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

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**EVIDENCE**

**Thursday, May 7, 2009**

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**Chair**

**Mr. Bruce Stanton**



## Standing Committee on Aboriginal Affairs and Northern Development

Thursday, May 7, 2009

•(0910)

[Translation]

**The Chair (Mr. Bruce Stanton (Simcoe North, CPC)):** Good morning to our members and witnesses. This is the 18<sup>th</sup> meeting of the Standing Committee on Aboriginal Affairs and Northern Development.

On the agenda today, we have the Auditor General's report and  
[English]

Also this morning, we have two presentations. First, from the Treaty Land Entitlement Committee of Manitoba, we're going to welcome Paul Chief and Carl Braun. Secondly, we'll have a presentation from representatives of the Treaty One First Nations, and we're going to be welcoming Chief Terry Nelson and Chief Glenn Hudson.

Seeing as one of our witnesses from the Manitoba TLE has yet to join us, we'll begin with the Treaty One First Nations.

Chiefs, welcome to our committee this morning. You have 10 minutes. I'm not sure who would like to lead off, or if you wish to split, with five minutes each. It's your 10 minutes.

Chief Nelson will begin.

**Chief Terry Nelson (Chief, Board of Directors, Treaty One First Nations):** *[Witness speaks in Ojibway]*

I want to thank the committee for its time this morning.

I'm Chief Terrance Nelson, and I was elected by the chiefs of Treaty One to present our position. Due to time constraints, I will forego the formalities and go straight to the issues. Treaty One was signed with the British crown on August 3, 1871, at the Stone Fort. Our ancestors signed the treaty with clear intentions: to preserve our way of life, to ensure our sovereignty within our reserve territories, to ensure shared benefits from all 16,700 square miles of our territory, and to have a peaceful, respectful coexistence with Her Majesty's white and other subjects.

Today 900,000 people inhabit our 10-million-acre traditional territory. Our position as to Treaty One is simple, straightforward, and clear. Before the immigrants got to our lands, we owned all the land. Our rights were inherent and not granted by any other race or people. The crown did not give us any land in treaty. The crown had no land to give us. The crown could not give us what was already ours. We never ceded or surrendered our traditional territory. We agreed to share the benefits of our lands. To gain the consent of indigenous people to allow crown access to the 16,700-square-mile Treaty One territory, the crown promised and undertook definite and binding obligations as documented in the treaty text.

One of the main crown obligations is to recognize our exclusive territory—lands reserved for the sole and exclusive use of indigenous people:

Her Majesty the Queen hereby agrees and undertakes to lay aside and reserve for the sole and exclusive use of the Indians the following tracts of land, that is to say...as will furnish one hundred and sixty acres for each family of five, or in that proportion for larger or smaller families....

In the last 138 years since the signing of Treaty One, the crown has not completed the most basic condition of treaty: the promise to recognize and reserve 160 acres' grant for each family of five. Five first nations in Treaty One—Broken Head, Long Plain, Peguis, Roseau River, and Swan Lake—have unfulfilled TLE agreements with the crown. The other two first nations in Treaty One, Sandy Bay and Sagkeeng, are in the process of negotiating TLE agreements. TLE is just one of numerous breaches of the conditions of treaty that must be completed by the crown.

Since 1871 the benefits for the crown to use, license, and tax immigrant activity within Treaty One have been immense. It is the position of Treaty One that the only legal access the crown has to our 16,700-square-mile territory is the treaty. We, the indigenous people, have title to all our lands and resources within Treaty One territory, and the crown has only conditional access based on the rights granted to the crown in treaty.

On August 3, 1871, the crown gained conditional access to the territory but only for settlement and immigration. The crown promised in the 1871 treaty negotiations to meet with the indigenous people in the future to clarify the benefits of treaty. That promise is written in treaty as:

...and that they may know and be assured of what allowance they are to count upon and receive year by year from her Majesty's bounty and benevolence.

Despite numerous Supreme Court of Canada decisions on the crown's duty to consult and accommodate, and despite our new numerous attempts to engage the crown in fulfilling its legal obligation, the crown continues to ignore the treaty and its own courts.

In licensing and permitting two new pipelines to be constructed in our territory without any agreed benefit for the first nations, the crown jeopardizes the benefit it's gained in treaty. The question is where we go to ensure that the honour of the crown is enforced when the RCMP and the Canadian army will not enforce Supreme Court of Canada decisions.

Based on the last 138 years of lack of enforcement of treaty obligations, it is the decision of the chiefs of Treaty One and the people of Treaty One that the continued failure of the crown to abide by the treaty condition to share benefits of our lands forces the first nations to collect for ourselves those benefits due to the indigenous party of the treaty.

● (0915)

We, as the indigenous party to Treaty One, granted the crown a pledge of peaceful coexistence, which the crown wrote in the treaty text as:

And the undersigned Chiefs do hereby bind and pledge themselves and their people strictly to observe this treaty and to maintain perpetual peace between themselves and Her Majesty's white subjects, and not to interfere with the property or in any way molest the persons of Her Majesty's white or other subjects.

Existing pipelines in our territory already transport \$40 billion a year in oil through our lands. With new pipelines in our territory, that number will reach over \$100 billion in oil per year through our territory, without any tariff or fee paid to the indigenous people.

All people in Treaty One territory, including private landowners who purchased land from the crown, are in the same position as a person who purchases stolen property or property with liens on it. We, as the indigenous landowners, still hold a lien and underlying title to all 16,700 square miles of Treaty One territory, because the crown did not discharge its lawful obligation under treaty.

As Justice Binnie wrote in a Supreme Court of Canada decision in Mikisew, "Treaty-making is an important stage in a long process of reconciliation, but it is only a stage." As well, he said that the "negotiations were the first step in a long journey that is unlikely to end any time soon".

When a fundamental breach of treaty is not resolved, we, as the indigenous party to the treaty, must always reserve our right to take direct action if we cannot get the other party to the treaty to complete their legal obligation.

When a government fails to abide by Supreme Court of Canada decisions and refuses to acknowledge international standards by voting against the United Nations Declaration on the Rights of Indigenous Peoples, what options are there for us to ensure that peaceful coexistence is not just another pretense for indigenous people to continue to live at the 63rd level of the United Nations' living index, while the immigrants to our lands live extremely well from the sales of the wealth of our lands and resources?

Not to interfere with the property of Her Majesty's white subjects is a treaty right granted by indigenous people to the people who immigrated to our lands. It is a treaty right that is contingent upon Her Majesty fulfilling the conditions of treaty. We, as Treaty One chiefs, have no desire to break the treaty or to interfere with the property or in any way molest the persons of Her Majesty's white or

other subjects, but it is important that the crown be held responsible for its word of honour.

We, as the chiefs of Treaty One, are prepared to answer any questions in regard to this action. We state very clearly that the crown's failure to abide by the land quantum of 160 acres per family of five has not been resolved in 138 years. They have given us a tremendous legal hammer, because we are saying that all 10.7 million acres of our land, our traditional territory, is still ours because the crown did not fulfill the TLE.

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

By the way, I should have recognized that you're also joined here today by Chief Donovan Fontaine.

I apologize, Chief, for not mentioning you in the opening comments.

Now we'll go to representatives of the Treaty Land Entitlement Committee of Manitoba.

You have 10 minutes.

Mr. Braun.

**Mr. Carl Braun (Executive Director, Treaty Land Entitlement Committee of Manitoba Inc.):** Good morning. Just as a brief introduction, I am the executive director for the Treaty Land Entitlement Committee.

The following is a briefing submission to the Standing Committee on Aboriginal Affairs and Northern Development on the issue of Manitoba treaty land entitlement, in consideration of the Auditor General's report of March 31, 2009, and chapter 4 on treaty land entitlement.

We thank the Auditor General and her office and, for the most part, agree with their findings, but take the opportunity to provide our comments—

**The Chair:** Excuse me. I'm sorry, but if you could keep the pace a little slower just for the purposes of translation, that would be helpful. Thank you very much.

**Mr. Carl Braun:** Sure.

We take the opportunity to provide our comments to the 2005 and 2009 Auditor General's reports. In addition to speaking to the reports, we take the opportunity to share experiences in twelve years of implementing the biggest land claim in the history of Manitoba, the May 29, 1997, Manitoba Treaty Land Entitlement Framework Agreement, which is referred to as the MFA. The following programs will provide background, highlight our experiences, and provide recommendations to improve the TLE process.

The Manitoba Treaty Land Entitlement Framework Agreement was signed by the Treaty Land Entitlement Committee of Manitoba Inc., representing 20 first nations—Canada and Manitoba—on May 29th, 1997, at the Opaskwayak Cree Nation. This agreement is intended to provide land owed to the 20 entitled first nations, fulfilling a longstanding commitment arising from a number of treaties signed between Canada and the first nations between 1871 and 1910.

Under the framework agreement, 1.1 million acres of land will be transferred to the first nations reserves to make up for the shortfall that occurred at the time reserves were created. Manitoba will provide the first nations with 985,000 acres of crown land. Canada will contribute \$76 million, a portion of which will be applied to the purchase of up to 114,677 acres of land from private owners for those first nations that do not have sufficient amounts of crown lands to select from within their vicinity.

All the purchases from private landowners will be on a willing seller, willing buyer basis. The framework agreement sets out the process, principles, and mechanisms agreed on by the federal and provincial governments and the 20 entitlement first nations. Within the packages I've circulated to the clerk, there exists appendix A, which provides a more detailed background on that process.

The committee was established as a party that signed the Manitoba framework agreement on behalf of the first nations. The TLE Committee is a centralized organization that is mandated to provide technical and professional assistance to the first nations. Out of the 20 entitlement first nations, 15 have executed their individual treaty entitlement agreements. The committees assist the first nations in implementing the Manitoba framework agreement and their specific treaty entitlement agreements that fall under the umbrella of the Manitoba framework agreement.

This includes dispute resolution processes and assists first nations with a specific negotiation, such as municipal development service agreements and resolving third-party interests. Again, within the package, appendix B provides a brief overview of the processes involved in the implementation. Regarding the Auditor General reports, both the 2005 and 2009 reports on the TLE obligation do not speak to the lack of resources on all sides, particularly the funding that has been exhausted through the periods in signing the agreements on through the current state. After twelve years of signing the MFA, we can report that we are 28% completed, and we have all exhausted much more than 28% of the initial funding received.

This performance measure represents the easier land transactions. At this rate it will take a minimum of 25 years to implement the entire MFA. We first point out in the 2005 Auditor General's report that it did not review the main federal policy that we understand dictates the reserve creation process, the additions to reserve policy, ATR—I'll repeat, the additions to reserve policy. The policy is at best the means to ensure that Canada's risk is minimized with practices unclear to first nations and inconsistent amongst INAC practitioners.

The ATR policy seems to be a policy of INAC, with guidance provided from the Department of Justice. We report that in some cases this risk assessment approach to providing certainty has not eliminated the risk but transferred the risk to first nations. As our fiduciary, we expect Canada to explore and create innovative instruments and tools with first nations input to provide certainty to all parties, rather than relieve itself of any liability. Our comments to the 2009 report begin with the recognition of questionable successes and performance measures, with specific reference to the 150,000-acre-per-year or 600,000-acre-per-four-year ministerial commitment. It is recognized as a four-year ministerial commitment.

The 2009 Auditor General report recognizes the achievement of INAC with respect to 159,000 acres in year one, in 2007, of the four-year commitment, and a rise of productivity in relation to previous years. We report that one parcel of crown land, 58,000 acres in size, made up 36% of the year one performance measure.

● (0920)

We also report that in year two there was one parcel of crown land, 82,000 acres in size, that would have made up 55% of the year two performance measure. This particular parcel was not achieved and was moved to year three of the four-year commitment. With this in mind, it can hardly be realized that four years of serious commitment to a file could result in such progress.

The committee recognizes Canada's four-year commitment as set out, but Canada must look beyond the 120-parcel target they set out, as there are approximately 280 more parcels that require reserve status.

If I could summarize, the 159,000 acres achieved was as a result of multiple years of work. We're looking at about 10 years of work that resulted in that 159,000 acres, and not any single period or adjustment in file management or policy change can be attributed to that success.

This comment is further supported in the Auditor General's report, which states that the Department has not reduced processing times.

The problem with TLE is the additions to reserve process takes far too long. We feel Canada's current ATR process is fundamentally flawed, and we have been challenged with pinpointing the exact problem, as it is not transparent to either the first nations or our committee. In our experience, on average, it takes Manitoba and Canada five to seven years to transfer and convert a parcel of unencumbered crown land to reserve. This is land that, for the most part, has no third-party interests or encumbrances—in other words, the easy land transactions. In one example, it took 14 years to add a parcel of land to reserve.

The survey process itself can take two years. The environmental screening process can take a year. The designation process to create leasehold interest on a land can take a minimum of one year. We have discovered that municipal service or utility agreements can take five years or longer. These are just a few examples. The bottom line is that first nations have an opportunity, with an agreement in place, for choice lands, and they may miss out on investment and development opportunities from the process taking so long.

Canada's current specific claim process involves having a claim validated, negotiated, settled, and essentially implemented. In the implementation phase of the Manitoba TLE Framework Agreement, there are approximately 470 parcels selected or acquired by 15 first nations that require reserve status. Each parcel has been strategically selected or acquired by the first nation with the common objectives of self-sufficiency, economic development, or political autonomy, to name a few. These parcels chosen by each of the first nations fall into Canada's policies and processes, secondary to the TLE Framework Agreement. Government policies, processes, and practices have become a major impediment. They are non-transparent to the first nations and the committee, and INAC staff essentially appear to implement under Department of Justice directives or become guardians of any potential liability associated with new additions to reserve.

The inadequacy of land base for aboriginal peoples across this country has been identified in various reports, including the royal commission report on aboriginal peoples. However, government continues to focus on potential liability associated with new additions to reserve. First nations and first nations organizations get caught up in implementing government's way or no way. This has quite evidently not worked. It tends to tarnish the relationship and instills age-old mistrust. There is also a lack of adequate human and financial resources allocated to the entire TLE process on all sides.

On the provincial side of implementation, it appears Manitoba is there to protect third-party interests. In a sense, they become a fourth-party interest and function within their own land tenure system. An example is their own crown corporation, Manitoba Hydro. Rather than proactively assisting in resolving interests, it seems they continue to issue all types of interests to industry as if TLE or land claims were secondary to other crown interests and land. This steers away from the spirit and intent of treaty land or the constitutional obligation at hand and complicates the first nations attempts to resolve third-party interests.

In terms of third-party interests, we have forecasted what the future holds for treaty land entitlement implementation, and we see that in the next two years, if Canada meets its four-year ministerial commitment, Canada will have problems identifying lands to survey by 2011.

To prepare for this, the Treaty Land Entitlement Committee has designed a third-party interest strategy and invested our own funds—\$600,000 for 2008-09 and another \$600,000 for 2009-10—in building the capacity of first nations in a solid attempt to deal with third-party interests.

● (0925)

The strategy takes a focused approach to prioritized parcels of land and lays out detailed work plans in addressing the options, methods, skill sets required, and challenges and opportunities with third-party interests. Our intent is to create unencumbered parcels, not just to assist Canada in meeting the four-year ministerial commitment, but toward the legal obligation of 1.1 million acres as per the MFA.

● (0930)

**The Chair:** If you could bring this to a close now, Mr. Braun, we are a little bit over time. Just take a bit of time to finish up and then we'll go to questions. *Merci beaucoup.*

**Mr. Carl Braun:** I'll skip to the conclusion. Thank you.

Rather than focusing on achieving objectives that promote first nations self-sufficiency, economic development, and political autonomy, it's quite evident that the government focus is to merely meet obligations under agreements. This appears to be the case with other land claim agreements, comprehensive or specific, across Canada.

The government's lack of human and financial resources allocated to the entire TLE process displays their ability to implement as resources permit. Government focus on risk and liability, dictated by non-transparent government policies and practices, will eventually transpire in the implementation phase of any land claim agreement settled in Canada.

Canada must look beyond their four-year ministerial commitment and keep the full constitutional obligation in mind. This four-year commitment is narrow in scope and targets only 120 parcels, or 30 parcels per year for four years. These parcels have been in the system for quite some time and are considered the easier land transactions. Looking beyond the four-year commitment will require a longer-term, fully resourced implementation plan that includes 260 parcels with third-party interest or other encumbrances on them.

The bottom line is that adding land to reserve takes far too long. Canada must recognize this and make key adjustments to policy in order to remove systemic issues. Any proposed policy changes to add land to reserve must foster first nations objectives, such as economic development initiatives, and look to reducing time in adding land to reserve.

In comparing land development projects with first nations in B.C., it is estimated that if 1% of TLE lands in Manitoba are developed by 2023, TLE first nations could realize \$4 billion in investment, \$87 million in annual property tax revenues, and \$40 million in annual servicing costs.

Our recommendations are to re-evaluate resources required for implementing TLE and to develop a new policy or approach and explore options and commit to that new approach, with first nations input. Also, Canada must commit to and ensure that there is a fully resourced implementation plan and continue with a centralized tracking/monitoring system to monitor the progress of implementation.

I'll finish with that.

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

For the benefit of members, Mr. Braun referenced the submission that he made. It was sent to the clerk, but unfortunately not in time to get it translated and made available today. That will be done. You will get copies of that in the days ahead.

Thank you for your presentations, Mr. Braun and Chief Nelson.

[*Translation*]

We will now move on to members' questions.

Let us start with Mr. Bélanger. You have seven minutes.

**Hon. Mauril Bélanger (Ottawa—Vanier, Lib.):** Thank you, Mr. Chair.

[*English*]

I thought I had missed more than I actually did, but I want to make sure I have the numbers straight.

Mr. Braun, how many parcels of land have been selected by the nations for transfer? Is it 480? Was that the number I heard?

**Mr. Carl Braun:** Yes.

**Hon. Mauril Bélanger:** In the four-year cycle we're talking about, there are 120, so that leaves 360. Have they at least been started?

**Mr. Carl Braun:** Yes, they've all started. They've all been put into the process. I guess an accurate picture would be that we have converted 86 of the 480 selections to reserve status.

**Hon. Mauril Bélanger:** I don't know if I'll pronounce this properly, but is Kapyong one of the 480?

**Mr. Carl Braun:** It's not one that has been formally selected at this point.

**Hon. Mauril Bélanger:** It is not one of the 480?

**Mr. Carl Braun:** No.

**Hon. Mauril Bélanger:** Well, okay, yet it's become a very.... Are you at liberty to speak to that one? Can someone speak to that one?

• (0935)

**Chief Terry Nelson:** Treaty No. 1 is the one that's in court right now on Kapyong. Actually, we will be coming up to court on May 20 and 21. One of the reasons, of course, is that Treaty No. 1 does have outstanding TLE agreements. There are two separate groups here. There's Treaty No. 1, which is seven first nations that have the 10.7 million acres of land, including the city of Winnipeg, and there's the TLE committee, which has a separate group and represents 19 first nations.

**Hon. Mauril Bélanger:** I must admit, I have an interest in that file, but I suspect we're a little bit hamstrung in terms of being able to talk about it. It's going to court on May 20.

To what extent are you free to speak of it now?

**Chief Terry Nelson:** We're free to speak to the issue. I think our clear position, as Treaty One, is that the crown clearly, in signing the treaty land entitlement, recognized that they had an outstanding lawful obligation from the 1871 treaty—namely, the reality of the 160 acres per family of five, which was presented as the land quantum that they would reserve. That was the minimum amount of lands supposed to be in place in 1871.

There are two processes here. There's the TLE land that was supposed to be in place in 1871, which the crown failed to do. They've actually recognized that legally, under TLE, signing the TLE agreement, that, no, they did not do what they had said they were going to do.

Then there's the additions to reserve policy, which the Department of Indian Affairs tries to stretch out and make a career out of.

**Hon. Mauril Bélanger:** They do that very well, do they?

**Chief Terry Nelson:** Yes, they do.

**Hon. Mauril Bélanger:** The reason I have an interest is that there's a similar situation in the riding I happen to represent. National Defence has declared surplus a piece of land that they were hoping to transfer to the Canada Lands Corporation for eventual disposal or sale or development or whatever. The Algonquin Nation has indicated, whoa, that's part of the land claim they have.

Were there any discussions with the government? Was there refusal? Why did you feel that you had to end up in court?

**The Chair:** Mr. Bélanger, perhaps I could just interject here.

The topic of the day is specifically around the Auditor General's report 2009. I appreciate that there are linkages here with respect to TLEs, but we are getting into an area that might be unavailable for some committee members to speak on the record about. This issue is before the courts. I would just ask that we try to do our best to confine the content of the questions and presentations.

I would say as well, Mr. Bélanger, that we won't take your time away. I think the chief wanted to get in on this as well.

Please carry on.

**Hon. Mauril Bélanger:** With all due respect, Mr. Chairman, if you read the presentation of the House of Commons standing committee of today, there's particular reference to this. If I can't ask questions, then why would the chief think he can make reference to it in his presentation to our committee?

**The Chair:** I don't wish to argue the point. I just want to say that our topic for the day is specific to the TLE reference by the Auditor General for Treaty No. 1 first nations. They're here to speak on that issue today. Certainly we'll afford as much latitude as possible, but if we drift into other areas—

**Hon. Mauril Bélanger:** Fine. I understand that. But could we see if the chief wishes to answer my question?

**The Chair:** By all means.

**Hon. Mauril Bélanger:** Thank you.

Would you care to answer my question, Chief?

**Chief Terry Nelson:** I'm sorry, can you restate it?

**Hon. Mauril Bélanger:** I want to know how it is that you got to this point, where you felt that you had no option but to go to court.

**Chief Terry Nelson:** In order for us to get to court, we were very clear. We sent a phenomenal amount of the paper trail to ensure that we had tried to engage the crown in doing what was legally right.

So for us to go to court, and spend literally hundreds of thousands of dollars to be at court, we certainly did not do this....

**Hon. Mauril Bélanger:** Was there an attempt to—

**Chief Terry Nelson:** Oh, absolutely.

**Hon. Mauril Bélanger:** It wouldn't have been INAC. It would have been perhaps—

**Chief Terry Nelson:** There were letters going to the Auditor General. There were letters going to the ministers, and pretty well to every level of government, trying to engage them and to resolve the issue prior to it going to court.

Clearly the intent was that the first nations were saying that the lawful obligation from 1871 was in fact.... If there's third-party interest in other lands, clearly the crown's lands would be much easier to deal with. The courts have been very clear in that context, that the crown does have that obligation.

We have a very strong legal basis for our being in court.

● (0940)

**The Chair:** Mr. Hudson.

**Chief Glenn Hudson (Chief, Board of Directors, Treaty One First Nations):** I want to comment about this case, because when it comes to the Canada Lands Corporation, that process was developed and formalized after our TLE process was established. On the priority, when you're dealing with these types of lands, they are given a mandate under the Canada Lands Corporation to protect those crown lands for the government. But when it comes to our shortfalls under TLE, which was mandated before Canada Lands Corporation, they seem to be set aside. This is one of the problems with these lands that are spoken about specifically, and in your territory also.

**Hon. Mauril Bélanger:** It is suggested here that there are other agencies of the Government of Canada that are not respecting agreements made by the Government of Canada via INAC.

**Chief Glenn Hudson:** Via INAC and also through Canada Lands Corporation...because that was established after the TLE process was established, and they're conflicting.

**Hon. Mauril Bélanger:** I'm sorry I'm not familiar enough with the TLE process. It's certainly binding to INAC, but is it also binding to all government agencies and departments?

**Chief Glenn Hudson:** They certainly play a role in the lands of interest within that process. In the additions to reserve policy there is a process we must follow to obtain clearance on that land.

But in this situation it seems that the government has implemented TLE on the one hand to look after the interests and rights as far as our failed obligations are concerned, but on the other hand it's to look after the government—the crown's interest in specific lands. And those two are conflicting.

**The Chair:** That's it.

I recognize that one other witness wishes to add a comment. I think it is Mr. Chief.

Make it very brief, please.

**Mr. Paul Chief (Board Director, Treaty Land Entitlement Committee of Manitoba Inc.):** Good morning, and thank you for allowing us to be a witness.

My name is Paul Chief. I'm a member of Brokenhead Ojibway Nation and I'm a council member.

I was a council member when Brokenhead first made the decision to take Kapyong as one of our selections in 2001. With that selection came many processes that were very new to us, and we were learning the agreement. We were under the impression that any lands that were available through the crown in Canada were available to first nations. Brokenhead made that selection, and new legislation, policies, and procedures were thrown at Brokenhead. In particular was the strategic land disposal.

We were able to view the property. It felt like a movie, in particular when Chevy Chase looked at the Grand Canyon. We walked in, took a look, it was good enough, and we walked out. That was the process. There were no formalities. We initiated it, but it wasn't part of our original treaty land entitlement selection, as you asked, because of the unanswered questions about what this actually falls under. Is it a true land entitlement agreement, or does it fall under strategic lands?

**The Chair:** Thank you for that.

We have to move on.

[Translation]

Thank you, Mr. Bélanger.

It is now your turn, Mr. Lemay. You have seven minutes.

**Mr. Marc Lemay (Abitibi—Témiscamingue, BQ):** I suggest that you use.... Do you understand what I am saying? I think you had better use the interpretation earpiece.

Mr. Chair, you can start my time once his earpiece is in. It is important; I want him to understand what I have to say. Let the members get settled. We will get there. I want Chief Nelson to understand what I have to say.

Good. We can get started.

● (0945)

[English]

**The Chair:** Make sure you have English on channel 1.

[Translation]

**Mr. Marc Lemay:** First, I want to thank you for being here. I have read all the documentation, and I have listened to all of you. My first reaction was to admire your incredible patience. I know some of your colleagues who would have blocked roads for a lot less than that a long time ago.

We heard from the Auditor General. No matter what the Conservatives and Liberals say, it makes no difference because those two parties have been in power since 1871. The committee wants to know what we can do, and that is why we asked you to appear before us.

What can we do to poke a stick in the hornet's nest—to use a polite turn of phrase—and make something happen quickly? It makes no sense that you have been waiting nearly a hundred years. What can we do today? Should we tell you to go before the courts? You are already doing that. Should we talk to both governments?

You have members from the two major parties in front of you. One will replace the other; it may take a few years, but one will always replace the other. What can we do?

In Quebec, we have the peace of the braves agreement. We have done a good deal of the work. This afternoon, with Bill C-28, you will see that we have made significant progress, but what are they doing in your province?

Go ahead, Mr. Chief. You have raised your hand often. Mr. Nelson's turn will be next.

[English]

**Mr. Paul Chief:** *Megwetch.*

One of the biggest problems we have in Manitoba is continuity. We've had six directors of lands within our region of Manitoba. Our files keep getting passed on or forgotten.

We have no continuity with the Province of Manitoba, which you have no authority over. We need people to stay on the files. We need resources within our community. We need treaty land entitlement to get rid of third-party interests, which is one of the major problems we face in Manitoba.

We are so different from Saskatchewan. Saskatchewan has an agreement to take care of third-party interests, yet the treaty land entitlement committee has not received a contribution agreement to actually fund for this year. Last year we went six months without a contribution agreement for us to handle third-party interests. With the changeover in the personnel within our regional department it's frustrating, difficult, and we have no means of actually getting anything done.

Until we have the continuity and the dollars within our community to handle these affairs, we are going nowhere fast and spending taxpayers' dollars with no results.

**Chief Terry Nelson:** Thank you. I appreciate your comments.

Successive governments have failed. The treaty was in 1871, and 138 years later we still don't have the quantum of land that was promised in the treaty. Farther west of us, the first nations got 640 acres for a family of five. We agreed to 160 acres for a family of five.

You asked what the committee can do. The committee can clearly understand the legal obligation and the honour of the crown. The crown promised that the most basic premise of the treaty—the peaceful coexistence between the indigenous people and the immigrants—would be respect for each other, and we would have separate jurisdictions.

On the reservation land quantum, treaty land entitlement is separate from the addition to reserve process. When we select our lands—and they are our lands, all 10.7 million acres of land—they will automatically have reservation status. That is the critical thing to do without....

●(0950)

**The Chair:** Chief Hudson *aussi.*

**Chief Glenn Hudson:** I just wanted to reiterate that when it comes down to third-party interests, that seems to take precedence with respect to having these lands converted to first nations that are under TLE. It boils down, basically, to the commitments of Indian Affairs. I know when we started on this process there were commitments that were put in place by the department, and I guess this may stem from what Paul was saying about the continuity. Those commitments were never followed through with, and again, we have to start the process over, over, and over again.

[Translation]

**Mr. Marc Lemay:** Since I am a lawyer in my spare time, I know that it is possible to ask the Federal Court for fee provisions and that the federal government could be asked to pay the fees so that you can you continue your proceedings.

I get the sense that the federal government is in total conflict of interest. It is the federal government that is funding the process and choosing negotiation dates, times and places, and if there is a lack of consistency, all the government has to do is change deputy ministers. There have been eight in the span of five years.

There is another problem I find very troubling. The Auditor General spoke to the committee. How is it that oil, gas and pipeline companies and companies like Manitoba Hydro can use your land and assert rights without your being able to stop them? Please explain how they are allowed to do that. From a legal standpoint, they cannot, so what allows them to do it?

[English]

**The Chair:** We're out of time here, actually, so we'll have to really limit it to a very brief response. Who would like to go?

Chief Nelson, one brief response, and then we'll have to carry on.

**Chief Terry Nelson:** I guess it is how Canada is viewed internationally. Clearly, it is a black eye for Canada, because in the United States, which is a smaller country, with 10 times more population, the reservations are 64 times larger than the reservations on the Canadian side. It's clearly a question not so much that there isn't any land; it is a question of the honour of the crown and the commitment by the government to ensure a fair process. No question, what's clear is the economics, that the resources and the lands are being used without compensation for the indigenous people...and keeping the indigenous people at the 63rd level of the United Nations' living index.

**The Acting Chair (Hon. Mauril Bélanger):** Thank you. Thank you, Mr. Nelson.

Madam Crowder.

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

[Translation]

**The Acting Chair (Hon. Mauril Bélanger):** It is my pleasure to tell you that your time is up, Mr. Lemay.

[English]

**Ms. Jean Crowder:** I want to thank the chiefs and the TLE for coming before the committee today.

I think part of the challenge we're faced with is that there's a fundamental lack of commitment and understanding by various governments around what "treaty" meant. My understanding of it is—and I'm not a lawyer, unlike Monsieur Lemay—that it was an agreement based on a nation-to-nation basis. It's a legal document that says this is what the two parties agree on. For 138 years, you've had one of the signatories to the agreement continuously fail to live up to its obligations. Is that a good summary?

**Mr. Paul Chief:** That's a great summary.

**Ms. Jean Crowder:** Based on that, what we have is this complete and utter failure of the honour of the crown. How do you even begin to resolve it when you don't have governments.... Again, Monsieur Lemay is right, this is not a partisan remark; we've had governments in power since 1867 that have failed to live up to their 1871 obligation. So what needs to be done to shift the mindset of governments, so that they are actually dealing on a nation-to-nation basis?

• (0955)

**Chief Terry Nelson:** Speaking for Treaty One first nations, the frustration we have felt over a number of years is clearly getting to the point where we must take action. The reality is that the two pipelines that are coming through Treaty One territory will be blockaded, and they will be blockaded this summer. We have been authorized by our people, and the chiefs have been very clear on that.

The crown has authorized the licence with permits for two pipelines to come through our territory, which will ship 1.9 million barrels of oil per day to the United States. The Americans are very clear that they want the oil. Seventy-two per cent of all foreign investment in Canada comes from the Americans. Eighty-seven per cent of all exports from Canada go to the Americans. The relationship between Canada and the United States is clear. There are three nations that are opposed.

The United Nations Declaration on the Rights of Indigenous Peoples includes Canada and the United States. Canada and the United States have over 30% of the world's GDP. Essentially the indigenous people have patiently said that we have agreed to share the resources and the wealth of our lands; however, we did not ever agree to impoverish ourselves.

Therefore, it is important for the government and people like you to understand our frustration. I thank the committee members for understanding that clearly our intention has always been to not be in conflict. And in fact the treaty is very clear on peaceful coexistence. It is critically important that Canada, which was declared by the United Nations seven years in a row to be the number one country in the world to live, understand the value of peaceful coexistence and understand that blockades and conflict are not the way to go. Respect for each other is clearly the intention of the treaty, and the committee must do everything in its power to ensure the honour of the crown.

**Ms. Jean Crowder:** Thank you.

**The Chair:** Mr. Chief and Chief Hudson, do you wish to comment?

**Ms. Jean Crowder:** The reason this is so important in the context of treaty land entitlement is that it underlies everything else that falls out, so if we don't get this right, it's tough to get anything else right.

Mr. Chief and Mr. Hudson.

**Mr. Paul Chief:** Thank you.

Your statement was correct. It's a nation-to-nation agreement. The problem is that although I'm a councillor from Brokenhead Ojibway Nation, when I go to meetings in regard to treaty land entitlement, I spend most of my meetings with technicians. I don't get the respect of Canada, nor do I get the respect of Manitoba. I spend more of my time dealing with technicians in regard to treaty land entitlement issues, where I'm not treated as a nation-to-nation representative. We are left in the dark. When it comes to respect of nation to nation, I do not see members of Parliament, MLAs, or any others besides technicians. Only when I come to Ottawa do I get the respect that I truly deserve as a political leader of my community.

With that said, there is the underlying reason we have made no gain in regard to treaty land entitlement. They treat us like technicians.

And may I say that I go through an election every two years—not every four—and I've been around for over 10 years.

*Megwetch.*

**The Chair:** Chief Hudson.

**Chief Glenn Hudson:** I just want to add to the answer. In support of Chief Nelson and Paul Chief, the bottom line is that there has been a failure with respect to the duty to consult and accommodate through this process. We've never been shown that respect, and I don't think the bureaucrats who are dealing with this issue truly understand that duty. When it comes right down to it, that's where we end up failing.

Obviously the second part of my answer would be to clearly understand and clarify the benefits of treaty on our part, in terms of those returns coming back to the first nations. I don't think that's fully understood at the bureaucratic level and at the government level.

• (1000)

**The Chair:** You have about 15 seconds left, Ms. Crowder.

**Ms. Jean Crowder:** On the next round I'll address some of the findings in the Auditor General's report. From INAC's perspective, it's pretty damning of the performance of the Manitoba region.

**The Chair:** Mr. Duncan.

**Mr. John Duncan (Vancouver Island North, CPC):** Thank you.

We are here to talk about the Auditor General's report. This has been in place for about 12 years. I was here when this was negotiated and created under legislation. I remember the push-back from some of the third-party stakeholders that you've made reference to. I think that despite some of the conversations we've heard today, there has been a great deal of progress.

There has been quite a bit of attention focused through the Auditor General's report. The performance in Saskatchewan is something we've looked towards, and the comparison is definitely a concern. I forget who made the statement that there was no third-party agreement to deal with third-party interests with the Province of Manitoba. Was that you, Mr. Chief?

I'm wondering if you can round that out. We have a long-time provincial administration in the Province of Manitoba. I would have thought that this item would have been taken care of, if it was seen as a real impediment. I'm just wondering what the impediments are, as you see them.

**Mr. Paul Chief:** One of the biggest is Manitoba Hydro. It's not a signatory to the treaty land entitlement, but for some reason, at some point, Canada relinquished its responsibility for all waterways. My understanding is that the Department of Fisheries and Oceans has all say on water, but for some reason in Manitoba that's not the case. It's at a 100-year flood level. It's this dynamic where we have to negotiate easements. That's one of the bigger ones.

I would like Carl Braun to add more to the comment.

**Mr. Carl Braun:** There's been a lot of discussion on third-party interests. I want to make it clear that there are now 105 parcels of land, totalling 150,000 acres, that are sitting. There are no encumbrances on this land. There are no third-party interests. Why hasn't that land moved? I think the Auditor General was clear about why that land hasn't moved. We're talking about mismanagement of files, miscommunication, a lack of directives, and a lack of leadership. I want to start with that.

Certainly, there needs to be more attention to detail in resolving third-party interests. The committee has a responsibility to assist the first nations. The phrase in the agreement says, in effect, that the entitlement of first nations will remove, accommodate, or discharge third-party interests to the satisfaction of Canada, Manitoba, and the third-party interests. That's the clause that seems to be creating the paradigm.

I understand that the first nations need to take the initiative. We've done that. We've prioritized parcels. We've identified third-party interests. We've set tables. We've allocated the first nations own resources for this. We now need Canada to come to the table as a fiduciary, with the proper legal instruments, whether under the Indian Act or the Federal Real Property Act, to facilitate the process.

•(1005)

**Mr. John Duncan:** Mr. Braun, you talked about how it often takes five to seven years to get the ATR process concluded. I think you mentioned that a survey takes two environmental studies, a design study, and municipal agreements. All together it takes five years. With respect to those 105 parcels, are these things all done?

**Mr. Carl Braun:** Those 105 have no need for a municipal service agreement, nor third-party interests, instruments or tools. Certainly they'll need an environmental review and audit. Certainly they'll need to be surveyed.

**Mr. John Duncan:** Are there impediments to that in the way of financial resourcing?

**Mr. Carl Braun:** Definitely. I'm the technician. I work with the Manitoba region on a daily basis, and the frustrations are voiced, if

not daily then weekly, about the limited capacity, the limited resources. They are as frustrated as we are. Again, I'm speaking from a technical point of view. They've also voiced on record that they, too, are frustrated with the additions to reserve policy themselves. There's a lot to discuss.

**Mr. John Duncan:** Our documents here indicate that there are 26 first nations, at least, in Manitoba that have TLE eligibility. Do I take it that the 19 that are in the TLE Committee are different, that there's no overlap between the 19 and the 7? Are those the 26 first nations? Is that all of the first nations with eligibility for TLE, or are there more?

**The Chair:** I think that might have been directed to Mr. Braun.

**Mr. John Duncan:** It's directed to anyone who can answer it.

**The Chair:** Chief Nelson had his hand up as well, Mr. Duncan, so if you wanted to allow that, let's go ahead with Chief Nelson.

**Chief Terry Nelson:** To help the committee understand the difference between Saskatchewan and Manitoba, in Saskatchewan the average conversion process took two years. Saskatchewan was earlier in their TLE agreements. Unfortunately, what happened after that was that the bureaucrats got hold of it in Manitoba and we ended up with an ATR process.

Having spoken with Minister Prentice at one point, the former Minister of Indian Affairs, he said that he saw Saskatchewan TLE agreements coming before his desk week after week after week. In all of his time in that office, he didn't see anything come across his desk from Manitoba. So that is clearly one of the frustrations we're feeling in Manitoba.

We had a national day of action on treaty land entitlement, and I was the one who was focusing in on that. We did have a national day of action based on the fact that TLE was not moving ahead—the honour of the crown. From the second time I met with Minister Prentice to the time that he converted the reserve parcel of land, 70 acres of land near the city of Winnipeg, it took six weeks. From the second time I met with Minister Prentice to June 13, 2007, it took him six weeks to convert that land, so it can be done.

•(1010)

**The Chair:** Thank you, Chief and Mr. Duncan.

**Mr. John Duncan:** Could Mr. Chief answer my question? He has his hand up.

**The Chair:** I'm sorry, I missed that.

Go ahead, Mr. Chief, briefly.

**Mr. Paul Chief:** There are 64 first nations in Manitoba. We are all entitled to treaty land entitlement under the treaty obligations. The problem is that we have to prove that we are entitled to more lands. Twenty-four bands have proven that fact, and there are still 40 bands that have to initiate process through ATR—I'm not too sure of the acronym—but we have to prove our case, even though within our treaty signing it stated that we would be entitled to more lands.

So to your question, sir, as to how many bands, the answer is every one of us. Every one of our communities is entitled to treaty land entitlement, but we have to prove it to Canada.

*Megwetch.*

**The Chair:** Chief Hudson, did you have a brief comment to add?

Please go ahead.

**Chief Glenn Hudson:** I wanted to answer his question directly. There are 21 first nations that are part of the TLEC, and in Treaty One there are 5 that have their own TLE agreements. Peguis is one.

**The Chair:** I thank you all.

Thank you, Mr. Duncan.

We're now going to begin the second round.

We'll start with Mr. Bélanger for five minutes.

**Hon. Mauril Bélanger:** Now I understand how Madam Crowder feels all the time. You have the second round, third round; you get....

Has the 2000 Manitoba Claim Settlements Implementation Act been of any use, in your opinion?

**Mr. Carl Braun:** I'll comment briefly, again from a technical standpoint.

Under the umbrella agreement, the Manitoba framework agreement, there was one attempt to use the act. As I recognized, there was a flaw in the wording from the Manitoba region in the submission to the Department of Justice. The DOJ then rejected it.

It is dysfunctional. The region has not mastered it yet. I can report we've been requesting a definition of the process—a flow chart and the technical detail on how to use it. After years of requesting it, we just received that last week.

One example would be the Brokenhead Ojibway Nation in what's entitled an East St. Paul parcel. The community went through the designation process to use the act, and it was returned or rejected by the Department of Justice, which pinpointed some inadequacies in the Manitoba region as well.

**Hon. Mauril Bélanger:** You say you received the flow chart of how the act might work last week.

**Mr. Carl Braun:** Yes.

**Hon. Mauril Bélanger:** I wonder if that's a coincidence. My cynicism is showing here. Sorry.

I want to go back to the questions Mr. Duncan was asking Mr. Braun. Let's see if we can get the committee engaged in something here.

You say 105 parcels are unencumbered. Are they part of the priorities, or is there a priority list of the 360 remaining parcels? Of the 480 parcels, are they set in order of priority or not?

**Mr. Carl Braun:** The INAC Manitoba region put together what they call a dashboard. The term is questionable in our minds. It's a list of their priorities to achieve the ministerial commitment. Another list exists, and that's a list of the first nations priorities. Certainly some of those parcels we've talked about are on that list.

**Hon. Mauril Bélanger:** Can we get from you or Paul Chief the list of the 105 that are within your priorities? Maybe not the whole 105, but could you get that to us?

Perhaps we can ask the department that, if the committee wishes to engage in that. Of those that are unencumbered and you treat as priorities, how fast can they get those resolved? Maybe we could try that and see what happens.

How soon could you get that to us?

**Mr. Paul Chief:** As Mr. Nelson said, if you have the right political leaders in place, it'll probably take six weeks.

**Hon. Mauril Bélanger:** No. How soon can you get us that list? Are you saying we'll have it in six weeks? Is that what you said?

**Mr. Carl Braun:** We can probably do that within a week.

**Hon. Mauril Bélanger:** Then I will attempt to convince my colleagues on committee, if they are willing to undertake this exercise, to forward that list to the department and see if we can get a commitment from them to deal with the unencumbered priority parcels according to your priorities. Is that fair enough? We'll see where that takes us.

That's it for now.

• (1015)

[*Translation*]

**The Chair:** Mr. Rickford now has the floor for five minutes.

[*English*]

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

I welcome all the witnesses. I'm from Kenora, where they're on Treaty No. 3, and we're neighbours. We have some mutual friends.

First of all, I have a brief comment about the committee not being engaged to the extent that our representation was made. I think we're very engaged, as I appreciated throughout this morning's energetic dialogue.

I want to focus my questions to Chief Hudson. You're at a very interesting stage as you're set to revisit a vote in July. Is that still on track?

**Chief Glenn Hudson:** We're looking at the illegal surrender of the former St. Peter's Reserve. We've already accepted and have received our financial compensation through TLE. That was last year.

**Mr. Greg Rickford:** Okay. So what does the next vote—according to the news release I had—accomplish?

**Chief Glenn Hudson:** Well, the vote is with respect to the illegal surrender of St. Peter's, and it is a negotiated settlement as far as the loss of use of the former St. Peter's Reserve and compensation provided for that former reserve.

**Mr. Greg Rickford:** Just take this next four minutes with me, Chief, if you can, to reflect back on the process.

Obviously the nation has some things they are responsible for, and we've heard some reference to some of the difficulties you have. But just as objectively as you can, what sorts of internal barriers or challenges do you face that may slow down this process, as you think back?

**Chief Glenn Hudson:** I know there was one issue I dealt with just at the airport in coming here yesterday. We established a date of this upcoming vote, June 13, and we had forwarded all the documentation and information to the department, and we obviously indicated our wishes as to who was to conduct that vote, as far as the contract goes. But it seemed that the contract was never followed through with, in terms of engaging that contractor to carry out the vote. That delayed the process, when we had spent weeks arriving at a date and determining when would be the best time for this. That process was delayed by the department here, I guess at headquarters, and I guess the region had a role to play in that, in not engaging that contractor.

**Mr. Greg Rickford:** Is there anything else?

**Chief Glenn Hudson:** I guess that comes to mind with respect to that illegal surrender. But on TLE, we have the largest claim in Manitoba's history—166,000 acres of land. I know the commitments that had been put in place by the former Minister Prentice were to have 150,000 acres converted each and every year over the next four years. I think we're at the fourth year of that agreement, and they've fallen short. I believe one of the main aspects in reference to some of their previous comments was the third-party interest. That takes precedence over our interest. Yet when you deal with Manitoba Hydro, as mentioned previously... They're not engaged in this process, yet they're an arm of the Province of Manitoba, as far as a crown corporation—

**Mr. Greg Rickford:** We look to Saskatchewan, obviously. There seemed to be a better framework for streamlining a lot of that activity, and that component of the process was a little bit more successful. Do you agree with that?

**Chief Glenn Hudson:** Yes, and I think that's what needs to happen in Manitoba. Again, it needs to be the commitment from the region to see these things followed through with, because given the land quantum we have—that 166,000 acres—we'll never see that in 25 years, where that agreement states.... I know just getting 75 acres of land converted...it took Chief Nelson's community 10 years to do 75 acres, yet we're supposed to be getting 166,000 acres.

•(1020)

**Mr. Greg Rickford:** I may have to come back to this in another round, Chief Hudson, but I want to just focus on the voting process. As you reflect back on that, what steps might you have taken, or would you take, to facilitate a higher participation by the community? It seems you were at 38% of the population and the rules require 51%. Did you want to comment on what consultative, communicative, or education process you would have gone through or you are going through now or would in the future to get voter participation up to where it needs to be?

**The Chair:** We are out of time. I recognize there are two witnesses who wish to comment.

**Mr. Greg Rickford:** My questions were directed to Chief Hudson, frankly.

**The Chair:** Okay, Mr. Rickford, we'll start with Chief Hudson, although we do try to recognize if other witnesses wish to have a comment.

We'll go to Chief Hudson.

Could I ask you to be very brief, Chief, and then similarly Mr. Chief?

**Chief Glenn Hudson:** I think given that the provision is under the community approval process, which is set out by the department.... For example, if we had to have 50% plus 1% in a general election, whether it's Manitoba or the federal government, would we have a government in place if we didn't achieve that percentage? We just need, I guess, in terms of those guidelines, to have them in place to reflect obviously outside provisions in dealing with elections. Of that 38% who voted, over 92% voted in favour of it.

**The Chair:** Mr. Chief, briefly.

**Mr. Paul Chief:** I will briefly reiterate exactly what Chief Hudson said, that it's ironic, or a double standard, that in first nations we need 51% of our vote to pass anything within our community's interest. Yet Canada, in its last election...what did you make? Was it a little over 7% of the actual vote? It's kind of a double standard, and I think that really needs to be looked at closely. Maybe it was 13%.

**The Chair:** Thank you for your comments.

[Translation]

Mr. Lemay, you have five minutes.

**Mr. Marc Lemay:** It is a bit ironic that the Clarity Act requires us to have more than 52% in Quebec, but that debate will not happen tomorrow morning.

Two points caught my attention. One is the possible blockade of the transportation of oil and gas, given the pipelines that are coming. But it was the second point that I found most interesting.

Last week, we heard from government officials who work on this portfolio. The Auditor General appeared before us, and then, suddenly, after eight years, you heard some news. The best solution would be for us to meet at least once a year. What do you think?

Chief Nelson.

[English]

**Chief Terry Nelson:** I agree with you 100%.

In 1994 the new Minister of Indian Affairs, Ron Irwin, made a declaration to a thousand of us who were gathered in Manitoba. He said he wanted to be the last Minister of Indian Affairs. He wanted self-government for native people. He said he wanted to turn off the lights at Indian Affairs as he went out the door, when they dismantled Indian Affairs.

I think it's about 15 years later and the lights are still burning brightly at Indian Affairs, and in fact we have to use Indian Affairs a lot of times.

A lot of times the ministers do in fact make commitments. Members of Parliament want to resolve issues. Unfortunately, you have a bureaucracy that is out of control and essentially does not fulfill the wishes of the members of Parliament.

I think we should in fact be meeting more regularly. As a party to treaty, we have to take care of our side of the agreement and it is important for the crown and for the members of Parliament to take care of their side. That's critically important.

•(1025)

[Translation]

**Mr. Marc Lemay:** Mr. Chief.

[English]

**Mr. Paul Chief:** Your comments were greatly appreciated.

It's not until we have the grasp of members of Parliament that things actually get done in Manitoba.

On your comment about meeting once a year, I would like it once a month so that we could actually fulfill our commitment.

Brokenhead has a treaty land entitlement. We've gained 4% of our treaty land entitlement in over 10 years. We have three years remaining within our agreement and it's dead and gone. So, yes, I would love to meet once a year, but I'd like to meet once a month until we get the next 96% of our treaty land entitlement completed.

[Translation]

**Mr. Marc Lemay:** I have to be honest with you: every month might be a little difficult. I can tell you, though, that the Quebec Cree and Naskapi issue will be settled this afternoon. With Bill C-28, a lot of the work has been done.

You have our support. Obviously, it is not normal for it to take a hundred years to settle these claims, because the more time that goes by... I would like to read an excerpt from a document that was sent to us, the Treaty Research Report Treaty One and Treaty Two from the Department of Indian and Northern Affairs:

In retrospect, Treaties One and Two were the instruments of a post-Confederation government policy [careful, that blow will be felt] that was designed to protect the Indians while providing a basis for their peaceful assimilation into Canadian society.

It is not me saying it; it is the government. You understand that I do not agree with this. So I think that, over the next few years, we will be seeing each other more often than you think.

Thank you.

[English]

**The Chair:** We'll close on that. Thank you, Monsieur Lemay.

*Maintenant, Monsieur Clarke, pour cinq minutes.*

**Mr. Rob Clarke (Desnethé—Mississippi—Churchill River, CPC):** Thank you, Mr. Chair.

I'd like to thank the witnesses for coming here.

I understand that one of the chiefs here has an election today. The elections are all done? Oh, good. My election on my home reserve just finished here last month.

I'm from Saskatchewan. I come from an RCMP background, and both my parents served in the armed forces.

Just hearing what the Bloc said here today really alarms me. They seek out confrontation. That's how people get hurt—that's my stand—and I don't agree with it. We'll just stick to the issues here today.

[Translation]

**Mr. Marc Lemay:** I rise on a point of order, Mr. Chair.

Mr. Chair, it is unacceptable for a government member to say that we only seek out confrontation. That is unacceptable in the House and, especially, in this committee. That is not what I am trying to do.

We are studying a file that affects aboriginal peoples, and it is not us seeking out confrontation. I think the member should be called to order.

[English]

**The Chair:** In fact, it's not a point of order; it's a point of debate.

Mr. Clarke, carry on with your questions. As I said earlier, Mr. Clarke, we're trying to keep the content—albeit there are a range of issues that we can speak about—focused on the Auditor General's report as it relates to treaty land entitlement for Manitoba. If we could zero in on that topic, that would be terrific.

Go ahead, Mr. Clarke.

**Mr. Rob Clarke:** I just know there was mention of a blockade.

What I understand here—and if I can get some clarification—is that over the progress of the past four years, there are 150,000 acres that have been allocated for each year. Now, does that represent about 10 times the average amount set aside from the preceding nine years?

**Mr. Carl Braun:** If I understand your question, you're looking to see if the 159,000 acres represents—

**Mr. Rob Clarke:** I mean the 150,000, or 159,000, that have been allocated over the last four years. Now, have you guys been progressing? Is it 10 times the average yearly limit or amount set aside during the preceding nine years?

**Mr. Carl Braun:** I'm not clear on your question. Can you try to rephrase that?

• (1030)

**Mr. Rob Clarke:** Basically 150,000 acres over four years represents more than 10 times the average annual amount set aside during the preceding nine years. I'm just wondering if that's correct. It was the testimony of Sara Filbee.

**Mr. Carl Braun:** Is it correct? For the most part, but there are certain factors that play a role in that. The Manitoba region had been working on those parcels for the previous nine years. That resulted in success in that one year.

**Mr. Rob Clarke:** We talked earlier about economic development and about a pipeline that crosses traditional lands. Maybe I'm wrong. I'm just kind of curious if this pipeline crosses treaty land reserve.

**The Chair:** Go ahead, Chief Nelson.

**Chief Terry Nelson:** The crown clearly undertook legal obligations. I'm a former police officer also, and I'm very clear in terms of what the Supreme Court of Canada has decided in regard to the duty to consult and accommodate. In fact, the indigenous peoples, having gone to the court in at least 12 different decisions on their duty to consult and accommodate, found that there is no enforcement mechanism on the treaty.

We are unable to go to the RCMP to ask that they enforce the Supreme Court of Canada decisions on the duty to consult and accommodate. Where do we apply to do that? The Canadian army? We can't go to the Canadian army and ask that they enforce this.

The treaties are very clear: "...and that they may know and be assured of what allowance they are to count upon and receive year by year from Her Majesty's bounty and benevolence".

That is what the treaty said, that in fact the benefits from the 10.7 million acres of lands that Treaty One represents would in fact be due to us, and that in the future the crown would come.... You are the crown in this case, because you are members of Parliament. I'm therefore coming to you and saying, "How do we enforce the lawful obligations?"

**The Chair:** I recognize that Chief Hudson wants to add a comment too, although Mr. Clarke has only one minute left.

**Mr. Rob Clarke:** Can I please ask two more questions?

How many jobs have been created in regard to this pipeline, and how much money has the pipeline company or companies provided Treaty No. 1?

**Chief Terry Nelson:** Number one, the pipelines are not the crown. Essentially it is the crown's obligation under the treaty to come to the table and ensure that the permits they have granted to Enbridge and TransCanada to cross the lands are legal. That's what we are in court about; we are, in fact, in court on this issue. We're awaiting the court, and we certainly would appreciate it if the system were more relevant in terms of the timeframe. The fact that we, as indigenous people, have to take direct action is not our fault. It's 138 years later, and that's our position.

**The Chair:** Thank you, Chief Nelson. I appreciate, witnesses, that there are others who wish to comment here. We are getting a bit pressed for time here because we do have some committee business.

We have time for two more questions. We're going to go to Madam Crowder and then to Mr. Albrecht. Then we will have to finish up, unfortunately.

I'll do my best...and just keep in mind, gentlemen, that members have limited time both for questions and responses. If they're directing a specific question, it's difficult to give everybody time to respond.

We'll go to Madam Crowder for five minutes.

**Ms. Jean Crowder:** I'll make a couple of quick comments before my question.

We're starting to see a thread here. We heard from the Cree-Naskapi commissioners on Tuesday that one of the biggest impediments to getting things done is the bureaucracy, and we certainly see that in Manitoba, whether it's lack of management of files, lack of recognition of the responsibility around third party—it goes on and on.

The second piece of it is that there is a double standard in Canada, as you have rightly pointed out. The Cree-Naskapi commissioners pointed out that they were expected to go to referenda on all kinds of issues for which municipal governments and other levels of governments don't. And someone drew in the voting percentages. Municipal governments in Canada don't require a minimum percentage, and many of them have less than 20% in order to form governments.

I want to come to the additions to reserve under the treaty land entitlement. My understanding of this is that once you get through the TLE process, you then have to do an ATR process, so you could spend years in TLE and then years in ATR. As well, while you have a piece of land that's been settled under TLE you could end up

paying municipal or other levels of taxes while you're waiting for the addition to reserve process to happen. Is that correct?

That's crazy.

Under the Saskatchewan process that somebody referenced, before somebody caught up to what they were doing, could they move the TLE right into the additions to reserve? Was there a quicker process in Saskatchewan?

• (1035)

**Chief Terry Nelson:** There's a bit that needs to be clarified. Treaty land entitlement is what the crown, in signing these agreements, has openly admitted in the agreements was the shortfall back in 1871. They also agreed in the case of Roseau River. The shortfall is 5,861 acres. They can go up to 16,218 acres under the addition to reserve process. So there are two separate issues that we're dealing with. The TLE, in our belief, says that this was a crown obligation in 1871. It should be reserve status the day we buy it. In fact, the normal transfers of title in the non-native situation would be three weeks.

**Ms. Jean Crowder:** I'm not clear, if there is a process that recognizes the TLE and grants whatever acres are involved under the TLE, a recognized obligation, why the additions to reserve couldn't be rolled into that process.

**Chief Terry Nelson:** That's an issue that the crown has to deal with. The first nations, the indigenous peoples, signed a treaty with the crown saying that this amount of land...and it was agreed to in 1871. It should be based on the honour of the crown; the crown should deal with that situation. It shouldn't be up to the first nations or indigenous peoples to go through a horrendous process to satisfy the crown. It is the crown that is getting the benefits from the 10.7 million acres of land.

**The Chair:** Thank you, Madam Crowder.

We'll go to Mr. Chief, but prior to him, Chief Fontaine wanted to get in as well. So if it's okay with you, we will proceed with Chief Fontaine and then go to Mr. Chief.

**Chief Donovan Fontaine (As an Individual):** Good morning, committee members. I am Chief Fontaine, Sagkeeng First Nation.

As you heard, Sagkeeng and Sandy Bay are two of the seven in Treaty One that aren't in the TLE process yet. However, in 2001, our submission was denied and sent back to us for fine-tuning.

Getting back to Mr. Lemay's comment about Treaty No. 1 and Treaty No. 2 being a model and a forerunner of subsequent treaties, what I'm going to say here is that they are kind of linked. There's a logical extension. That is what I'm saying.

On unextinguished lands, if you study Treaty No. 1, there were no blanket extinguishments of all the outside territories under Treaty No. 1. The one that was purportedly surrendered was reserve boundaries. We submitted a title claim in 2007 for aboriginal title on the unextinguished territories we've had. It goes to all this about crown land being crown land and being part of TLE. So it's all connected; the three are connected.

Sagkeeng is challenging this unextinguished title under Treaty No. 1 by virtue of the government not coming back to us and dealing with our community. I'm optimistic that Bill C-30 will help us. The Specific Claims Tribunal Act will hopefully not take us seven years down the road or eight years down the road. We're at the door now with the TLE process.

I came here as an observer.

I also wanted to briefly comment on the whole process of the tar sands and the pipelines going into our traditional territories. I want to say quickly that there's such a thing as dirty oil and there's also a human side to it. The human side, of course, is first nations. The treaties of 1871—territories, forestry, mining; we have yet to see one house come out of our traditional forests. It goes for anything else.

Thank you.

**The Chair:** We'll have a brief comment from Mr. Chief, and then we'll have to move on.

• (1040)

**Mr. Paul Chief:** The question was how we can fast-track this. The problem is the fiduciary responsibility of Canada. They don't want any liability. This is the process that slows down our conversion from common lands to reserve lands.

If I were a common citizen and walked down the street and bought a piece of property, it would be done within months, if the lawyers did not tie it up very long. Otherwise, it would become my property. As a first nation person, Canada has a fiduciary responsibility, and that fiduciary responsibility is having no liability. There's our comment.

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

Finally, we'll go to Mr. Albrecht, and we'll try to keep it to the five minutes.

Thank you.

**Mr. Harold Albrecht (Kitchener—Conestoga, CPC):** I just want to follow up briefly on Mr. Bélanger's point about the 105 parcels. You indicated that there are no third-party interests outstanding. Can I assume, then, that this is all crown land, that the 105 parcels are all crown land?

**Mr. Paul Chief:** Yes.

**Mr. Harold Albrecht:** Okay.

Have these crown lands all been surveyed and had environmental assessments done on them, or is that potentially what's holding up the process?

**Mr. Carl Braun:** That is potentially what is holding up the process. I don't have that detailed information in front of me per parcel, but it's almost a safe assumption to say that it's possibly a lack

of funding to do the environmental audits and the surveys. That would be a factor.

**Mr. Harold Albrecht:** I'm in agreement that I'd like to see those lists and see if we can expedite that process.

Mr. Braun, you mentioned in your remarks—and I wasn't able to follow every statistic you quoted, because we didn't have them in front of us, but I think you indicated that there's a 28% completion rate. The Auditor General said 34%. Then you indicated that at the current rate, it will take 25 more years. I believe that's what you said. I don't want to put words in your mouth.

You said that it was due to lack of resources. What resources? Is it only financial and personnel resources? If so, what kinds of resources would it take to speed it up? Or are there other resources you're referring to that I'm missing?

**Mr. Carl Braun:** It's a pretty broad question and it requires maybe a little more time than we have here. I'll try to be concise. The 28% we spoke to is under the Manitoba framework agreement. There are lands that have been converted under what we call the independent agreements that exist in Manitoba as well.

The 25 years is ambitious, as we are coming to a point where we are going to be dealing with encumbered parcels of land and so on. So it is ambitious.

In terms of resources—human resources, financial resources—there definitely needs to be a meeting of minds on the part of all parties, including third-party interests. There needs to be leadership brought to the file and management brought to the file.

I don't think I can adequately answer your broad question at this point. But I am sure that my colleagues can assist as well.

**The Chair:** Do any of you wish to respond?

Chief Hudson, go ahead.

**Chief Glenn Hudson:** I wanted to comment on the conversion, maybe not this specifically, but just in general. Referring back to the illegal surrender of St. Peter's, which was deemed illegal, all that is required to have that land fall into the hands of the crown, in terms of surrendering it, is one vote, and it happens in a snap.

On the TLE side, you hear that it takes up to 25 years and beyond for us to get our land back. Why doesn't it happen at one vote also? They are two different situations, but it gives a comparison of how long it takes in terms of a release, and also how long it takes in terms of treaty land entitlement requirements of land.

**Chief Terry Nelson:** In the case of Roseau River, we tried a treaty land entitlement in 1996. The shortfall was 5,861 acres of land. We have converted 70 acres of land to this point, which represents 1.3%. So we're still awaiting 98.7% of just the shortfall, not the addition to reserve, the 16,218 acres.

Not to confuse the committee, but there are specific claims and there's treaty land entitlement. In 1871 the Roseau River was supposed to get 160 acres for a family of five. They said to us that if you give access to the crown to the 10.7 million acres of land, this reserve land would be yours forever. Forever didn't last very long. In fact, it was 32 years later that they came and got over 60% of our reservation, and they shot one of our members to acquire that 12 sections of land. We're negotiating a settlement on that one, and that's a specific claim.

Unfortunately, we also have members of Parliament who get elected in our region by people who are outside of the reservation. So it's critically important that it be resolved, because we do have a situation in that.

•(1045)

**The Chair:** Unfortunately, members and our guests here today, we really are finished. I apologize that there's rarely enough time to get everything in that we'd like.

We have some important committee business to undertake and we need about 10 minutes for that. So, members, we are going to undertake a very brief recess and we will resume the meeting at approximately 10 to 11. That meeting will be in camera.

Before we wrap up this segment, may I express, on behalf of the committee, our thanks for your attendance here today and also to the guests, representatives of the Treaty One first nations, who are also in attendance today.

I have two hands up here, *Monsieur Lévesque, aussi Monsieur Clarke.*

Monsieur Lévesque.

[*Translation*]

**Mr. Yvon Lévesque (Abitibi—Baie-James—Nunavik—Eeyou, BQ):** Mr. Chair, those appearing before us today have travelled a very long distance to be here.

Perhaps we should give Mr. Chief another minute or so, since he did request the floor to answer a question. It is up to you, but, given the distance they have travelled, I think they deserve to be heard.

**The Chair:** Yes, I understand.

You have 30 to 40 seconds, Mr. Chief.

[*English*]

**Mr. Paul Chief:** Further to your comment with regard to resources, we need resources internally, but what we really need are resources in our region. We went through four directors of lands within the last two years, six within the last five years, and four RDGs within the last four years. This is the commitment in resources that we actually need within the Province of Manitoba.

Further to your comment with regard to the pipeline, I didn't know it was an issue here. I thought we were talking to the land entitlement. I didn't know that the pipeline was an issue within your comment. I just wanted to clarify that and make it part of the record.

*Megwetch.*

**The Chair:** *Merci beaucoup.*

Mr. Clarke.

**Mr. Rob Clarke:** Thank you.

Chief Nelson mentioned it, and I'm always looking at economic development for our first nations. Seeing our first nations people get jobs is always a concern for me, and I was curious about the economic stimulus that it might try to provide.

Hopefully, I can get some of my questions answered and maybe distributed to the rest of our committee and address some of the issues here. That's what my intention is.

Thank you.

**The Chair:** *Merci, Monsieur Clarke.*

*Megwetch* to all of our presenters here this morning. I'm sorry we had to rush you along.

We'll take a very short recess and we'll come back in three minutes.

*Merci beaucoup.*

[*Proceedings continue in camera*]





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