day, somebody may not feel that their particular view was reflected as fully as they may want. There was certainly, I have been advised and believe, an opportunity to provide a perspective, even though some of those perspectives may not be totally reflected in the final decision.

There is no diminishment between the exercise of governance under the Indian Act in terms of non-Aboriginal input as opposed to under the self-government agreement. It is enhanced. Nowhere in the Indian Act is there a call or a mandate for that advisory committee to exist. Under this agreement, it is legislated under the First Nations law. It will be their first law, that this advisory committee must exist. In practice, from what I am told, is that in terms of setting taxation levels, et cetera, within the community, which they have been able to do under section 83 of the Indian Act, there has been a broad-based consultation between all members of the communities, both Aboriginal and non-Aboriginal.

In terms of what happens in 20 years if there is bad leadership, that is the same thing that happens in any community. The whole idea here is that the leadership becomes responsible to the people of Westbank, to their community members as opposed to responsible solely to the Minister of Indian Affairs. If they are providing poor government, I would expect -- as I expect in all governments -- that their constituents will exercise their prerogative and vote out what they would consider to be bad leadership and replace them with people whom they felt were acting in the best interests of their community.

Senator St. Germain: One thing concerned me, and perhaps the Minister can answer this question about committee travel. You talk about top-down, bottom-up. The House of Commons committee did not travel out to the constituency. On an issue as important as this, can you make any comment as to why they did not travel?

Mr. Mitchell: The decision of the House of Commons committee to travel or not to travel is a decision made by the committee, not the minister.

Senator St. Germain: Minister, let us face it; I have been a minister in the government and I know what influence a minister can have. It leaves those who are opposed to the bill a bit of an argument that could have been curtailed had the committee travelled.

My other question concerns the inherent right to self-government policy. This has been a real bone of contention as far as this bill is concerned. Opponents have said that the Supreme Court has not ruled on what an inherent right to self-government really is. Do you have you an explanation for us on that?

Mr. Mitchell: There are two separate things. The current government recognizes, as a matter of policy, that there is an inherent right of self-government. Based on that policy, we negotiated this agreement. It is a unique agreement to Westbank. It deals with their particular situation and their particular needs.

You could go to the Supreme Court or to the courts and say, "Is there a specific right, as expressed in section 35, that applies to this specific First Nation?" The courts would examine that and may put a particular test; they do have a test in which they would try to determine that that existed, but that is not what was done here. This is a self-governing agreement based on a policy of the government; it is not a constitutional agreement under section 35.

Senator Tkachuk: Minister, in regard to taxation, how will the government in Westbank fund itself?

Mr. Mitchell: They will use section 83 of the Indian Act to raise revenue through taxation, which they have been doing in the past and, I suspect, will continue to do in the future.

Senator Tkachuk: Things like property tax and sales tax?

Mr. Mitchell: Property tax, yes.

Senator Tkachuk: Does their major source of revenue come from the federal government?

Mr. Mitchell: I would have to take a look -- I have not looked at the financial statement of the band.

Senator Tkachuk: What does the federal government contribute to Westbank?

Mr. Mitchell: They do receive federal funds, absolutely, as all First Nations do.

Senator Tkachuk: Yes, but could you tell me what funds they do get and what the total amount of money is?

Mr. Mitchell: I will get that for you, senator.

Senator Tkachuk: You cannot tell me here?

Mr. Mitchell: We have 640 First Nations, senator.

Senator Tkachuk: You are only here to discuss Westbank. I am not here to discuss the other ones.

Mr. Mitchell: Senator, if you want a detailed breakdown of the financial statement of the First Nation -

Senator Tkachuk: I just wanted to know how much money they receive.

Mr. Mitchell: I will get that for you.

Senator Tkachuk: What areas of jurisdiction does it cover?

Mr. Mitchell: Our funding?

Senator Tkachuk: Outside of health care.

Mr. Mitchell: Health care would not come from me, of course, senator. That comes under the Department of Health. Things like education, funding for governance would come under that, social assistance. There is a series of measures that we provide assistance to the First Nations and it is often done in a cost-shared basis. Where the First Nation has revenue sources of its own, it contributes to that type of programming.

Senator Tkachuk: Under this act, what would the taxation powers of the Westbank government cover?

Mr. Mitchell: Those items that they will be responsible for or have jurisdiction for under the First Nation.

Senator Tkachuk: Like?

Mr. Mitchell: Governance, culture, language, education, natural resources, environment. As counsel indicates to me, they will continue to use what has always been used in section 83 of the Indian Act. Nothing is changing in that respect.

Senator Tkachuk: We spoke about the Charter of Rights and Freedoms. Although section 32 of the agreement stipulates -- and I take this from the parliamentary, it is a better question than I had -- that Westbank First Nation and counsel are bound by the Charter with due regard for section 25 of the Charter. This is the so-called shield provision, under which the Charter guarantees are not to be construed to detract from Aboriginal and treaty rights. This has been an argument that has been quite public in the paper, about whether the Charter applies.

Could you explain what "with due regard for section 25 of the Charter" means in the act?

Mr. Mitchell: First of all, the act is not what puts section 25 as part of the Charter. The Charter was passed and brought into force, including section 25.

(Take 0920 follows, Mr. Mitchell continuing - When the Charter is applied)

CC May 4, 2004 (0920 begins, Mr. Mitchell continuing after, section 25.)

When the Charter is applied, whether in this case or in any other case, section 25 needs to be taken into account. Westbank, this bill, this proposed legislation, this agreement is not changing that fact. That fact exists right now in the application of law in this country. Section 25 is a standing part of the Canadian Charter of Rights and Freedoms, anytime the Charter is applied.

Senator Tkachuk: Could you explain what section 25 says for the people out there listening to us?

Mr. Mitchell: It basically says, to paraphrase, that what you do in applying the Canadian Charter of Rights and Freedoms should take into account Aboriginal concerns and Aboriginal issues.

Senator Tkachuk: What does that mean? Give me an example.

Mr. Mitchell: An individual court may have to rule on what a section-25 application may mean in a particular case. I have given you a general application but it depends on a particular case that may be in front of the court. It is very difficult to say in advance what it could be until you see the specific issue that is there. The important part -- and I want to make this clear for honourable senators -- is that section 25 is a part of the Charter. Over a generation of the application of the Charter has always required that section 25 be applied. That is nothing new that is being added with this particular piece of legislation. To suggest otherwise, senator, I believe is inaccurate.

Senator Tkachuk: I did not suggest that.

Mr. Mitchell: Not you, but you have referred to what has been put out in the media.

Senator Tkachuk: Yes. Only because even though it was supposed to be absolutely clear, it was seen as unnecessary to reiterate it in the bill itself. Although you say it does not matter, it is reiterated one more time in the bill.

Mr. Mitchell: Senator, I did not say it did not matter. I simply said that section 25 is something that applies at any occasion when the Charter is employed.

The Chairman: Senator Tkachuk we are running out of time and we are over our time. Senator Gill wanted to ask a question. Do you mind?

Senator Tkachuk: Maybe I could come back.

(French follows -- Senator Gill -- Lorsqu'un projet de loi)

JL/04-05-04 (après anglais)

Le sénateur Gill: Lorsqu'un projet de loi concernant les Premières nations est déposé, on éprouve souvent, et depuis longtemps, une certaine réticence à confier aux Premières nations la gestion de leurs affaires. Cette gestion implique souvent des communautés non-autochtones. On semble inquiet du fait que les Premières nations puissent assumer ou décider d'assumer les responsabilités en matière de gestion du territoire, de l'habitation, de l'éducation ou de d'autres secteurs. Ce phénomène varie d'un endroit à l'autre.

Sur ce point, je dois tout d'abord affirmer que je suis favorable à un projet de loi visant à rencontrer les besoins d'un groupe ou d'une communauté d'une Première nation, surtout lorsque celui-ci satisfait les objectifs nationaux des Premières nations, tient compte du secteur de la population que l'on gère habituellement, et tient compte de la population non-Autochtone. Il est important de respecter ces paramètres.

Cependant, s'il y a réticence, je me demande si c'est dû à la perception du fait que les Premières nations ne paient pas de taxe ni d'impôt.

Il serait important que le public soit informé du fait que les membres des Premières nations vivant à l'extérieur des communautés sont soumis exactement aux mêmes règlements que les autres.

Également, dans la plupart des communautés des Premières nations au pays, des taxes sont exigées.

Il existe des taxes sur l'eau et sur toutes sortes de chose.

Les gens croient que ces communautés des Premières nations ne sont pas taxées, alors que ce n'est pas le cas. Il existe évidemment un appui de la part du gouvernement fédéral.

Certains milieux, comme les milieux universitaires, sont très bien informés. En général, ces milieux bien informés appuient les projets de loi. Toutefois, la population en général n'est pas aussi bien informée.

Ne serait-il pas approprié pour le ministère des Affaires indiennes d'informer la population, plutôt que de se heurter constamment aux problèmes considérables lorsque nous élaborons une entente?

Dans ma région, nous sommes en train de négocier des ententes, et il règne un bouleversement incroyable.

Le ministère ne pourrait-il pas créer un programme d'information pour faire tomber les tabous et les préjugés? Cela éviterait beaucoup de difficultés dès le départ.

(Mr. Mitchell : I agree with you, Senator. The Department...) (anglais suit)

(Following French, Senator Gill, beaucoup difficulté dès le départ.)

Mr. Mitchell: I agree with you, senator. The department does do a lot of work in terms of providing information. We are doing some specific work, for instance, in Saskatchewan to try some specific outreach in terms of providing the Canadian population in general with information about the issues. This is something that we need to do at the educational system in the primary and secondary levels to be able to deal with these issues to ensure that we have a better-informed public. You are right. We need to do it in general information. However, in our school systems we also need to do it.

Mr. Chairman, if I could just have another moment, the fiscal transfer to Westbank for the last year was \$3.16 million.

The Chairman: Our time is up for the minister and his staff.

Senator Tkachuk: I just wanted to follow up on the financial information. I know we have other witnesses here but this is the minister and he is responsible for the bill.

Will this amount of money continue to flow into the reserve?

Mr. Mitchell: There will be negotiations for a fiscal transfer that will take place once the bill comes into force. The exact nature of what that will be depends on the outcome of those negotiations.

Senator Tkachuk: It seems that the majority of the money that the Westbank government will have will be money from the federal government. Is that correct?

Mr. Mitchell: As part of the negotiations, the issue of how much own-source revenue that the First Nation is achieving is taken into the calculation and into the process when coming up with what the fiscal transfer will be. That is not unusual for any governing body. We do that as a federal government vis-à-vis the provinces. The provinces do it vis-à-vis the municipal governments where they determine exactly how much they may or may not be transferring to assist a particular community. I do not know why anybody would find it surprising that we would be dealing with another level of government that is the federal government -- as the federal government and that we may be involved in a fiscal transfer. That is a fairly common practice in the Canadian context.

Senator Tkachuk: I will not get into an argument over whether the analogy is the same. The point I was trying to make is that the money comes from the federal government, and the local government is responsible for managing the money and ensuring that the money is distributed wisely amongst the people there. The people do not actually pay taxes to that government to pay for that. In other words, it is a somewhat different situation than it is here, is it not?

Mr. Mitchell: I am not sure I follow the question, senator.

Senator Tkachuk: I am trying to determine how much of the total budget of the Westbank Indian reserve will be federal money and how much will not.

Mr. Mitchell: That will be subject to negotiations that will occur for the next fiscal transfer with Westbank. In part of those negotiations own-source revenue is taken into account, the revenue that is being generated locally. It is not ignored. The negotiations do not happen as if that did not exist. That is a reality for Westbank and it is taken into account when those negotiations occur.

(0930 follows, Mr. Mitchell continuing, It is a subject of)

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(Mr. Mitchell continuing after negotiations occur)

It is a subject of negotiations to determine what that fiscal transfer will be. I should mention as well that any fiscal transfers that is made by the federal government is subject to all of the controls and checks and balances and financial rigour that we apply to transfers.

The Chairman: Thank you very much, minister, for your attendance. The next witness is Chief Robert Louis of the Westbank First Nation, legal counsel and negotiator. Welcome and you can proceed

Chief Robert Louie Tim Raybould, Westbank First Nation: Thank you. Good morning, honourable senators. I am proud to be Okanagan and very honoured to be here representing Westbank First Nations at this momentous time in our people's history. Sharing this honour with me today are councillors Rafti Kaverra, Clarence Clough, and Mickey Wirchek and our negotiating team Larry Derrickson, Brenda McGregor, Dr. Jim Raybould, and Mitcha Menzer. We are also pleased to have with us in Ottawa at this time to witness these historic events, elders Mary Derrickson and Dorothy Clough, representatives of our youth, Flynn Wetand and Claudine Wilson, and two members from our community-working group that developed our Constitution -- Dolores Leask and Denise Clough.

Comment [TSoC1]: None of the names not on agenda are verified

Honourable senators, Westbank First Nation is located in the heart of the Okanogan Valley adjacent to the city of Kelowna. Westbank is one of the seven communities that comprise the Okanogan Nation. Collectively, we are the Okanogan people.

Our community has approximately 6,000 acres of land with five reserves, two of which are located on the west side of Okanogan Lake and are populated. Our membership population is 618, with approximately 7,500 non-members living on our lands.

More often than not, the debate for or against self-government transcends into an academic discussion by lawyers, scholars, or politicians on conceptually what self-government means -- politically, legally, or constitutionally.

What really matters at the end of the day to us as Aboriginal people is whether it work. Ultimately, Westbank self-government will be judged on whether implementation was successful and primarily by those who are most affected by the agreement -- the Westbank members and the non-members residing on Westbank lands.

Self-government at Westbank has been 15 years in the making. Its development has followed a very pragmatic approach. Most of what we have done has been in response to specific issues that we have faced and is based on experience. The agreement is about fixing the problems of the often-misunderstood reality of governance on reserve under the Indian Act. Off the national radar screen until now, the development of our self-government agreement has been very much a local community-based, grassroots initiative led by dedicated community members.

The minister has already addressed the self-government agreement that outlines our jurisdiction, the ongoing relationship with the federal government, the continuing protection of the Canadian Charter of Rights and Freedoms and other matters. Given the time constraints, I do not intend to repeat these details. Rather, in the time allotted to me, I would like to draw your attention to the Westbank Constitution.

The Westbank Constitution was developed over several years by our community-working group composed of volunteer community members. This group has fulfilled a historic and crucial role in the evolution of Westbank self-government and for this we are eternally grateful. While the self-government agreement focuses on our jurisdiction and relationships with the federal government, for many of our members, it is a Constitution that is most important for our future.

The constitution sets out how our communities will govern ourselves, including rules for the election of council, and ensures Westbank government will be responsive to the needs of our people and the community. Westbank is an urban community. We face pressures of the development and the impact of growth. Improved governance, accountability and transparency with local control and decision-making is not a luxury but a necessity of good governance in our situation.

The election rules in the constitution provide for a democratically elected council with all adult members both living on and off reserve having a vote. There is direct accountability for the elected officials. Ultimately, at Westbank, a councillor or the chief can be removed if we fail in our duties and responsibilities as the constitution provides for recall procedure for elected officials.

The constitution also sets out clear conflict of interest guidelines for chief and council to ensure that personal interests do not interfere with public duty. In a small community such as Westbank, it is essential to have well-defined conflict of interest rules.

Perhaps the most important part of the Constitution is how the community has addressed the question of making laws. Under the Indian Act there is no law making process set out and a chief and council can make a law without consideration, debate or reflection, basically on the spur of the moment. For a self-governing communities with more power and responsibility, there is a need for due consideration of proposed laws. Under our constitution, there is now a clear law-making process that includes community consultation and reflection. The law enactment process involves three readings of every law and will typically take at least 90 days.

Public finances are a core element of all governments. Westbank First Nation is no different, and the constitution establishes a requirement for yearly budgets and periodic reporting to members throughout the year. The constitution does not permit Westbank to budget a deficit unless it is first approved in a vote by the members.

The constitution also recognizes the central role for community planning. It requires Westbank to establish a land use plan within two years to ensure an orderly scheme for community growth. The granting of land allotments to members is our form of individual holding of land and a key issue for the future.

The constitution requires Westbank to enact a law setting out a process with criteria and policy for allotments under self-government. This will ensure that there is equity in the allotment process.

The constitution was voted on at the same time as the agreement and comes into force on the effective date of self-government.

Honourable senators, advanced democracy is not easy. Self-government is not easy. It takes work. While approximately 65 per cent of our members support self-government, we must acknowledge that some do not. It would be easy for us to focus solely on those who support the agreement. The majority have directed us to move forward, but we must always remain mind will of the minority. This, honourable senators, will be done.

Self-government is inclusive for both the majority and minority alike. We will be working closely with those in our community who have raised concerns about this agreement to show how self-government will benefit all and that the increased opportunities under several government will be for everyone.

Honourable senators, non-member interests will be protected. We would be remiss in failing to pay attention to non-member views, which is the reason that we established an interim advisory council in 1999.

(Take 0940 Follows – Chief Louie continuing: With the implementation of our...)

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(0940 -- Chief Louie continuing after: council in 1999.)

** With the implementation of our self-government agreement, there will be an elected advisory council and a secure legal mechanism that will provide a formal, guaranteed voice for non-members.

We expect many more people to move on to our lands as we develop. We intend to work with them to create a strong and vibrant community that we are all proud to call "home." People have nothing to fear.

Financially, what will self-government cost? The cost of maintaining the status quo is clearly not acceptable to anyone. However, good governance does cost money. While Canada is committed to provide financial support to Westbank, it is important that transfer agreements between Westbank and Canada support the new self-government arrangement. As well, it is important that Canada looks at the real cost of self-government and does not rely on formulas developed on Indian-Act-based funding arrangements. Funding arrangements must consider the modern realities of accountable, transparent and democratic First Nation government with increased jurisdiction and responsibility.

The Westbank agreement is based on the premise that there is an existing inherent right of self-government protected by section 35 of the Constitution Act 1982. Our self-government agreement, however, is not a section 35 agreement and, consequently, we have included a non-derogation clause.

In our view, non-derogation clauses are very important to First Nation peoples because they provide assurance that agreements such as ours, which represent the practical implementation of the inherent right of self-government, do not inadvertently interfere with constitutionally protected rights.

One area in our agreement that was important to our members addresses the question of what happens to matrimonial property when a marriage breaks down. As committee members are aware from its study, this is one of the many grey areas in the law under the Indian Act. Currently our

community working group is developing a law to address this matter. It will be important to address past injustices and to guarantee a fair and equitable system for our children when disputes arise.

Honourable senators, ladies and gentlemen, in simplest terms, self-government is about our culture, our heritage, our identity and our future. Our vision is of a strong, vibrant and healthy community where we are once again decision-makers in our own house, on our own lands. In closing, there are many people to thank for the contributions to the remarkable chapter in our long journey. I would like to publicly acknowledge the work of past chiefs and councillors, community members, elders, youth, staff and advisors who have all worked to make this day possible. Finally, I thank this committee for the opportunity to speak to Bill C-11. We would be pleased to answer your questions.

Senator Chaput: Welcome, chief. I liked what I heard this morning when you said that you are mindful of those who do not agree. What were the main concerns of those who did not agree?

Chief Louie: Yes, concerns were raised. Some of our members thought that the self-government agreement did not go far enough. Some members advocated sovereignty and in that capacity, we did not need anything written down -- we did not need a self-government agreement and that this is our inherent right as Aboriginal peoples. Therefore, sovereignty should apply to not only us but also to other First Nations. On the other extreme, some members said that the Indian Act has protected us for over 100 years. They feel safe and secure with the Indian act and think that we do not need anything more. They are not ready to take the final steps to self-government.

Those concerns have been expressed. Evidently, this is a major step and so it has taken 15 years of discussions and hundreds of community meetings with members, non-members, government and interest groups across the country.

Senator Chaput: Some say that once the bill is passed, many members of this new nation would not be eligible to vote. Is that true? How will voting eligibility be determined after the bill is passed? Will it be different?

Chief Louie: It will be different in several respects. When we talk about good governance, we talk about accountability and transparency. That means we need to focus on our community. We give the community clear direction, and they provide the direction back to council, that certain forms of law-making must be followed. Assurances of transparency and accountability are in the agreement. When a member wishes to have laws brought forth, the community members meet to suggest laws that need to be looked at. In turn, time frames and mechanisms must be put in place to give fair hearings -- three readings of laws, for example. Many mechanisms have been well thought out and well documented; and they are part of the whole process.

Senator Tkachuk: I want to congratulate you, chief, and your band for the success of the agreement. Like all political acts, it is not without opposition. I understand there was more than one vote to gain approval of this proposed self-government agreement. There were three votes, I believe.

Chief Louie: Yes.

Senator Tkachuk: What were the percentages in the first two votes?

Chief Louie: All of the agreements, including the first two, included a majority of our members.

We looked at the highest threshold possible, which was to have an absolute majority of every voting member, whether on the reserve or off the reserve. That was the ultimate strived for. The majority approved each of the three votes.

Senator Tkachuk: -- of those who voted?

Chief Louie: Absolutely. Of those who voted, approximately 65 per cent voted in favour. I ask senators: is there a democratic process in this country for which you can have three votes receive majority in favour of those who vote? I do not know of any other process in this country that has very much confirmed that there is support for this agreement. This is what we have gone through. It is taken much time but it has been a democratic process.

Senator Tkachuk: I asked the question because I wanted you to explain the process for the record. Many members of Parliament would have a hard time getting elected if you were counting those who did not vote.

Chief Louie: I agree.

Senator Tkachuk: Some concern has been raised by mail and in public on the non-Aboriginal population leasing Aboriginal lands. I have a series of questions on that. For most tenants on Westbank lands that are non-Aboriginal, is that their primary residence or is that, in many cases, their secondary residence?

Chief Louie: For most it is their primary residence. We have approximately 7,500 non-members that reside within two reserves. We have the Sinskemptum Myer No. 9 and Sinskemptum Myer No. 10. They live in trailer parks and in single-family homes.

Comment [TSoC2]: Not found. Names to be verified.

(0950 follows -- Chief Louie continuing: ** More recently we are looking at more of the townhouses...)

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(0950 begins, Chief Louie continuing after, single family homes.)

***More recently we are looking at more of the townhouses and in the future, maybe high-rises, so the majority of people in Westbank, the non-members, have a primary residence at Westbank and make Westbank their home.

Senator Tkachuk: The band council has governed Westbank under the Indian Act for quite some time. There has not been any sort of small revolution amongst the non-Aboriginal community to be involved in the vote, say, of the chief or council, to this point?

Chief Louie: No, there has not been. It is interesting, though, that back in the mid-1980s, in 1985-86, concerns were raised not only by non-members but by the members at Westbank. They dealt with the accountability of the then-chiefs and council, whether things were being done properly, and whether leases were being administered fairly. This all really culminated in what is referred to as the Hall Inquiry. It is interesting and important, I think, for the senators to understand, that as result of the Hall Inquiry, it was recommended by Mr. John Hall, the head commissioner, that Westbank

look and pursue self-government. This was good advice at the time and this was the recommendation after lengthy hearings with the non-members and members of our community.

Senator Tkachuk: Were the leases negotiated by the federal government -- Department of Indian Affairs -- or by the band council?

Chief Louie: Most of the pre-1980s, in the seventies, most of the agreements were basically off-the-shelf leasehold arrangements, much of which Westbank had to comply with. Today, -- since we proceeded -- we have advanced as far as we can under the Indian Act. By that I am saying that the most advanced that First Nation can go under the Indian Act is implementing sections 53 and 60 of the Indian Act, which deal basically with surrendered or designated lands and all of the rest of the lands that members have that might apply to **locatese**, let us say. We have been exercising that authority now since the 1985 time-frame so we have already been administering as far as we can, under the existing regime and these are all seen as preliminary steps leading to where we are today with the self-government agreement.

Comment [TSoC3]: Sorry, could figure this one out.

Senator Mercer: Chief, it is good to see you again. I was concerned about one comment you made in your presentation. You used the words, "people have nothing to fear," when talking about opposition, and non-members. I suspect those are the same words used by the first Europeans to arrive in your part of the country and they said to you that people have nothing to fear and look at the mess we have made of it, so I caution --

Senator Tkachuk: What are you trying to say?

Senator Mercer: I caution use of the words again because people are always nervous about new levels of government.

However, I want to talk about taxation. I want to know where you see yourself going in taxation and what the preliminary plans are to raise the necessary revenue to run this nation. Second, I want to go back to the question I asked the minister. He gave me an answer, which was a good answer for the minister to give, but I do not necessarily buy it. What happens in 20 years time when Chief Louie is retired and all of his council are retired and there is a not-so-good council in place and they are doing things that are not beneficial to Westbank or to the people of Westbank. Democracy has a way of being manipulated sometimes. I am just nervous that if things go completely wrong, and I am very supportive of the bill and will vote for it, but I just get nervous that in 20 years or longer we will be back to square one. Westbank will come back and say, this was a mistake and we need to go backwards as opposed to forwards. I am always looking for progress.

Chief Louie: With regard to your first question about taxation and raising revenues, we have section 83 of the Indian Act, which will continue to apply and there is a safety net for all of the taxpayers at Westbank. We do pay taxes right now in several areas. I would like to mention the taxation is paid on fuel, tobacco and alcohol, and includes taxes paid by both membership and non-members alike, so these are things that we already proceed with. As well, when we are off the reserve, here for example, we pay all the taxes that anyone else in this country pays. As far as the taxation revenues and so forth -- and I want to make this clear, if I may, right now -- the majority of our monies and the cost of the government is covered by Westbank. Over 60 per cent is what we

contribute and 40 per cent, or less than 40 per cent, is what Canada has contributed today. This is approximately the formula that applies.

With regard to the future councils, yes, very likely we will have councils who may not see eye-to-eye at different times. That happens in any democratic society but that is exactly why we have the self-government agreement, to have protections built in. We have recall provisions, for example. If there are faults of a significant nature that our membership sees in the future they can recall the elected chief and council. There are guidelines that must be followed and I am sure, honourable senators, this is something that our people will hold not only this council but every future council accountable to. I think this is good, accountable, transparent government the way good governance should work. This is what we built into our self-government agreement.

Senator Pearson: Welcome to you and your colleagues, especially the young people you brought with you. My question first is, you talk about all adult members. What is your voting age under the Constitution?

Chief Louie: 18 years.

Senator Pearson: That is good. Others I heard were 21 and I thought that was too old.

Second, how will your Constitution, or you, deal with child and family services?

Chief Louie: Child and family services are a big area of course. That is the whole social services part of our agreement. That includes health and many matters. We have the right in the agreement to look after all these aspects. Social services are a big area and we have problems with drug and

alcohol abuse and I think we are not unlike other communities. We may be more fortunate in many respects and we do see a change. We focus on education. Education is a key priority, we believe, to address the social issues as well as employment. Employment is another major drive that we have in our community.

We will focus very seriously, and our membership will ensure that every council focuses, on the health and on the social services. These are jurisdictions that we are willing to take the responsibility for to ensure that we have the best community possible. That is how the agreement has been laid out.

Senator Pearson: Do you come under the regulations of British Columbia for standards in child care?

Chief Louie: Yes we do. We are looking at the matrimonial laws, for example, and this has been a key focus for us and will be a focus in our community. In the preliminary drafting of them, the children will be a very important aspect of the matrimonial laws. That is our future and this is where our focus will definitely be.

Senator St. Germain: Certificates of possession, CPs, will they be affected at all, the existing ones?

Chief Louie: Certificates of possession, the rights of CP holders, will continue. In our particular case, approximately 80 per cent of the land in the two reserves is what is referred to as certificates of possessions. Property rights is very much a fundamental, important aspect of this agreement so the protection of the CP holders is something our people are very supportive of and that will remain.

(1000 follows, Sen. Tkachuk continuing, I would like to finish)

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(Following Chief Louie: will remain)

Senator Tkachuk: I would like to finish off the line of questioning I was pursuing earlier on the non-Aboriginal leaseholders. Since the 1980s, they would negotiate a lease if someone off reserve wanted to come on reserve basically with the band. Correct?

Chief Louie: Yes.

Senator Tkachuk: Do you charge them property tax as well on top of the lease or does the lease include the property tax? How does that work? Is that one amount of money?

Chief Louie: There are several forms of leases. We have, for example, mobile manufactured home parks. We have single-family residences. For the single-family residences, Westbank was one of the first communities in British Columbia that looked at long-term leases. We have many 99-year leases, most of which are prepaid leases.

We have built into those leases, back in the early 1970s, for some of our lands, such as the Lakeridge lands on the number 10 reserve, a requirement that there be three quarters of 1 per cent an annual fee. We use that fee to cover things like parks or maintenance aspects. That is a local service. It is not really considered a tax.

Be it for a non-member or a member, once a lease is in place, taxes are payable to the band. It would be like any community anywhere in Canada. This is a requirement. This is how we operate with regard to taxes and the leasehold structure.

Senator Tkachuk: When a person is getting ready to sign the 99-year lease and he is sitting up on that nice hill overlooking the beautiful Okanogan Lake is he making a big deal about democratic rights or is he looking forward to signing that lease?

Chief Louie: We know from a survey that the majority of members in our community support the self-government agreement. Over many meetings, there is very good support for the self-government agreement.

We provide services. If I may just cover that aspect again, taxes are meant to cover the provision of services, whether it is water, sewage, parks or bylaw enforcement or policing. All of those types of services are included. It is something that is not paid for nothing.

The advisory council is so important and valuable to that entire process. They ensure that we have the services and a right for all of the people who reside within the reserve, lessees or not. This is very important. It is a fundamental aspect of this agreement to ensure that we have good governance. We are focused on that.

Senator Gill: I would like to congratulate Chief Louie and his colleagues for their success in this process. I would also like to congratulate you for your national involvement with the First Nations.

You have been there for some years. Congratulations.

Chief Louie: I very much appreciate your comment, Senator Gill.

The Chairman: I thank you for your attendance and wish you well.

Chief Louie: Thank you senators.

The Chairman: The next witness is Mr. Reddick from the Interim Westbank First Nation

Advisory Council. Please proceed.

Mr. John Reddick, Chair, Interim Westbank First Nation Advisory Council: Honourable senators, I am here on behalf of the Interim Advisory Council to present the beliefs, concerns and general thoughts that non-members have about the Westbank First Nation self-government agreement.

I shall first introduce myself to the committee. As a resident on band land I may be able to speak on our beliefs in support of the self-government agreement.

I have lived on Westbank lands since November 1995. It is my primary residence. I have been a member of the Interim Advisory Council since June 2001. In 1998 the Westbank First Nation set up a residents' ad hoc committee and invited representatives of non-members living on Westbank land to participate. The role of the committee was to develop a mechanism to allow non-members input into matters that directly and significantly affected them.

At that time, I was on the board of directors for the Sun Village Homeowners Association. I was one of the participants in establishing what we now call the Westbank First Nation Interim Advisory

Council, which is charged with representing the interests of non-band members residing on band lands.

I would like to take a minute to talk about the community. It is only fair that I speak on what it is like living in our community. I emphasize community, not reserve lands, because it is a thriving, vibrant community.

When one drives through, and one must to get to the neighbouring towns, you see beautiful homes built on beautiful lands, parks and thriving businesses serviced by excellent roadways, no different than from the next town. One cannot make a physical distinction between Kelowna's west side, the Town of Westbank and Westbank lands. A seamless division exists with our neighbouring communities.

Both members and non-members on the reserve take great pride in their homes and lifestyle. We all have services that are comparable to other communities and live harmoniously together.

If you were to ask what it is like being a non-native living on reserve lands, simply put, it is enjoyable. We enjoy being there.

It is true that the community at large did not know that Westbank First Nation began negotiating the framework for self-government agreement in 1990. When the Westbank First Nation chief and council signed the self-government agreement in principle in 1998, a public announcement to the community was made. This was the beginning of many public information meetings.

Part of this process was to also bring together members of the community to form the residents' ad hoc committee to discuss the self-government agreement and a mechanism by which non-members would have representation and input.

In the beginning, there was much confusion. At the residents' ad hoc community level, one could even say that there was fear, driven in part by the unknown. Considerable time was spent having questions answered and just making sense of what self-government meant.

For most of us it required considerable studying, as with any legal document. The question never was whether the Westbank First Nation had a right to self-government. Questions arose around the impact it would have on non-members in the area of land leases and taxation. These are areas in which most Canadians feel vulnerable.

How we could have representation in the matters that affected us as residents of the Westbank lands was the common question. Such arguments presented themselves around the taxation without representation issue. Some felt it would only work if non-members were allowed a vote and a seat, just as band members had at the Westbank First Nation band council level. Others recognized that this was not practical, simply because of the large number of non-members living on Westbank lands.

Much has been done by Westbank First Nation to inform, enlighten and work with the non-member residents to address their concerns. I am here representing the working members of the Interim Advisory Council to present constructive and positive feedback that we have received through various stages of what we would like to refer to as a work in progress. We inform the

committee that we believe that the majority of non-members are not opposed to the self-government agreement.

(Take 1010 Follows - Mr. Reddick continuing: Fact one. Most resident...)

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(Following Take 1000, Mr. Reddick continuing - self-government agreement)

Fact one: Most resident non-members feel that the mechanism of an advisory council will allow ample democratic input by non-members, provided the advisory council is established in a similar manner and form as any other municipal council, involving elections, rules, regulations and responsibilities.

Non-members feel that a law establishing the advisory council must be a law of substance, which should include terms spelling out the areas of input such as taxation, budgets, bylaw establishment, capital improvements and, in particular, a dispute resolution mechanism between the Westbank First Nation and non-members; in short, a law that prevents the advisory council from becoming merely window dressing.

We have been operating as an interim council for the last five years. This has been a valuable learning process for both parties. Like any new endeavour, it has been frustrating at times, simply because we are breaking new ground.

Out of this experience, and together with input from residents, we are currently developing a draft law, taking into account all relevant matters including role and structure of the advisory council,

duties and responsibilities, elections, including term, eligibility, appeals, et cetera, removal from office, petitions to the advisory council, expenses, disputes between the advisory council and the Westbank First Nation council, confidentiality, conflict of interest and oath of office. These recommendations have been presented to the Westbank First Nation for the development of the law establishing the advisory council.

In closing, section 54 states that non-members living on Westbank lands or having an interest in Westbank lands shall be provided in Westbank law with mechanisms through which they may have input into proposed Westbank law and proposed amendments to Westbank law that directly and significantly affect such non-members.

The establishment of an advisory council is the proposed mechanism of choice by the non-members in the Westbank First Nation as the forum to fairly represent the interests of residents on the reserve. We believe this is a bold and unique step that can serve as a model for future self-government agreements. However, this model can only work if proper safeguards are built into the law to protect the interests of both the non-member residents and the Westbank First Nation, and if both parties demonstrate good faith.

Senator Pearson: I have a very practical question. This is not the abstract question about taxes and non-taxes; it is a question about schools.

I presume, given the numbers of non-Aboriginal residents on the territory, that most of your children go to school on the lands, do they?

Mr. Reddick: No, they do not. I think they would go to whatever school happens to be closest to them, in the normal course of events in the education process that is in place. They do not go to a band school.

Senator Pearson: There is a band school, is there not?

Mr. Reddick: Yes, there is, I believe so.

Senator Pearson: Would your members, therefore, have a vote on the school board? This is British Columbia, I realize it may not be the same as Ontario, but I presume there are school boards.

Mr. Reddick: I believe that is the case. It has been a long time since I concerned myself with that.

Senator Tkachuk: You obviously have not voted, either.

Mr. Reddick: Well, I have, actually.

Senator Pearson: This is just a question as it works out for people on the land, and who gets a chance to have some say in the services that you take advantage of, and schools are one of the primary ones. We will come back to that later.

Senator Christensen: Mr. Reddick, you have already answered this but I wish to reiterate and get your answer on the record. Certainly, this kind of legislation is unique legislation. It is the result of many years of negotiation on the part of many parties. Does the proposed legislation, in your opinion, provide for the making of the laws and the regulations that are needed to meet the needs of the advisory council?

Mr. Reddick: Yes, I believe it does. In the establishment of the formation of the law establishing the advisory council, there is a unique opportunity for non-members to have direct input into those matters -- probably more so, I think, than in any other municipal type of council. It is a kind of in-your-face council, where we are dealing directly with the people who are making the decisions on a day-to-day basis.

Senator St. Germain: I have just gotten my answer on the school taxes. I was going to ask you a question on school taxation, but as you pointed out, you and I may be long past that point. I just wanted to thank you for your presentation this morning.

Senator Mercer: I am interested in the relationship between the non-Aboriginals and the Aboriginal community, the governing bodies that are now and will be set up. There is a very amicable relationship, I gather from what you are saying. Regarding dispute resolution -- as in any community, you will have disputes -- has that been a smooth process? As disputes come up with non-Aboriginal residents, since control is with the Aboriginal community, have those disputes been able to be managed properly?

Mr. Reddick: I will answer that question in two ways. First, in terms of the non-members on the reserve -- the general members on reserve -- I am not aware of any major disputes whatsoever. They certainly have not come to the interim advisory council.

In terms of our relationship with the chief and council, on the interim advisory council, it is just like any evolving process. It is almost like a new marriage; you have disputes that occur from time to

time and the road is not always smooth. There have been times, quite frankly, when we have been frustrated with what we felt were answers to questions that did not come in a timely manner.

Under the present circumstances, the relationship between the interim advisory council and the chief rather depends on who happens to be chief and council at any given time. That is why I think this self-government agreement establishes a much more stable relationship that is built in law, that gives us bylaws, that allows that any bylaw that is made that affects non-members may not be changed, except with the agreement of the non-member or the advisory council, rather than non-members through the advisory council.

Finally -- it is a long answer but I think it is important -- where we have had difficulties, the interim advisory council has made its concerns known. When it has come to a situation where it has been difficult, the chief and council have responded very quickly and addressed any issues that might occur.

Senator Mercer: This sounds to me like a very mature relationship between both groups. While we are starting what you have described as a new marriage, I would say that it is a new marriage but both partners are pretty experienced.

Mr. Reddick: Yes, I will not dwell on that.

The Chairman: Mr. Reddick, you talked about, in your presentation, the idea of setting up a municipal-type body with elections and so forth, and also a dispute resolution mechanism. Are these, in your view, possibilities that can come about in the future? Is this the next level, the next step that you would like to see occur?

(Take 1010 follows, Mr. Reddick: I use the term)

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(1020 -- following The Chairman: ...to see occur?)

Mr. Reddick: I use the term "municipal-type governance" in a generic sense, if I may. The law establishing the advisory council will be an important part of that. There has been input from the community. The Interim Advisory Council, based on its experience over the last five years, has input recommendations as well. We will look at that closely once the law is drafted.

I do not think that non-members on reserve lands will have a vote on band council in the future. However, anything is possible, although it would be difficult. From the band's standpoint it would be somewhat like being in bed with an elephant, if I may use that expression. We are 8,000 people and the band has 4 to 6 members.

The Chairman: How is the advisory council chosen?

Mr. Reddick: Once the self-government agreement goes into effect, it will be an elected position. As it is proposed, although not finalized, there are five wards to represent the non-members on band lands. The members in each ward will vote for their representative on the advisory council.

The Interim Advisory Council members were appointed after an interview process.

The Chairman: I have one final question on what Canadians normally know as the standard land holding, which is fee simple. When you buy property, you receive title to the land and that means you have title in perpetuity, as it were.

In the case of the lands in the Westbank, long-term leases are given. They may be very long leases but what is the attitude of people like you toward the idea of never having title but having a lease with a termination date?

Mr. Reddick: I live in a gated community. There are three similar communities in my ward. In the case of my community, all 250 residents 99-year leases. It was a conscious decision by the people who bought their homes on the land. I believe those residents move to bend land with the full knowledge of the lease. They have made that decision.

When my wife and I made the decision to live on band lands, we decided that a 99-year lease was probably long enough because we would not likely be around when it expired. To answer your question, I think people are quite comfortable with that because they know that that is the case.

The Chairman: Thank you for your presentation.

(1030 -- The Chair continuing: Welcome to our committee. Ms. Hardy...)

DV May 4, 2004 (The Chair continuing after your presentation)

Welcome to our committee, Ms. Hardy, Ms. Wilson and Mr. Forney. We will give Ms. Hardy the opportunity to begin.

Ms. Marianne Hardy, Secretary/Treasurer, Canadian Citizens Rights Association: Good morning and thank you for inviting me to appear before your committee. It has been a difficult for all with an interest in Westbank First Nation. The difficulties have been caused by decisiveness and confusion that surrounds the process that brought us to this point in the evolution of the Westbank

self-government agreement. All of us who will be affected by Bill C-11 have strongly-held opinions regarding the fairness of the process used to fabricate the agreement.

We all have strongly held opinions on the impact it will have on the residents of WFN. We all have strongly held opinions on the legality of a government that was formed by not allowing certain citizens, 90 per cent of the WFN population, to participate in the ratification vote. These citizens will continue to be denied the right to vote or hold elected office in this newly formed government.

There are people here today who strongly support the notion that non-band members should have no legitimate voice or authority in the workings of this new government. There are people here today who believe that the promise of accountability will be met by the chief and council through the provisions of this agreement. We believe the opposite.

I am here today to speak behalf of the majority of the WFN taxpayers who are opposed to this agreement and believe that the process to ratify this agreement and the agreement itself are contrary to the principles of Canadian democracy. These taxpayers have expressed their blanket opposition through a referendum conducted by our association earlier this year and in a recently held poll conducted by a local newspaper, the *Capital News*.

We also believe that in the mid and long term this agreement will reduce accountability, reduce our access to the provisions of the Canadian Charter of Rights and Freedoms, as it already has done by denying us the vote, and will greatly increase the stigma and negative aspects of purchasing and living on reserve land. It will also restrict our access to the court system by forcing us into an exhaustive WFN tribunal system.

My husband and I purchased our land on IR10 in 1989 before the process to negotiate this agreement began. We paid fair market price at that time. That price was comparable to freehold lakeshore property. We paid our taxes to Okanagan regional district.

In 1991, our family relocated to Singapore and lived outside of Canada for the next six years. During that period, as taxpayers, our only form of communication from WFN was our tax assessment after the taxing authority was changed in 1992. In 1997, we returned to Canada and built on our property with the full expectation of never moving again. This was our home where we would live for the remainder of our years. Then, as now, we believed that it was our land belonging to us for the 99-year term of the paid in full lease as guaranteed by a legal contract between the Crown and us.

In 2002, I was asked to sit on the Westbank advisory council, I accepted with the belief that I would be able to adequately represent the taxpayers who were undoubtedly under represented. Some taxpayers, who although assessed taxes at the same mill rate as neighbouring communities, received no services for their tax dollars. These are service that most people receive and take for granted. Services such as water and sewer, road maintenance and garbage collection are nonexistent for some of us who live on Westbank First Nation land.

Once I became a member of the advisory council, I learned that the council was dysfunctional and because of funding authority and desire were incapable of representing the interests of the non-band member residents. This reality can be best described by the words of the chairperson of the advisory committee. I should like to read into the record her letter addressed to the chief and dated April 6,

2003, which was one month before the ratification vote by the band members. It was written on behalf of the five members of the council.

Comment [TSOC4]: Do not have letter, captured as read

Dear Chief Louis,

One of the fundamental prerequisites for Aboriginal self-government is for an advisory council comprised of non-bands members to represent the interests of the non-native taxpayers. We as members of the Westbank First Nations Advisory Council have unanimously reached the conclusion that serious structural changes must be made if this council is to become a functioning entity able to fulfil its obligations.

Regrettably, since the inception of this advisory council, we have been prevented from practising section 4 of the law establishing the Westbank First Nation Advisory Council. Presently, there is no formal inter-council structure and no formal lines of council-constituent communication due to a lack of funding, an issue we have repeatedly addressed. We have no credibility when dealing with the band council members. This is consistently demonstrated by the level of importance they place on our joint meetings by simply not attending.

We believe that vital interests of the taxpayers are not being met and, although the taxpayers are led to believe the advisory council is there to represent them, the council simply does not have the structure, the authority, the funding nor the credibility to fulfil this obligation. As members of the Westbank First Nations Advisory Council, we not only have the moral responsibility to represent the taxpayers in an honest, ethical and forthright manner but a legal obligation as well.

The band council, under charter, has a responsibility to the band members. Appointing us as the non-native representatives has fulfilled the Westbank First Nations chief and council's obligations to the non-natives. Our very real concern is that by us remaining silent and not formally presenting our frustrations to you our frustrations to you, and failing redress, making our concerns known publicly to the taxpayers, we are unwittingly legitimizing all decisions made by the band council and we become equally culpable for any and all repercussions, which rose from these decisions.

If this council is to be effective, if this council is to be able to fulfil our explicit obligations to the taxpayers, then effective immediately the advisory council must be empowered and legitimized.

Chief Robert Louis, we are formally requesting a meeting with you to clarify our concerns, credibility and to obtain equitable solutions for all parties concerned. I look forward to your prompt reply.

I would like to hand this to you. Attached, I will not read this; I have the first draft of this letter with handwritten notes on it from two of the other advisory council members and a short e-mail that simply shows that there was, in fact, teamwork involved in constructing this letter from all the members of the advisory council.

(Take 1040 follows - Senator Tkachuk: Could we make that part of the...)

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(1040 -- following Ms. Hardy: ...of the advisory council.)

Senator Tkachuk: Could we make that part of the record?

The Chairman: Certainly.

Ms. Hardy: We, like all Canadians, believe that self-government is exactly that -- bands members governing themselves. It was during my tenure on the advisory council that I became aware of the true scope and intent of this proposed self-government agreement; and the alarm bells went off. Bill C-11 would not allow self-government but rather it would create an autonomous sovereign state with zero accountability. Having seen the workings of the advisory council, I understand that it was little more than a sham. It is a shell constructed to give the illusion that taxpayers had representation. Even the letter of intent, which created it explicitly, states that the advisory council is powerless and incapable of holding the chief and council to account. The letter of intent is in this book that I will hand to you. It is easy to find through the index.

In May of 2003, I became the second member of the advisory council, representing the residents of IR10 to resign. I had a legal and moral obligation to represent the interests and concerns of the taxpayers and to fully explain to the taxpayers what I had learned about the proposed self-government agreement. I was incapable of doing so because of the constraints and restrictions placed on all advisory council members.

It is most important to note that there will be no difference under an elected advisory council. It will operate under the same restrictions and the same lack of power to hold the chief and band council accountable. Its only function will be, as it is now, to give the illusion of taxpayer

representation and to give rubber-stamp approval to the decisions of the band council, who may, at their discretion and as stated publicly by the grand chief, entertain input from non-natives.

I will quickly refer you to two articles that I submit to the committee. There will be no transfer of powers from one chief to the other, which is a major concern. What one chief says and does will not have to be carried forward by the next chief. In an article on May 26 entitled, "Nothing to Fear," we were assured that we will have a voice and that all will be well. A few days later, a letter from the grand chief in a newspaper stated that Westbank First Nation will entertain input from non-natives and will control the future and destiny of its people. Those articles appeared only a few days apart. That is of great concern to me about lies ahead.

It has been said, even by a member of this committee, that people who buy on Indian land have no one to blame but themselves. However, it must be understood that when we purchased our property, governance was not an issue. Even now, full disclosure of the governance issue is not forthcoming when prospective buyers consider purchasing property on Westbank First Nation lands. It is apparent that agents are enticing unsuspecting buyers into purchasing leases by dismissing the governance issue as a non-issue. Many who have purchased WFN leases told us that they would never have done so had they had information about the scope of this proposed agreement and about the unfettered power the band will attain once this agreement, the Constitution and land code become law. Like us, they would never have moved onto Indian land if this proposed Westbank self-government agreement had been fully disclosed and understood.

After we went on record as opposing WFN self-government, my husband, my neighbours and I have been intimidated with threats of eviction. We have been told that we could be forced off our land. The band restricts our access to sewer and water, even though we have offered to pay the cost of the installation. The band's administration has told us to talk to the band member adjacent to our land. They said that it is their decision. Interestingly, it is this band member, an ex-chief, who now wants our land for his future development. These threats and intimidations, and my firsthand knowledge of the workings of a compliant, manipulative advisory council, are, I believe, not only an indication of how the Westbank self-government agreement was ratified but also of how the Westbank First Nation will be governed in the future.

I ask that the committee go beyond the chief in council and talk to the people in Westbank and answer the two questions that they have: why did this government want to ram Bill C-11 through without listening to the people of Westbank First Nation? How could this government justify passage of proposed legislation when its flaws are so obvious and when it is supported by only a small, elite group of band members?

The Chairman: Thank you. We will go to questions after the next witnesses.

Ms. Hardy: That is fine.

Ms. Marie Wilson, As an individual: Good morning ladies and gentlemen. I am a member of the Westbank Indian Band. I represent 150 members who strongly oppose this proposed legislation and we appeal to this committee to not pass Bill C-11; stop the process of Bill C-11. We the opposition were never included or involved in the process. As a witness today, I will give evidence

as to why we want Bill C-11 stopped. I doubt any one of you have an idea of this because you have all heard the greatness that Bill C-11 will bring to the Westbank First Nations land. However, it will not do that.

Since the early 1980s, the Westbank Indian Band has gone through a great deal of turmoil that included lawsuits, inquiries and numerous other processes. There have been lawsuits filed by one chief against another chief, lawsuits against band members and against landowners. In 1987, the band members lobbied strongly enough and, ironically, these are the same chief and council who, today, lobbied for the inquiry into the Westbank administration of fraudulent misappropriation and misrepresentation, et cetera.

After much work, we managed to get the inquiry, which heard many witnesses speak to the mismanagement of funds and the corruption of -- -- -- -- allowances through welfare funding. The then chief's brother borrowed hundreds of thousands of dollars from the government to start his own businesses. There was some involvement of past ministers and senators with their full knowledge of the scams that were occurring.

Officials were involved in the inquiry: Lorne Greenaway; Fred King, MP; Senator Len Marchand; David Kilgour, MP; **Gordon** van Bursar of the central district office; former ministers of Indian Affairs, John Munro, David Crombie and Tom Siddon; and a few other senators. Those people were totally involved in what was happening on Westbank First Nation land.

An amount of \$3 million was invested in the Northland Bank, which went bankrupt. These were band members' monies and not that of the chief and council. It was invested regardless of the protest

Comment [TSoC5]: Verified – see file for hard copies.

Comment [TSoC6]: Sounds like – not found

against the Northland Bank. They lost \$3 million. From 1986 to 1988, families began to divide.

Some families could see that even with a new, elected chief, things would never change.

(1050 -- Ms. Wilson continuing: ** Other families turned a blind eye toward the...)

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(Following Take 1040, Ms. Wilson continuing -- never changed)

*** Other families turned a blind eye toward how the administration was being handled. There were lawsuits laid between the chief at that time, in 1986 through 1988. Finally, several frustrated Westbank Indian band members launched a lawsuit of their own against the federal government in 1997. Their claims were that the chief and council of 1986 to 1988 had submitted a presentation to the government that said that the Westbank First Nations members were fully in support of their ratification for the self-government process, to begin the self-government process, which never happened. This went to court.

Today, we still strongly oppose the self-government agreement. The Chartered Land Act, the Land Management Act, all these framework agreements were negotiated behind closed doors with various federal officials and senators. Yet, this government has continued to breach its fiduciary duty to the remaining 51 per cent-plus of band members who will continue this fight. We are asking that this committee stop the bill, and at least take enough time to look at it and maybe get some legal advice on it. You can see the devastation it will create on reserves across Canada, and I mean it, because it will be a template for other bands to follow. I do not think that is right because what you

will have done, senators, is you will have created an Indian Mafia in Canada. I do not think that will be right for the Canadian people.

I thank you for taking the time to listen to me. I have condensed it. I would like to say more, but you do not give me much time. I do not think that is fair, because I have never had time to be on this committee and to present before you the problems we are having. This is the first time.

Comment [TSoC7]: The reporter put in this comment – I can hear Sen. Tkachuk saying something, but can't make out what it is.

Senator Tkachuk: (inaudible) something about time you had?

Ms. Wilson: We phoned and we said we were not invited. We phoned and phoned and phoned.

I can show you my phone bill. I think it is a shame that this government cannot listen to the people who oppose a bill of such magnitude. Thank you.

The Chairman: We will ask you to remain and answer questions a little later. Mr. Forney, please proceed.

Mr. Ray Forney, As an individual: Thank you for the opportunity to express my opinion and the opinions of many non-native residents who reside on Westbank First Nations land.

This is our first opportunity to appear in opposition to the agreement, as we were given 24-hour's notice to appear with the Senate committee, which obviously was impossible to fulfil, so this is the first opportunity that any opposition has had to present to Parliament or the Senate.

Senator St. Germain: Were you referring to the Commons committee?

Mr. Forney: Yes, the Commons committee, sorry. Thank you again for giving us this opportunity.

I have been in direct contact with many non-native residents in the past three months. These are some of my summaries.

Basically, I am retired engineer, 73 years of age. I was born in Kelowna, and attended a small country school somewhat north of Kelowna. I had many friends from many different groups, such as East Indian, African, Canadian, Japanese and our native Canadians; therefore, racial discrimination was not a part of my life, and it never will be.

My wife and I presently reside on Westbank First Nations land in a mobile home park, and have done so for the past seven years. We have had no reason to be alarmed with the fact that we live on native lands.

A large percentage of non-native residents on band land live in walled-in villages or in mobile home parks such as we do, and are of retirement age. From my experience, most of them are unaware of band policy, as a specific management group governs each complex; therefore, the management group, and not the band, handles most of the things that take place.

For the most part, these residents do not ponder on band politics, nor do they have any problem with self-government as the Westbank First Nation people have basically had a form of self-government for years, with taxation and so on. I have many native friends who live on the reserve, and I have relatives who live on the reserve, including a son-in-law who is very active in band activities. He has had a two-year term as a band council member, has been involved in assignments paid for by the band and chief and is a strong supporter of youth members of the band in sports and recreation activities. I have had the occasion to assist this young man in his band

endeavours and have been a strong supporter of all of his efforts, including his participation in the self-government proposal, as I am aware of the inequities of the Indian Act.

It was not until late January of this year that the red flag went up. I was discussing an issue with a band member and to my surprise and disbelief, I heard this statement: "When we get self-government and make all our new laws, we will be able to do anything we want."

It was not long before I obtained copies and studied the self-government agreements, some 84 pages, the Westbank First Nation land code, some 59 pages, and the Westbank First Nation Constitution, 92 pages – all of these go hand in hand and, as well, the Indian Act comes into effect here.

After several days of reviewing these documents, I became more upset and somewhat confused as to the contents and to the many references found in the various documents. However, some areas were quite clear to me as they did not require interpretation, such as -- and this may not be the exact wording of the agreement: Westbank law will supersede Canadian law, and some clauses may be amended by resolution of council without outside input if there is confliction between the Canadian Charter of Rights and Freedoms and the agreement. This agreement will be a template for all future self-government agreements in our country, some 603 reserves. How this agreement will relate to the many land claims that are now in due process -- land claims that include both Canadian and U.S. in the Okanagan nation, conflict between border crossings, et cetera, and a lack of protection for non-native spouses of band members and other items -- I will not bring forward as I am not qualified to do so. Hopefully, there are other who will be reviewing this and stating their opinions. In general,

the agreement will give the band chief and council unprecedented powers over approximately 8000 non-natives and some 500 native residents on the band land.

Others who are more qualified than I must interpret some other areas of the agreement. It was now that I was interested in the feelings of other non-native residents on band land. After some 150 or so telephone conversations and more than 200 personal contacts with residents on the band land, it was not surprising that they, in nearly every case, were wandering down a garden path in complete ignorance of the contents of the agreement, or any of the related documents that they could well be governed by in the near future.

(Take 1100 follows, Mr. Forney continuing - *** They also had a somewhat)

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(1100 begins, Mr. Forney continuing after, in the near future.)

They also had a somewhat apathetic attitude toward the whole issue, not unlike my own attitude some few weeks before.

We were all guilty of riding on blind faith with the attitude that, what could happen to us that would be so bad? Some comments that I got from mostly elderly people were such as: "I am too old to fight this, I am 78 years of age." or "I will not be around to see what happens so why should I worry?" Or "What can I do? They will do what they want any way." or "If there are negative, unconstitutional parts of the self-government agreement, surely Parliament will find these and change them. Is that not what we are paying them for?" Another gentleman who was the go-between in a

walled-in village of some 250 residents, and I spoke to him for several hours, said, "What are you asking me to do, tell these old people, some of whom are ill that their life investments are in jeopardy? They would have heart attacks. They would panic and try to sell their homes."

Then there are those elderly residents who do not agree with the agreement or parts of it who will fight it all the way to the Supreme Court of Canada. Many residents chose to ignore what was happening in hopes that it would go away. Others were afraid to speak out as they may be subjected to retaliation or harassment. Some felt helpless, as they did not know what to do because they did not understand it. One might ask the question: Did we not have representation in the four members of the advisory council? The answer to that question is simple: No, we did not.

The advisory council was appointed and paid by the Westbank First Nation chief and council. The advisory council in the past five years plus, did not have one meeting amongst themselves to discuss or air their feelings regarding the contents of the agreement or any other related documents. They did not discuss the concerns or their duties toward the residents they supposedly were representing, and they did not have even one meeting with non-native residents such as ourselves to inform us of what was taking place and to be available to answer questions regarding the agreement.

With all due respect to these persons on the advisory council, they simply did not do their job in representing non-native residents. It is also my belief from reputable sources that the advisory council deliberately withheld information contained in the agreement directed by chief and council because they felt the information would upset non-native residents and cause their property values to be decreased.

Also, a point that has been flaunted by the Westbank First Nation chief is that numerous meetings were held. These meetings were basically dominated by the chief and the band council and only a few minutes were left, perhaps 20 to 30 minutes, for the floor for some 75, 80, whatever, 100 non-members, people who were there asking questions. They left them approximately 30 minutes or less to ask questions and have them answered. When the questions were answered they were elusive and incomplete due to the time factor.

We might compare the House of Commons standing committee or the Senate standing committee meetings on Bill C-11, where two full days were spent reviewing a six-page document. At the end of that time they had not reached positive conclusions. They left questions unanswered and ignored. How then could we review some 84 pages, plus 400 pages of related documents, in a two-hour meeting when we had 20 minutes to ask questions? Totally impossible.

These meetings only added to the confusion.

In conclusion, Mr. Chairman, how could approximately 8,000 non-native residents approve this agreement when they were not informed and were ignorant of its contents? Also, if adequately informed, how could they come to a qualified opinion when even the lawyers and scholars who have studied the agreement and related documents have varying opinions and/or interpretations of the agreement? This fact in itself tells us that further study of the agreement must be carried out before it is adopted as law as it will reflect on Canadians as a whole, not just Westbank.

I have reason to believe that many of the MPs who voted in favour of the self-government agreement, specifically Bill C-11, did not review the agreement, did not have copies of the agreement

and did not study same. I question how they could vote in favour of something that they were not totally informed of.

This entire scenario is not about Westbank First Nation. Let us just for a moment change the scenario and replace Westbank First Nation with the words "East Management Group," who at present has 603 parcels of land in our country and is negotiating for some 10 times that amount. Would we give them the unprecedented powers that are in this agreement? I would suggest that this issue be further studied by a qualified committee and that a Senate committee appear in Westbank to hear the concerns firsthand of the multitude of non-native residents who oppose this agreement.

Most of my efforts to date have been unrecognized by the parliamentary process, such as letters to Mr. Paul Martin and Mr. Stephen Harper, e-mails, et cetera, with various copies -- I could provide those if you so wish.

In closing, the media seems to indicate that this is a done deal. If so, it will be extremely upsetting and hurtful to us that we have appeared here only to add a frill to this scenario.

The Chairman: Thank you for your presentations. The floor is now open for questions.

Senator Tkachuk: It bothered me that the people who oppose the agreement were dealt with, it seems, rather rudely by the members of the House committee. I want all of you shortly just to explain the efforts you made. I want to get it on the record, to speak in opposition to the bill and you were not, I understand, allowed to do so.

We will start with you, Ms. Wilson.

Ms. Wilson: About our not being able to speak.

Senator Tkachuk: And your efforts to appear.

Ms. Wilson: We made a lot of efforts and Mr. John Cummins made a lot of efforts on our behalf.

We were all turned down, from what direction I am not really sure. All I know is that Mr. Cummins said we were not allowed.

Ms. Hardy: My husband made most of the efforts. He was in touch with the clerk of the committee. As soon as we found out who was putting the committee together, we made contact almost on a daily basis. We called and made sure that everyone understood that we were willing and able. There were about four or five of us who were willing and able to travel to Ottawa if Ottawa could not or would not come to Kelowna. All we asked was just to give us the time-frame needed to make reservations and go.

(1110 follows, Ms. Hardy continuing, When it came close)

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(Ms. Hardy continuing after reservations and go)

When it came close to the time that the committee was calling people, we knew that one person from regional district was in Ottawa the day before four people from a list of 12 witnesses that wanted to be called was presented to the clerk. Four people were called, and those four people were given 24 hours or less to appear at a teleconference. Our opportunity to travel was gone. We could not travel.

That really bothered us, because we knew that there was someone from regional district who had flown to Ottawa and had said to someone on the committee to recommend that they not to travel to Kelowna. We were quite upset about that.

I was one of the people who were not invited.

Mr. Forney: I have basically been working independently on this because I was stirred up by the remarks that I mentioned earlier. I first wrote letters to Stockwell Day asking for representations. He promised to have a committee come to Westbank to review our concerns. That did not happen.

I followed up with letters asking for us to appear here. That did not happen.

I wrote letters to Paul Martin with copies going to the commons committee. I wrote letters to Stephen Harper. I wrote further letters to Stockwell Day, Werner Schmidt and others. Not one of these faxes, e-mails or letters was recognized. Why?

Senator Tkachuk: Ms. Hardy, were you a member of the advisory council?

Ms. Hardy: Yes.

Senator Tkachuk: Are you still a member?

Ms. Hardy: No.

Senator Tkachuk: Why is that?

Ms. Hardy: I was appointed in March 2002 and resigned May 1, 2003. Why did I resign?

Senator Tkachuk: First, how did you become a member of the advisory council?

Ms. Hardy: We had issues on our street. We do not have any services for tax dollars.

Senator Tkachuk: How much tax do you pay?

Ms. Hardy: Eleven houses pay may \$50,000. We are on the waterfront, so we are the highest taxpayers on WFN land.

We had issues on our street. We decided to form a committee of the street residents and try to organize something to rectify the problem. We thought, we will manage one way or another to do this and decided to go to the band office and meet some of the people and the band members. We said that we would have to help some of these band members. Perhaps they are new at this governance, and we will work it out. We would get to know them and work out a relationship. We were confident that that would work.

My husband went to the band office. He had been to lunch with maybe three or four of the band members. He was asked by, I believe, the chief negotiator to go on the advisory council because there was a vacancy. My husband said that he was too busy and that he recommended that I go sit on the advisory council. He would work with me in the background. Together, we have always been a team. That is how I was appointed.

My husband and I both had no issue with self-government. We thought that that was fine. If the natives want self-government, we did not see any issue. We were not very informed; we will admit that. We did not know anything about it.

Senator Tkachuk: Will there be elections for the advisory council?

Ms. Hardy: Yes, there will be.

Senator Tkachuk: How often will they be?

Ms. Hardy: I am not that clear on all of the details. I do not have the document that has been recently produced.

I want to add that that is an issue with me. I do not think there will be any difference whether they are elected.

When I was on the advisory council, two of the advisory council members thought they had been elected. One of the first things that I was told was that these two particular people were elected. The other three were appointed.

At one time I came across a document, I think it was the letter of intent that stated that all five members of the advisory council were appointed. Two of the people did not even know that they were actually appointed.

We do not have the authority or the legitimate representation. Therefore, it makes no difference whether we are elected.

Senator Tkachuk: Ms. Wilson, one more question and then I will pass. My understanding from the chief was that there were three elections on the agreement on self-government at Westbank. The first two were not in the majority. How is it that you were not able to convince the majority of the voters to oppose this?

Ms. Wilson: We tried. We petitioned the electoral officer. We wrote letters. We told them that there were deceased people on the voters list. No one would listen to us.

The electoral officer said, "Well, it is on the Westbank First Nation voters list so they must be there. They put it down." We said, "No, these people are dead, and you are allowing them to vote." My mother probably got up and voted.

We notified authorities. We notified the Minister of Indian Affairs. We notified everyone of the discrepancy in the voters list and no one would listen to us.

There were petitions sent to Ottawa. We never had a reply back, let alone a telephone call. That was on the third one.

Senator Tkachuk: What about the first two?

Ms. Wilson: The first two were fairly legitimate. The majority of the full membership was on the voters list. At that time, if you did not vote, you were automatically counted as "no".

Senator Tkachuk: In other words, if you voted you were considered for the agreement. If you did not vote or voted "no" then it was a no vote?

Ms. Wilson: Yes.

Senator Tkachuk: What were the results of that election?

Ms. Wilson: That was a huge majority on our part. We won with, I believe, 53 per cent.

Senator Tkachuk: You had 53 per cent of the vote.

Ms. Wilson: I believe so.

Senator Tkachuk: What about the second time?

Ms. Wilson: We won the second vote by one vote.

Senator Tkachuk: I am confused here.

Ms. Wilson: We won by one vote.

Senator Tkachuk: Am I as confused as you are?

Senator Munson: I wish to clarify. Are you saying that if you did not vote, you were counted as a no vote? That is how you won by one vote?

Ms. Wilson: We won by more than one vote on the first one. That was the first vote.

Senator Munson: My colleague said that it was the second vote.

Ms. Wilson: The second vote was the same. Deceased people started appearing on the voter list for the third vote.

Senator Mercer: I thank you for taking the time and for coming to see us. I have several issues.

I am concerned because the council and the chief are still in the room.

(Take 1120 Follows - Senator Mercer continuing: I am concerned when Ms. Hardy...)

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(1120 -- speaker continuing after: still in the room.)

** I am concerned when Ms. Hardy talks about threats and about not receiving proper service because of her opposition to self-governance. They need to address this in the future as we move forward on this.

However, I wish to remind Ms. Hardy that one chief not honouring the commitments of a previous chief happens every day in politics whether it is on a reserve. It happens in this city every day. Some of us are happy with it and others, such as I, who are not happy with it. That being the case, Ms. Wilson, I am confused, as my colleague was confused, about this voting process. If you do not vote then, in my books, your vote does not count. The only way your voice can be heard in a democratic process is by putting your vote in the ballot box. I put no credence in any vote that says a non-appearance is a no vote. If you want to vote no, then you show up and vote no.

Ms. Wilson: I am sorry but I think you are confused. I voted no. However, I am saying that the people who live off the reserve in the States and in other countries did not bother to send in their ballots because it was a mail-out vote. The ballots not received were counted as no votes. Those of us that reside on Westbank voted no.

Senator Mercer: Decisions are made by those who show up in my kind of democracy with the politics that I have operated under for a couple of years now. If you do not show up, then you do not take part in the decision. I do not count that as a no vote. Rather I consider those to be votes that do not count. I want to know the percentages of the people who actually voted.

Ms. Wilson: Oh, the percentage was good enough that we won by the vote itself.

Ms. Hardy: I have it in the letter here.

Senator Mercer: I am confused on this issue. That is not what I understood in previous meetings and earlier in today's meeting.

Ms. Hardy: I have all the percentages here.

Senator Mercer: They are in your letter.

Ms. Hardy: They are in the book that I presented.

Senator Tkachuk: What would the percentages be?

Ms. Hardy: The first vote was June 13 and the second vote was May 24 and the percentages were as follows: 56.7 per cent of the total votes cast were in were in favour of self-government -- a simple majority; and 45.3 per cent of the total eligible voters were in favour of self-government. These results are from the last vote, which was May 24. Of the eligible voters, 45.3 per cent were in favour -- pure majority self-government.

Comment [TSoC8]: Numbers were quite clear but I'm missing something. Please check.

Senator Mercer: My last comment is to Mr. Forney.

You should be around here to find lawyers and scholars who do not agree all the time; it is remarkable. Certainly, do not talk to economists because they never agree.

I was just curious about the future. You indicated that your son-in-law had been a member of band council before. My question is: why did he leave the council and will he try to return to the council in the future?

Mr. Forney: His term expired and he ran in the following election but he lost by a small margin.

He will run again. He is ambitious and a good, hard worker.

Senator St. Germain: I wish to thank our witnesses for coming. As you know, I work with Senator Fitzpatrick. He and I are British Columbia senators and we made sure you came before the committee on Bill C-11. This is important and we put in our request to the Clerk and the Chair of the committee. Working together we were able to bring you here today. It is important that your voices be heard. Certain things are happening in this country, such as an election that never seems to be called, but these are some of the inequities of our system. You talk about self-government having short-comings; well, I think fixed elections are due and quickly, but nothing is perfect.

I have a question for you, Ms. Wilson. Did you not tell me in a phone call that as far as you were concerned, you wanted to have the right to be able to dispose of your land in any way possible?

Ms. Wilson: I said that I have the right, in a good democracy, is the freedom to vote for government that I want to be ruled by and not have one foisted upon me through this federal government, which I do not believe in, or by a third level of government, which I do not think should have any place in Canadian society. I, as a native, and every other native, do not want to experience the colonization of this government again. If you were to pass this bill you would be taking us back 200 years to the days of colonization. With this bill, we will not be herded on to reserves to live the rest of our lives in poverty but we will be herded off the reserves so that chief and council can take over our lands, develop them and do whatever they damn well please with them.

Senator St. Germain: I asked that question. You have a certificate of possession now in your family.

Ms. Wilson: I do have that but it will not do me any good.

Senator St. Germain: I asked that question earlier today because it is a concern of mine, about how these certificates originated, whether there was equity when they were first issued and, mainly, whether they would be protected. I will not argue with you, Ms. Wilson, because you are entitled to your views. However, it is a concern of mine.

My biggest concerns, and Mr. Forney mentioned this, are the inequities of the Indian Act as it stands. The Indian Act has subjected Indian people to ghettos, poverty, discrimination and everything else just by nature of its design. I am not saying that the people involved are bad but rather that the system is bad. The previous government and the present government have adopted this method to get native peoples out from under this paternalistic organization that has virtually done great damage. The Westbank First Nation is most likely an example of success compared to most Indian bands.

Ms. Wilson: For whom?

Senator St. Germain: If you look at the broad picture, Ms. Wilson, you can see a reasonable degree of wealth in that area, although I am not saying that it is distributed equitably; and I will not enter that debate. I am speaking in generalities.

If we do nothing and continue as we have done, we will always have what we have always had.

Mr. Forney, you spoke to the inequities of the Indian Act. If we do not allow native peoples to take control of their own lives and get them away from the Deputy Minister and Minister of Indian and Northern Affairs, how will we ever accomplish anything for our Aboriginal peoples?

Mr. Forney: That is a good question. I am totally in favour of the Westbank First Nation self-government, with some revisions. Qualified people must look at those revisions. Some areas have prompted disagreement, such as the delegation of too much power and the creation of a template for all others in this country to follow.

Senator St. Germain: I have a quick comment on the template. I have been here for 20-some years. I was a Member of Parliament and have been in the Senate for the last 10 years. Having worked with Indian bands across this country, I do not think that a template is an appropriate statement to make.

(1130 follows -- Sen. St. Germain continuing: ** Every one of these nations...)

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(Following Take 1120, Sen. St. Germain continuing -- statement to make)

*** Every one of these nations that I have dealt with have a uniqueness unto themselves and they want something that is different in most cases.

I have worked on a piece of enabling legislation for two or three years, which, hopefully, I will be able to present to the next session of Parliament. The fact is that these people -- the Aboriginal

peoples in Nova Scotia or here in Ontario, like the Six Nations in Ontario here, or you take the bands in Saskatchewan and our bands in British Columbia -- are so diverse, and their needs are so different, that it is unbelievable to say a template would apply, but I will not argue with you. I appreciate the fact that you have come, and I wish there was more time. However, we are in a minority in the opposition. Having said that, I really appreciate the fact that you have taken the time to come.

Mr. Forney: I am well aware of the diversified bands throughout the country, and this is another problem. We will have, say, 603 levels of third government.

Senator St. Germain: As I take, Mr. Chairman, I do not think this is a third level of government, but that is another argument that you could go on ad infinitum. Thank you very much.

Senator Fitzpatrick: Thank you. First, I would like to welcome you here. I would like to welcome all those from my home territory of Kelowna who are here today, not only as witnesses but to participate in this process.

As Senator St. Germain has said, we are both from British Columbia. I am the sponsor of the bill, and the senator spoke to the bill last week when it was before the Senate. It was very important to both of us and, in particular, to Senator St. Germain that you be able to appear here as witnesses. I am pleased that you are here and had the opportunity to have enough notice to get here.

Obviously, I am in support of the bill and I will send you the comments that I made in the Senate. I would like to, if I may, clarify one issue. I am not arguing about the adequacy or inadequacy of services, but I happen to live on the other side of the lake from you, and I also live on the lake, Ms. Hardy, and I am in the municipality of Kelowna. Between my house and my winery and my

son's house, we probably pay a very substantial amount in taxes and, unfortunately, we do not have sewer or water service where we are either. That, I think, is part of what we have to deal with in a rural or semi-rural area. I wanted to state that, that it is not abnormal in the area to not have these services.

Chairman, I do not want to make any other statements because I am not part of the committee, but I did feel that that should be clarified. Again, thank you for coming.

The Chairman: With that, I want to thank you for coming -- B.C. is a long way from here.

Thank you for coming and freely expressing your opinions on this matter. You will have helped us in dealing with this. Thank you very much.

Our next witness is Ms. Tanis Fiss from the Centre for Aboriginal Policy Change. This is from the Canadian Taxpayer's Federation.

Please proceed.

Ms. Tanis Fiss, Director, Centre for Aboriginal Policy Change, Canadian Taxpayer's

Federation: I would like to thank the committee for inviting us here today. Like other experiences, we were unable to speak at the House of Commons level. We first applied to speak upon Bill C-11 back in November, when it was first read in the House of Commons. Of course, former Prime Minister Jean Chrétien prorogued Parliament. We then applied again to speak before the committee earlier this year. We were given less than 24 hours' notice to appear before the house committee, and we were unable to do so because of the lack of notice. On behalf of the 61,000 supporters of

Canadian Taxpayer's Federation, thank you for having us here today for this very important piece of legislation.

I will speak to why the Canadian Taxpayer's Federation opposes this bill. I have a presentation here. However, I will not read from it because listening to the other witnesses here, we have already covered off some of the points. I do not want to waste your time rehashing things that have already been discussed.

There are three main reasons why the Canadian Taxpayer's Federation opposes Bill C-11. The number one, in our view, is that the band council will be exempt from the Canadian Charter of Rights and Freedoms. That is something that concerns us. We believe that it establishes a third-order style of government; we do not believe there is room within the Constitution to do that. We are also concerned about the issue of taxation without representation, as we have heard those discussions here today.

I think everyone here is in agreement that the Constitution of Canada is the supreme law of the land. Section 25 is part of that Constitution; therefore, we believe that it applies in this particular case, which would exempt the Westbank band from Charter application. There could be allegations of discrimination, for example, that could not be brought forth with a Charter challenge.

Then there is the issue of the third-order style of government. Yes, the Province of British Columbia and the federal government have established a de facto third-order style of government with the ratification of the Nisga'a treaty. However, it is very important to mention that there is a group of Nisga'a people who are arguing the constitutionality of that particular agreement before the

courts. They, too, do not believe there is room in the Constitution for a third-order style of government. We feel that the Westbank agreement will further entrench a third-order style of government within Canada, and that a municipal style of government would be far better for native Canadians.

There will be some who say that CTF believes in assimilation. We believe it is more integration, because perhaps the Westbank agreement will work today, and possibly tomorrow, but we must do fast forward 100 years from now. Can Canada actually sustain 600 separate enclaves of semi-sovereign nations within Canada? That is exactly what we are establishing here today.

We have seen in other countries, such as South Africa and the former Yugoslavia, that when you start treating some citizens more equally than others, there will be tension within society. At the Canadian Taxpayer's Federation, we do not want to see that happen in Canada. We feel that as long as you segregate a group of people -- draw a circle around them and treat them differently, as we believe the Westbank agreement does -- you will get tension within your society. In the long run, we feel that is not sustainable for Canada.

With regard to the issue of taxation without representation, there are approximately 7500 non-Aboriginals.

(Take 1150 follows, Ms. Fiss continuing - ***I believe that has been)

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(Ms. Fiss continuing after non-Aboriginals)

I believe that has been established here today. They do not have, in our opinion, an adequate say over what happens within their community.

Yes, there will be an advisory board. Yes, there are advisory boards with other native band councils as well, such as Sechelt, which is located in British Columbia. However, it has not been in place long enough to know whether it will actually provide enough redress for the community members.

We raise the concern. We are not saying it will not happen. It is just a concern for us that there is taxation without representation. We believe that if you are to be taxed, you have a fundamental right to have your voice heard within your community. We are uncertain that the particular advisory council will actually provide enough of that. That is pretty much where the Canadian Taxpayers Federation stands on this bill.

Again, I would like to thank the Senate committee for providing this opportunity because we were not given this opportunity when the bill was at the House of Commons. I look forward to taking your questions.

Senator Tkachuk: There is a question of whether the Charter applies. There was an article in the *National Post* today about a judge of the Quebec court, I think, and other judges being a moral arbiter of Canadian society. He considers himself the new priest of Canadians society, which frightened me. Perhaps the Charter not applying would be a good thing for the Westbank band and not a bad thing. We have had that discussion.

I do not think that we ever had a debate in Parliament about the principles of self-government and how we would approach it. I find that rather astounding. Nonetheless, we sort of leapfrog from one agreement to another without anyone having a clue how this thing will work when it is all finished.

We have had that discussion earlier here on the question of whether the Charter applies. You say it does not apply. I think that is what you said.

Ms. Fiss: Yes, in our opinion it does not.

Senator Tkachuk: How do you back up your opinion that it does not apply? Why do you say that?

Ms. Fiss: We say that for two reasons. Section 25 is contained within the Constitution. That section exempts Aboriginal communities from application of the Charter.

As well, the Westbank self-government agreement is written on the premise that the inherent right to self-government is contained within section 35. However, the inherent right to self-government has not actually been defined. Is this going to end up being in the long run merely an agreement and legislation that can be amended? The CTF supports that. Societies and people change. They should have a right to look at legislation and change it as society changes. If that is the case, then we are quite pleased at how the Westbank agreement can change with time.

However, we are concerned that because the inherent right to self-government has yet to be defined this may become a treaty so to speak or become entrenched within the Constitution.

Thereby, it would be as if written in stone and be virtually impossible to change.

Senator Tkachuk: You do not think that this is a bill that can be amended by Parliament?

Ms. Fiss: There are some individuals who would say that the Westbank band, in negotiations with the federal government, can actually amend this agreement if all parties are wanting to do that. The Constitution can be amended, but we all know how onerous a task that is. Therefore, this agreement will essentially be written in stone.

Senator St. Germain: Thank you for coming, Ms. Fiss.

Sechelt band has been operating under several government for a period of time. It has been very successful in British Columbia. I will not discuss the Charter rights.

You say that there is an inherent right to question the third order of government. Are you familiar with the Proclamation of 1763?

Ms. Fiss: Yes.

Senator St. Germain: The king clearly stated that there were nations that had to be dealt with in a certain manner?

Ms. Fiss: Yes.

Senator St. Germain: Your federation represents many people in Canada. Look at our Aboriginal communities. There is poverty and problems. Look at urban Aboriginals. I have worked on that for several years.

The non-Aboriginal community has taken the position that something has to be done. Has the taxpayers association a solution?

Previous governments and this government have decided that self-government is possibly one of the only ways that these people can assert themselves in society, while maintaining some of their cultural and historical rights. Has the taxpayers association an alternative to this? It is easy to criticize, but how do you come up with a solution?

Ms. Fiss: Certainly -- if you oppose, always propose. I like you what said to the former witnesses. You felt that the system was broken.

Without a doubt the Canadian Taxpayers Federation believes the current system is broken. The Indian Act is broken it is outdate. It is a good thing for the Westbank people to be moving away from the control of the Indian Act.

The Canadian Taxpayers Federation advocates the eventual abolition of the Indian Act because we that it does more harm than good. That would be imperative to help native Canadians prosper. As it stands now, land that comprises the native reserve is held in trust by Crown. We feel that limits the ability of native Canadians to fully participate within the Canadian economy. We would like for that land to be transferred in fee simple to the band members. They can decide how they wish to run their community.

As I mentioned in my presentation, we would like move more as a municipal style of government. The Sechelt agreement is more a mirror of a municipal style of government. We feel that would be in the best interests of native Canadians rather than setting up yet another system in

order to treat them differently. Any time that happens in other countries, it leads to tensions within that society, unfortunately. That is one of our proposals.

Comment [TSoC9]: <http://pup.princeton.edu/titles/423.html>

Senator St. Germain: Have you read the book entitled *And Still the Waters Run?*

Ms. Fiss: No.

Senator St. Germain: There are six Indian bands in Oklahoma that were relocated from the East Coast of North America. They were put on lands in Oklahoma. They discovered that lands on which they put these natives were abundant in coal and oil resources. The federal government in the United States decided that the only way to access it was to turn the land over fee simple. There was only one band of the six bands that did not. The rest of the land was exploited, just as the lands were exploited for my people, the Metis people in Manitoba. It was fraudulently taken away from these people in a process that you are advocating.

It is a philosophical position as to whether these people should hold on to lands from a communal point of view. The majority of our native people want that. There are some at the table here who live on reserves.

The argument will continue as to whether they should go to fee simple. However, I can guarantee you that if we turned these lands over to fee simple, we would lose our Aboriginal peoples from the cultural and other various points of view. The only way that we can maintain this valuable asset to Canada is by identifying them with a land base. It is an argument. I respect your position.

Ms. Fiss: I respectfully disagree with you, because I would say that if fee simple is given to native Canadians, they can choose to hold the lands communally. There is nothing that says they cannot.

If that is what they want to do, fine. If they want to have some band owned lands and some individual property that should be up to native Canadians who comprise that community to decide.

For too long, it has been Ottawa treating native Canadians as though they are incompetent children, incapable of taking care of themselves. Ottawa knows best. That is why we have the Indian Act and are always dictatorial.

(Take 1150 Follows - Senator St. Germain: Do you not see us, the Westbank...)

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(1150 begins after Ms. Fiss, always dictatorial.)

Senator St. Germain: Do you not see us, the Westbank, like Sechelt and various others? There are several. This is not new. We are not inventing the wheel here. Can you see this as a step in the right direction at least of getting out from under the Indian Act?

Ms. Fiss: Getting out from under the Indian Act, which I said previously, is a good thing for the Westbank people. The Canadian Taxpayers Federation does not believe that, in the long run, setting up a third-order style of government will be a positive thing for Canada.

Senator Gill: I would like to refer to two statements. I will paraphrase. You said, for example, that you are against assimilation but for integration. I would like to know what you mean by

integration? The second is, no taxation, no representation so it implies that no Aboriginal is paying income tax or taxation of some kind.

Ms. Fiss: I will clarify.

Senator Gill: If there are taxes paid by the Aboriginals, it means they can have their representation. Could you comment on that?

Ms. Fiss: Integration means integration within Canada's economy and within society. Again, it is an individual choice, whether you want to do that. We feel at the Canadian Taxpayers Federation that native Canadians should be given that opportunity. As I mentioned before, we feel that letting native Canadians actually have control over the land by owning it, whether communally or as individuals, will actually allow them to do that.

As well, I liked what another member said to a previous group of witnesses, that one thing the Westbank does, it is unique to the Westbank people itself, hence why the Canadian Taxpayers Federation advocates more for the municipal style of government than the third order. To say all municipalities in Canada are the same, to me is a false statement because it would be like saying Vancouver is the same as Moncton or Moose Jaw. That is why we are advocating for the municipal style of government. The native Canadians could have greater autonomy over their communities within that system. Their languages, their traditions, could still continue to flourish if again that is what the people in that community choose to do. There would be no barriers to that. As far as taxation without representation, yes, native Canadians who are working and living on the reserve are in the most part paying taxes to the band council and they do have representation with a vote in

community elections. We are advocating that the non-natives should also have more of a say within the communities rather than simply the advisory board because they are paying taxes to that community which is beneficial to all members of that community because, of course, the tax dollars are being pooled to be utilized in that community. Those non-native Canadians living there should have a greater say.

Senator Gill: I am talking also about those who are living off reserve or even on reserve -- Aboriginal people paying income tax outside the reserve -- to provincial and federal governments. Most of the time they do not have representation there.

Ms. Fiss: Well, native Canadians who live off reserve have the same rights and responsibilities as any other Canadian with regard to paying taxes. They also have the right to vote in municipal elections, provincial elections and federal elections. I would argue that there is representation there as well because off-reserve natives, after the Corbier decision, now have a right to vote on reserve elections.

Senator Gill: Say that to the Aboriginal people across the country. Try to convince them they have this right.

Senator Pearson: I want to make a quick comment. I am wary of always tying the mantra of no taxation without representation because all of us at one level or another pay taxes including kids. Kids do not have a vote so how will you expand your argument? Those of us who have summer properties and so on in different provinces, we do not have the vote and all that. I think the mantra

itself is not helpful. I think the argument should be a little more specifically related to the situation in which people find themselves.

Senator Léger: Did I misunderstand? You used the word "segregation," that by creating this situation, the non-members would become segregated. Good Lord, does not segregation exist already to the full extent with the Aboriginals? They are the ones who are segregated.

Ms. Fiss: Absolutely, and it is the native Canadians who I am actually talking about here. Clearly, the reserve system segregates them from the rest of Canadian society and we believe establishing yet a third order of government is just a continuation of the reserve system.

Senator Léger: Did you not apply the word segregation to the non-members, to the second order of government or the first order of government? I think you applied that word to the non-members.

Ms. Fiss: No, I apologize if that is how it came across. I was actually referring to native Canadians; that once again, drawing a circle around these individuals and setting up a completely different system will continue to segregate native Canadians.

Senator Léger: Another point you said was we cannot look ahead and we are going to do 601 differences. Why not? I mean, basically we are sitting right here and we are all dressed the same, we are all using the same words to argue for or against, so why is it so difficult for -- not only your association but for your opinion, that Canada cannot start opening doors and, yes, we will get together. We know there are more and more immigrants. I personally feel it will begin with the Aboriginals, to be able to answer the next one. Why can we not? It cannot be that different or can it?

Ms. Fiss: We are not obviously opposed to, as I mentioned, abolishing the Indian Act, the reserve system, and establishing a municipal style of government. We oppose establishing the third order of government, which we feel that the Westbank agreement will entrench.

Senator Léger: You said you wanted to abolish the Indian Act and you just said now you did not.

Ms. Fiss: Yes I did say we want to abolish the Indian Act and reserve system.

Senator Tkachuk: Which is what she said earlier. Let us not be so hard on her.

Senator Léger: The third order of government might be the only thing that has to come in now. It cannot be the old way only. I feel the taxpayers association is set in the way we have always done, and not some opening for something else.

Ms. Fiss: I disagree with your opinion and you are entitled to it. It is just we believe that a third order style of government is not in the best interests of Canada and moving along a municipal style of government is actually in the best interests of Canada and the best interests of native Canadians as well.

Senator Léger: Thank you.

Senator Tkachuk: I would like to thank the Canadian Taxpayers Association for establishing a refreshing voice on this issue. For a long time, few groups did independent study on this issue and I understand the taxpayers association has decided to do that. This is the kind of debate we should be having in Parliament and we have never had. I agree with many of the things that Ms. Fiss has said

and so I think this has been refreshing. Maybe all of Parliament should have this debate. It might be an interesting debate to have.

Senator Gill: Can we be members of the association, paying taxes?

Ms. Fiss: Of course.

Senator Gill: Do you study how many Aboriginal members are paying income tax and taxes?

Ms. Fiss: I am.

Senator Gill: Lots of people.

The Chairman: Thank you very much for your attendance and providing us with your views.

Senators this concludes our witnesses that we have arranged to hear. Considering the time that we have to deal with this, I thank you all for your participation.

Are senators now ready to deal with this matter in clause by clause?

Some Hon. Senators: Agreed.

The Chairman: We will go through clause-by-clause consideration of the bill and have it concluded today.

(1200 follows, The Chairman continuing, There is agreement to)

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(following take 1150--Chair continuing...have it concluded today.)

There is agreement to deal with clause-by-clause consideration of Bill C-11.

Senator Fitzpatrick: I had said earlier that I am not a member of the committee. I was not then, but I have since been advised -- thank you -- courtesy of someone, that I am a member of the committee. Do not be surprised if I am voting in the process.

The Chairman: Shall the title stand postponed?

Hon. Senators: Agreed.

The Chairman: Shall the preamble stand postponed?

Hon. Senators: Agreed.

The Chairman: Shall clause 1 stand postponed?

Hon. Senators: Agreed.

The Chairman: Shall clause 2 carry?

Hon. Senators: Agreed.

The Chairman: Shall clauses 3 to 5 carry?

Hon. Senators: Agreed.

The Chairman: Shall clauses 6 to 8 carry?

Hon. Senators: Agreed.

The Chairman: Shall clauses 9 to 12 carry?

Hon. Senators: Agreed.

The Chairman: Shall clauses 13 to 15 carry?

Hon. Senators: Agreed.

The Chairman: Shall clauses 16 to 19 carry?

Hon. Senators: Agreed.

The Chairman: Shall clauses 20 to 22 carry?

Hon. Senators: Agreed.

The Chairman: Shall clause 1 carry?

Hon. Senators: Agreed.

The Chairman: Shall the preamble carry?

Hon. Senators: Agreed.

The Chairman: Shall the title carry?

Hon. Senators: Agreed.

The Chairman: Is it agreed that this bill be adopted without amendment?

Hon. Senators: Agreed.

The Chairman: Is it agreed that I report this bill to the Senate?

Hon. Senators: Agreed.

The Chairman: Thank you very much, colleagues. The meeting is concluded.

The committee adjourned.