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Chair

Mr. Chris Warkentin

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● (0850)

[English]

The Chair (Mr. Chris Warkentin (Peace River, CPC)): Colleagues, I call to order the 74th meeting of the Standing Committee on Aboriginal Affairs and Northern Development.

Today we have three different panels of witnesses. We're beginning with two witnesses for the first hour, Mr. Gagnon and Mr. Hruddy. Thank you so much for being here.

Mr. Hruddy is coming as an individual, and is a former panel member of the Expert Panel on Safe Drinking Water for First Nations. Mr. Gagnon is coming to us as a representative for the Centre for Water Resources Studies.

Thanks, gentlemen, for being here. We're going to turn it over to you.

We'll begin with Mr. Gagnon's opening statement, then we'll hear from Mr. Hruddy, and we'll then have some questions for you.

Prof. Graham Gagnon (Director, Dalhousie University, Centre for Water Resources Studies): Thank you, Mr. Chair and honourable members, for providing me an opportunity to address clean drinking water in first nation communities in Atlantic Canada, and the potential impacts of Bill S-8.

The Centre for Water Resources Studies at Dalhousie University was established in 1981 to address water issues facing Atlantic Canada through applied research. The objective of our centre is to address real challenges faced by water communities and to provide a platform for the development and appropriate application of water technology, water quality analysis, and advancement.

As director of this centre, I'm also a professor and NSERC chair in water quality treatment in the Faculty of Engineering.

Over the past five years, the centre has worked with organizations such as Alberta Environment, New Brunswick Department of Health, Nova Scotia Department of Environment, and the Government of Nunavut, to evaluate and develop risk-based water and wastewater strategies.

Through the research chair program I've also had the opportunity to work with water utilities, engineering consulting firms, and technology firms in Atlantic Canada and beyond to investigate and provide solutions to emerging water quality challenges.

Since 2009, our centre has worked in partnership with the Atlantic Policy Congress of First Nations Chiefs on advancing knowledge in

clean water and developing a path forward for safe drinking water and wastewater systems in first nation communities.

The APC recognizes the challenges of their current water practices. The APC sees opportunities for improving health and safety in first nation communities. One would be through the passing of Bill S-8.

Bill S-8 defines lines of responsibilities between the owner and the regulator of water assets, which was seen as a critical step forward in providing safe water in the report on the Walkerton inquiry, written by Justice O'Connor in 2002.

The state of drinking water and waste water in first nation communities is a recognized challenge in Canada.

In 2006, an independent expert panel for safe drinking water for first nations provided recommendations to Aboriginal Affairs and Northern Development Canada on water treatment and management strategies for first nation communities. The expert panel identified 16 elements of a proposed regulatory system, and suggested that a national-level first nations water commission take on the roles of regulation, enforcement, and accountability.

Since that time, national studies have been conducted by several independent organizations. Notably, Neegan Burnside conducted a system assessment report of water and wastewater treatment, and the related costs and risks in first nation communities.

Within the Atlantic region, the centre, in partnership with the APC, has conducted several research projects related to water and wastewater systems in first nation communities. These projects fall under the umbrella of a clean water initiative for first nation communities. The overall purpose of this clean water initiative is to provide public health and safety for first nation communities in Atlantic Canada.

The main activities undertaken by the centre have included a regulatory assessment and regulatory benchmark development for the Atlantic region, a water asset analysis and cost assessment for the Atlantic region, and the development of a framework for a first nations regional water authority.

Mr. Chair, our centre has developed a regulatory benchmark for first nation water and wastewater operations in Atlantic Canada. These were based on the 16 elements defined by the expert panel. They're also benchmarked against the regulations from Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland and Labrador.

These regulatory benchmarks have been reviewed by AANDC and have been reviewed by several key experts in the water field.

To test the implementation of these regulatory benchmarks, members from our centre conducted pilot trials with four first nation communities in Atlantic Canada. The results of the pilot trials suggest that there is potential for a high level of compliance with drinking water and wastewater quality. However, there are significant operational gaps identified that require investment of both human and financial resources to meet the standard on a day-to-day basis.

Going forward, the benchmarks offer an opportunity to develop a regulatory structure in the Atlantic region. It's been noted that the enforcement and compliance aspects of this regulatory structure would require funding resources and a full review with various first nation stakeholders, going forward.

Mr. Chair, the centre has also provided a peer review of the data presented in the 2011 national engineering assessment, conducted by Neegan Burnside. The centre specifically focused our efforts on first nation communities in the Atlantic region. The centre's review showed that only 50% of the systems had an operator with adequate certification, only 11 systems also had a source water protection plan, and 15% had groundwater assessment plans. These source water protection plans and ground water assessment plans are viewed as a critical step for water security, which has been outlined in the report of the Walkerton inquiry.

Within the context of waste water, the national engineering assessment revealed that a mere 35% of the wastewater systems in Atlantic Canada met the 1976 federal guidelines for wastewater quality. This was viewed as significant, as the wastewater system effluent regulations were promulgated in 2012, and therefore the 2012 wastewater regulations specify significant changes for first nations systems.

Based on a review of the national engineering assessment data and the pilot trials, it is apparent that there is a gap between the current practice and future regulation for water and wastewater systems.

We have evaluated the economic gap in regulation and engineering practice by working with an engineering firm called CBCL Limited. CBCL is an engineering firm with over 60 years of design experience in Atlantic Canada. They were asked to conduct a drinking water and wastewater asset assessment of first nation communities. The asset assessment developed class C and class D cost estimates for water treatment, water distribution, wastewater collection, and wastewater treatment. The cost estimates focused on the gap between the current state of conditions and those proposed in the regulatory benchmarks.

The asset assessment consisted of individual community visits, evaluation of background materials and documentation, and using costing models for regional water systems of similar service size. A

summary of all first nation communities in Atlantic Canada was prepared along with detailed individual reports for each participating community.

It was estimated that a complete replacement of all existing water and wastewater infrastructure would total approximately \$250 million in the Atlantic region, whereas the estimate to bring systems into compliance with the proposed regulatory benchmarks would cost, at the low end, \$70 million, and at the high end, \$100 million. Operation and maintenance costs were estimated to be approximately \$7 million per year among the participating communities in the Atlantic region.

Finally, our centre has a history of working with the water industry, and we have recommended that a regional first nations water authority be established. To its credit, the Atlantic Policy Congress of First Nations Chiefs has recognized that addressing water challenges through a coordinated regional approach is required. Implementation of a first nations regional water authority would enable coordinated decision-making, maximize efficiencies of resource allocation, and establish a professionally based organization that would be in the best position to oversee activities related to drinking water and wastewater disposal. This would, on a day-to-day basis, transfer liability away from chiefs and councils, and pass it to a technical group. Examples of similar organizations include water utilities, power companies, and post-secondary educational institutions in Canada.

The APC is evaluating options for a water authority structure. Potential structures include a water authority as a crown agency, as a private company, or as a corporation through a federal private act. In partnership with McInnes Cooper, a law firm based in Atlantic Canada, our team evaluated all three options and determined that incorporation through a private act would be the most desirable option for the proposed water authority. Incorporation through a private act would enable the water authority to maintain a greater level of autonomy and transparency, and most important, a defined scope of activity and responsibility.

The proposed water authority structure is consistent with the 2006 "Report of the Expert Panel on Safe Drinking Water for First Nations". It's also consistent with the spirit of Bill S-8, in that a regional entity would be a body upon which the power to own and operate drinking water and wastewater systems in the Atlantic region could be conferred.

In conclusion, the Centre for Water Resources Studies has had the privilege to work with the Atlantic Policy Congress of First Nations Chiefs to identify safe drinking water and wastewater disposal practices for first nation communities in Atlantic Canada. Through this partnership, the team has worked on three main activities: a regulatory benchmark framework, a water asset analysis, and the development of a framework for a regional first nations water authority. There is a significant opportunity to improve health and wellness for first nation communities. The provision of safe drinking water and wastewater disposal has been a significant barrier for many communities in Atlantic Canada.

Within the Atlantic region, the first nations chiefs have been highly supportive in developing innovative solutions to address water quality challenges in Atlantic Canada. The path forward proposed by the Centre for Water Resources Studies is therefore consistent with Bill S-8 and with the 2006 expert panel report. To that end, it is recognized that these activities will require resources in collaboration with the federal government. However, these resources will be used to provide sustainable communities and a legacy of safe drinking water for generations.

Thank you.

• (0855)

The Chair: Thank you, Mr. Gagnon.

We'll turn to Mr. Hruddy now for your opening statement.

Dr. Steve Hruddy (Former Panel Member, Expert Panel on Safe Drinking Water, As an Individual): Mr. Chair and standing committee members, I greatly appreciate this opportunity to give evidence concerning safe drinking water for first nations in Canada.

I have previously testified with Grand Chief Stan Louttit to the Senate Standing Committee on Aboriginal Peoples on March 1, 2011, and with Dr. Harry Swain, on May 15, 2007, concerning our findings in the 2006 Expert Panel on the Safe Drinking Water for First Nations report.

Our report speaks for itself. I don't need to repeat the details of the report here today. My views have not changed. I choose to focus my evidence today on my scientific and professional judgment, based on our research about what makes drinking water unsafe, to allow for understanding of what must be done to keep it safe.

This evidence is conditioned by practical experiences, such as serving Justice Dennis O'Connor on the Research Advisory Panel to the Walkerton inquiry and considering submissions from over 100 parties at hearings held at nine locations across Canada in 2006 while preparing our expert panel report. I have also included a bio at the end of my written submission that covers my other experiences.

I will focus my evidence before you on two matters: what is safe drinking water and how can it be assured, and the vital importance of operational competence in assuring safe drinking water.

Regarding the first matter, Bill S-8 is titled An Act respecting the safety of drinking water on First Nation lands, but safe drinking water is not defined in Bill S-8, nor is it found in the Ontario Safe Drinking Water Act or the U.S. Safe Drinking Water Act. This should be a clue for parliamentarians about a major challenge regarding this topic.

Although it is clearly central to the purpose of Bill S-8, legislators elsewhere provide no assistance in defining safe drinking water. The problem is that "safe" as applied to drinking water is not a simple yes or no, black or white, determination. The drinking water at Walkerton, that killed 7 people and made over 2,000 ill, was clearly unsafe. It was black, not white. Most of the conditions that allowed that failure had been in place for almost 22 years before May 2000, when disaster struck.

In hindsight, the Walkerton drinking water supply was unsafe for 22 years because those responsible for assuring its safety failed to recognize and understand the risks to that supply. If they had recognized and understood the risks, and taken some relatively simple measures in response, the Walkerton disaster need not have happened.

Yet, those measures cannot have assured zero risk of drinking water contamination. Rather, safe drinking water must be assured by achieving negligible risk of consumers becoming ill, and by negligible I mean risks too small to worry about or to justify changing personal behaviour. Negligible risk will not be absolutely pure white on the inherently grey scale of safety, but negligible risk is close enough to white for all practical purposes.

While drinking water quality criteria, as captured by tables of water quality criteria numbers, provide an essential reference, such numbers, legislated or otherwise, cannot and do not assure safe drinking water. If those responsible for Walkerton's drinking water had simply satisfied the very limited guidance that was in place for treating Walkerton's water, that tragedy could have been averted. This disaster arose from a failure to do what needed to be done operationally, not from a lack of stringency of water quality criteria.

So how is negligible risk for drinking water achieved? I would suggest four steps: first, by recognizing and understanding what are the threats to a drinking water system; second, by understanding what are the capabilities and limitations of the treatment and monitoring processes available or that drinking water; third, by assuring that the treatment system operates to its capabilities for dealing with threats at all times; and fourth, by assuring that treated water is delivered to consumers without being contaminated during distribution.

These elements are key features of a "know your own system" approach to assuring safe drinking water that has become international best practice since first being proposed in 2004, almost simultaneous by the World Health Organization and the Australian drinking water guidelines. This approach calls for every water system to develop its own water safety plan.

In Canada, some provinces have addressed many elements of this approach. Ontario requires an operational plan and satisfying the quality management standard, but I find the Ontario approach to be too onerous for the smaller systems that invariably face the greatest risk. So far, only Alberta has made adoption of drinking water safety plans mandatory, and its program was intentionally designed to be practical and effective for small systems. Because drinking water systems for Canada's first nations are essentially all small systems, and many also face additional challenges of being remote, the drinking water safety plan approach is inherently the best available option for assuring that drinking water does not become unsafe.

● (0900)

Bill S-8 could, in one modestly bold step, reflect international best practice by making an absolute commitment to addressing a drinking water safety plan approach as its guiding principle.

The second issue in terms of the vital role of operational competence in assuring safe drinking water is that drinking water safety plans cannot assure safe drinking water unless those who are operating the plant possess the necessary operational competence—the training, knowledge, public health awareness, commitment, and functional capacity. The smaller and more remote the entity charged with providing drinking water, the more challenging it becomes to assure competence.

Consider the following image to illustrate my point about competence. Would you be comfortable as a passenger travelling in a plane flown by a pilot being paid minimal wages with minimal training and limited technical support? I wouldn't. Yet in many small communities in Canada, including first nations, we place responsibility for delivering safe drinking water on personnel who are often under-trained, mostly underpaid and generally under-supported for the enormous public health responsibility they must discharge. A serious operational mistake can make an entire community ill.

Evidence that we heard during our hearings in 2006 confirms my belief that even if physical treatment facilities are less than optimal, a well-trained, responsible operator will be able to protect the safety of a community much better than an inadequately trained operator, even if equipped with the best possible treatment facilities when the system is challenged. Providing safe drinking water is a knowledge-intensive undertaking, and must have a support system that equips and supports operators in taking on that challenge.

So I have to ask, how difficult is to recognize where the real problems lie? Canada has made major investments in upgrading water treatment facilities for first nations, with some excellent improvements to show for that investment. Yet to date, the emphasis has been on funding facilities without sufficiently increased emphasis on tackling the more challenging task of training and supporting competent, responsible operators for every facility.

Given the high unemployment that exists in many remote first nation reserves, an emphasis on creating skilled employment should be an obvious priority, even without the vital role that competent operators play in assuring safe drinking water. Above all else, our focus must be on assuring operational competence.

Small and isolated communities in Canada universally face challenges in achieving the necessary level of competent operations,

but some communities have been successful in investing in their operators. Several first nation communities have benefited from circuit rider programs that provide regional support for isolated operators, but these programs are too often over-subscribed and underfunded.

Lack of leadership is a major problem for assuring safe drinking water in Canada. Bill S-8 provides a unique opportunity to fill this leadership void with benefits for Canadians in all small communities, not only first nations. After all, who can credibly disagree with the merits of managing our drinking water to the international best practice of adopting a drinking water safety plan and a know your own system approach?

Thank you.

● (0905)

The Chair: Thank you, gentlemen.

Mr. Hruddy, thank you.

We'll begin the rounds of questioning with Ms. Crowder, please, for seven minutes.

Ms. Jean Crowder (Nanaimo—Cowichan, NDP): Thank you, Mr. Chair.

Thank you, Mr. Hruddy and Mr. Gagnon.

I don't think anybody sitting around this table would disagree that first nation communities should have access to safe drinking water.

Part of what we've heard, either through testimony here or through written correspondence, is that there are a number of concerns about whether Bill S-8 will deliver safe drinking water. Part of the concern raised is the fact that a regulatory process will be developed that is not clear. Although the language in the proposed act says "working with first nations", it's not clear that actual regulatory processes will actually be developed in full partnership with first nations. We've seen a long history of that not happening, so that's concern number one.

Concern number two, which you have both spoken to in one way or another, is resources, whether those be capital infrastructure costs or the ongoing operations and maintenance costs and training costs.

The third issue that's been identified—and Mr. Gagnon did address this somewhat—is around where the liability will rest and whether chiefs and councils will actually have the capacity to own that liability. Then there are the issues around operational gaps.

I quickly want to touch on a couple of points. In the report of the Expert Panel on Safe Drinking Water for First Nations, you indicated that the federal government must close the gap. But there were some concerns about putting in a regulatory regime, because creating and enforcing a regulatory regime would take time, attention and money that might be better invested in systems, operators, management, and governance.

I think you spoke to that, Mr. Hruddy. Is that correct?

• (0910)

Dr. Steve Hrudehy: Yes.

Ms. Jean Crowder: So in your view, part of what has to happen is a very real investment in training, operations, and maintenance, in order to make sure qualified operators are on the ground.

Do you have any view on how chiefs and councils might retain those trained operators? We've heard some chiefs and councils say that once the operators are up and trained, they can't afford to pay the going rates that larger communities can pay and so they lose their trained operators.

How might first nations retain those trained operators once that happens?

Dr. Steve Hrudehy: Coming from Alberta, I know it's not a problem unique to first nations. When operators get trained, whether they're with a first nation or another small community, they're a very valuable commodity and often get recruited away.

I recall testimony that we heard from the Piikani first nation in southern Alberta. Their manager said that it's a glass half-full, glass half-empty thing. He actually found this to be an opportunity for people on his reserve. If he trained them up and they became skilled and could find employment elsewhere, then he wasn't about to hold them back.

Ms. Jean Crowder: It still leaves the communities in a position where they don't have trained operators on the ground.

I want to move on quickly here because I only have seven minutes, including your answers.

In the report of the Commissioner of the Environment and Sustainable Development from 2005, there was an indication that the success of a first nation water management strategy depends on INAC's and Health Canada's addressing the management weaknesses. There were a whole bunch of management weaknesses.

Mr. Gagnon once again pointed out that Bill S-8 clarifies roles and responsibilities, but we've just recently had the case of Kashechewan, where the community recommended there be storm sewers and backflow limiter valves for each house after the flood of 2008, and the government refused. The storm sewers would have helped contain the flash flood. Instead, the sewage lifts were quickly overrun. There was no way of stopping the backup of raw sewage into the homes, and now 38 people are homeless.

This kind of situation is not unusual in first nation communities, and the community is well aware of it, but we've got governments.... This is not a partisan remark. It's not only this government but decades of governments that have not responded to community needs. It's the community that bears the direct brunt of this.

Do you think Bill S-8 will clean up situations like this?

Dr. Steve Hrudehy: I'll respond briefly in terms of the expert panel's expectations in 2006. I think we recognized in those nine meetings across Canada, and in the 100-plus submissions, that this was not a homogeneous problem. There's a lot of diversity among first nations in Canada, a lot of different views. The challenge in coming up with federal legislation on this topic is, how do you accommodate all of that diversity?

The way I see Bill S-8 is that, essentially, it's only enabling legislation. The test would be in how it's implemented.

I think it is fair criticism that there are no financial obligations associated with Bill S-8. From my point of view—I'm not speaking for the panel here—I would like to see commitment to the operational training part. From all the experience I've had, my view is that's the most critical element.

Ms. Jean Crowder: Do I have time, Mr. Chair?

The Chair: Yes.

Ms. Jean Crowder: Again, you rightly pointed out that many of the systems in first nation communities are small systems, and there are challenges that go with those.

Currently, we know we have systems that are inappropriate for the size of the community. Either they've been overbuilt and are far too complicated and not what the community needs, or the training hasn't taken place.

This legislation does not address any of that. It's being sold as a bill of goods, in terms of, "This is going to provide safe drinking water for first nation communities." In and of itself it won't do that.

What needs to be in place, specifically? I've heard that it's money. What else needs to be in place to ensure that this legislation delivers on its promise?

Dr. Steve Hrudehy: I'll answer briefly. That's why I chose to focus on water safety plans. There is no federal legislation that, by itself, can assure safe drinking water. It's a question of providing the tools and the framework to do what needs to be done, and that means getting your mind away from focusing solely on the standards and numbers to focusing on operational competence.

I'll let my colleague comment further if he wishes.

Prof. Graham Gagnon: I would echo what Steve was saying; my comments are very similar. The act enables regulation. How that regulation would unfold....

I think our regulatory framework was very similar to what Steve outlined, in that it would be a drinking water safety plan of some sort. I think that is critical for ensuring that operators understand what they're doing on their day-to-day job, and what the safety checks are on a day-to-day basis.

Steve is quite right: having a plan in place through this bill would be critical.

• (0915)

The Chair: Thank you very much.

We'll turn to Mr. Seebach now, for the next seven minutes.

Mr. Kyle Seeback (Brampton West, CPC): Thank you, Mr. Chair.

I have some questions for you, Graham.

Thanks for your testimony. I don't think anyone is suggesting that this is the answer to everything with respect to first nations' drinking water and waste water.

One thing, though, is that a regulatory regime is an important step, one that was identified by the expert panel. With your experience, both with the Atlantic Policy Congress Of First Nation Chiefs and other projects, why do you think developing a regulatory regime is such an important step?

Prof. Graham Gagnon: Regulatory enforcement presently is essentially enabled through a funding envelope to the first nation community. That is very difficult to enforce because it's enwrapped in all of the other activities the first nation community does. Having explicit goals, explicit milestones or benchmarks that the water community must uphold, would be critical to have in that regulatory framework.

It would be very similar to driving a car. If we don't understand the rules of the road, it would be quite chaotic driving on various highways in Canada, so the regulatory framework spells out what you're allowed to do and what you're not allowed to do, and how to basically proceed in your job.

Mr. Kyle Seeback: Dovetailing with that, when you talk about regulations, one of the things that is raised by some people who have come to the committee and also by members is that of dealing with capacity issues.

One of the things that I've asked witnesses about is the following. Certainly, you have to have capacity, but the government has been quite clear that we are not going to impose the regulations. It is going to be done in consultation with first nations—and certainly not until they have the capacity to do so.

Why do you think it's important that it's done in that way?

Prof. Graham Gagnon: I think it's important, first of all, to recognize that for first nations to achieve self-governance, they have to be at the table deciding their fate and what they can uphold, first and foremost. They should also, as first nations leaders, have a clear idea of what their goals are for safe drinking water and outline, as Dr. Hruday pointed out, what they aspire to achieve in terms of safe drinking water, and define safe drinking water. That regulatory framework would help to define that, and they should be at the table with a voice to spell out how they would like to uphold safe drinking water.

This also helps them and all the stakeholder parties to define the funding mechanisms to achieve that, and the resource mechanisms, not only financial but also the human resources at a skill level from an operational standpoint and from a management level, needed to achieve these goals on a daily basis.

Mr. Kyle Seeback: This is one of the things I asked a witness about earlier in the week. Their position was that you should determine the funding and fund, then develop the regulations. In my mind, that is backwards. If you are going to develop these regulations, you have to actually develop the regulations first

before you know what the funding is going to be, because the funding is going to be contingent, I would think, upon how stringent the regulations are.

Do you agree with—

Prof. Graham Gagnon: In my testimony, to follow along your line of thinking, we developed a benchmark based on best practice in the Atlantic region. Then we pilot-tested those benchmarks. We didn't necessarily pilot the community's ability to meet the benchmarks but we piloted the benchmarks themselves, so we asked the questions, "Do these benchmarks make sense? Are they achievable?" Then we asked how much it would cost to actually achieve those benchmarks. So we are following the same playbook, I guess.

Mr. Kyle Seeback: To me, that makes sense.

One of the things that has been suggested is to look at adopting provincial or territorial standards, then adopt them regionally. Do you think that would be a good approach to developing this as we go forward?

Prof. Graham Gagnon: Yes, I think a regional approach has some merit from the standpoint, as Dr. Hruday mentioned, of Canada not being a homogenous place. Water challenges across Canada are certainly different and unique: there are arid places in Canada, and the Atlantic region is certainly not an arid place. So to have regulations that would deal with different regional contexts has some logic, especially if they follow the same spirit of a drinking water safety plan and having checks and barriers in place. We could then deal with the subtleties of regionalization a little more easily.

● (0920)

Mr. Kyle Seeback: When you talk about setting the benchmarks—I might be paraphrasing—what advice would you give the committee when those benchmarks are set in a regulatory framework? How will we assess whether or not a first nation is going to be able to comply or able to meet those benchmarks? What sort of key things should we be making sure are there in the sense of capacity?

Prof. Graham Gagnon: I think, to come full circle again, it would obviously involve first nation communities at the table. Dr. Hruday mentioned the capacity at the ground level, the front level. Are there operators? Do they have the capacity, the management structure, and the operational structure to actually achieve whatever goals were in place? Benchmarks must include aspects around human resources, basic human resources. We outline those types of aspects in our benchmarks, so it's not just a table of numbers where you meet these values, but the actual performance standards of the employees of the water community are upheld. Those types of elements really need to be thought about very carefully.

Mr. Kyle Seeback: Steve, do you have anything you want to add to that?

Dr. Steve Hruddy: Yes, I think it's really important for the committee to understand that the biggest misconception around safe drinking water is that you can define it by tables of numbers. This may seem counterintuitive. Safe drinking water ought to mean measuring all these things to give you safety. It's true that, if you could meet all those numbers and monitor all those things continuously, you could probably have safe water, but the fact is you can't. You can't measure in real time most of the things that matter. You can't get your results until long after people have drunk the water, so it's not a preventive approach. The focus has to be on the competence of the operations using processes that we know work for the things that make people sick. That's what keeps water safe.

What works in one place isn't necessarily going to work in another. It's not as simple as just promulgating a table of numbers, and if you exceed these numbers we'll send you to jail. That misconception blinds most people to what needs to be done.

The Chair: Thank you very much.

We'll turn to Ms. Bennett now for the next seven minutes.

Hon. Carolyn Bennett (St. Paul's, Lib.): Thanks very much.

As you know, when the minister was here, we were reminding him, Dr. Hruddy, of the report that said that regulation alone would not be effective, and that without the investment to build capacity, it might even put drinking water safety at risk by diverting badly needed resources into regulatory frameworks and compliance costs. This is what your report said. You went on to explain in the report what the adequate resources would look like and what you've outlined today, mainly capacity.

Obviously, we told the minister that we're not in favour of this bill until we see some evidence that there's going to be capacity because, again, it's a false assurance that we're going to get safe drinking water just by passing this bill. If they continue to cut the resources and the opportunities for training, this will not work.

We're also concerned that it came in through the Senate, which means it can't have any funding allocation attached to it.

So if this bill was going to be improved to deal with what you described as water safety plans, knowing your own system and that the bill was an opportunity, what would you amend? What would you do to this bill to improve it?

Dr. Steve Hruddy: I guess when I was looking at this and saying that I'm cognizant of the fact that it's now seven years since we had the expert panel, making progress on this file has apparently not been easy. The idea of enabling legislation obviously has some merit in the sense of at least taking a step.

The thing we were trying to caution against in the expert panel report is, do not fall into the trap that I just spoke to in my previous comments of publishing a table of numbers, publishing a series of penalties for not meeting those numbers, and leaving it at that. Proposals like that have been out there in the past. I testified before a Senate committee on a proposal to make drinking water under the drug act and regulate it that way. That's not going to get the job done.

To answer your question, I've offered this suggestion. There's been a ton of excellent work done around the world to come up with this drinking water safety plan approach. We don't need to reinvent the

wheel. This was developed by WHO for communities in sub-Saharan Africa and in Tokyo, Japan. One size fits all in the concepts that are being proposed. One simple measure is to provide some guiding principles to this act to say we don't need to reinvent the wheel. All this good thinking has gone forward in describing what drinking water safety plans need to be. This act, regardless of anything else that it's intended to do, should achieve those objectives.

● (0925)

Hon. Carolyn Bennett: Regarding the need for flexibility in small systems, I think we've heard from chiefs, as my colleague said, that whether it's having to meet provincial standards or any other framework, on the ground it doesn't work. You can have met all the criteria and then you end up with a power outage, and the guy who knows how to fix it is not allowed on the property to just reset the power because he doesn't have a certain level of certification, because that requires a written test.... Some of the people we met were encyclopedic in their knowledge of the microbiology and the emergency plan, and they could pass an oral test at any time, but you have these rules that mean that the guy is not allowed to turn the power back on until you get somebody to come from the mainland. And by then you're into a boil water advisory, or you're waiting for the department to approve the new membrane that this fabulous new plant needs in order to do its job, but it's about cost.

So I'm pretty frustrated that we're stuck with this bill when it doesn't look like they have listened to the people on the ground or to the WHO, and are just writing this and then saying "over to you" in terms of liability to chief and council.

Dr. Steve Hruddy: Well, I think what you've described is reality. Stuff happens. Just ask Montreal. There are a million people under a boil water advisory because of problems that hit there yesterday. That's the nature of trying to provide safe drinking water. And I repeat, there is no legislation federally or provincially that can anticipate and deal with all those things. The most you can expect to have happen is to put in place a process, a framework that can build capacity so that the people on the ground are able to deal with the real problems. That starts with them understanding what the challenges to their system are and what the capacities of their system are, and working towards fixing the things that will allow them to deal with problems.

It needs to be a bottom-up approach. I would really encourage you to have a look at what Alberta has done by adopting a requirement for water safety plans. This didn't come from the top. This came from a few experienced people within the department who were aware of what actually was going on in Scotland, where they had a lot of similarities to us, and how effective the drinking water safety plan was. They brought this in to the regulatory structure. It's not a panacea. It's going to take years for it to have all the benefits that it can have, but it's a useful start.

Hon. Carolyn Bennett: So could this bill be improved by some assertion around the need for a water safety plan approach? How would you fix this?

We're going to get this bill. So is there anything we can do to make it better such that at least there's a bit of education that comes with it in terms of what people should be looking at, instead of just having to wear the liability?

● (0930)

Dr. Steve Hruddy: Well, that's what I'm pointing to: the simple addition of a preamble that focuses on the water safety plan approach. And then amongst the regulatory options that are outlined—because it is broadly enabling—I point out that this broad framework should be reflected throughout any options that are adopted.

That, I think, would be true to what the expert panel heard and wrote in our report. We were afraid of simply imposing a detailed regulatory structure with “meet these numbers or go to jail” and nothing else. Well, Bill S-8 isn't that, but the criticism is.

What else is it? It could be effective in the sense that it enables a whole bunch of things to happen, but it doesn't have the guiding principles, and that's what I'm advocating.

Hon. Carolyn Bennett: Would you like to write us a letter about what should be in the preamble?

Dr. Steve Hruddy: I'd be happy to.

Hon. Carolyn Bennett: Thank you.

The Chair: Thank you.

Ms. Ambler, we'll turn to you, for the next seven minutes.

Mrs. Stella Ambler (Mississauga South, CPC): I thank you both very much.

Dr. Hruddy, I want to ask you specifically about your thinking and view of some of the timelines in this legislation. According to the written submissions to the panel, several first nations have expressed the opinion that their water systems must first be brought up to clear standards before a legislative regulatory regime is put into place. The government has stated that regulations will be phased in, so first nations will not be required to comply with the regulations until they have the capacity to do so. The previous minister did express that in writing and has made it very clear.

Can you comment on and give us your view on the phased-in approach?

Dr. Steve Hruddy: Well, I think that's the only sensible approach to something like this. That's what the expert panel was concerned about. You can't just pass regulations and say, “After this date you're

in violation and you're going to jail.” But at the risk of sounding like a broken record, one of the advantages of a drinking water safety plan approach is that if you put that as your overriding approach to solving the problem, it maps what your source water issues are, what your capabilities for dealing with those challenges are, what your personnel challenges are. It requires you to put your mind to all of these issues, and at that point it should reveal where the gaps and deficiencies are.

I guess I would prefer, as a taxpayer, to see funds invested, with the knowledge that can be gained from a drinking water safety plan, rather than some kind of arbitrary list of “You're next.”

Mrs. Stella Ambler: Right, I appreciate that. Even in your comments you talked about the fact that it can't simply be preventative and that there isn't a way to just prescribe what needs to be done. I think what you're saying is that the phased-in approach, obviously, is a good one. It will allow first nations to do this properly, I think.

What conditions must be in place and be met before these new standards are enacted?

Dr. Steve Hruddy: Clearly, there needs to be a commitment to work with the people who actually have to implement this. The essence of a drinking water safety plan approach cannot work if it's not owned by the people who have to do it. You don't get that ownership by imposing it and saying, “You will do this.” I guess that's one of my criticisms of what's happened in Ontario, with the quality management standard. It's so complex that the smaller communities look at it and their eyes glaze over and they say, “Well, we'll hire a consultant.”

Mrs. Stella Ambler: Yes, you mentioned that it was too onerous.

Dr. Steve Hruddy: Well, it's just too complicated. It doesn't cut to the heart of what this system should be trying to achieve. It won't work if you simply hire consultants who produce a glossy report that goes on the shelf.

● (0935)

Mrs. Stella Ambler: Yes. That we need a bottom-up approach, I also heard you say.

You mentioned Scotland. Could you tell us what their method is and your experience of how they're doing it there? It sounded like you were impressed by the system they have in place.

Dr. Steve Hruddy: There's a couple of things there.

The person who led the charge in Alberta to get the drinking water safety plan approach actually immigrated to Alberta from Scotland, so he brought that expertise and brought some people familiar with what was going on there to actually do things on the ground in Alberta.

The thing about Scotland is they did not privatize their water utilities like England and Wales did. They kept them under, essentially, the equivalent of a crown corporation, but their realities are similar realities to many of those a lot of small communities in Canada. When they looked at what WHO had come out with in the water safety plan approach, they said, "This is what we need to do." For these smaller communities, "You need to have the people on the ground aware of where the threats are coming from, and aware of what they can and can't do."

Something I didn't say in my remarks, but which is one of the most important things, is to know when to call for help. Let's face it: you're not going to put people with Ph.D.s with chemical engineering into communities of 200 people, a thousand miles away from anywhere.

Mrs. Stella Ambler: Right.

I also appreciated your reference to Walkerton. I'm from Ontario, and in the 1990s that was obviously a very tragic situation in terms of what you described—that this can never be assured, that you can only reduce the risks to negligible. As you said, I think that's a common misconception that many people have.

To go back to the timelines, how long do you think it will take to bring first nation communities up to the standards once a regulatory regime is decided on?

Dr. Steve Hruddy: There are a number of first nations who are already beating any standard you would ever want to meet. There are some real gold-plated success stories out there.

Mrs. Stella Ambler: Yes.

Dr. Steve Hruddy: The challenge is to try to get everybody up to that level. I can't honestly say how long it would take to get everybody up to that level. The problems of water treatment operations are not that vastly different from the challenges you're looking at in housing and everything else that happens in remote small locations.

I think it's realistic to look at a five- to ten-year window over which you have almost everybody onside, but I'd be reluctant to say that you can guarantee everything done in that period of time.

Mrs. Stella Ambler: Right—or that it would cover every single one.

I would think—

The Chair: I hate to jump in, Ms. Ambler, but your time has expired.

Mrs. Stella Ambler: Oh, sorry. Thank you.

The Chair: Gentlemen, I just want to remind you that if you need translation devices, you do have them there.

We'll turn to Mr. Genest-Jourdain for the next five minutes.

[Translation]

Mr. Jonathan Genest-Jourdain (Manicouagan, NDP): Good morning, gentlemen.

You referred briefly to the consequences incorporating provincial water quality regulations or measures would have for Indian bands. Could you tell us more about the consequences this could have?

● (0940)

[English]

Prof. Graham Gagnon: The impact of provincial regulations in the Atlantic region would be significant. There are four provinces, so I think it would be significant. We created a regional framework to move away from provincial regulations, because the four provinces regulate quite differently.

Currently funding is more on a regional basis. The idea would be to make sure that, regionally, each first nation community was upholding the same standard regardless of whether they were in New Brunswick, P.E.I. or Nova Scotia.

That's an important point you've raised.

[Translation]

Mr. Jonathan Genest-Jourdain: Gentlemen, has it been brought to your attention that funds have been invested in the preparation of plans to ensure the safety of the drinking water of first nations? Do you know if funds have been allocated to the implementation of such measures?

[English]

Prof. Graham Gagnon: I'm not aware of any. Through Bill S-8, I'm not aware of any.

[Translation]

Mr. Jonathan Genest-Jourdain: Very well.

I am going on a bit of a fishing expedition with my last question. It is going to be quite brief.

I would like to know what you think of the consequences of industrial activity on the water tables that are being affected, and, ultimately, on the quality of water in first nations communities. Have you ever studied this issue? I did not see anything on that in your reports, but I'm quite convinced that you have a position on this.

[English]

Prof. Graham Gagnon: For the Atlantic region, industrial activities are quite a bit different from what they would be in Alberta. I'll answer from the perspective of the Atlantic region, and perhaps Dr. Hruddy could expand on Alberta.

Within the Atlantic region, industrial effluents don't pose a tremendous challenge for many of the first nations. There are maybe one or two communities that would be challenged. Given the remoteness and the proximity of where their surface water or groundwater systems are, the impacts might be less. But certainly in other places, in Ontario, Quebec, and certainly Alberta, challenges with impacts from industrial pollution could be significant.

Dr. Steve Hrudehy: The most important thing to understand is that the most pervasive and certain cause of illness from drinking water has nothing to do with industrial discharges; it's human waste, animal waste, wildlife. That's the source of microbial pathogens, and that's the thing that most commonly makes people ill from drinking water. That's what killed people in Walkerton. That's what made people sick in North Battleford.

Industrial contamination is very site specific. Obviously, there are circumstances in Canada where communities are located near industrial activities, and they may experience difficulties from industrial contamination. In my experience over the past 40 years, these cases are actually few and far between. They're not the dominant problem that we're trying to resolve.

[Translation]

Mr. Jonathan Genest-Jourdain: How much time do I have left?

[English]

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

[Translation]

Mr. Jonathan Genest-Jourdain: Gentlemen, let's talk about radon gas. In Quebec, this is quite a problematic situation. Some communities can't even benefit from filters in homes, because they are already too radioactive. This is also related to mining exploration in some locations. Obviously, this ultimately affects the quality of water.

Can you give us some insight into your position on the effects of radon gas?

[English]

Dr. Steve Hrudehy: I'm not aware of substantive problems with drinking water safety in Canada from radiation.

I don't know everything; there may be some circumstances that I don't know about. It's among the parameters that are looked at, but that's very rarely a primary problem.

The Chair: Gentlemen, we want to thank you for coming today. We certainly appreciate your testimony, your statements, as well as your willingness to answer our questions.

Your testimony will be considered in undertaking our review of this bill. Thanks so much.

We'll suspend for a few minutes, and then we'll get under way shortly with the next panel.

● (0940)

(Pause)

● (0945)

The Chair: I call this meeting back to order. We will continue with our next panel of witnesses.

For the second hour, we have representatives from Metro Vancouver as well as from the Union of British Columbia Municipalities.

Coming from Alberta, I'm on a two-hour time difference. You guys are on a three-hour time difference. We know it's a little earlier for you this morning, and we appreciate your willingness to be here.

From Metro Vancouver, we have Mr. Daykin and Mr. Hildebrand. Thanks so much for joining us.

From Union of British Columbia Municipalities, we have Mr. MacIsaac. Thanks for being here.

We will begin with the folks from Vancouver. We'll turn it over to you for the first 10 minutes, and then we'll hear the submission from the Union of British Columbia Municipalities.

● (0950)

Mr. Ernie Daykin (Director and Chair, Aboriginal Relations Committee, Metro Vancouver): Thank you, Mr. Chair.

Committee members, we appreciate the opportunity to speak to you this morning.

My name is Ernie Daykin. I'm the mayor of the District of Maple Ridge in British Columbia. I'm also a director on the Metro Vancouver board and chair of the Vancouver Aboriginal Relations Committee.

As you mentioned, Mr. MacIsaac is with us from the Union of B. C. Municipalities, and Mr. Ralph Hildebrand, general manager of corporate services and corporate counsel and manager of Vancouver's Aboriginal Relations Committee.

At the local government level we fully recognize and support the need for all Canadians, aboriginal and non-aboriginal, to have access to clean, safe drinking water, and the proper disposal of waste water.

We're here today to present a local government perspective on Bill S-8, An Act respecting the safety of drinking water on First Nation lands, and represent some issues that are common to local governments not only in Metro Vancouver and British Columbia, but, we believe, across the country. In this regard I want to acknowledge the Federation of Canadian Municipalities, which supports Metro Vancouver's views on Bill S-8. FCM's comments are reflected in some of the statements that are made in this presentation to the standing committee.

For everyone's benefit, I'll give an overview of Metro Vancouver. It's a federation of 24 local authorities, including one unincorporated area and one treaty first nation, the Tsawwassen First Nation. Tsawwassen First Nation reached the first modern urban treaty with the governments of Canada and British Columbia in 2009, under the B.C. treaty process.

Metro Vancouver works well together and collaboratively as we deliver plans and regional services, including drinking water, wastewater treatment, and solid waste management. Metro Vancouver also regulates air quality, plans for urban growth, manages a regional parks system, and provides affordable housing for our residents.

Metro Vancouver's population is currently 2.3 million, and over 50% of B.C.'s population live within the Metro Vancouver area. It's also home to 52,000 aboriginals, according to the 2011 census.

As I mentioned, I'm the chair of the Aboriginal Relations Committee, which is a standing committee of the Metro Vancouver board. It's been established to provide advice on treaty negotiations and aboriginal relations within Metro Vancouver to the board and to individual municipalities.

A key part of the committee's scope of work is strengthening relationships with first nations. We are participating actively in two tables with Katzie and Tsleil-Waututh as part of the provincial negotiation team's monitoring of emerging aboriginal treaty and non-treaty related issues, and assessing their impact on regional and municipal governments.

The relationship building and day-to-day interaction between municipalities and first nations that's taking place in our urban setting presents a number of challenges that we feel are unique, including higher population densities, competing private interests, unique land use considerations, rapidly growing servicing needs, and limited available crown land for treaty settlements.

Faced with these complex realities, Metro Vancouver has committed to building effective, positive working relationships with our first nations. This will ensure alignment and achievement of our common interests.

The regional district has been successful in communicating regional interests on a number of emerging policies and legislation that have been developed by the senior levels of government, and ensuring its continued involvement in the B.C. treaty process.

With respect to Bill S-8, Metro Vancouver has been concerned about the proposed legislation and its potential impact and implications for local governments since it passed first reading in the House of Commons in June 2012. Metro Vancouver has significant concerns about how Bill S-8 will affect its delivery of services in the Metro Vancouver area.

In response to Metro Vancouver's invitation in October 2012, staff representatives from the Vancouver offices of the Department of Aboriginal Affairs and Northern Development Canada attended an Aboriginal Relations Committee meeting and made a presentation on Bill S-8. The federal representatives outlined a legislative framework for managing drinking water and waste water on first nations lands, and encouraged Metro Vancouver to submit its input into the parliamentary process by appearing before your committee.

● (0955)

Given the commitment on the part of the federal government—as expressed by the federal delegations—to consider and address local concerns as providers of water services to local communities, including first nations, we're pleased to be here today and provide you with our perspective.

To clearly formulate our interests and concerns with respect to Bill S-8, Metro Vancouver drafted a position paper on that bill, the safe drinking water for first nations act. That was drafted and presented to the board in November 2012. Based on the interest articulated and the issues identified in the position paper, local governments believe that it is at the community level that the effectiveness of this bill will be tested—including funding, improvements, and the need to execute and sign servicing agreements.

As such, the Metro Vancouver position paper identifies the following issues with respect to Bill S-8. One of the primary concerns expressed in the position paper is the transfer of responsibilities. From our interpretation of Bill S-8, an obligation to provide utility services and enforcement regulations could be imposed upon local governments if the federal government and respective provincial governments enter into an agreement under which the provincial governments are obliged to compel local governments to provide water and wastewater treatment services to first nation communities. Provincial governments may create or amend legislation to impose duties and responsibilities on local government as provincial bodies established by a provincial act.

Local governments do not want to be put in this position. There's a long history in B.C. of reaching agreements for services between local governments and first nations, as evidenced by the 550 servicing agreements between local governments and nearly 200 first nations.

Level of service is another concern. It's not clear whether Bill S-8 and the regulations passed pursuant to Bill S-8 will impose new requirements on local governments, and whether a regional authority such as Metro Vancouver will be required to provide water services to all municipalities to meet the obligations imposed, or whether Metro Vancouver will be required to increase its level of service to accommodate all growth and development within first nation lands.

Local governments in Metro Vancouver are compelled to comply with a regional growth plan. The projections for population growth and development are coordinated within the planning and development of regional services, such for the supply of drinking water and disposal of waste water. The imposition of requirements to provide drinking water and wastewater services to first nation lands that are developed outside of our regional planning principles could create, or will create, an imbalance between water and sewage plans and the regional growth plan.

Another concern that was expressed is bylaw regulation and enforcement. It is our understanding that Bill S-8 would permit local governments to apply their bylaws and regulations to first nations' lands to enforce and regulate the use of water and wastewater services to first nation communities. However it is not clear how the federal government will facilitate the enforcement of local government bylaws on reserve lands regarding the provision of utilities and other services to first nations. This includes first nation lands that are subject to future applications for additions to reserves.

Another closely related concern is regulatory authority. Bill S-8 is not clear on how the federal government proposes to protect local governments regarding environmental and public health liabilities related to servicing agreements for first nation lands when local governments have no regulatory authority over reserve lands and Indian bands do not have natural persons powers to enter into contractual agreements with local governments.

The financial liabilities are another concern that have been highlighted in the position paper. Regulating drinking water on Indian reserves would have significant capacity and resource related implications for local governments. It is not immediately clear how Bill S-8 will protect local governments that provide utility services to first nations against financial liabilities when local governments do not have taxation authority over first nation lands that are serviced.

In addition to undefined financial liabilities, there are also undefined legal liabilities presented by Bill S-8. For example, with section 13, the bill appears to remove the Government of Canada from legal liabilities associated with the regulations to be developed and implemented under the act.

In this regard, the Federation of Canadian Municipalities has asked us to seek clarification from the standing committee as to what person or body the legal liability will reside with for the regulations developed and implemented under the act.

• (1000)

In addition, there is a concern with funding capacity. It is not clear whether the federal government and first nations across Canada have the proper funding capacity for the proposed infrastructure improvements on Indian reserves under Bill S-8.

The national assessment report, released in July 2011, estimates that over the next 10 years the combined projected capital and operating costs to meet the water and wastewater servicing needs of the communities of the 618 individual first nations across Canada will be approximately \$4.7 billion, plus a projected operating and maintenance budget of \$419 million annually.

The report further notes that in 2009 the water and/or wastewater systems of 153 of B.C.'s 203 first nations were considered to be high-risk systems. As indicated in the 2012 Canadian Infrastructure Report Card, released by the Federation of Canadian Municipalities, local governments across Canada also face major challenges while maintaining and managing decaying water and wastewater infrastructure to meet current public needs and minimum performance standards. The substantial infrastructure deficit is of great concern to municipal and local governments.

The upgrading and replacement of drinking water and wastewater systems will require considerable investments in many communities across Canada. Consequently, the capacity of local governments to expand the provision of water and wastewater systems and services may be limited. The infrastructure capacity gap for both local government and first nations must be closed to ensure that all Canadians have access to clean and safe drinking water.

We agree that the process needs increased funding to be successfully implemented. Bill S-8 outlines a legislative framework for managing drinking water and waste water on Indian reserves, but still lacks an adequate implementation plan, such as detail and

substance required to improve water resource management on first nations' lands.

The issues I have just mentioned outline the difficulties that will be faced as a result of Bill S-8. At the local government level, when enacting plans, bylaws, and regulations that affect residents and businesses in the region, we seek input and consultation, and have other processes to ensure that we obtain a broad vision of ramifications of our actions and to ensure that we can practically address the concerns and avoid the law of unintended consequences.

Here, unfortunately, local government input in the enabling legislation is lacking. With Bill S-8, local government interests were not considered in the drafting of the legislation. Adequate communications and meaningful consultation with local governments are necessary, as local governments, we believe, will be impacted by Bill S-8.

In summary, I'd like to reiterate that local government recognizes and fully supports the need for all Canadians, aboriginal and non-aboriginal, to have access to clean water and to wastewater disposal. To achieve this goal, senior governments must first make provisions for appropriate funding to first nation communities.

As local governments, we feel we have a unique perspective on this issue, its implementation, and potential implications. We remain hopeful that the regulations to be drafted for Bill S-8 will address the following requirements: reliable certification of water and wastewater treatment operators; binding and consistent water standards; clear oversight and reporting responsibilities; clear delineation of the roles of health, environment, and water officials, including first nations officials and their governments; clear and comprehensive monitoring and testing of drinking water; clear delineation of responsibility for responding to adverse events; opportunities for public involvement, disclosure, and transparency; opportunities for receiving expert third-party advice; available resources and funding mechanisms; and proper capital and infrastructure planning over time.

The tasks at hand are very large and challenging for any level of government, including first nations; therefore, all parties need to work together. There are significant investments that the federal government and first nations have made on this issue.

•(1005)

I think it's important to note that at the local government level we have also made significant investments. That needs to be acknowledged. Local governments request some clarity on cost recovery and the liability issues identified earlier, and which appear in Metro Vancouver's position paper.

Bill S-8 has potential implications for local governments. Given these issues identified, local government seeks a commitment from the federal government that Bill S-8 will be amended in consultation with local government and first nations.

Further, local government would like acknowledgement from the Government of Canada that local governments will not be affected by Bill S-8, and further, a commitment from the Government of Canada that local governments will be kept apprised and engaged in the process of developing the regulations for Bill S-8.

That concludes my remarks.

Thank you.

I'm going to pass it off to Mr. MacIsaac.

The Chair: Mr. MacIsaac.

Mr. Gary MacIsaac (Executive Director, Union of British Columbia Municipalities): Thank you, Mayor Daykin.

Good morning, Chair, vice-chairs, and committee members.

I appreciate having the opportunity to appear before you this morning. My name is Gary MacIsaac. I'm the executive director of the Union of B.C. Municipalities, or UBCM. Metro Vancouver is an active UBCM member and, as you just heard, a provider of regional services, including drinking water and wastewater treatment. I am pleased to be here on behalf of the UBCM First Nations Relations Committee to speak in support of Metro Vancouver's position and concerns on Bill S-8, and I hope to provide additional provincial context on this matter.

The First Nations Relations Committee members, unfortunately, could not make the trip due to prior community commitments, and they send their regrets.

UBCM is a member-driven organization, with 100% local government membership in British Columbia. In addition to its 188 local government members, UBCM also represents six self-governing first nations members. UBCM's First Nations Relations Committee oversees all organizational policy development work related to first nations issues, including treaty negotiations, negotiations outside the treaty process, and governance reform. The committee's other key role is to focus on relationship-building between first nations and local governments through best practices and other initiatives.

With that brief overview, I would like to turn to Bill S-8. First and foremost, I acknowledge the real and substantial need for development of federal regulations governing the provision of drinking water, water quality standards, and the disposal of waste water in first nation communities. Access to clean drinking water is a basic need that must be provided as expeditiously as possible.

But as Mayor Daykin outlined, this bill has the potential to impact local government operations extensively, not only in the Metro Vancouver region, but across British Columbia and the nation. Yet it would appear that local government consultation was not sought in the development of this legislation. Early, meaningful consultation with local government not only allows potentially impacted local governments to raise concerns around issues such as service agreement and regulatory considerations, legislative and jurisdictional uncertainties, and potential financial and capacity implications, but it also allows for a mutually beneficial identification of issues at an early stage in the process. Local governments do not aim to obstruct the provision of necessary services; welcoming early and ongoing local government participation provides an appropriate forum for discussion and concern resolution.

The established role of local governments in aboriginal affairs has been recognized in agreements between UBCM and senior levels of government. This includes a memorandum of understanding with the Province of British Columbia on local government participation in the new relationship with first nations, which was renewed in 2012. Under this agreement, local government representatives serve as respected advisers to the province in treaty negotiations that affect their interests, and the province is committed to initiating contact with a local government when the outcome of negotiations will affect the local government's jurisdiction, operations, or provision of services. As a result of the 2005 new relationship vision document, this MOU was expanded to include consultation and information exchange with local governments on other agreements outside the B. C. treaty process, and on matters of mutual interest, including those that will have a significant impact on local government jurisdiction.

A MOU on communication and information-sharing between UBCM and the former INAC was renewed four times, and most recently in 2007—with the former INAC, now AANDC, indicating its interest in renewing the agreement in 2009. This agreement set out to improve communication and strengthen working relationships between INAC and UBCM, building on issues of common interest. In our view, this goal is critical not only to the local governments that provide on-the-ground services to first nations, but it also benefits senior government in the successful implementation of legislative initiatives.

With the importance of local government consultation in mind, Minister Valcourt's recent response to UBCM's letter expressing concerns about Bill S-8 was quite heartening. In it, Minister Valcourt indicated that Bill S-8 is an enabling bill that, if passed, would allow the Government of Canada to work with first nations and other stakeholders to develop regulations on a region-by-region basis, and that local governments are welcome to participate in the process, where appropriate. We appreciate the assurance that local government input will be sought, and look forward to participating accordingly.

●(1010)

At the core of concerns around Bill S-8 are broader concerns around local government exposure to liability as a result of the existing regulatory gap. As you know, reserve lands are exclusively federal lands and jurisdiction, outside of local government regulatory and taxation authority. Yet reserve lands are included within local government boundaries. There is an inability for local governments to regulate utility services on reserve lands, and without effective regulatory tools, local governments are exposed to financial, environmental, and public health liability if a problem arises with the local government service provided to those lands.

As Mayor Daykin previously outlined, these concerns relate to the potential conferring of service provision provided for under subclause 5(1) of Bill S-8 and to other service agreements that local governments develop in good faith with first nations. There's a real and pressing need for provincial and federal governments in collaboration with local government and first nations to develop effective legislative tools to reduce local government exposure to financial, environmental, and public health liability.

In addressing the concerns raised today by Metro Vancouver, there is also an opportunity to examine underlying regulatory issues more thoroughly.

I appreciate your time today, and we look forward to participating in the development of regulations and implementation plan pursuant to Bill S-8 as appropriate. We hope that today's presentation has aided in opening communications regarding Bill S-8 as well as ongoing and future matters of mutual concern. Both Mayor Daykin and I welcome your questions.

The Chair: Gentlemen, thank you very much.

I will begin our rounds of questioning with Mr. Bevington for the first seven minutes.

Mr. Dennis Bevington (Western Arctic, NDP): Thank you, Mr. Chair.

I want to thank you for your presentations here today. As an ex-mayor myself and a member of the FCM, I understand your basic concerns about how this is going to impact on your business, which is the provision of services.

As it stands now, would you say that the cost of the provision of water and wastewater removal in British Columbia is a cost-escalating business?

Mr. Ernie Daykin: Yes, past and present. Metro Vancouver did a significant upgrade to the Capilano-Seymour watershed in the range of \$800 million over the last number of years that's just being

wrapped up. We have two wastewater treatment plants, one on the North Shore and one in the Richmond area, that are primary treatment plants now but that are going up to that secondary treatment level. It costs in the range of \$1 billion-plus to put those two pieces of infrastructure into service Metro Vancouver. So it is a challenge, yes.

Mr. Dennis Bevington: When you're in a service relationship with the first nations in your region, what has the experience been?

Mr. MacIsaac may want to answer that, too, for outlying communities.

How is that relationship in terms of dealing with these escalating costs of providing service?

Mr. Ernie Daykin: There are some very good relationships that are in place as we speak. In my own community, we are chatting with the first nations that are in Maple Ridge. There is that ongoing dialogue. I'm not sure there's a recognition at some level of the cost, the infrastructure cost, the capital cost, and the ongoing costs that go into the provision of water. But the fact that we do have a number of agreements in place I think tells me that it's working. Could it be better? I'm sure perhaps it could be.

Mr. Dennis Bevington: Mr. MacIsaac?

●(1015)

Mr. Gary MacIsaac: Yes, I would echo those comments. Generally the same situation would exist across the province, where you would see that there's a wide variation. But there are service agreements in place, and local governments and first nations do have a variety of relationships, not all identical. They would vary depending on local needs and issues.

Mr. Dennis Bevington: Would you also say it's likely that the service agreements that you have are beneficial to the first nations? In other words, it's better that they're getting their water through the municipal services than trying to provide those themselves.

Mr. Ernie Daykin: Yes, I would agree. With the approach that we take at our local table but also at the regional table there are a number of things, a number of services that are delivered, that the District of Maple Ridge can't do on its own. It's better to be part of a federation, to share those collective efforts. Again, we've provided a list of the local government servicing agreements with first nations in Metro. It goes from water and sanitary services to fire protection, and some of the communities have animal control, and dike maintenance. A range of services are provided, and again, as Mr. MacIsaac said, they're not all identical. But I think there's a critical mass of those services that the region can provide in a cost-effective way. Our concern is that—

Mr. Dennis Bevington: Basically you're an integral partner with these reserves; they're going to be part of what you're doing in the future. There's no question about that. There's not going to be division of service. So you're stuck with what happens here. You're stuck with this legislation and yet you're their best option.

Those terms make it vital for you to be at the table with this legislation.

Mr. Ernie Daykin: Yes. We want to be willing partners. We want to provide our expertise, our experience, and be part of drafting whatever comes down the pipe.

Mr. Dennis Bevington: When it comes to more remote communities—remote first nations that are in service agreements with municipalities—where there are water delivery services, for example, where you're trucked water, where these services are more difficult, and where the standards are harder to maintain because they're such individual customers.... You're not putting it in a pipe and sending it across the border. You're putting it in a truck and delivering it to individual homes or you're picking up your sewage services.

Do you see this kind of relationship as requiring a great deal of integration with the standards and the regulations that might come out of this particular process?

Mr. Gary MacIsaac: I think generally if the first nation reserve is experiencing that problem, the local government will have similar challenges. It certainly does speak to the need to look for local solutions and to work closely together.

Mr. Dennis Bevington: So what you're saying here basically is that you haven't had that opportunity yet to deal with this bill so that you can be assured that as time goes on, when these regulations are set, your essential role in dealing with water and sewer services on first nation communities will be recognized.

Mr. Ernie Daykin: Yes, that's correct.

Mr. Dennis Bevington: Quite clearly, your case is very strong. We'll look forward to seeing if you have some idea about amendments that could be made to the bill to enhance your and other municipality's roles in this across the country. If you're saying this, the same thing applies in many other areas across the country. Certainly we would want to know that there are amendments we can propose that would give you the kind of security you're looking for with this legislation.

• (1020)

The Chair: You've taken all the time, Mr. Bevington, but if there is a short answer, we can hear it from you folks.

Mr. Ralph Hildebrand (General Manager, Corporate Counsel, Corporate Services, Metro Vancouver): I'll try a short answer, Mr. Chair.

I think one of the issues of concern is the lack of consultation so far. That's clear in both presentations. If we look at, for instance, the definition section about a drinking water system, a system includes the whole system, which would mean the system on first nation lands and the local government system.

If that section, for instance, included the same provision as in section 4.3 that specifically references first nation lands, it would mean that before you could move forward with regulations, there

would have to be that consultation with the local governments. That would give us some assurance.

The Chair: Thank you.

We're going to turn to Mr. Clarke instead.

Mr. Clarke, seven minutes.

Mr. Rob Clarke (Desnethé—Missinippi—Churchill River, CPC): Thank you, Mr. Chair. I'd like to thank the witnesses for coming.

I've got a couple of questions. It's actually pretty straightforward.

My home first nation is Muskeg Lake first nation in Saskatchewan. I was in the RCMP stationed all over northern Saskatchewan, including at the Red Earth reserve, a remote community located about 150 kilometres northeast of Nipawin. In that time—back in 1995 until probably about 1997—being stationed on that first nation reserve, there was a brand new water treatment plant that was built under the federal government at that time. That was great. The local community had nice potable water. Water sewage was great, but there was one problem and I'd like to get your point of view on it.

This is why the government is trying to introduce the current legislation. Do you feel it's fair for a community to go without water for three to seven days, despite having a brand new state-of-the-art facility, because of an individual going out for personal reasons, either for hunting or for personal reasons? This has happened quite a few times. There are no regulations in place or no back-up systems for extra people to look at. Yes or no?

Mr. Ernie Daykin: No, it's not fair.

Having said that, we're not saying there's a silver bullet or a fix-all piece for the equation. There are different challenges that we have in an urban setting than in a situation like you're suggesting or describing. We're not here to say that people don't have that right. That's a given. Through consultation with local governments, we can together come up with a framework that will ensure that this doesn't happen in your community, and doesn't happen in my community, which is significantly larger. What we're asking for is the desire and the willingness to be at the table, to be part of the conversation.

Mr. Rob Clarke: You mentioned consultation with local governments and first nation governments.

I'm just wondering if you clearly understand that there are over 633 first nations across Canada. Did you know the legal definition of the duty to consult with first nations, when you mentioned it in your speech?

Mr. Ernie Daykin: I'm going to defer to my legal colleague.

Mr. Ralph Hildebrand: It's an interesting area of developing law, isn't it? I think that would be the appropriate response.

Mr. Rob Clarke: I'd like to hear your legal definition of the "duty to consult".

Mr. Ralph Hildebrand: The duty to consult varies, of course, depending on the nature of the interests that are stake in any particular first nation's circumstance. It's not something I could give a black and white answer to, as we heard from the previous one.

Mr. Rob Clarke: It was clearly defined with the Haida versus B. C. forestry case in British Columbia.

Mr. Ralph Hildebrand: That would depend on whom you talk to.

Mr. Rob Clarke: You've mentioned the duty to consult. I just want a clear definition of what you thought was the duty to consult.

• (1025)

Mr. Ralph Hildebrand: In terms of our concern with “duty to consult”, it's the fact that as local governments we have a lot of experience in dealing with water and wastewater issues. We would like to be able to come to the table to discuss and give our perspective on those issues and let our concerns be known, where appropriate and where our interests are at stake. I assume they would be addressed in the regulations that follow.

Mr. Rob Clarke: I'd like to turn my time over to Ms. Ambler, please.

Mrs. Stella Ambler: Thank you, Mr. Chair.

First of all, I'd like to acknowledge, Mayor Daykin, the essential role that you play, as underscored when you were speaking to Mr. Bevington. I understand that Minister Valcourt assured the municipalities that you will have a strong role to play should Bill S-8 become law. It's heartening that you're working with FCM and that you're representing their views as well as the views of Metro Vancouver.

I noticed in your position paper that there are a number of open-ended questions and concerns. Words like “unknown” and “unclear” require clarification. Would you agree that a regulatory framework is what's needed? Are you relieved, and are some of your concerns assuaged by the fact that Minister Valcourt has said the department really wants your input afterwards in the development of the regulations?

Mr. Ernie Daykin: Yes. It's been a work in progress. When the delegation came to the aboriginal relations committee in October, they made their presentation. Throughout it, consistent references were made to significant investment by the federal government in the delivery of water and significant investment by first nation communities. There was not, in our view, an acknowledgement of what local government and the regional government had done. We received that correspondence and it was very encouraging. Again, it's about having that strong, positive relationship. In terms of ongoing consultation, yes, I think there's a framework there, but it will be in having that dialogue on an ongoing basis at a number of levels that will make it successful for all of us.

Mrs. Stella Ambler: Sure. That I think can take place, too, after the legislation is passed as well.

Also, in Minister Duncan's letter, a little further back in February, he did specifically say that “Bill S-8 will not affect municipalities' ability to choose to pursue or not to pursue municipal service agreements with First Nations. As well, S-8 will not delegate powers or costs to provinces or municipalities with respect to First Nations drinking water — jurisdiction will remain with the federal government.”

In the spirit of alleviating your concerns, did that help as well? I know that both you and Mr. MacIsaac talked about financial and

legal liabilities, but municipalities can choose or not choose to enter into a service agreement and include these issues in it. So I guess I just....

Mr. Ernie Daykin: We would like an assurance on that. I think there's still the feeling or understanding that we could be required to do that.

Mrs. Stella Ambler: But the letter says specifically that you won't be.

Mr. Ernie Daykin: Fair enough.

Mrs. Stella Ambler: Okay. I'm sorry. It's just....

Mr. Ernie Daykin: Again, I'm a glass-half-full kind of guy. I don't like to be a skeptic.

Mrs. Stella Ambler: Okay. I can tell.

Mr. Ernie Daykin: But there are questions, and I'll give you a really brief example with waste water. If there's contamination or a problem with what's going into the wastewater system at the municipal level, we find out where the source is and there are bylaws and opportunities in place to deal with that. There could be fines imposed, because that's the source that's causing a problem for the system.

It's not clear if the same thing would be applicable in a first nation....

Maybe Gary can help—

Mrs. Stella Ambler: Well, I hope that in your involvement with the...will help with that. Thank you.

The Chair: Ms. Ambler, your time is up. I do apologize. These clocks keep running.

We'll turn to Ms. Bennett now, for the next seven minutes.

• (1030)

Hon. Carolyn Bennett: I think what you're telling us is worrying, as is your position paper. The words that we see are: point 1, “lack of consultation”; point 2, “unknown”; point 3, “unclear”; point 4, “challenges”; point 5, “uncertainties”; point 8, “unknown”; and point 9, “lacking”. Oh, I left out one “unclear”, and one “require clarification”.

So clearly, the bill as drafted does not reflect the concerns you expressed at the meeting. I guess my question is, if this bill is passed in its present form—because it didn't really address the complexity of your situation, which I think is an excellent case in point.... You have first nations sitting in a region, and the way the bill is drafted at present, you feel that you will be affected by it and that that's not addressed.

Just tell me how this ought to work. Seeing that you're going to get this bill, is there a way we can fix it between now and when it's shoved through?

Secondly, what kind of consultation would you require in the development of regulation?

What do we have to do to this bill to reassure you that this doesn't increase your liability? A letter from a minister doesn't mean anything if you have a bill that you believe really affects your ability to do your job.

Mr. Ernie Daykin: As mentioned at the beginning, we can provide inputs and suggest amendments. Our hope would be that those would be given strong consideration and provide us with some clarity and assurances.

I know that Gary had something to say, though.

Mr. Gary MacIsaac: MP Bennett, if I understand your second point, you were asking at what level the consultation needs to occur.

The bill sets out the powers to do a lot by regulation. As you heard from your previous delegation this morning, on a technical level there are many ways to achieve satisfaction with regulation. So we think there would need to be consultation at a local government and first nations level, because they're neighbours and work together on the same system and both want it to be delivered.

I would also say there's a great technical need. As these regulations are built out and developed, there is a real technical need. So there very clearly needs to be technical input from the local government and community on it, as well as political input.

Hon. Carolyn Bennett: Do you believe that the water safety plan approach, if that were better articulated in a preamble, would help?

Mr. Gary MacIsaac: I'm not sure I'm clear on your question.

Hon. Carolyn Bennett: In the previous panel, Dr. Hrudehy was concerned that this doesn't have the over-arching articulation, the need for individual water safety plans.

Mr. Gary MacIsaac: What we at UBCM are saying here today is that we understand there is going to be a regulatory framework and that there's no debate on that, because there seems to be a merit in and a need for doing that. So there are no debates about that. We just think that the framework could be developed much better for all the partners if there's local government involvement early and often in the process.

So we are where we are in the process, from where we got today. What we said coming in today is we're very much willing to work as a local government community, both at Metro Vancouver and UBCM, in the development of these regulations.

Hon. Carolyn Bennett: But Mayor Daykin, what would your concerns with the way the bill is drafted right now? What areas would you like to see amended?

Mr. Ernie Daykin: Again, we want a clarity on what is required of us and what the potential liabilities are and how those can be alleviated at our level. I think that's one of the uncertainties we're faced with.

Hon. Carolyn Bennett: Have you had a response from the department to your position paper, to all of the nine areas you are seeking clarification on, and...?

• (1035)

Mr. Ernie Daykin: No. We had the letter from the Minister, but nothing specific addressing our eight or nine points.

There was that general comment that we won't be harmed or held responsible, or that there won't be costs—but as for addressing those specific issues, no.

Hon. Carolyn Bennett: I don't know, Mr. Chair, what we can do about that. As you know, when the Minister was here, we didn't

really get a chance to talk to the officials. I wonder if it would be worthwhile bringing the officials back so that we can ask them directly about some of Mayor Daykin's concerns.

The Chair: The expectation, Ms. Bennett, is that we will invite the officials before we go to clause by clause, and also during the clause-by-clause process. So if there are questions with regards to amendments, or...

Hon. Carolyn Bennett: Maybe by then, Mr. Daykin, you could suggest to the committee and to the clerk some potential amendments that would seek to remedy these uncertainties.

Mr. Ernie Daykin: Thank you. Yes.

The Chair: We'll go to Mr. Rathgeber now for the next seven minutes.

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Thank you, Mr. Chair, and thank you so much for your interesting presentation.

I do have some questions because I require some clarification. You indicated, Mayor Daykin, that there are 52,000 aboriginals living in Metro Vancouver. Do you know how many of those individuals live on what are known as urban reserves?

Mr. Ernie Daykin: Sorry. We don't have that, but we can get that for you.

Mr. Brent Rathgeber: That's fine, but you probably can tell me how many urban reserves there are in Metro Vancouver—

Mr. Ernie Daykin: There would be—

Mr. Brent Rathgeber: —because I'm assuming that's what we're talking about.

Correct?

Mr. Ernie Daykin: Right.

Mr. Brent Rathgeber: We're talking about first nations that have reserve lands inside Metro Vancouver.

Mr. Ernie Daykin: Yes, we're representing that position, but we're speaking.... As I said in my opening comments, it has implications throughout the province and through—

Mr. Brent Rathgeber: Sure.

Mr. MacIsaac is here for all of the municipalities.

Mr. Ernie Daykin: Correct, yes.

Mr. Brent Rathgeber: So do you know how many urban reserves there are in Metro Vancouver?

Mr. Ernie Daykin: There are, I'm going to say, 24 or 28. I don't have the number off the top of my head. I'm sorry.

Mr. Brent Rathgeber: And Tsawwassen would be included in that number.

Mr. Ernie Daykin: Correct, yes.

Mr. Brent Rathgeber: And it's self-governing.

Mr. Ernie Daykin: Correct.

Mr. Brent Rathgeber: So it won't be affected by Bill S-8.

Mr. Ernie Daykin: Yes, unless they choose to. Right.

Mr. Brent Rathgeber: And do you know—and again, this is only for my education—are there other self-governing first nations amongst those 24 or 28 urban reserves in Metro?

Mr. Ernie Daykin: No.

Mr. Brent Rathgeber: Okay. Thank you.

The chair of the Metro Vancouver board is Mayor Moore.

Mr. Ernie Daykin: Correct. Yes.

Mr. Brent Rathgeber: I understand that he wrote to the then Minister Duncan on November 30 of last year, and the minister replied on February 7 and cc'd all the board members. So that would include you?

Mr. Ernie Daykin: Yes.

Mr. Brent Rathgeber: So you know the letter that I'm talking about.

Mr. Ernie Daykin: Yes.

Mr. Brent Rathgeber: And my friend Ms. Ambler, I think, referred to the letter, where the minister indicated unequivocally that Bill S-8 would not affect the municipality's ability to choose to pursue or not pursue municipal agreements with first nations.

You indicated in one of your answers that you're concerned about liability and you're concerned about off-loading. In your own brief you indicate in concern number two that the transfer of responsibilities is unknown. You, or whoever wrote this, states that Bill S-8 does not explicitly download duties and responsibilities onto local governments.

Mr. Ernie Daykin: That's correct.

Mr. Brent Rathgeber: That's your position, but you're concerned that there might be some hidden meaning or something in the regulations that might mitigate against that.

Mr. Ernie Daykin: Yes.

• (1040)

Mr. Brent Rathgeber: Okay.

If I understand your concerns—and this is partly in what you said, but more from what I've read—you're concerned that if the federal government enters into an agreement with the Province of British Columbia that might somehow obligate you to provide services to first nations, notwithstanding that you acknowledge that there's no express download.

Am I understanding your position correctly?

Mr. Ernie Daykin: Correct.

Mr. Brent Rathgeber: I don't mean to put words in your mouth.

Mr. Ernie Daykin: No. That's correct, but I think there's some concern that if a member municipality or the region cannot come to a

servicing agreement resolution, there may be the ability to impose a solution on either of us.

Mr. Brent Rathgeber: Sure. Because you're [*Inaudible—Editor*]...the province.

Mr. Ernie Daykin: Correct.

Mr. Brent Rathgeber: My question is very simple. What in Bill S-8 concerns you that the federal government will be authorized to enter into an agreement with the provincial government that will ultimately bind you? I'm looking for it in Bill S-8 and I just don't see it. I'm not saying it's not there, but I'm trying to find the basis for your concern.

I ask because I can't find it. Maybe we can come back to that after the meeting is over.

Mr. Ralph Hildebrand: It's a concern about the federal government and the provinces being able to come to an agreement with respect to regulations—and that's encapsulated elsewhere in the bill as well.

Mr. Brent Rathgeber: But the regulations are with respect to standards; the regulations are not with respect to compelling the provision of service.

Mr. Ralph Hildebrand: Well, in our position that it's not clear in the bill.

Mr. Brent Rathgeber: At least I understand your concern now. All right.

How much time do I have, Mr. Chair?

The Chair: [*Inaudible—Editor*]

Mr. Brent Rathgeber: Thank you.

So you understand, and I think you said this quite candidly, that this is essentially enabling legislation. As with any enabling legislation, the devil is in the detail. Am I correct in understanding that you're more concerned about the regulations or what they might look like than you are about the statute per se?

Mr. Ernie Daykin: Correct. We recognize this is a bill with.... I'm going to maybe characterize it in my way: I see this as a skeleton or a framework that needs to be fleshed out.

Mr. Brent Rathgeber: Okay.

Mr. Ernie Daykin: We at local government want to be part of the conversation around fleshing it out.

Mr. Brent Rathgeber: Right.

My last question is whether you have or have not. You've had good dialogue. You wrote the then minister at the end of November and you received a response on February 7. I understand there has been a subsequent conversation with the current minister, and they've thanked you for your input and assured you that your concerns will be taken under advisement and that there will be more consultation as the regulations are developed. It appears to me that you do have a seat at the table.

Mr. Ernie Daykin: Again, we want clarity on that. At the local government level, one of the terms that's used regularly in our land use discussions is “early and ongoing” consultation.

In my view we have some catching up to do. I appreciate the fact that we're at the table. I appreciate the fact that we've been able to present this, and we're just looking forward to more opportunities.

Mr. Brent Rathgeber: Thank you.

The Chair: Thank you.

We'll turn to Ms. Crowder for the last questions.

Ms. Jean Crowder: Thank you, Mr. Chair.

Of course, it's great to see people here from my home province.

With regard to consultation, I would first like to put on the record that appearing before a standing committee does not constitute consultation in any kind of form. I really welcome your input. I think your brief was excellent. But there has been a long history of first nations in particular, but also other organizations, clearly indicating that appearing at a standing committee is not consultation. I just want to say that I don't consider this consultation.

The fact that you have had some ongoing dialogue with the minister or with the department in my view also does not constitute consultation. I think it's an opening of a door. With respect to my colleagues opposite, just because you get a letter from the minister saying "Everything is hunky-dory, don't worry about it".... We have other instances. For example, with specific claims, which is not your area of interest, a number of years ago we had an agreement signed between the minister and the Assembly of First Nations that indicated that a process was going to unfold with regard to dealing with specific claims over a certain dollar value. That process never materialized, despite a written confirmation.

So I appreciate your raising concerns around consultation, and I want to point out a section in the preamble that doesn't actually mention municipalities or local governments, or any other organizations. It says that they "have committed to working with First Nations to develop proposals for regulations to be made under this Act".

In the preamble there is no mention of other stakeholders that would be included in this process, so I think you're right to be concerned about how you will be included. I want to also point out that this says "proposals for regulations". It doesn't indicate involvement in developing the regulations, only proposals for that.

What happens with the development of regulations is it goes away. There is no parliamentary oversight for it. It does not come back to us for any kind of review. So any assurances about your involvement, unless you have it guaranteed, signed, written, outlining how you will be involved, by when, what the results will be, are not worth the paper they're written on.

Could you tell me specifically how you would like to be involved, what the consultation would look like from your view? And maybe Mr. Hildebrand could address that, because I know there's a legal aspect of this.

But Mayor Daykin, go ahead.

• (1045)

Mr. Ernie Daykin: First off, I agree with you, and consultation is a lot of hard work. It's more than just coming and making a presentation for an hour. I see that as ongoing. And I think, with the

greatest respect to us as elected officials, a lot of that work—tough sledding—needs to be done with the staff and from a technical point of view, because they are the experts.

We're willing to put in that effort at our level from the political level, and I'm going to speak for the staff, but at the staff level as well. There you go.

Mr. Ralph Hildebrand: Once again volunteered.

I obviously don't want to get into a debate about what constitutes or doesn't constitute consultation, but I agree with Mayor Daykin that the object is to be able to share our expertise and our concerns, and have those dealt with in a way that results in a better product all around and a more workable product.

Ms. Jean Crowder: You have raised a number of concerns with this piece of legislation that's before us. Part of it is regulation, but part of it is actually lack of clarity around what some of the clauses in this legislation mean.

We are actually as a committee going to have very limited time to study this. If you have proposed amendments, I would urge you to get them to us expeditiously because I suspect that we could be in clause by clause by as early as next week—not that I can predict the outcome of what the committee will determine to do. But we're just not going to have the time to address the kinds of concerns you have raised. I would encourage you to do that.

Am I out of time?

Thank you for coming.

The Chair: Thank you.

Thank you, gentlemen. We appreciate your testimony today. We appreciate your opening statements and then your willingness to answer questions.

We will suspend the meeting, colleagues, for a few minutes. Then we'll line up our next panel.

Thanks, gentlemen.

• (1045)

_____ (Pause) _____

• (1050)

The Chair: Colleagues, we'll call this meeting back to order.

For the third and final hour, we do have representation from the Atlantic Policy Congress of First Nations, and we want to thank Mr. John Paul and Mr. Vicaire for being here. We certainly appreciate your willingness to be here. We'll hear from you gentlemen first.

Then we'll hear from the Ontario First Nations Technical Services Advisory Group. We have Mr. Howsam, and Mr. Hoppe who has joined us as well.

We'll turn it over first to Mr. Vicaire.

Chief Dean Vicaire (Co-Chair, Atlantic Policy Congress of First Nations Chiefs Secretariat): Thank you.

[Witness speaks in Mi'kmaq]

[Translation]

Good morning everyone. My name is Dean Vicaire and I am Chief of the Listuguj community.

[English]

Good morning, honourable members.

I would like to thank you for giving the Atlantic Policy Congress of First Nation Chiefs this opportunity to testify before you.

My name is Chief Dean Vicaire, and I am the co-chair of the APC and the chief of Listuguj Mi'kmaq First Nation. My fellow co-chair, Chief Deborah Robinson, the chief of Acadia First Nation, sends her regrets. I'm here today to speak on behalf of the Atlantic chiefs regarding Bill S-8. I am also here with our executive director, John Paul.

We are a research organization that analyzes and develops culturally relevant alternatives to federal policies that impact on the Mi'kmaq, Maliseet, Innu, and Passamaquoddy communities and peoples. The Atlantic chiefs have always had the position that all Atlantic first nation communities deserve healthy safe drinking water now and for future generations to come. APC has taken the steps to look at innovative ways of addressing the current situation for Atlantic first nation communities, which Mr. Paul will expand on in more detail.

With the release of the Neegan Burnside study in 2010 that identified issues and concerns with first nation systems, and more recently Dr. Graham Gagnon's continued work based on the Neegan Burnside study, the true complexity of the situation in first nations communities became apparent. With no regulations in place to ensure the health and safety of first nations' drinking water, the current state of first nations' systems has escalated the issue even further. Regulations give requirements to determine how a system must function and what needs to be done to provide healthy and safe drinking water. Without proper oversight of any protocols or regulations, no one can really say if they are meeting any standard.

The APC chiefs also have other concerns about the legislation, such as the lack of resources to properly develop, test, and implement any proposed regulations, as well as the lack of resources for capacity not only for operators, but also for the maintenance of these systems.

The APC chiefs have taken steps to find innovative ways to address water and wastewater issues in first nation communities. In 2006, the APC presented to the independent Expert Panel for Safe Drinking Water for First Nations. The panel provided recommendations to INAC on water treatment and management for first nation communities. In 2009, APC contracted Dr. Graham Gagnon with the Centre for Water Resources Studies at Dalhousie University. He reviewed the 16 elements for safe water and developed a detailed document and approach for addressing these elements in first nation communities in Atlantic Canada.

In 2012, APC, with the support of Dr. Gagnon, conducted a regulatory review of the Atlantic provinces' current water and wastewater regulations. From that review, Dr. Gagnon developed a draft of regional benchmark regulations to give the APC chiefs an idea of what these benchmark regulations would look like and to

identify the issues. As part of an innovative approach to addressing water issues, APC is also exploring the feasibility of a regional first nation water authority.

APC has undertaken three valuable research projects to strengthen the case for further resources and capacity for Atlantic first nations' water and wastewater systems. Mr. Paul will now expand on those studies.

I'd like to thank each and every one of you for listening.

[Witness speaks in Mi'kmaq]

Thank you.

• (1055)

Mr. John Paul (Executive Director, Atlantic Policy Congress of First Nations Chiefs Secretariat): Thank you, Chief Vicaire.

Good morning, committee members. I'm John Paul, the executive director of the Atlantic Policy Congress. I'm here today to speak on behalf of our chiefs regarding an approach to Bill S-8 and how our Atlantic chiefs are working to find proactive and innovative solutions to addressing the current state of water and wastewater systems in our region and in all our communities.

As you heard from Chief Vicaire, APC has been involved with this file since 2006, beginning with the presentation to the expert panel. Since that time, the APC have explored ways of addressing the current state of water systems in Atlantic Canada. With the release of the Neegan Burnside study on first nation water and wastewater systems in Atlantic Canada, it has given us a glimpse or a snapshot of current water issues.

To that end, the APC began to look at innovative options. The first thing we did was to have an asset condition assessment done. APC contracted Dalhousie University's Centre for Water Resource Studies to lead the water and wastewater asset condition assessment. The objective of that study was to perform asset condition assessments of water and wastewater systems in first nation communities in Atlantic Canada.

The study further entailed a site audit of water and wastewater treatment facilities and an assessment of the distribution and collection systems. The Neegan Burnside study identified that approximately \$45 million was needed to address current shortfalls based on the safe drinking water protocols—although it was only a snapshot in time. It did not include distribution, collection, and other costs, which are critical elements in determining the actual cost.

The asset condition assessment study would also aid in identifying shortfalls in operation and maintenance for both water and wastewater systems through site visits to all Atlantic communities.

A second bit of work was a pilot for benchmark regulations. Bill S-8 states that the regulatory regime is required to ensure that residents of first nation communities have access to safe drinking water, and it commits to working with first nation communities directly to develop proposals for the regulations to be made under the bill. APC has contracted the Centre for Water Resource Studies to develop a regulatory benchmark for water and waste water in Atlantic first nation communities. Dr. Gagnon's report proposed benchmark regulations adopted from the most suitable elements existing in Atlantic provinces' regulations and all other regions in the country.

Testing of these benchmarks would be done to ensure that each first nation meets the requirements of benchmark regulations under Bill S-8, ensuring the availability of safe and reliable drinking water in each community and protecting the environment from wastewater effluent.

Four communities in Atlantic Canada, from each of the provinces, were selected as pilot communities for the proposed benchmark regulations. These pilot communities would determine whether first nations would meet the benchmark regulations, and if not, what type of resources would be required.

A third aspect of our work was a water authority. Our chiefs have also looked at developing a water authority entity to assist first nation communities in managing water and waste water. APC is currently working with the firm McInnes Cooper in Atlantic Canada to do further research to find out more.

Vital issues that will need to be addressed include the identification of required parties for the board of directors for such an organization; the organizational structure of the entity; the specific roles of a water authority; the responsibilities of each member; the financial arrangements that would result; a clear definition of the relationship with federal agencies; the defining of relationships with private companies or utilities, and the operating water and wastewater services; and the defining of the fundamental relationships between all communities and a water authority.

It is anticipated that a water authority structure will be owned and controlled by the first nations themselves. By having our first nations in control of this water authority, it would bring us closer to achieving greater independence and self-determination in terms of water and waste water.

We also wish to further develop the benchmark regulatory regime through our discussions with all of the provinces in Atlantic Canada to obtain their direct feedback regarding how they deal with such issues as implementing modifications to regulations, operator certification, emergency response plans, and drinking water safety plans.

• (1100)

It is also vital to gain feedback from the provinces regarding the proposed regime. Some of the questions we need answers to are: Are the proposed benchmark regulations too stringent, or not stringent enough? Are there any lessons learned from the provinces about items in the benchmark regulatory reform that will not work in practice?

Communication is possibly, I feel, the most critical component of the work we're doing on this file and what we've undertaken to date. Key messaging is important to ensure that the Atlantic chiefs and all our first nation member communities understand the innovative approaches that APC has undertaken to ensure the health and safety of all first nation people in regard to drinking water.

The necessary support of our chiefs and all our communities and people in the future on this issue is critical. APC has discussed the process, the benefits, funding, challenges, changes in liability; ultimately, however, there is still an overwhelming need to address this health and safety priority issue in our communities.

With the approval and mandate of chiefs and our communities, APC has taken a very proactive and innovative approach to ensuring a viable option for the health and well-being of all our member communities now and for future generations to come. As the issue of safe drinking water has been an ongoing issue for many years, with no clear answer on addressing the current state, a solution had to be found before a Walkerton-type of outbreak happens in any one of our communities. The health and safety of our first nation communities, people, and drinking water have been key drivers of our search for innovative options. The future investment in any innovative option must be fully discussed. As there has been a significant amount of work undertaken, it is timely to discuss this opportunity for a long-term funding commitment for potential solutions, which we, as first nations, want to clearly pave a way forward. First nations are currently the fastest-growing population, and it is our collective responsibility that we ensure long-term sustainability, ensuring our life-giving resource as well as the health and safety of future generations to come.

Again, our member chiefs support the concept of Bill S-8, but like many other first nations and organizations, there needs to be a long-term commitment—a very long-term commitment—of adequate financial resources and capacity to properly implement Bill S-8 and any proposed regulations.

We want to thank the committee for giving us the opportunity to discuss the work we're doing and the ongoing initiatives we are conducting.

Thank you very much.

• (1105)

The Chair: Thank you very much, Mr. Paul.

We'll now turn to Mr. Howsam, for his opening statement.

Mr. Robert Howsam (Executive Director, Ontario First Nations Technical Services Advisory Group): Thank you very much, Mr. Chair and committee members, on behalf of the Ontario First Nations Technical Services Corporation. I want to thank you for asking us to provide our technical perspective on this issue and to highlight some of the challenges that Ontario first nations encounter when delivering safe drinking water.

Our presentation is only of a technical perspective and not intended to replace the perspectives of the Assembly of First Nations, the Chiefs of Ontario or Ontario first nation leadership regarding the whole range of issues around consultation, finance, aboriginal land, and treaty rights.

In cooperation with individual communities in Ontario and affiliated first nation tribal councils and technical units, OFNTSC delivers advice on infrastructure and provides operator training to address the evolving needs of first nations. The Ontario First Nations Technical Services Corporation is active in the area of water and waste water—in particular in operator training and engineering services. We have staff look at environmental issues, project planning and development, fire safety, fire protection, housing and environment, and engineering services. Obviously the focus of the presentation today is on the drinking water issue.

There are many parallels between the circumstances of Ontario first nations now and the conditions that existed in Ontario municipalities prior to Walkerton in May 2000. However in the years following the publishing of the Walkerton inquiry report, the promulgation of regulations from the Ontario Safe Drinking Water Act 2002 and the Ontario Clean Water Act 2006 have successfully legislated municipalities and other provincial agencies to provide a broad safety net that minimizes the risk of releasing unsafe drinking water to consumers.

There is a high price to be paid for this safety net in the form of abatement, compliance, enforcement, and resources. Unfortunately, the delivery of reliable and safe drinking water to many first nations in Ontario remains unavailable. When the Ontario drinking water regulations are compared to other Canadian regions, the key difference in Ontario's case is that the safety net known as the agency—the Ontario Clean Water Agency—will come to the aid of any failing Ontario municipal drinking water authority. The cost of the agency's service is borne by the owner of that water system and could potentially include legislation and investigation.

Currently first nations and the federal government do not have an Ontario-like compliance abatement or enforcement mechanism. Without these types of mechanisms, first nations' boil water orders continue to illustrate the long-term health and safety issues that can only be remedied through significant capital reinvestment and facility upgrades. That's true in terms of the high risk facing at least 30 Ontario first nations.

The formula for balancing ownership and liability in Bill S-8 may in fact serve to reduce Ontario first nations' autonomy and increase the liability of chiefs and councils. The elements that comprise the Ontario municipal drinking water quality management system are an effective yet very costly model to administer due to the safety net features. Ontario first nations would benefit from a similar safety net. However, the additional cost required to administer it would be

impractical given existing federal allocations. Already stressed capital and operation budgets would never be able to subsidize the safety net and would require significant new funding streams.

The notion of incorporation by reference is of particular significance to Ontario simply because of the complexity of the Ontario legislation. So if incorporation by reference happens, it must be noted that in the case of Ontario first nations, there is a very different reality in terms of their size, geography, capacity, etc.. That difference is even true when compared to most remote or rural municipalities, let alone urban centres. There are currently 30 communities in Ontario that only have winter road access via ground travel and receive their electrical services through on-site diesel generation, which brings a whole set of challenges on its own.

● (1110)

The national engineering assessment, which was mentioned earlier, estimated that the cost of addressing first nations' water facilities in Ontario would be \$241 million, with another \$4 million annually required for operations and maintenance.

Incorporation by reference would only drive these numbers even higher because of the complexity of the provincial legislation.

Now I'm going to turn it over to Matt, to talk a little bit about the current infrastructure realities.

Mr. Mathew Hoppe (Technical Manager, Ontario First Nations Technical Services Advisory Group): My name is Mathew Hoppe. I am the OFNTS technical manager. I oversee the circuit rider training program and engineering services.

In terms of the current infrastructure gap, since the release of the national engineering assessment for first nations, and completion of the recent water and wastewater plant inspections in Ontario, baseline data is now available to assist in the development and implementation of a strategy for remote first nations' capacity development and sustainable water operations.

First nations are utilizing this baseline data and comparing it to current operational maintenance and future infrastructure needs. Unfortunately, when one compares first nations' needs and reviews the projected water and wastewater funding allocations, these values significantly differ. These findings confirm that there is an opportunity to investigate options on how first nations and government can close this expanding infrastructure gap.

With these challenges, the federal government is increasing and prioritizing existing funding to high-risk facilities. While this is an understandable approach, it contributes to the neglect and premature rust-out of other facilities due to a lack of appropriate operations and maintenance funding.

During the past two years, AANDC has completed regional water and wastewater facility inspections. They used the same assessment criteria from the national engineering assessment. Upon completion of the inspection reports, the deficiency results were released to first nations, but the risk rankings of the results were withheld.

First nations continue to voice concerns about being responsible for inadequate, underfunded, under-designed facilities that do not meet current design best practices or regional standards. This can be extended to water main distribution systems that were not adequately sized or that have insufficient reservoir storage capacity that provincial systems require for fire protection requirements. The same could be said for wastewater facilities that will require substantial upgrades to meet the new federal guidelines.

The risk here is that first nations will be responsible for meeting increased standards with inadequate infrastructure and will provide lower fire suppression response services when compared to their municipal neighbours.

First nations do not want to be held responsible for facilities or distribution systems that do not meet current design standards or may require substantial upgrades to be compliant. An approach that is an ongoing challenge is to allow first nations an opportunity to investigate collective solutions and build on successful initiatives, such as the circuit rider training program and investment in the support mechanisms through tribal councils and political organizations that assist and advise Ontario first nations.

Recent reductions in tribal council funding formulas will significantly impact on their ability to provide services. With all of the various competing community priorities that are perpetually under-resourced, first nations are taking a closer look at their existing and future infrastructure needs, and recognize that the development of a community plan on current data is essential.

First nations continue to express a strong desire to operate and maintain their facilities; however, the reality of imposing a regulated regime using existing federal funding allocations may limit progressive first nations and negatively impact troubled first nations. A balanced approach would not only address these progressive first nations but also offer support to first nations that may need guidance and support.

Another factor to be considered is that legislation gives the federal government the ability to outsource the management of water and wastewater facilities to non-first nation entities. The money spent on first nations' infrastructure and maintenance should be an economic driver for communities. This feature of the legislation prevents that and gives no opportunity for the development of first nation capacity, either as individuals or communities.

The balanced approach is not limited to logistically challenged first nations, and should not limit the autonomy of larger and progressive first nation water laws. Regulatory compliance should not withhold first nations or negatively impact self-government water initiatives that are currently under way.

Sustainability can be achieved through a collective approach to maintaining facilities and a regulated environment; however, it must be developed through a collaborative first nation and government strategy with appropriate funding streams to administer it.

In closing, first nations recognize that sustainable and quality drinking water is directly linked to ongoing capital reinvestments, a structured environment, and development of a trained and skilled workforce.

• (1115)

If water regulations are developed, a balanced first nation approach must be an integral part of the development of the regulations and the implementation process to provide a sustainable drinking water approach. The government's Budget 2012 announcement of an investment of \$338 million over two years was encouraging. First nations and their technical advisers continue to wait for an opportunity to be a meaningful part of the discussion during the development and implementation of these regulations.

Thank you.

The Chair: Thank you very much.

Thanks to all of you, gentlemen, for your opening statements.

We'll turn to Ms. Crowder now for the first seven minutes of questions.

Ms. Jean Crowder: Thank you, Mr. Chair.

I want to thank the witnesses for coming forward today.

I want to start with Chief Vicaire. It seems that the Atlantic Policy Congress has done a tremendous amount of work, has taken the initiative, and is moving forward.

Now, I want to point out that all the work you've done has been done without Bill S-8 in place, so can you speak to the fact that you've been able to go ahead and take charge of these initiatives without this particular legislation? The government is saying that we need this legislation in order to have these kinds of things happen, but clearly you're moving ahead.

Chief Dean Vicaire: Yes. That's exactly our intention. We're not going to sit back and just wait for things to come down the pike. We're taking the initiative, and we're being extremely innovative in terms of taking the lead on that.

Ms. Jean Crowder: Are you confident that you will be able to continue with those initiatives you've undertaken to date if Bill S-8 is passed?

Chief Dean Vicaire: I believe so. It's something that we're going to be striving for as long as we can. Whether or not the bill is passed, it's something that we're just going to move forward on.

Ms. Jean Crowder: Has there been any discussion with the Atlantic Policy Congress about how you will be involved in the development of the regulations and perhaps how you will be involved in determining how much capital and operations and maintenance money will be required to implement?

Chief Dean Vicaire: I'm not exactly keen on that in terms of where, to my knowledge, we're at with that process. However, I can possibly defer that to my colleague here, John. He could speak to that.

Mr. John Paul: We have had discussions with the government on that issue in particular. We're adamant about being involved in the process because of all the work we've done to date in developing the benchmark regime, which Mr. Gagnon has developed, and subsequently in our starting discussions with provincial governments as well.

We want the best regulations possible. We want the best standards for our people in the community to ensure that they get what they deserve, basically, and that's our goal as communities: working on behalf of our communities. As well, I think that in terms of the resourcing of this, it's like I spoke about yesterday. Our goal is to get the best and most accurate information so that we ourselves, individually as communities and collectively as communities, will know what it's going to cost, based on relevant, reliable data.

A lot of the work we've been doing over these years has been about creating volumes and volumes of data about our communities in terms of having a greater understanding of the systems that are operating in the communities, then compiling all that information about anything and everything that's in the communities, feeding it back to the communities, and working with the communities in terms of extrapolating a cost for communities. We're then aggregating that cost for what we're looking at, both in terms of the long-term capital cost and also in trying to come up with a very accurate cost for the operation and maintenance, and not just for now. We're trying to look out into the future for 10 years, 20 years, and 30 years out.

I've always said when we've come to talk about water and the bill that this is a public safety issue in our communities, and we have to take it seriously, as we must, and ensure that our effort as an organization is to create the most accurate and relevant information, where the government has to see it for what it is, basically, and recognize that. I think that's fundamentally important, because we have to explain this same data to our communities as well. I spoke earlier about this. That's why raising awareness and understanding and communicating about what we're doing and how we're doing it with our communities are fundamentally important in trying to come up with a solution that makes sense.

I'm hopeful that the government will live up to its commitment that says we will be directly involved in what gets developed in terms of a regulatory regime. We're adamant about that. We're going to have to wait and see exactly what happens, but I can tell you that we're not going anywhere. We've been at this for six years, and we're going to get this to where we want to get it for our communities and for our leaders.

• (1120)

Ms. Jean Crowder: Thanks, Mr. Paul.

Do I have time?

I want to turn to Mr. Howsam and Mr. Hoppe. You pointed out some of the challenges in Ontario. It's a very different kind of

situation and we have many smaller communities that have independent water systems.

What is the biggest stumbling block to being able to deliver safe drinking water?

Mr. Robert Howsam: I don't think there's one single one. There are two realities: the human factor, in terms of skilled operators licensed to the level of the plant and their maintaining those skills; the other is the capital side, the plant. With the source water, you find a way of dealing with it, but it's really the resourcing issue in terms of operations maintenance and new capital, and then the human side of the equation.

Ms. Jean Crowder: With regard to the circuit rider program, which is being touted as the be all and end all, my understanding is that it's great to get the operators trained, but there have been challenges with keeping them in their communities. Ms. Bennett has pointed out that some people aren't able to pass the written test. Can you speak to what else has to happen with the human resource component?

Mr. Robert Howsam: It's as complex as any staffing issue any company would face. You need to be able to pay people appropriately; certainly, that's part of it. There are big geographic challenges with getting people out for training, etc. If you're in a fly-in community, it's probably going to cost you \$2,000 to get to Balmertown, Ontario, to take a week-long course. And, by the way, while you're gone, who's there to run the plant?

Those are some of the challenges.

I don't want to minimize some of the strides that have been made. When Walkerton happened, I believe there were nine operators licensed to the level of their plant in first nations in Ontario. That number is now well over 100, and some first nations run very sophisticated plants. They have the same financial challenges as others. There's a lot that's been achieved over the years, but there's a lot left to do.

• (1125)

The Chair: Thank you very much.

We'll turn to Mr. Seeback now for the next seven minutes.

Mr. Kyle Seeback: Thanks, Mr. Chair.

Thanks for your testimony today.

John, you mentioned that you've been at this for six years. I know that you and APC were involved in some of the amendments that we see in this revised legislation, so I just wanted to say thanks for your work on that.

One of the things we talk a lot about on this committee is the following. Some people believe this legislation should solve all problems, which I don't think is possible. That's my personal view. I'm a big fan of trying to tackle the things you can, and then moving forward. How does this set up? My understanding or view is that what we're going to do with this is.... It's enabling legislation, first of all. What it will do is to enable the government to go forward and put together some regulations with respect to drinking water and waste water. Then you go forward and consult and work with first nations to determine what those regulations are going to be. And then once you now what those regulations are going to be, you're able to determine what the cost of that is going to be and, therefore, what kind of funding you're going to need to meet those obligations.

Presuming that's exactly how this goes, do you agree that's the right approach, and if so, why?

Mr. John Paul: From my perspective, the big thing we need to own is the solution at the end of the day, as my colleagues were talking about. We need to own whatever regulations come out of this, and we need to believe that they're workable and to figure out exactly what we need to do on the human resources side, the governance, and all of those different things.

Over the last couple of years, there have been issues of trust with the government, very serious issues. I believe that the work we're doing helps build unquestionable evidence of what we need to do. I think that in terms of the regulatory regime, we've worked closely. We've worked closely with our operators in the communities as well as our leadership in the communities to look at the rules we're trying to benchmark and to come up with and to make sure they work. What's the sense of creating a regime that you basically can't do anything with?

We've looked very seriously not only at the kinds of core capacities of the operators but also at what other levels of support and capacity need to be put in place to ensure that it operates as a whole system, from the time we cost out building a facility, build it, manage it, and operate it for 25 to 30 years. We believe that we need to build evidence on all that stuff and really figure out multiple strategies on all of those issues to make sure that the workers we do have will stick it out.

I understand that we have the same challenges: people get qualified as a level 3 or level 4 operator and then want to go to work out west. I should point out that in dealing with our water operators in Atlantic Canada, I saw that they are community people—all of them. It's home, so they want to make sure that whatever they're doing protects their people in the community. Because of that, a lot of them will continue to stick with it. In spite of the toughness, or lack of salaries, or whatever's going on, they've stuck it out all this time, to date.

A lot of them there today, we've increased the number of people who are certified and trained. We have circuit rider trainees, CRTs, supporting the communities in a good way. I think that at the end of the day, we want what everybody else wants: safe drinking water for all our people in every one of our communities. It's simple.

• (1130)

Mr. Kyle Seeback: If I'm to distill what you've said. What you're saying is that if this legislation is passed, the next critical step is

going to be very close collaboration with organizations such as yours on the development of these regulations, so that we know they'll work and that we're going to be able to determine what the funding is going to be for those. I take it that you see that as the next critical step.

Mr. John Paul: I think it's very critical. You can't figure out in a vacuum what some of these things are going to cost; you can't cost it out. It's like trying to build a space program, right?

Mr. Kyle Seeback: Sure.

Mr. John Paul: You start out with a vision of what it is, but essentially and fundamentally we do have to be part of the process in detailing those regulations. Look at it from the reality of our communities and include our communities.

At the end of the day, I've always seen water as something so fundamentally sacred in our communities that we need to own it. If you create whatever and people don't understand what it's about, then how are you going to make children, or elders, or mothers, or somebody in the community understand that you're doing these things to protect their safety in the community?

The inclusion of our first nations in the process is fundamentally important. It's critical—that's all I can say.

Mr. Kyle Seeback: Am I...?

The Chair: You're pretty well out of time.

We will turn to Ms. Bennett now for the next seven minutes.

Hon. Carolyn Bennett: Thank you very much.

Again, because this bill is going through this committee so quickly, it's very urgent that we hear from you if there are things you think we need to fix before it's passed. I'm hearing some concerns, including those that there be assurance of a close relationship as the regulations are developed.

If this bill were passed as is, is there anything you would suggest to the government that it actually needs to fix before there are unintended consequences?

Chief Dean Vicaire: I can speak to that.

Mr. Seeback asked a great question, and I think there was an even better response regarding what will be required. Taking ownership is key. Ultimately when you have that ownership, confidence comes along with it. With that confidence come the abilities to lead, to move forward, and to strive to become a model for other first nations across this country from coast to coast to coast. When we first set out on this process way back when, the goal and the vision were always to become a leader, to become a model that other first nations across this country could follow. This is not something we're just reacting to. It's not something we haven't put a lot of thought and a lot of expertise into. We've put a lot of time, money, and effort into this.

I think the goal, ultimately, if and when this comes down the tubes, is to give and allow the opportunity for first nations not only to have that valued input but, ultimately, to take the lead and become a model for others to follow.

Hon. Carolyn Bennett: But that also requires some resources to come with it for training and for infrastructure.

• (1135)

Chief Dean Vicaire: Absolutely. That's been said here all morning, right? There's no need for me to repeat that. It's quite clear: we need human resources and money.

Hon. Carolyn Bennett: In the presentation from Metro Vancouver, they were outlining, I think, something that hadn't really been considered in this bill: places where the jurisdictions overlap and the fact that there's a partnership between a first nation and a local neighbouring community. As my colleague pointed out, that's not articulated in this bill at all. Either in Atlantic Canada or in Ontario, do you have some experience with that?

Mr. Robert Howsam: There are some, what we call, municipal type agreements in Ontario around fire protection and water, and waste water in some cases. A number of them are very successful and are long term. To be frank, some of them are challenged in that the relationships between the municipality and the first nation are tested or challenged on maybe unrelated issues, and the water pipe is used as a threat. I don't think it's ever actually been turned off.

MTAs are a valid vehicle where they work. Frankly we'd like to see a reverse type of MTA, whereby a first nation can sell water or fire protection services to a neighbouring municipality. In fact, there is an example in Ontario—

Hon. Carolyn Bennett: We've heard that Christian Island is not allowed to sell the water to the cottagers. It's ridiculous.

Mr. Robert Howsam: Exactly, yes.

Mr. John Paul: They do it in Rama, too.

Mr. Robert Howsam: Rama sells its education to Orillia.

Hon. Carolyn Bennett: In Atlantic Canada do you have the same?

Mr. John Paul: We have the same thing. We have a number of MTAs. The issue is about relationships with your fellow governments in the area. The only issue I would comment on about MTAs is that they're vague. They're not constructed in a way that I would think will ensure—

Hon. Carolyn Bennett: There were concerns that there might be some untoward effects on these agreements coming out of Bill S-8, which haven't been cleaned up in the bill other than in a vague letter from a minister.

Mr. John Paul: I think on the MTAs, they're as varied as the municipalities in the country. Even in Atlantic Canada, there is variability among agreements, and the level of clarity in those agreements is kind of all over the map, and a lot of them have—

Hon. Carolyn Bennett: I think the question is on liability. It sounds like, from the municipalities, they're a little concerned that Bill S-8 confers some liability to the local municipality.

Mr. John Paul: In a way it's like they're providing a service to the communities. The issue is that if you're a municipality in Nova Scotia or wherever, you have to follow what the provincial law is.

You have to follow what regime there is in the province in the provision of water. If they're providing me with water and they're also under the provincial regime....

I know in my own community, we have an MTA with the Cape Breton Regional Municipality. We have the expectation that CBRM is liable in terms of provision of the water and being able to meet the provincial standards in terms of quality and in terms of service. They clearly understand that in our discussions.

In the communities, that's the kind of discussion you have to have, basically. You have to fully understand that and be clear about it.

I think open dialogue and communication, as they were talking about, is the way to address it. You have to talk about these serious issues, whether it is around liability or concerns.

Hon. Carolyn Bennett: I guess I just want to say that every place I've been, the pride that these water operators show you around their place is a really good thing in terms of the bottom up. Everybody wants clean water, and all of them would feel awful if anything happened. But in the flexibility of it, I have been concerned that people who have been doing their jobs for 30 years are somehow having trouble meeting a written test sometimes, when they could easily pass an oral test; I don't know.

• (1140)

Mr. John Paul: I think it goes back to the training standards that are set. You know, in different professions, in different things, there are different ways to test for those individual skills. Maybe that's something that needs to be part of it, in terms of making sure that they do the test in Mi'kmaq, or do the test in Maliseet or Ojibway or Salish or whatever, so that the person has a conceptual framework in terms of when they respond to something, such a process at the plant.

A lot of our people are very visual in terms of how they describe stuff. You need to really come up with an appropriate measuring stick, as you said, that makes sense. I think there's a variety of options there. We just have to really work to figure it out, working with our communities and working with our people and working with the people who provide the training and so on to ensure that we attain that standard, basically.

The Chair: Thank you.

We'll turn to Mr. Boughen now for just a few minutes for some final comments or questions.

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

Let me add my voice of welcome to the panel. It's good of you folks to give up your time and spend it with us. We need that input, and it's good to have you here sharing that with us.

I have a couple of questions for you. Anyone on the panel, feel free to answer. All four of you, if you like, feel free to answer.

In light of your extensive technical and on-the-ground experience, what aspect of your work would benefit from having a regulatory framework in place?

Mr. Robert Howsam: Maybe I'll start.

Any kind of operation, be it water, waste water, or something else, needs some kind of standard against which to be measured. Certainly from the discussions I've had with Ontario first nation leadership, nobody has a concern about having regulations or having standards. The issues are around how it's implemented and how it's resourced.

You were mentioning about people who can't pass a test. In Ontario we use the provincial testing system for first nations operators, a decision made by the leadership. It seems to work. Yes, some people fell by the way as a result of that, but it's given us at least some degree of confidence. Unfortunately, it also means they go to the neighbouring municipality at \$10 an hour or more, but that's life.

Chief Dean Vicaire: It's the same idea as Dr. Gagnon's example about driving on the highway, right? You just need those basic rules and regulations.

One thing that I can speak about on behalf of my community and my people, and the people who I represent on a larger scale in the Mi'kmaq nation, is that we are tremendously resilient and have proven our perseverance in anything we do. So it's just another hurdle, in my opinion, that we'll have to hop when the time comes. It's simple: we'll adapt.

Mr. John Paul: I also think that too. Right now, it's with the protocols, and I think greater clarity will help everybody. Greater clarity with this stuff helps. I think it will also help in communities in terms of raising the level of understanding of the importance of water as a public health issue or a public safety issue in the communities. I

think it's very important that you don't drive on the right side versus the left side in terms of what you're doing.

Like Chief Vicaire said, I think we're very resilient. We've been here 10,000 years, so you tell us what it is, and I figure that we'll figure it out. That's my belief. I think and believe that the people who are involved in this work at the community level and in our leadership are really committed to do this and get it done. They'll put what needs to be put into it to get it done, because it is about safety of the people in the community at the end of the day.

● (1145)

The Chair: Thank you.

Chief Dean Vicaire: I have one final comment and then that's it. I promise.

The Chair: Yes, absolutely, Chief Vicaire.

Chief Dean Vicaire: I've been listening all morning. I pride myself on listening, versus hearing. I've been listening to everyone on the panels, to the experts, and to the honourable members around the table here. You're all listening and paying close attention to this. I think that proves that we all relate to the issue of safe drinking water and waste water.

This is my final statement. This is not an Indian issue or a native issue; this is a Canadian issue. I'll end it at that.

Thank you.

The Chair: Thank you. That is the appropriate way to end this.

I certainly appreciate each one of you taking the time to be here. We certainly appreciate your testimony and your engagement in the questions and answers.

Colleagues, before we complete the meeting, I want to ask committee members to continue to reflect on possible amendments as we prepare to move through the legislation. As amendments are decided upon, if you would make us aware of those it would help the legislative clerk as he undertakes his work in preparation for clause by clause in the next number of meetings.

Colleagues, the meeting is adjourned.

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