



## Briefing Note on Current Parliamentary Activity: Senate Committee Hearings on C-27 Begin As First Nation/Government Relationship Reaches “Tipping Point”

**A Four Arrows Summary  
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Treaty 8 First Nations of Alberta**

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**THE HILL TIMES**online

6 February 2013

### **Opposition MPs say relationship between feds, First Nations at a ‘tipping point’**

*Thanks to Bea Vongouangchanh and The Hill Times*

Ottawa, Ontario – Despite Idle No More demonstrations, the hunger strikes, railway and highway blockades, Tom Flanagan says that First Nation issues remain precisely where they were in 2012.

The Harper Government says where things were is that it has improved the lives of First Nations peoples.

Opposition MPs, however, say the relationship between First Nations and the federal government is reaching a “dangerous tipping point”. They vow to keep up political pressure in the House of Commons.

They also say that gaps in economic, health, and social indicators need to be addressed in a non-partisan way

“If the government were serious about moving forward, it would work in a spirit of true partnership and consultation to bring First Nations, Inuit and Métis up to the standard of living that the rest of Canadians expect,” says MP Jean Crowder, NDP critic for aboriginal affairs.

Last week, she put forward an opposition day motion last week calling on the government to make improving economic outcomes for First Nations, Inuit, and Métis a central plank of its upcoming budget, expected at the end of March.

Following months of protests and gatherings of the Idle No More movement across the country, First Nation issues have come front and centre in the House of Commons.

First Nations are calling on the Canadian government to honour treaties, to resolve land claims, to provide them with revenues from their resources, to provide proper funding to First Nations, to consult First Nations on legislation that affect them as outlined under section 35 of the Canadian Constitution, to deal with the *Indian Act* in a comprehensive and meaningful way rather than by “tinkering,” to commit to an inquiry on violence against indigenous women and girls, to create better access to education.

Prime Minister Stephen Harper outlined his priorities for this winter spoke to his majority Conservative caucus last Wednesday, but did not mention First Nation issues as a priority. Rather, he said the Conservative government remains focused on the economy and criminal justice.

But in the House last week, Mr. Harper, who was repeatedly criticized in the Commons for his lack of leadership on aboriginal peoples’ issues and who has faced intense public pressure across the country from First Nations chiefs in the last month, said he would continue to work with those “positive partners who seek to make progress.” He said his government has improved the lives of aboriginal peoples.

“We have made ... unprecedented investments into things that will make a concrete difference in the lives of people,” Mr. Harper said in the House. “In skills training, in housing on reserves, in potable water, in schools, in treaty rights, in protection of the rights of women and, of course, in the resolution of many of the land claims.”

NDP MP Romeo Saganash (Abitibi - Baie James - Nunavik - Eeyou, Quebec), introduced a private member’s bill on 28 January Bill C-469, to ensure that new laws in Canada are made consistent with the *United Nations Declaration on the Rights of Indigenous Peoples*.

After three years of opposing the UN Declaration, the federal government endorsed it on 12 November 2010. It outlines individual and collective rights of the 370-million indigenous people around the world. It calls for a strengthening of cultural identity. It took 25 years, dating back to 1985, for the UN to adopt the Declaration.

When Mr. Saganash introduced his bill, that, "These are minimum standards set by the United Nations that I am asking this House to respect henceforth, in order to ensure the dignity, survival and well-being of all aboriginal peoples, including those of Canada."

University of Calgary professor Tom Flanagan, a former adviser to Mr. Harper and author of *First Nations? Second Thoughts*, said Saganash's bill is a "terrible idea" and that the government should not support it. He told *The Hill Times* that the UN Declaration is merely a "long essay" which is "full of abstract language ... that nobody knows what they mean for certain." Further, he said, it could conflict with the Canadian Constitution.

"We already have over 200 years tradition of dealing with indigenous peoples, going back to the *Royal Proclamation of 1763*, even before that. Let's say starting with the *Royal Proclamation* and a whole body of complex law has developed over the centuries including a couple hundred different treaties. On top of that you would suddenly put this other abstract essay and declare it legally enforceable.

"Nobody knows what the results of that would be," Prof. Flanagan said. "I think it would create legal chaos to adopt it. Virtually everything would be up for challenge. After decades, the courts could work through it, but I don't think we need that kind of confusion. This is a private member's bill. I don't think it has any chance of passing and I hope it will be dispatched as quickly as possible."

Minister John Duncan told *The Hill Times* last week that the government has some concerns with the Declaration but that it has expressed its general support. "Our statement of support for the Declaration demonstrates our specific concerns with some of its provisions. We believe that this document can be interpreted within the context of our own legal framework and the Canadian Constitution."

"Our government is already working in partnership with aboriginal peoples on many of the issues addressed in the Declaration to foster opportunities for a better future for aboriginal peoples in Canada. We are taking concrete actions on education, economic development, housing, child and family services, access to safe drinking water, and the extension of human rights protection and matrimonial real property protection to reserves.

"We continue to make strides in the reconciliation and fulfillment of Aboriginal rights through negotiation of modern treaties and the settlement of specific claims," Mr. Duncan said in the statement to *The Hill Times*.

Mr. Duncan said that the government is "making good progress" on commitments to working with First Nations. "The National Chief and the Prime Minister will be having a meeting in the relatively near future. I am sure they can fully discuss at that time the progress that has been made."

In response to Mr. Saganash's private member's bill, the Assembly of First Nations said that it is continuing to advance the Declaration as a "basic standard and guide to the relationship between indigenous peoples, nations and other governments" and it "welcomes all efforts to raise awareness of this basic standard."

Prof. Flanagan said that the UN Declaration on Indigenous Rights has been used as a "political document" that is not binding on the Canadian government.

"People can refer to it and say, 'The government isn't living up to it.' So it becomes a political resource to be used, but there's no, as far as I know, legal obligations. If you're into litigation, lawyers will cite it in court and attempt to argue that existing Canadian law should be interpreted in the light of the declaration. But that's for judges to decide," he said.

MP Carolyn Bennett (St. Paul's, Ontario), Liberal Party critic, said the government sees First Nation peoples as adversaries. "Their frustration," she said, "is understandable, given the complete lack of progress on their issues and the refusal of the government to fulfill its legal obligation to consult them on matters that may impact their inherent and/or treaty rights and the fact that we find in government documents that the Conservatives actually see First Nations, Inuit and Métis as adversaries."

Ms. Bennett said another key issue impeding First Nations is the lack of resource revenue sharing. "The failure of the government to even begin to deal with the imperative of sharing Canada's natural resource revenues fairly has resulted in relations with Canada's indigenous population reaching a dangerous tipping point. First Nations are pursuing their rights and winning almost every time in the courts," she said.

Despite the protests, Prof. Flanagan said that aboriginal issues remain where they started before the Idle No More movement – Mr. Harper and AFN National Chief Shawn Atleo are working together on "businesslike management of reserves" and education.

06 February 2013

## ***The General Situation and Environment***

### **THE CURRENT PARLIAMENTARY AGENDA**

#### **1. Bills C-38 and C-45 (Budget Implementation**

**Bills):** These two bills have been a target of the Idle No More movement – they are already law. Repeal of either Bill in its entirety is impossible. New legislation could be passed to repeal an objectionable portion of a Bill, or to amend the new Act.

#### **2. Bill C-27: First Nations Financial Transparency**

**Act.** This is a Harper Government measure being billed as a way to enhance transparency on First Nations reserves. If passed into law, this bill would require First Nations leadership to publicly disclose their finances including the salaries of chiefs and councillors. Critics say the measure is paternalistic and overbroad, but the government is plowing on ahead saying the bill will give reserve residents the transparency they need to make informed decisions. (Global News).

Sunmedia editorials describe opposition to the Bill as coming from "First Nations elite" who want "to keep sucking money from taxpayers without having to defend where and how it is spent."

This Bill has passed the House of Commons. It was introduced in the Senate, which passed it at 2<sup>nd</sup> Reading December 13, 2012, and referred to the Senate Standing Committee on Aboriginal Peoples which had its first hearing on the Bill on 6 February. A transcript of the hearing follows this section of <e-notes>. The meeting came to an abrupt close when the Liberal Senators walked out on the Minister and his officials.

Requests to appear before the Committee may be addressed to Clerk Marcy Zlotnick - (613) 990-6080, fax : (613) 947-2104, e-mail [appa@sen.parl.gc.ca](mailto:appa@sen.parl.gc.ca) . Mailing address:

Standing Senate Committee on Aboriginal Peoples  
The Senate of Canada  
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As the AFN Parliamentary Summary states, "The Act would require First Nations to prepare and publically disclose audited consolidated financial statements AND schedules for remuneration paid to Chiefs and councillors. This information would also be provided on the Indian Affairs website. Failure to prepare or disclose such information could result in withholding of contribution funds or termination of an agreement."

Chiefs have affirmed the importance of accountability and transparency to their citizens. This Bill will not address the real issues that challenge First Nation governments. It provides new powers to the Indian Affairs Ministers. The Indian Affairs description of the Bill is at <http://www.aadnc-aandc.gc.ca/eng/135783460022/1357834629769>. The Library of Parliament legislative summary is at [http://www.parl.gc.ca/About/Parliament/LegislativeSummaries/bills\\_ls.asp?source=library\\_prb&ls=C27&Parl=41&Ses=1&Language=E&Mode=1](http://www.parl.gc.ca/About/Parliament/LegislativeSummaries/bills_ls.asp?source=library_prb&ls=C27&Parl=41&Ses=1&Language=E&Mode=1) <e-notes> has summaries of Committee hearings in the House of Commons available upon request.

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**3. The Standing House Committee on Aboriginal Affairs is having hearings on Bill C-47, An Act to enact the Nunavut Planning and Project Assessment Act and the Northwest Territories Surface Rights Board Act and to make related and consequential amendments to other Acts.** This Bill was introduced on 6 November 2012. It implements certain provisions of the land claims agreement between the Inuit of the Nunavut Settlement Area. NWT Territories First Nations have expressed serious concerns.

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**4. Bill S-2: Family Homes on Reserves and Matrimonial Interests or Rights Act.** This Bill was first introduced in the Senate on September 28, 2011. The Standing Committee on Human Rights reviewed the Bill on November 28, tabled in in the Senate on November 29,

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and it was passed at 3<sup>rd</sup> Reading on December 1, 2011 and went to the House of Commons where there were debates on December 8, 2011 at First Reading, and again on Second reading in November 2012. The proposal is that this Bill will be referred to the Standing House Committee on the Status of Women.

5. **Bill S-6: *First Nations Elections Act*.** Introduced in the Senate on December 6, 2011. Passed 3rd reading in the Senate on April 24, 2012 without amendments. Introduced at 1st reading in the House of Commons on May 4, 2012. Bill S-6 is opt-in legislation for First Nations who conduct their elections under the *Indian Act*.

It would extend the election term from two to four years; has provisions for a re-call mechanism; elections can be contested in a court and sets out offences and penalties in relation to the election of a chief or councillor. Concerns have been expressed about provisions in the Bill that empower the Minister of Indian Affairs to order a First Nation under the Act, including one that conducts custom elections, in the event of a dispute or an election overturned by the Governor-in-Council.

There would also be opt-out provisions for First Nations to transition to custom codes. The Bill is to go to the Standing House Committee on Aboriginal Affairs.

6. **Bill S-8: *Safe Drinking Water for First Nations Act*.** Introduced in the Senate on February 29, 2012. Completed 3rd reading and passed in the Senate on June 18, 2012, without amendment. Bill S-8 was introduced in the House of Commons at 1st reading on June 19, 2012. The Bill underwent debates at 2nd reading on November 1 & 22, 2012.

Bill S-8 was previously introduced in the last session as Bill S-11. Some changes have been made including a commitment in the preamble for First Nation input into the development of regulations, the inclusion of a non-derogation/ abrogation clause, and an explicit limitation that the bill does not authorize regulations respecting the allocation of water supplies or issues of permits for the use of water for any purpose other than as drinking water. Creates regulations regarding First Nation drinking water, but does not provide for the capacity to comply.

Early support had been expressed for the changes and this version of the Bill by Alberta and Atlantic Chiefs. However, Alberta Chiefs have since passed a resolution and rescinded their support, as the Government has not met their conditions of acknowledging their Treaty and inherent control over water (including First Nation water supply and allocation laws) or addressed the water infrastructure funding deficit.

Consensus remains that investments are needed to support capacity for First Nations in this area, and that First Nations must be directly involved in the development of associated regulations. The proposal is to send the Bill to the Standing House Committee on Aboriginal Affairs.

An article on the “Poison Pill in the Safe Drinking Water”, and the Senate Report on dangers attached to non-derogation clauses will appear in the next issue of <e-notes>.

7. **Bill C-48, *An Act to amend the Income Tax Act, the Excise Tax Act, the Federal-Provincial Fiscal Arrangements Act, the First Nations Goods and Services Tax Act and related legislation*** was read a second time on 28 January 2013 and referred to the Standing House Finance Committee. The First Nation amendment enables the First Nations goods and services tax, imposed under a tax administration agreement between the federal government and an Aboriginal government, to be administered through a provincial administration system, if the province also administers the federal goods and services tax.

#### PRIVATE MEMBER BILLS

8. **New Item. Bill C-469, *An Act to ensure that the laws of Canada are consistent with the United Nations Declaration on the Rights of Indigenous Peoples***, was introduced in the House of Commons on 28 January 2013. The Bill has the support of the NDP and Liberal caucuses but is unlikely to move without government support.

9. **Bill C-428: *Indian Act Amendment and Replacement Act*.** Although this is a private member’s bill, it has received endorsement from the Harper Government. It was introduced on June 4, 2012, by Rob Clarke, Desnethé-Mississippi-Churchill River. Underwent debates at 2nd reading on October 18, 2012 and November 28, 2012. Passed 2nd reading on December 5, 2012 and has been referred for study to the Standing House Committee on Aboriginal Affairs and Northern Development to be dealt with when there is room on its agenda.

The Act, if passed, would amend provisions of the *Indian Act* including repealing provision which limit bylaw authority and require submission to the Minister before they can come into force; repeals provisions related to residential schools, and repeals provisions that give the Minister authority over the handling of wills and estates on reserves.

Sets out in preamble a commitment to develop new legislation to replace the *Indian Act* and continuing work in “exploring creative options for the development of this new legislation in collaboration with the First Nations organizations that have demonstrated an interest in this work”

Establishes a requirement for the Minister to report annually on efforts to replace sections of the *Indian Act* with modern amendments or legislation.

private sector housing providers and civil society organizations in order to establish a national housing strategy.

#### OTHER PRIVATE MEMBER BILLS OF POSSIBLE INTEREST:

##### **10. Bill C-233: *An Act to Eliminate Poverty in***

***Canada:*** introduced on June 20, 2011 by Jean Crowder, Nanaimo-Cowichan, NDP critic for aboriginal affairs. Compels the government to eliminate poverty and promote social inclusion by establishing and implementing a strategy for poverty elimination in consultation with the provincial, territorial, municipal and Aboriginal governments and with civil society organizations.

**Bill C-261: *National Hunting, Trapping and Fishing Heritage Day Act:*** Introduced on June 23, 2011 by Rick Norlock, Northumberland – Quinte West, Conservative. Would designate the third day in September “National Hunting, Trapping and Fishing Heritage Day”

**Bill C-267: *An Act respecting the preservation of Canada's water resources:*** Introduced on September 19, 2011. Would prohibit the removal of water in bulk from major drainage basins in Canada.

**Bill C-297: *An Act respecting a National Strategy for Suicide Prevention:*** Introduced on September 29, 2011 by Megan Leslie, Halifax, NDP. Would create a national suicide prevention strategy and work to address the higher risks and rates of suicide faced by gay youth, Canada's elderly, teens and young adults, First Nations, Inuit, and people in remote communities.

**Bill C-400: *Secure, Adequate, Accessible and Affordable Housing Act:*** introduced on February 16, 2012 and underwent debates at 2nd reading on October 17, 2012. Requires the Minister responsible for the Canada Mortgage and Housing Corporation to consult with the provincial ministers of the Crown responsible for municipal affairs and housing and with representatives of municipalities, Aboriginal communities, non-profit and

**11. Motion to be introduced in House of Commons week of February 4 by Liberal MP Judy Sgro calling for House Status of Women Committee to look into murder, disappearance of aboriginal women.** The motion has the support of the Native Women's Association of Canada. However, the demand for a formal inquiry by a special commission, not a House Committee, was in the 13-point Declaration of Commitment signed by First Nation leaders and opposition parties to end the hunger strike of Chief Theresa Spence.

#### Senate Public Bills

**12. Bill S-207: *An Act to amend the Interpretation Act (non-derogation of aboriginal and treaty rights)*** Introduced in the Senate on 13 December 2011 and completed 2<sup>nd</sup> Reading on 7 June 2012. It has been referred to the Standing Senate Committee on Legal and Constitutional Affairs for study. The Bill would amend the *Interpretation Act* (which governs the implementation of all laws) to provide that no enactment shall be construed so as to abrogate or derogate from the aboriginal and treaty rights recognized and affirmed by section 35 of the *Constitution Act*, 1982. **A lengthy article on the great importance of this matter will appear in the next issue of <e-notes>.**

**13. Bill S-212: *First Nations Self-Government Recognition Bill.*** Introduced on November 1, 2012 by Senator Gerry St. Germain, who has since retired. Current sponsorship of the Bill has not been determined. The Bill provides for a process for a First Nation to become a recognized as self-governing under its own constitution and would recognize a First Nation's exclusive power to legislate with respect to its lands and persons on those lands.

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## THE STANDING SENATE COMMITTEE ON ABORIGINAL PEOPLES

### EVIDENCE<sup>1</sup>

Ottawa, Wednesday, February 6, 2013

The Standing Senate Committee on Aboriginal Peoples, to which was referred Bill C-27, *An Act to enhance the financial accountability and transparency of First Nations*, met this day at 7 p.m. to give consideration to the bill.

**Senator Vernon White, Chair:** Good evening. I would like to welcome all honourable senators and members of the public who are watching this meeting of the Standing Senate Committee on Aboriginal Peoples on CPAC<sup>2</sup> or on the web.

My name is Vern White from Ontario, chair of the committee. The mandate of this committee is to examine legislation and matters relating to Aboriginal peoples of Canada generally. Today we will begin examination of Bill C-27, *An Act to enhance the financial accountability and transparency of First Nations*. Tonight we will hear from the Minister of Aboriginal Affairs and Northern Development. He will be joined from officials from the department and from the Department of Justice.

Before hearing from our witnesses, I would like to take this opportunity to introduce the members of the committee who are present this evening.

I will start with Senator Lillian Dyck, the deputy chair of the committee, from Saskatchewan; Senator Nick Sibbeston from the Northwest Territories; Senator Sandra Lovelace Nicholas from New Brunswick; Senator Jim Munson from Ontario; Senator Jacques Demers, Quebec; Senator Dennis Patterson from Nunavut; Senator Nancy Greene Raine from British Columbia; Senator Asha Seth from Ontario; and Senator Linda Frum from Ontario.

Members of the committee, please help me in welcoming

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<sup>1</sup> This rendering of the evidence is unofficial. As well it has been excerpted, and where necessary summarized. Anyone requiring the official evidence can obtain it from the Clerk of the Committee or find it on the Parliamentary Website at [www.parl.gc.ca](http://www.parl.gc.ca)

<sup>2</sup> The meeting was recorded for television and will appear on CPAC. Check [www.cpac.ca](http://www.cpac.ca) for the schedule when the recording will be telecast.

our witnesses from Aboriginal Affairs and Northern Development Canada. They are Brenda Kustra, Director General, Governance Branch, Regional Operations Sector; Anne Scotton, Chief Audit and Evaluation Executive, Audit and Evaluation Sector; Susan MacGowan, Chief Financial Officer, Chief Financial Officer Sector.

They are joined at the table by Karl Jacques, Senior Counsel, Operations and Programs at the Department of Justice, as well as the minister, Mr. John Duncan. Thank you very much for being here, sir.

We look forward to your presentations, which will be followed by questions from the senators. Please proceed.

**Hon. John Duncan, P.C., M.P., Minister of Aboriginal Affairs and Northern Development:** Thank you, Mr. Chair. This is an important bill. We are talking, of course, about Bill C-27, the *First Nations Financial Transparency Act*. Democracy depends on citizens being able to call their elected leaders to account to ensure they represent their community's best interests.

We have heard from First Nation community members who want, and deserve, greater transparency and accountability. Like all Canadians, they want assurances that funds are being used as they were intended to improve the quality of life and economic opportunity in their community.

Currently, First Nation governments operating under the *Indian Act* are the only level of government in Canada that does not currently have a legislated requirement to make basic financial information public.

First Nation community members may ask for financial information relating to their band from their leadership. However, the First Nation is not legally required to release this information. As a result, my department receives dozens of requests from First Nation individuals looking for this basic information each year.

Our government believes that First Nation citizens should have the same basic access to the financial statements of their governments and information on the salaries of their elected officials as all other Canadians expect from their federal, provincial and municipal leaders.

It is unbelievable that, in the 21<sup>st</sup> Century, the Minister of Aboriginal Affairs -- that is me -- should have to act as the middleman in responding to these requests. I would much prefer not to be in this position.

Mr. Chair, Bill C-27 would directly address this issue by requiring First Nation governments to publish annual audited financial statements and a schedule of the salaries

and expenses of their chiefs and councillors. This would ensure that First Nation community members have the necessary information to make informed decisions about their elected officials.

We believe that this legislation is long overdue and that First Nation members should be able to access this financial information directly from their band leadership without fail.

This legislation is something that First Nation residents are demanding. The real genesis of this legislation rests at the grassroots level.

Individual members of some First Nations and, in other cases, community coalition groups formed across the country, have complained repeatedly about questionable financial practices. Too many First Nation members say they do not have access to the information they need to hold their leadership to account.

I want to emphasize that these concerns do not apply across the board. I can vouch for many progressive First Nation leaders who I have worked with prior to and since assuming this portfolio, leaders who understand that accountability is essential to democracy and leaders who recognize that transparency and demonstrating sound accounting practices is good for business and good for developing investor confidence and community capacity.

I expect this legislation will serve to encourage and support band leadership to make their governance more effective.

Just this past November I joined with the Canadian Taxpayers Federation, Phyllis Sutherland of the Peguis Accountability Coalition and others in a press conference in regard to this bill, Bill C-27. At this conference, Phyllis Sutherland stated:

If First Nations want to govern themselves they should be as accountable and transparent as all other levels of government who make their salaries accessible to the public.

Beverly Brown of the Squamish First Nation said, "C-27 will help band members because it will allow them to view the material online and anonymously."

I would like to give credit to Kelly Block, the Conservative Member of Parliament for Saskatoon - Rosetown - Biggar, for her private member's bill which, at the time, was Bill C--575, introduced in 2010, that really got the ball rolling.

The purpose of Bill C--575 was to ensure that information about financial remuneration to First Nation leaders would be publicly disclosed. When this bill died on the Order

Paper in 2011, our government reintroduced this legislation in November of 2011 in the form of Bill C-27, which is what we are here discussing today. This legislation builds on Ms. Block's bill, strengthening it in a number of areas by also requiring First Nations to publish annual audited, consolidated financial statements. This makes rules regarding financial transparency for First Nations consistent with those that apply to all other governments across Canada.

I want to note that this proposed legislation would not set salary levels. Decisions regarding the appropriate level of remuneration for the chief and council would still be up to the First Nation, as is already the case. This bill simply ensures that the information would be publicly disclosed. This would allow band members to decide if compensation levels are reasonable and appropriate.

That is why it is essential that such information be easily accessible not only to First Nation residents but to the broader Canadian public. The publication of financial information will make it easier for analysis and comparisons to be done by a wider group of people, including academics, the media, economists, investors and the general public, as is the case with information provided by other governments in Canada.

The proposed legislation has also benefited from the input of First Nation leaders. One such individual, Chief Darcy Bear of the Whitecap Dakota First Nation, appeared before the house committee and recommended new wording to clarify some aspects of the bill. The bill was amended to reflect his proposals regarding band-owned businesses so that their competitiveness would not be undermined through financial disclosure. Bill C-27 does not require each individual businesses owned by the band to publish its detailed financial statements.

In addition, the Standing Committee on Aboriginal Affairs and Northern Development made amendments to the bill to more clearly stipulate how this information should be made public to avoid any confusion. The legislation now stipulates very clearly that schedules of remuneration should include information about both salaries and expenses separately and should not be lumped together.

Bill C-27 also stipulates that the audited consolidated financial statements of the First Nation as a whole be published. This is consistent with the requirements in their current funding agreements. First Nation governments will have to follow the rules established by the Public Sector Accounting Board of the Canadian Institute of Chartered Accountants. This was also made clearer through amendments made by the house committee.

Financial reports would need to include any entities which, according to generally accepted accounting principles, are to be consolidated with the First Nation, including band-owned businesses. This is a standard accounting principle that applies to all other government-owned businesses across Canada.

The House of Commons Standing Committee on Aboriginal Affairs and Northern Development heard testimony that transparency and accountability was the principal factor that turned the Whitecap Dakota First Nation in Saskatchewan from near bankruptcy to the model vibrant community that it is today.

I also want to underline that the proposed legislation will not create additional paperwork for First Nation governments. They are already required to produce consolidated financial statements each year, as part of their funding agreement, and these are already audited by independent accredited professional auditors. This bill ensures that this basic financial information is publicly available.

The bill also does not place additional requirements on First Nations to create a website. If a First Nation does not have a website the legislation allows the First Nation to post their information on a partner website or they can request Aboriginal affairs to post it on their behalf.

The last element of the bill that I would like to mention is the compliance measures. I want to underscore that the compliance measures in the bill are the same measures currently in use under existing funding agreements. The only difference between this legislation and what currently exists is that Bill C-27 now allows an individual to take the First Nation government to court if they fail to publish their audited financial statements or schedule of remuneration.

The purpose of this bill is to provide for greater accountability between a First Nation government and its individual community members. This legislation will provide First Nation members with the tools they need to move forward with economic development and good governance, which will create jobs and economic growth and improve the overall quality of life for community members. That is what matters most. Strong, transparent and accountable First Nation governments will deliver better results for their members.

To sum up, Mr. Chair, I believe that accountability and transparency in First Nation governments are essential building blocks to lead to autonomy, jobs, economic growth and sustainable communities. That concludes my presentation.

**The Chair:** Thank you very much, minister. If the other people with you do not wish to make comments, I will start with Senator Dyck.

**Senator Dyck:** Thank you for your appearance here this evening, minister, and your officials as well. I will start with a question from your speech.

You said that you no longer want to be the middleman in dealing with requests from various band members to get financial information about either salaries or business operations from the band. I can understand that. My question is twofold. First, why do you need a legislative approach? Already under the provisions a band member can actually make that request to their chief and council. You did not actually mention that in your speech. I recognize time is a factor, but band members can request that from their chief. That possibility is there for them so you do not necessarily have to be the middleman.

Second, why do you not just answer their requests? If they are asking you to give information regarding the audit or the chief and council's salaries and expenses, why do not you just give it to them?

**Mr. Duncan:** Thank you for your question. What we heard from band members is, number one, quite often making those requests is unsuccessful; and, number two, it can lead to uncomfortable circumstances. In the body of my speech I talked about the fact that this should occur without fail and I quoted Beverley Brown talking about being able to access this anonymously. That is very important.

The other thing we have to recognize is that the *Privacy Act* currently prohibits the department from publishing or from divulging chiefs' and councils' salaries and remuneration. The effect of Bill C-27 is that that would then give us the legal authority to do so, and this is recognized by the *Privacy Act*.

**Senator Dyck:** I will follow up with a similar question. Currently under regulations the Indian revenue money regulations require a First Nation to actually post their auditor's report and their financial statements in a conspicuous place on the reserve so that members can have a look at it. Theoretically, they should be able to access information anonymously if that information is posted. Although it is not posted out on the web somewhere, it is actually physically posted, let us say, on a bulletin board somewhere.

**Mr. Duncan:** Yes, I understand in a perfect world that that would probably work perfectly, but unfortunately the experience is such that it does not occur all the time. We are registering many complaints on an annual basis.

**Senator Dyck:** I think you said 25 a year?

**Mr. Duncan:** No, at least 25 a month.

**Senator Dyck:** On page 2 you said, "...dozens of requests from First Nations each year."

**Mr. Duncan:** No, the information that I have --

**Senator Dyck:** This is what you read this evening.

**Mr. Duncan:** Did I misspeak?

**Senator Dyck:** Perhaps.

**Mr. Duncan:** Each regional office, but we have nine or ten regional offices. It is in the order of 250 complaints on an annual basis.

**Senator Dyck:** So one every two days?

**Mr. Duncan:** Yes.

**Senator Dyck:** That does not sound like an onerous task. I agree that certainly some First Nations will not follow the rules, which makes it difficult for members to get information. In my opinion, that is probably the minority.

**Senator Demers:** Minister, I have a couple of quick questions, please. How will this bill lead to a reduction in the reporting burden? Beyond this bill, what have you done to date to reduce the reporting burden for First Nations?

**Mr. Duncan:** Thank you very much for your questions. First, we will look at the question from a different aspect. Will this legislation create an additional burden?

The answer is simply no, because everything that we are talking about is already produced on an ongoing basis. We think that over time, what we are going to end up with is First Nations accommodating themselves very easily to this new process. Many of them will discover that this is actually a very positive thing for their community.

This is from some of the testimony and conversations that we have received: Once investors and others develop confidence in the fiscal financial prudence and management of the community, they are much more prepared to get into economic development and other measures.

This will serve as a catalyst for positive change in these communities. One thing will be a logical extension of that: Currently, we operate for the most part with single-year funding arrangements, but we have some five-year arrangements. That makes the reporting and auditing burden easier and the ability to plan for the community so much easier. We will see a major shift in that direction, which we are promoting.

As well, it will create a circumstance whereby we will have more people thinking more often about their governance. This will encourage capacity-building or personal development, which will be good for developing leadership within the community.

**Senator Lovelace Nicholas:** How many communities were consulted on the drafting of this bill?

**Mr. Duncan:** As I said in my speaking notes, this proposed legislation developed from a private member's bill that had generated a lot of dialogue at every level within First Nations, regionally and nationally. Many people weighed in. We are well aware of the resolution that was passed by the AFN calling for accountability.

The wording of the resolution was to choose to lead by example and demonstrate to other orders of government processes for accountability including (a) providing clear and timely access to audits and public accounts; (b) itemizing and publicly disclosing salaries, honoraria and expenses associated with the operations of chief and council; and (c) ensuring that information about community finances and decision-making is easily accessible and available via the Internet, where applicable.

I believe that was in 2010, if I am not mistaken. To date, the take-up on that has been on salaries and remuneration in 6% of the 535 recognized First Nations across the country. On the consolidated annual statements, it is 15%. That is a good start, but it is only a start. In the 21<sup>st</sup> Century we need to get to a new place much more quickly.

**Senator Lovelace Nicholas:** On page 8, you mentioned that in addition, the Standing Committee on Aboriginal Affairs and Northern Development made amendments to the bill to more clearly stipulate how this information should be made public to avoid any confusion. When these amendments were made, were there consultations with First Nations?

**Mr. Duncan:** The amendments made were consistent with recommendations that had come to the committee. Often, there were consistent with some opposition motions as well as suggestions that had come from Chief Bear, who had been designated as someone with a capacity to hire legal counsel in order to develop some language. I would say that there was fairly common agreement on the amendments that they were positive.

Certainly, we saw the merit in those agreements. Did we do a whole new round of consultation based on amendments? No. As I stated previously, this whole bill germinated from a private member's bill and from a resolution by the Assembly First Nations dating back to 2010. This is also consistent with the United Nations,

which, when talking about indigenous governments, talks about transparency and accountability being essential in order to get to the right place in terms of good governance.

**Senator Lovelace Nicholas:** I have to agree with you, minister. I live in a First Nations and if I ask for information, I cannot get anything. Thank you.

**The Chair:** A question of clarification.

**Senator Dyck:** I believe that Senator Lovelace Nicholas was asking if any band members had input to the bill. You had Chief Darcy Bear but did band members actually have input to the design of the bill?

**Mr. Duncan:** No. We did not have band members' input into the design of the bill but some band members have applauded the bill.

**Senator Raine:** It is always a pleasure to have you at the committee, minister. I cannot help thinking two things. First, there are a lot of First Nations who have excellent records in terms of their financial management. They are moving forward and that is so encouraging.

However, I can put myself in the shoes of a First Nation member in a community where it is not open and transparent. Their inability to ask for financial information, especially about salaries, would certainly be very unpleasant. There could be repercussions and we certainly heard that from many people.

If there are First Nations who do not comply, what is the enforcement planned and can you explain how that would work?

**Mr. Duncan:** How would that work? The way the legislation reads is, of course, any individual can actually apply to the court for disclosure. Ultimately that could fall upon me as the minister. I would not expect it to get there, but the legislation does point out that "any individual" includes the minister.

This is at play currently with our funding agreements. If the annual reporting for funding agreements does not occur, the department can take certain actions, but this bill is actually putting the responsibility more where it belongs.

It really belongs on the community to hold their leadership accountable, which is preferable to the way it is today, which is the department trying to hold the leadership accountable with hands tied, in a sense, because of privacy considerations and because we are operating without the ability to disclose publicly what has not been provided, and we cannot stop individual transfers. We cannot hurt the general membership by stopping transfers to individuals.

This has been a conundrum for a long time. To get to the bottom line, this legislation, in my view, will change everything, and it will change everything for the better because you will now have communities that will learn that they have to look after their own affairs, and they will have the tool box to be able to do so. Up until now, they have not had that ability.

If the capacity is not within the community necessarily, we will have other interested parties who will want to assist and help in doing that, such as think tanks, such as media, such as volunteers from the public, such as organizations like the Canadian Taxpayers Federation, and the list goes on.

I had not meant to give such a comprehensive answer, but really we are accused at times of being paternalistic. This is actually a legislated attempt to not be paternalistic.

**Senator Dyck:** I would like to make a comment.

**The Chair:** Senator Dyck, please. Senator Sibbeston has a question.

**Senator Sibbeston:** My line of questions will deal with consultation. I can tell you, minister, that I support the bill in terms of what it will do, basically provide more information to First Nation members. I believe there is no question about the usefulness and the need for a bill like this.

My sole issue is with consultation. I understand you said that really the consultation went even before Bill C-75, but I gather there has been no consultation really on this bill. Am I correct on this matter, minister, that there really has been very little consultation on Bill C-27?

**Mr. Duncan:** I would not put it that way. When we introduced the bill in November of 2011, I did write to all chiefs and councils enclosing a copy of the bill, and in my covering letter I invited the First Nation leadership to learn more about the bill and to contact the Standing Committee on Aboriginal Affairs and Northern Development if they wished to participate in the parliamentary process with the bill.

We certainly did receive feedback. Yes, Chief Bear was in committee, and yes, Chief Bear gave us comprehensive thoughts. There were other chiefs who knew he was doing that and so did not participate because he was their proxy. That is just an efficient way to do things.

I would say there was a fair degree of consultation and there was a lot of discussion, public discussion at that time as well.

There are some people who are entrenched contrary to the bill, but the public call for accountability and the

membership call for accountability is something that as government I do not think we can ignore.

**Senator Sibbeston:** I respectfully disagree with the minister that writing a letter and sending a copy of the bill was consultation. Our whole country has gone through a process with the fasting of Chief Spence and with the Idle No More movement. There has been a real national self-examination or awakening, as it were, by Aboriginal people in our country, not just with First Nations but Canadians as a whole. One of the issues that has been raised time and time again is there is need for consultation with First Nations.

I am a bit shocked. This is our very first meeting after all we have heard and seen in our country and now you as minister are sitting before us promoting a bill that has had very little consultation.

I ask you as an Aboriginal person on behalf of all the Aboriginal people in our country who say there is need for consultation whether you would consider pulling the bill for a period of time -- three months, six months -- so there can indeed be consultation. You have written letters. Let there now be an opportunity for the chiefs to respond and have consultation. If you were to do this, I believe you would have the support and be endeared, as it were, to all the First Nations in our country, so I would ask that you consider doing that.

**Mr. Duncan:** Thank you once again. I wrote the letter and provided the legislation in November of 2011. Everyone has had plenty of time to get back to me. We do have the AFN resolution, the chief's resolution that they were in favour of full disclosure, and that includes their audited financial statements and their salaries and expenses and remuneration.

This process has taken a long time to get here. The first report based on this new process that would be put in place by this bill will not occur for almost a year and a half from now. If we delay another period of time, then we are probably talking about at least two and a half years down the road before we would see a single result from this legislation.

I think that patience and tolerance for that has basically disappeared.

**Senator Patterson:** Thank you to the minister and officials for being here.

I would like to explore the criticism I have heard about the bill: If chiefs and band councils withhold information, the minister and the department will penalize the band members. I would like the minister to outline what typically happens. I know there are many exemplary

bands as Senator Raine has pointed out, but there are some who do not comply with requirements to release information to the department about how they spend public money given to them by taxpayers.

Could the minister outline what steps typically take place when there is a problem? I understand there is a series of actions the department can take to deal with problems of withholding financial information. I think that will be helpful to the committee. Thank you.

**Mr. Duncan:** I would put that question in the category of being somewhat technical and I will ask Ms. Kustra if she will respond.

**Brenda Kustra, Director General, Governance Branch, Regional Operations Sector, Aboriginal Affairs and Northern Development Canada:** Thank you for your question, senator. As you have correctly indicated, there is a series of incremental steps the department would go through if a First Nation refused to publish their financial statements and make them available as required by the legislation.

In the first instance the department, on behalf of minister, would work with the council to understand the circumstances under which the information was not being made available, develop an action plan with the chief and council in order for the information to be made available, and to ensure that the financial information would ultimately be released.

With the potential failure of an action plan that would be cooperatively developed with the First Nation, the minister could take an incremental step which would involve withholding funding that would normally go to the First Nation for discretionary programs.

This withholding of funding does not affect the essential programs and services that are delivered to the First Nation. Resources that would go to education and income assistance, et cetera, would continue to flow, but discretionary money could potentially be withheld pending the submission of reports and audited statements.

In extremely rare circumstances, a very severe penalty would be that the minister may completely terminate a funding agreement. However, that would only happen after all other measures had been exhausted. We have a very measured, incremental process in working with the community to ensure that the information is made available and the process has been very successful. We have used that process for many years.

**Senator Patterson:** Further to that, I have heard some people addressing the problem of not affecting the membership at large. I have heard some people say "Well,

why can the department not just stop cutting cheques for the chief and band council salaries in cases where they refuse to reveal those salaries?" Could you respond to that comment I have heard, please?

**Mr. Duncan:** I would be happy to respond to it in a broad way and perhaps someone who is with me will offer some further detail.

We do not cut cheques to the chief and council. They determine their own levels of salary and remuneration and provide themselves with their own salaries. Those salaries do not come in a separate funding envelope. They come as part of program funding. It becomes technically impossible for us to do that.

Once again, if we could do that, it is much more paternalistic than having the community itself make the decisions based on the performance of their leadership and the knowledge of what they are paying themselves, etc.

Even if we could do that, it is not my first choice. Does anyone wish to tuck on?

**Ms. Kustra:** We have a program called Band Support Funding which provides a small contribution toward the operation of the First Nation's government. There is a formula which generates an amount of money to each First Nation, which is used to support the salaries of chief and council as well as the administration of the band office.

That is only a small portion of the actual cost of operating the First Nation's government, and First Nations use monies from other sources of revenue to support it. If we were to withhold only that small portion it really would not have any substantial impact on the First Nation and it would not be a big stick which would cause the First Nation to publish or release information if there were other reasons it was being withheld.

**Senator Munson:** I have a number of questions, but I will defer in the second round to Senator Sibbeston who wishes to ask a question.

**The Chair:** We are in the second round, I will put you on.

**Senator Dyck:** I was not going to ask on the second round, but I will. I put the question of salaries to the sponsor of the bill and we put those questions to you ahead of time so you could get a chance to consider it. The reason was because within the bill, under clause 13, there is a provision that you can withhold funding. However, there is nothing in there that actually says you will only withhold discretionary funding and that you will only terminate funding under the most severe conditions.

When you read it as is, it looks like a big threat. I wonder why you did not put in other steps and why you would not

prefer to -- you call it a paternalistic action -- cut off salaries to chief and council if they refuse to comply.

To me, it is a worse penalty to cut off funding to the whole band. Why would anyone complain about the salaries if they feel their whole community will be punished? What kind of incentive will it be to me, as a band member, to complain if I must worry that I am going cut off the funding for everyone else? We are all going to be punished.

**Mr. Duncan:** Clause 13 reads exactly the same way that our current funding agreements read. It is exactly the same. We use the incremental method that Ms. Kustra described and ultimately, if none of that works, we revert to the ultimate intervention which is third party management. How many First Nations are in third party management Canada wide?

**Anne Scotton, Chief Audit and Evaluation Executive, Audit and Evaluation Sector, Aboriginal Affairs and Northern Development Canada:** Nineteen.

**Mr. Duncan:** We have 19 First Nations out of 635 that are in third party management today. That is not a happy number and this means that we put a person in place who writes the cheques, and chief and council no longer write the cheques.

**Senator Dyck:** I recognize that that is the same provision. I do not see why you could not have done something different, for example, put in other steps rather than the final thing of withholding or terminating funding. Did you consider other options?

**Mr. Duncan:** Well, I do not know how to respond to that. I do not know what other options there would be. We are very sensitive to the fact we have to continue funding. We cannot just stop those funds that are going to be directed to individuals. That is most of the funding that actually goes to the First Nation.

**Senator Dyck:** You said it was difficult to interfere with the salaries, but it was technically difficult. That does not mean it is impossible.

**Mr. Duncan:** Well, as Ms. Kustra explained, we could stop funding for a portion of their salaries and expenses. Most First Nations have other sources of revenue, and I can be well assured that if we are at that point with a First Nation that they would be using those funds to fill whatever gap we created, so I do not see that as being an answer, and it would not be my first choice, as I explained earlier.

**Senator Raine:** My question sort of follows along the same line. Nobody likes to do the math, and, obviously, if

a small First Nation is having trouble managing their finances and it comes to the point where third party management comes in to do it for them, if you like, at that point, I would imagine that the salaries of the chief and council are diminished a bit, perhaps, and that the programs continue to flow to the people, so I do not see the issue.

What will the government do in that third party management situation to help the First Nations comply with the bill and help them get the capacity so they can run their own affairs? Are there development programs for that?

**Susan MacGowan, Chief Financial Officer, Chief Financial Officer Sector, Aboriginal Affairs and Northern Development Canada:** Within the department we have a policy called "default prevention management," and most of our effort within the department is focused on working with First Nations to ensure there is not a default of the terms and conditions of agreement in the first place.

As you note, when that does happen, and Ms. Kustra had mentioned there is an escalation, within the third party management regime, the third party will continue to work with the First Nation in terms of remedial action plan to correct the default, get them back on track and, while doing that, they are managing the monies that the department has entrusted within the agreement with the First Nation.

They are in there managing the money that Aboriginal Affairs and Northern Development Canada has provided under the agreement and working with the First Nation to build capacity and to work through an action plan.

**Senator Raine:** Has there ever been a situation where programming was cut off because of a situation like this, or do you foresee any possibility of this happening?

**Ms. MacGowan:** We do not as a rule cut off essential funding. The health and safety of First Nations members are paramount. However, as Ms. Kustra mentioned, where there are project-oriented funds, there is an opportunity to halt some of those while the action plan is prepared, and there is evidence that it is being executed.

**Mr. Duncan:** To cap that off, we have never done it nor would we.

**Ms. MacGowan:** For essential, never.

**Senator Sibbeston:** I just want to say to the minister that it seems as if you had a chance to give more time for this bill and for you to consult, but it seems like it is business as usual. Nothing has changed from the period before Christmas and now, and I am disappointed about it. It

seems as if you have been oblivious to what First Nations have been saying through the fast and through the Idle No More movement.

**It is easy for you as minister to show goodwill. This is the very first bill dealing with Aboriginal people that we have dealt with now in Parliament, and you could easily have simply pulled the bill for three months or six months or whatever to show goodwill to the First Nations of our country, and I wish you had it in your heart to be able to do that. It would go a long way to satisfy and give First Nations in our country a feeling that, yes, we have been hurt. There will be changes. We are going to have a good future, and I think this is what is at issue.**

**If you are not willing to do that then, I think the Aboriginal senators -- Senator Dyck, Senator Lovelace Nicholas and I -- are walking out of this committee. It is not earth shattering. It is our small way of showing a discontent with the fact that nothing seems to have changed and also to show our support for the First Nations in our country that at least someone in Ottawa has heard them.**

**On that basis, we are leaving now for the evening, at least, and are certainly not going to be dealing with this bill anymore because of lack of consultation. I say this respectfully and I just wish we did not have to, but I think we have to.**

**The Chair:** Senator Munson, you have a question?

**Senator Munson:** Minister, I have here today all these emails. These are just this week from Aboriginal leaders, and I will not go through them all. For example:

**Dear Senator Munson, Bill C-27 is yet another bill being rammed down First Nations and will not improve conditions for First Nations. Furthermore, First Nations have yet to be consulted on this bill.**

You have talked about writing a letter, and as my colleagues have said, there is something different between writing a letter and having real consultation and sitting down.

Before I get into another substantive question I have, I look at what John Paul of the Membertou First Nation has said: "Many First Nations already disclose salaries and expenses to membership through websites or open to public meetings and band offices. Enforcement mechanisms that would stop funding could be catastrophic to First Nations, nor does the bill address real issues around transparency and accountability," and he says "no consultation."

There is a list of supporters, a list of those who oppose, of course, the AFN and others in the list I have here.

My colleagues here have referred to Chief Spence and have referred to the Idle No More movement. The first question I have for you is this: Have you learned anything from Idle No More? What have you learned, as minister, from the Idle No More movement and their perceived lack of consultation?

**Mr. Duncan:** Well, senator, I recognize that there has been a lot of focus on Aboriginal affairs and Aboriginal issues over the last number of weeks. I think that interest is there surrounding this bill as well, which I will remind you was first tabled in November of 2011. It has been around for quite some time. The fact that it is concurrent with those activities is just because that is how long the process has taken us to get here.

In actual fact, the public has become more engaged than they have been previously, and I think this is very positive. I have heard from many of my colleagues that the number of calls they fielded in the constituency offices were unequalled by any other issue that has come up during their tenure as members of Parliament. The switchboards at the department headquarters lit up and the vast majority of the calls were asking for the various measures found in Bill C-27.

**Senator Munson:** You are saying that the public is more engaged. Is the minister more engaged? We had the very public meeting here in Ottawa and the private meeting with the Prime Minister and others. What are the next steps?

**Mr. Duncan:** **That has been made quite clear. A senior operating group and a high level group came out of that meeting. I met with the National Chief and two regional chiefs yesterday. The treaty implementation group met today and the comprehensive claims group will be meeting on Monday.**

Many constructive activities have taken place. There has been some very good conversation. People realize that they want to get to solutions and to be constructive, and that is the attitude and posture with which I am entering into this exercise, as is everyone involved, to the best of my knowledge. The meeting with the National Chief in which I was involved went very well.

**Senator Munson:** According to Aboriginal chiefs, some of these consultations took place after the bill was tabled. You said in your speech that Chief Darcy Bear talked about amendments. You seemed to be implying that he endorses everything in this bill.

According to Chief Darcy Bear, the government did not provide his councillors with the details of this legislation prior to making the announcement on his reserve, so people have the impression that once again the government is taking advantage of First Nations peoples.

Do you feel it was fair to announce Chief Bear's endorsement without providing him or his councillors with the complete legislation? How can the government put a First Nations leader in such a position? You are asking for transparency from our First Nations leaders, yet actions by your government, in the eyes of some First Nations, is far from transparent. How do you go about rebuilding this relationship?

**Mr. Duncan:** Senator, we have a very strong relationship and the characterization that you have just given is not one that I recognize. I was obviously part of that announcement. I was in Saskatchewan on the day that the bill was tabled in Parliament. We had full disclosure with Chief Bear and have invited his comments and amendments. That is what we are operating from.

You can try to drive a wedge in that, but I do not see that there is a divide there at all.

**Senator Munson:** I appreciate your comments. I have one other question, which may be technical. If the government believes that this legislation is being implemented so that First Nations people will be able to hold their leaders to account, could you explain the following to me.

At a briefing given by Aboriginal Affairs officials we were told that the legislative requirement to prepare audited consolidated financial statements will not include the one item that First Nations members have been requesting in calls to Aboriginal Affairs, and that is information pertaining to performance standards and resource delivery. Aboriginal Affairs also stated that these audits are at such a high level that only specialized auditors are able to understand what is included in them.

I need an explanation of how this legislation will in any way keep First Nations leaders accountable to their members.

**Anne Scotton, Chief Audit and Evaluation Executive, Audit and Evaluation Sector, Aboriginal Affairs and Northern Development Canada:** You are right that audited consolidated financial statements are not performance reports, and they are not intended to be. In fact, the department is working very hard to ensure that the financial information that will be made available through the implementation of this bill will be joined by

performance information on a much more transparent basis, but that is not a matter for legislation.

**Senator Munson:** Thank you.

**Senator Frum:** What will be the lag time between this bill coming into force and when the public will see the first accounting statements? Does this bill provide any ability to get information retroactively, or will everything that has happened to date stay in a shield of privacy?

**Mr. Duncan:** I will answer your question, and if I am wrong I will be corrected. This legislation is not retroactive. Most First Nation governments report on the same fiscal year as the federal government, April 1 to March 31. Assuming this bill were to receive Royal Assent prior to March 31, the 2013-14 fiscal year would be reported on this basis. We would not receive those reports. Because the audit function takes 120 days, we would not receive those reports until 120 days after March 31, which is the end of July.

Is there a time for posting?

**Ms. Kustra:** If I may, the First Nations will be required to post their audited consolidated financial statements 120 days after the end of the financial year.

**Mr. Duncan:** That is 120 days as well. I did not know if there was a lag between providing it and posting it.

Does that answer all of your questions?

**Senator Frum:** I am wondering about the retroactive part. I only asked this because Idle No More has been raised several times by senators opposite. Part of that national conversation is about what is going on right now. Will there ever be an ability for First Nations people and taxpayers in general to understand the situation as of this minute?

**Mr. Duncan:** There is no provision in the legislation to catch up to anything prior to the fiscal year that applies after this legislation would receive Royal Assent. That is not our direction. Change takes time, but this is important legislation.

There are parallels. Twenty-five years ago the Supreme Court declared a vacuum in the law in terms of matrimonial real property on reserves. It has been discriminatory to continue with that vacuum in the law for this length of time in terms of women and children on reserves. We have been trying to get that addressed. I think it has been introduced into Parliament four or more times and it is still hung up. We have opposition to that. To me, this is a human rights issue. How can it possibly be a partisan issue; but it is.

We had the same thing earlier on as government with the fact that First Nations on reserve were excluded from the provisions of the *Canadian Human Rights Act*; section 67 of the *Canadian Human Rights Act* actually exempted First Nations on reserve. We changed that, but we had to change that over a lengthy period of time, with strong opposition within our own Parliament and from many First Nations. Now that it is in place, everyone has conveniently forgotten that they were opposed to it, or are embarrassed to admit it.

I believe the same thing will apply to when we eventually get the matrimonial real property legislation through, and I believe the same thing will apply to this bill. How could we possibly even think we could function without it?

Thank you for your question.

**The Chair:** Senator Raine has the final question.

**Senator Raine:** The final question. I have a question that I ask generally here. I have some background here that says the *First Nations Governance Act*, Bill C-7, was actually introduced originally 2003. That means we have been trying to get this through for 10 years. Now we are getting hung up on consultation.

Is there any mechanism for a consultation with the average First Nations citizen who I believe really wants this legislation? Is there a mechanism, and could there ever be a mechanism short of maybe an Ipsos-Reid poll or something?

**Mr. Duncan:** That is a philosophical question to some degree, as opposed to a technical question, I believe. To have people participate effectively and knowledgeably, once again this will be of great assistance.

I have wondered about that same question. How do we engage at the individual member level? It is not an easy thing to do. I think there were questions about the protests and about the amount of public interest. All of these things are forms of engagement that I think will become constructive. They will become much more channelled in a constructive way, because we will have people who are empowered with more knowledge. I am always an optimist.

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

I do want to make a point: I am disappointed that some people have chosen to leave the room. I think our job is to ask questions, gain information and intelligence to be shared with members of the Senate who are not in this room. I am disappointed that some people have chosen to leave because they did not get something they demanded.

**Committee adjourned.**

## **Opinion by Doug Cuthand**

### ***Accept aboriginal empowerment, independence***

*Thanks to The StarPhoenix for this column*

The media circus that surrounded and speculated about Chief Theresa Spence's fast can now rest easy and go back to whatever crisis, oddity or intrigue that becomes its next assignment.

For First Nations leaders and supporters, the hard work now begins. As Churchill put it after the Battle of El Alamein in 1942, "Now this is not the end. It is not even the beginning of the end. But it is, perhaps, the end of the beginning."

Chief Spence managed to capture the support of the First Nations public at a crucial time and became an icon for the Idle No More movement. For many, she was an important symbol of resistance at a time when First Nations people across Canada were taking to the streets in flash mobs and demonstrations.

She isn't simply walking away from her fast. She presented the Assembly of First Nations with a list of 13 categories of concern that she called the *Declaration of Commitment*. Her declaration, signed by AFN's executive committee, the Native Women's Association and the leaders of the Liberal and New Democratic parties, provides a blueprint for First Nations development and government-to-government relations now and into the future.

In the area of First Nations development, her list calls for a new funding system that eliminates the current colonial relationship. The amounts from government are presented on a "take it or leave it" basis, and if a First Nation presents a budget based on needs, it is ignored. The provinces, however, receive federal transfer payments and equalization grants to fund their services and programs.

In her Declaration of Commitment, Chief Spence calls for equity in capital for construction of schools on reserve, and parity with provincial education funding. She also wants First Nations housing to be made a priority.

In addition to local concerns, she called for an improved First Nations relationship with the federal government, and for new legislation from Ottawa to adhere the "duty to consult" requirement stipulated by the Supreme Court. She also wants an ongoing cabinet committee to address First Nation issues.

The AFN has been calling for years for the establishment of a commission of inquiry into violence against aboriginal women. Chief Spence also has included this

important request in her declaration.

She has left her fast on a high note. She has the respect of her people, and that is what counts.

While she is seen as a hero and national icon by First Nations people, Spence has been the subject of derision in the national media, which have called her Declaration of Commitment a wish list or pie in the sky.

However, it really is a serious list of doable and positive steps to which First Nations and Canada can adhere. It provides the government with a list of 13 clear goals. The job now for AFN National Chief Shawn Atleo and his executive is to insist that the government put in place an ongoing secretariat to address this important list.

Respect and decency were two sentiments in short supply from the national media. The Harper government released her First Nation's audit for the past five years and everyone piled on. The fact that Spence only was chief for the last year of the audit didn't seem to register with the media, or the fact that she has been improving Attawapiskat's financial situation during her term in office.

The reporting was so personal and appalling that it became a national disgrace. It is no wonder that an Ipsos poll reveals that 60% of Canadians believe "the problems of native people are brought on by themselves."

Oddly, the poll revealed that 81% of those surveyed believed "no additional taxpayer money should go to any reserve until external auditors can be put in place to ensure financial accountability." The amount was higher on the prairies, with 92% agreeing with the statement.

Yet already, every First Nation that signs a contribution agreement must provide the government with an audited financial statement. The survey question was drafted based on a false premise.

First Nations are developing at an accelerated rate. Our population, along with our political awareness, is rapidly increasing. The old days of colonialism and helplessness have been replaced by independence and empowerment.

The rest of Saskatchewan has to get on board and get used to the new reality.

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