HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

# Standing Committee on Aboriginal Affairs and Northern Development

AANO • NUMBER 009 • 1st SESSION • 41st PARLIAMENT

**EVIDENCE**

## Thursday, October 27, 2011

## Chair

**Mr. Chris Warkentin**

# Standing Committee on Aboriginal Affairs and Northern Development

**Thursday, October 27, 2011**

● (1140)

[*English*]

**The Chair (Mr. Chris Warkentin (Peace River, CPC)):** Committee members, I'm going to call this ninth meeting of the Standing Committee on Aboriginal Affairs and Northern Development to order.

We are obviously going to be short on time. Our schedule is going to be a little truncated, but we do want to give maximum opportunity for having committee members hear testimony from the department today, as well as including the questions that will follow.

I'm going to leave the introductions to you folks. We'll turn it over to you immediately and then go as quickly as we possibly can into questions. Thanks so much for coming.

**Mr. Patrick Borbey (Senior Assistant Deputy Minister, Treaties and Aboriginal Government, Department of Indian Affairs and Northern Development):** Thank you.

I am accompanied here today by my colleagues. Jim Barkwell is associate director general for negotiations in western Canada and is based in B.C. Perry Billingsley, from Gatineau, is the director general of policy development and coordination here in Ottawa. Stephen Gagnon is director general of implementation.

I'll try to go as quickly as I can through my notes. You do have copies, so if I'm going too quickly, I'm sure you'll be able to catch up.

I'd like to thank the committee for this opportunity to speak about our work, particularly as it relates to treaties and treaty negotiations. Treaties are an important part of the department's mandate. A great deal of work has been done and continues to be done in our efforts to conclude and implement treaties across the country.

As we will discuss, treaty-making is difficult and complex but very gratifying work. We are committed to producing positive and beneficial results for all Canadians as a result of our treaty work.

Aboriginal people in Canada claim rights to lands and resources and to be self-governing. Section 35 of the Constitution Act, 1982 recognizes existing aboriginal and treaty rights but does not define those rights. The uncertainty that accompanies unresolved claims to aboriginal rights and title often presents challenges to economic development opportunities. Tapping into these opportunities benefits both aboriginal people and the broader Canadian community.

[*Translation*]

Fundamentally, there are three ways for the Crown to deal with unresolved aboriginal rights claims.

First, we have treaties, which provide a permanent and comprehensive resolution of aboriginal claims by negotiating constitutionally protected agreements. Canada's preference is to negotiate resolution to unresolved aboriginal rights claims.

Second, litigation, where the scope and substance of aboriginal rights are determined by the courts.

Third, other agreements, such as contractual-type arrangements which do not provide for a final resolution of all claims.

My sector is responsible for addressing comprehensive, specific and special claims, including assessment and negotiation of those claims, managing the implementation of negotiated agreements, and managing historic treaty matters and commissions.

For today, we focus primarily on the Comprehensive Claims Policy, the work of the British Columbia Treaty Commission and Canada's policy for the implementation of self-government.

● (1145)

[*English*]

From the federal perspective, the key objectives of the comprehensive claims policy are twofold: achieving certainty of rights for all parties and finality of claims respecting lands and resources through a one-time settlement.

Comprehensive land claims agreements are negotiated in areas of the country where aboriginal rights and title have not been addressed by treaties or other legal means. These agreements are modern-day treaties among aboriginal claimant groups, Canada, and the relevant province or territory. While each one is unique, these agreements usually include such things as land ownership, money, wildlife harvesting rights, participation in land, resource, water, wildlife, and environmental management, and measures to promote economic development and protect aboriginal culture.

Through the policy, the negotiating parties seek settlement of aboriginal claims to lands and resources. The final agreements are constitutionally protected land claims. In exchange for the release of an aboriginal group's claims, the crown may transfer title to land provide a financial component, and establish arrangements for the use, benefit, and co-management of lands and resources. Settling claims is one step toward establishing a new, productive government-to-government relationship with aboriginal groups.

[*Translation*]

At present, the majority of comprehensive claims negotiations are in British Columbia. The British Columbia treaty process is a made-in-B.C. approach to negotiations. In 1992, an agreement was struck between Canada, the province, and the B.C. First Nations Summit to establish the British Columbia Treaty Commission. All First Nations in B.C. may participate in treaty negotiations once their statements of intent to participate are accepted by the commission.

As of September 2011, there are three treaties in effect in British Columbia: the Nisga'a Final Agreement (2000), the Tsawwassen Final Agreement (2009) and the Mah-nulth Final Agreement (2011).

There are 57 additional claimant groups (representing 108 of the 197 eligible First Nations in B.C., or approximately 75,000 of an estimated 120,000 members) who have submitted statements of intent to the BCTC indicating their intent to negotiate a treaty. The 57 claimant groups have organized themselves into 47 negotiation tables. Seven of the 57 are still in the early stages of negotiations, 43 are at the agreement-in-principle negotiation stage and five are at the final negotiation stage.

In addition, McLeod Lake First Nation, a recent adherent to Treaty 8, has submitted a statement of intent to negotiate a stand-alone self-government agreement within the B.C. treaty process.

[*English*]

To date, 23 comprehensive land claim agreements and two self-government agreements have been ratified and brought into effect since the inception of these policies and processes. These agreements cover approximately 40% of Canada's land mass and impact 96 aboriginal communities and more than 100,000 first nation and Inuit members.

Canada has recognized that the right to self-government is an aboriginal right within the meaning of section 35 of the Constitution Act, 1982. Canada's approach to self-government sets aside attempts to define these rights in favour of negotiating practical arrangements for aboriginal communities to exercise self-government.

Self-government agreements can form part of a land claim agreement or they can be stand-alone agreements. As stand-alone agreements, they can be either constitutionally or non-constitutionally protected and either be comprehensive—in other words, involving core governance and other jurisdictions—or cover only sectoral jurisdictions. An example is education.

For self-government agreements to be workable, they need to address a number of practical issues of public administration, the kind that are faced by all governments in Canada. These include the structure of the new government and its relationship with other governments, new fiscal arrangements, the relationship of laws between jurisdictions, program and service delivery, and implementation planning, to name a few.

I'm sure you can appreciate that while these are practical matters, negotiating them could be quite complex and time consuming. A key part of Canada's approach is that these arrangements be appropriate for the group in question, but in a 21st century context.

● (1150)

[*Translation*]

Emerging evidence suggests that aboriginal groups with self-government agreements enjoy improved outcomes compared to those remaining under the Indian Act.

In 2003, and again in 2011, Aboriginal Affairs and Northern Development completed an impact assessment of aboriginal self-government or community well-being. Using both quantitative and qualitative data, the assessment suggests that, as a group, self-governing First Nations have better education, employment and labour force outcomes in comparison to all registered Indians on reserve.

Further, the analysis shows that, not only have self-governing aboriginal communities focused on establishing the foundations of governance, they have a renewed sense of pride in their governments and have established new relationships to foster socio-economic growth and progress in their communities.

From this we can see that, although these negotiations are often challenging and lengthy, the outcomes certainly meet Canada's objectives of strong, healthy communities.

[*English*]

Currently, there are 18 self-government agreements in Canada involving 32 aboriginal communities. There is one education sectoral agreement involving 11 first nations: the Mi'kmaq Education Act. Sixteen of these self-government agreements are integrated within a land claim agreement involving 30 communities.

I know I'm throwing a lot of numbers at you, but they're on the map that we've provided for ease of understanding.

Two agreements are stand-alone self-government agreements involving two communities. In addition, there are 91 self-government negotiation tables, of which 67 are involved in comprehensive land claims and 24 are in stand-alone self-government negotiations.

Canada is also participating in four sectoral self-government negotiations: with the Blood Tribe on governance and child and family services; with the Nishnawbe Aski Nation—NAN—and the Union of Ontario Indians on governance and education; and with the First Nations Education Steering Committee in B.C. on education jurisdiction for 13 communities.

The Government of Canada remains committed to existing negotiating processes. We continue to build on our successes and learn from our experiences to improve our performance. While the complexity of the issues often leads to extensive negotiation time and expense, we continue to look for ways to improve these processes and to expedite the conclusion of agreements, both to further the process of reconciliation with aboriginal people and to achieve beneficial results for all Canadians.

[*Translation*]

I thank you very much for this time to present our work. I welcome the opportunity to respond to any questions you may have.

[*English*]

Thank you. I welcome your questions.

**The Chair:** Thank you.

We're going to start with Ms. Duncan.

**Ms. Linda Duncan (Edmonton—Strathcona, NDP):** Thank you, Mr. Chair.

Thank you for attending. I really appreciate the briefing. I asked for it. It's helpful to hear from the government on their perspective.

There is a lot to cover. I'm going to pick up right away on your statement on page 10 that “Emerging evidence suggests...”, and so on and so forth. A finalized treaty and self-government enable economic development, well-being, and so on and so forth: we're hearing that over and over again.

Having heard from the BC Treaty Commission, having looked at papers, and having talked to some of the first nations, the impression that arises over and over again is that the federal government is dragging its feet, particularly between agreement in principle and the final agreement. So the obvious question is, if the Government of Canada firmly believes this is the way to move forward and achieve well-being and economic benefits for first nations, where's the barrier? Why aren't we moving forward more expeditiously in resolving the treaties?

Next, we have two scenarios. In certain parts of Canada, we have these so-called modern treaties. In other parts of Canada, in a huge swath, in the Prairies and parts of eastern Canada, we have the original treaties. Many people who exist under the original treaties are feeling that they're getting short shrift on the traditional lands, that it's not enough to look at better ways to manage their reserve lands, and that they're missing out on the benefits they deserve in both their traditional harvests and in their underground resource extractions.

I would appreciate your responses.

● (1155)

**Mr. Patrick Borbey:** Certainly, we agree that it does take a long time and that it's probably frustrating to all parties. You need to have three parties in alignment to be able to reach an agreement in this case, not just the federal government and the first nations, but also the provinces and the territories. We certainly want to be able to improve on that track record, and we have some ideas about how we could do that.

I think Sophie Pierre has pointed out some particular issues in her report, which we want to work with. We want to continue working with her. The minister has appointed Jim Lornie to be a special representative to look at the B.C. treaty process and make some suggestions in terms of improvements.

We also feel that, given the fact that we have about 100 tables negotiating at any given time, that each one of them is at a different state of development, and that events such as elections or changes in government may, at the end of the day, have an impact on the negotiating table, we have to keep monitoring the progress there on a regular basis and ensure that progress is being made. So it's not easy. We can look at some potential solutions and, certainly, the effort will be made to make improvements.

On the historic treaties, yes, the country is divided roughly into historic treaties versus modern treaties or areas that are not yet covered by treaties. In historic treaties, you have the friendship treaties that covered Atlantic Canada, parts of Quebec, and some parts of Ontario. Then you have the numbered treaties that went from Ontario out west. Our position is that the rights have been settled through the numbered treaties.

We are in negotiations with some first nations that are associated with friendship treaties. Those rights are seen as not having been dealt with through those treaties, the lands and resource rights.

Also, of course, the rest of the country is not covered by historic treaties, so we are actively pursuing modern treaties.

The first nations in historic treaty areas that are not in negotiations can use consultation and accommodation mechanisms. If there are development projects in their area that are going to impact their rights, then they have the option of working with proponents and with governments from that perspective. We are increasingly seeing agreements that are reached that way—outside the treaty process.

**Ms. Linda Duncan:** Maybe I can just give the committee an example that will make it easier to see what I'm getting at.

There was an historic precedent-setting ruling by the Federal Court this past summer. Three Alberta first nations sued the Ministry of the Environment for failure to consider their interests in the recovery plan for the caribou. The court was very definitive that the minister erred in not considering aboriginal treaty rights in his decision-making.

So I'm curious to know.... Related to that case, I know that you're being sued by a number of entities who have final agreements, including Nunavut. Why are the first nations having to go to court? It's the federal government's responsibility to do the consultation, to consider and accommodate, not industry's, so I'm a little troubled by your saying they can talk to industry.

**Mr. Patrick Borbey:** If you're talking about a provincial jurisdictional matter, then it's the crown in this case—

**Ms. Linda Duncan:** No, I'm talking about federal jurisdiction.

**Mr. Patrick Borbey:** Okay. I'm not aware of this case and whether a federal decision is involved or not, yes, on consultation and accommodation, the onus is on the crown to maintain the honour of the crown and consult with first nations before a project goes ahead.

So I agree with you: we have to continue to move forward in that area.

But on the other part of your question, sorry. On the Alberta case, we would have to look into it.

**Ms. Linda Duncan:** The Alberta case is only one of many. The Mikisew Cree, of course, brought the precedent-setting Supreme Court case, the decision saying that the federal government is obligated to provide advance consultation, consideration, and accommodation. I understand that the Athabasca Chipewyan are now bringing the same case because they're saying the government is not living up to that duty to consult.

So there's the issue of expediting the new treaties, and then there's the issue of delivering on the existing treaties. Where is the problem? Do we not have enough moneys budgeted for either of those processes? Is there not the political will to deliver on those responsibilities?

● (1200)

**Mr. Patrick Borbey:** Part of the answer, as well, is the work we've been doing on specific claims, and again, first nations, aboriginal groups, who feel we have not honoured the terms of the treaty have that option and haven't been exercising that option. That has been funded by the federal government. Two and a half billion dollars have been set aside to resolve specific claims. That's another option first nations have, and access to the tribunal that has been set up is now up and running.

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

Mr. Clarke, for seven minutes.

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

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

I'm looking over your map of the Akaitcho and the Athabasca Dene in northern Saskatchewan and at just how the negotiation process takes place.

One of the things that's very interesting, and which I'm glad my colleague mentioned, is the strategy for saving the woodland caribou. We're talking about economic development, and we'd like to go further with the study, but with the court case—and I don't think my colleague is fully briefed on this—any projected development, especially in northern Saskatchewan, will not happen because of the woodland caribou strategy. Because 65% of the area has to be pristine for the caribou, for any development to take place in northern Saskatchewan.... It means no roads for first nations in northern Saskatchewan, no mines, no dams, no nuclear storage.

I'm very passionate about this issue. I'd be glad to debate it anytime, anywhere. I looked at the NDP platform in the provincial election, where they're going to do revenue sharing.... But there's not going to be any revenue in the province of Saskatchewan for first nations. They talk the story here and I get really frustrated about this, because as for what the strategy does with the first nations in northern Saskatchewan, the Alberta first nations took on the court case without consulting with northern Saskatchewan, and now they're going to be losing out on any type of economic development to help better themselves.

The Athabasca Dene in northern Saskatchewan are undergoing a negotiation process with the federal government and Northwest Territories, Nunavut, and Manitoba, which is in out-of-court negotiations right now. I'd like to have further clarification on why some of these negotiation processes take so long.

Maybe we can start with the chief negotiator. Please explain the process, if you don't mind.

**Mr. Patrick Borbey:** This is a special case because it's resolving a transboundary claim, so it's a little bit outside of our normal processes, but yes, the minister would name a negotiator and that negotiator would receive a mandate from cabinet. That mandate can only go so far in terms of what can be offered as a resolution.

Also, of course it involves the court cases: that those be in abeyance while we negotiate. In this case, there are two claims, one in Manitoba and, as you say, one in northern Saskatchewan. So, it's collaboration with the first nations to put those cases in abeyance, which is the situation right now, and then we have to work basically with the first nation and with the territorial government. In this case, that would be both with the Nunavut government and with the GNWT, but we also have to take into consideration the rights and claims of other first nations or aboriginal groups in the area. In Nunavut, it's obviously the Inuit of that region, and in GNWT, you have the Akaitcho, and the Métis to a certain extent.

We have to find the right balance among all those interests before we can come to an appropriate resolution. Right now we are in the midst of negotiations, and we hope that we'll be able to conclude successfully, but there's always the possibility that the litigation could be reactivated.

That's the environment we're working in. Also, of course, a new government has just been selected in the GNWT, so out of respect we need to give them a chance as well to develop their approach, their policy, towards the resolution of this claim.

● (1205)

**Mr. Rob Clarke:** Okay.

In regard to the annual report of the BC Treaty Commission, we heard testimony earlier this week from Sophie Pierre. She was very critical about the lack of progress in the B.C. treaty process. I'm just wondering what your perspective is on that criticism.

**Mr. Patrick Borbey:** Yes, everybody had envisaged that we would be further along in the B.C. treaty process than where we are right now with two agreements, plus Nisga'a, which was reached before under different terms.

However, we have a fair number of agreements that are well advanced. There are about five at the final agreement stage. There are good prospects for further treaties to move forward. The minister just signed the Sliammon final agreement last week, and we have made a lot of progress towards the Yale first nation treaty, which we hope we'll be able to put before you at some point. The government will decide what the timing is in terms of bringing that forward.

The vast majority of the other negotiations are at the agreement-in-principle stage, and some of them are at the very advanced agreement-in-principle stage. So we think there's kind of a wave making its way through the system, and we're hopeful that we'll be able to have a lot of progress over the next two years.

We're also hopeful that Mr. Lornie will be able to report based on his consultations with all first nations—"common table" first nations, first nations that are in treaty, first nations that are not in treaty—and he'll be able to give advice to the minister and to the government on ways we could further improve and further accelerate the process.

**Mr. Rob Clarke:** Could I get further clarification? Overall, why do treaties take so long?

**Mr. Patrick Borbey:** Well, they are pretty fundamental changes in status for the first nation. They're fundamental for Canada, they're fundamental for the province, and they also are extremely important for the first nation. Basically, there's a huge amount of work that needs to be done by all parties to achieve success on a treaty.

There are some capacity challenges that have to be met. A lot of the first nations in B.C. that we're negotiating with are fairly small. That's the way the structure is in B.C. We also have to be realistic as to what can be achieved within those communities.

Those of you who've heard or met Chief Kim Baird from Tsawwassen First Nation would be very impressed with the work they've taken on over the last few years to make that treaty a reality. This is a community of 400 people, and it's a huge amount for them to take on.

It does take time. I've heard first nations or aboriginal groups say that it takes too long and that we should move more quickly. I've heard others say that we shouldn't go so quickly, because this is a fundamental shift for them and they want to be able to work in step with us and be ready to take on all this new responsibility.

That's a bit of an answer, I guess.

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

We'll go to Ms. Bennett, for seven minutes.

**Hon. Carolyn Bennett (St. Paul's, Lib.):** Thank you very much.

Thanks to all of you for coming today. You have to bear with us: it's a steep learning curve for some of us. I may know a little bit more about the social determinants of health, but this is new.

However, I was very impressed with the briefing on the EU marine region, mainly because of the agreement on the shared territory in terms of traditional hunting and fishing and the fact that it was actually carved out and designated as such with a co-management plan, and it seems to be a pretty straightforward agreement.

Therefore, I was concerned about the Yale treaty. It is sort of what you were saying at the end, Patrick, in terms of the Goldilocks of your job: too hot, too cold, too fast, too slow. It is rarely just right for people on all sides. I was concerned to hear that the Stó:lo people are feeling that their traditional hunting and fishing rights have not been honoured, that there hasn't been a carve-out, and that they're worried they would need to have permits from one band to carry out what they've been doing for 10,000 years.

I would like to know the process for these areas that are contentious. What does it take for you to green-light a treaty when there's such objection? It sounds as if there are probably one or two or three amendments to the Yale agreement that could make it work. It's not about stopping it; it's a matter of actually finding those accommodations.

● (1210)

**Mr. Patrick Borbey:** Thanks.

It's an excellent question, because I think the overlaps create a lot of issues as we move forward in treaties. I don't think we'll ever find a situation in which every single person will be in agreement that all of the rights have been properly dealt with. That's the nature of traditional occupancy of the land, especially in British Columbia: if you've seen it, it's not even a puzzle picture, because all of the pieces are overlapping.

It's a huge endeavour. We do have some approaches and mechanisms. Some of them are legalistic in terms of how the agreement is structured. There is a non-derogation clause to ensure that the future rights that may be asserted by neighbouring first nations are not forgotten. There are some ways of dealing with it within the agreement. In coming together, in terms of the agreement, we've had a number of initiatives to deal with the Stó:lo claims and others.

I would like to ask Mr. Barkwell to explain, very briefly, what we've done in the case of Yale.

**Mr. Jim Barkwell (Associate Director General, Negotiations - West, Department of Indian Affairs and Northern Development):** Thank you. I will try to be brief, but there was a very extensive consultation process and three years of work to address the question the member raises.

We started in 2008 and involved over 60 first nations that are in the Yale area. We mailed out information to them and offered them an opportunity to meet with us and provide their views. A year later, we provided the final agreement to them so they would have that as detailed information, and we did the same thing.

As a result of that process, which was a joint one between me—I'm the senior federal representative on this particular file—and the provincial senior representative, we offered to have consultation meetings with those who were interested in providing detailed input to us.

We had 11 such meetings. As a result of that, we made several adjustments to the actual Yale treaty agreement, in addition to the things that are already built into our treaty model to protect the interests of other first nations, such as the non-derogation clause that Mr. Borbey references.

We are very careful in terms of land selection. We chose lands that we added to the Yale Indian reserves that were near the reserves and, as much as possible, away from areas where other first nations have interests. We specifically excluded one area known as the Yale beach, which is a public access area that allows fishermen to enter onto the water to exercise their fishing rights. We did that early on.

As a result of the consultation process and the input we received from Chief Joe Hall, whom you may have met, and other Stó:lo representatives, we made several other adjustments. We reduced the harvesting area—that's where they can hunt, fish, gather plants, and so on—to exclude Harrison Lake, because one first nation indicated an interest in that area. Chief Hope of the Yale agreed with that. We designated one area of new treaty settlement land known as Frozen Lakes as public. In the treaty, that's identified for public access so that other first nations and the public are able to go onto those lands. Some of those lands are culturally significant to first nations.

The third measure we undertook as a result of the consultation is an access protocol, which is an actual treaty provision we put in to indicate that access may be requested by any individual and that Yale may not unreasonably refuse to grant that access. This was done—and it applies to all people—particularly bearing in mind the interests of the Stó:lo representatives who had given us input. The standard backstop we have is the non-derogation language, which essentially asserts that no impact on other first nations is intended as a result of the treaty provisions. Essentially, if in the future a court determines there has been an adverse effect on a treaty provision, that provision will operate, or will be amended, so that it does not adversely affect that right.

I will just mention a couple of other things very quickly. The dispute or issue between Yale and some of the Stó:lo groups exists today. It isn't just a treaty-related issue, because it pertains to the Indian reserves themselves and a different view that the Stó:lo have in terms of how those reserves should be handled, even though they are currently held by the crown on behalf of Yale.

There is a reasonable point to be made that, through this treaty provision that I mentioned, the access protocol provision, the Stó:lo in a post-treaty world will have a higher level of access to some of the lands that are in contention than they do currently under the Indian Act.

Secondly, Chief Hope has made some public comments. He has indicated that—and I will tell you how he was quoted in some newspaper articles—the process of permitting, which is not currently accepted by the Stó:lo groups, may not “be imposed right away, if at all”. He said, “It may be better to put that aside”. Essentially he is saying that another option would be to have direct talks with families who have traditional fishing sites in the canyon. He is quoted as saying, “I'm hoping between then and now to sit down with [Chief] Joe Hall and others to talk in a reasonable manner and plan things out for Stó:lo people to come up to Yale.” Those are the chief's own remarks about how he is open to having an outside protocol or some other arrangement that would be suitable.

In that regard, the last point I will make is that we do have funding available through a process called treaty-related measures. We are providing funding to Yale in order to develop some work on the fisheries protocol.

● (1215)

**The Chair:** Thank you very much. I extended the time a little bit because it's an issue that I think many of us around the table are quite interested in.

Mr. Ray Boughen for seven minutes, please.

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

Let me add my voice to my colleagues' in welcoming you here and thanking you for taking time to spend part of your day with us.

When we look over what happens with some of the treaties, and how they are devised and put together, some of the questions that come to mind are things like how much debt the first nations will accumulate through the B.C. treaty process, the loan-handling process. We know there are costs involved here. What are those costs like? Can you share with us what the costs are and how the money is spent?

**Mr. Patrick Borbey:** Thank you.

Yes, through the special circumstances in the B.C. treaty process, the BC Treaty Commission makes the decisions, on an annual basis, on the amount of loans that are to be issued to each of the first nations. The federal government is responsible for those loans, but the BCTC is delegated or empowered to do that.

So it is an issue that's of concern in terms of the growth and size of the loans, and whether this information is always as transparent as it should be for first nation members who may not realize what kind of obligations they may be accumulating for future years.

The loans, as you probably know, are paid off at the signing of a treaty against the capital transfer. We're quite concerned when the capital transfer-to-loan ratio starts getting a little bit high to make sure that, at the end of the day, there is going to be some significant net benefit—funds out of the treaty that can be invested by the first nation in economic development, for example. In some cases, I think we're reaching a fairly high level, and we're monitoring that very closely. In a lot of cases, it's fairly low. It's still manageable, although that doesn't mean that it's not a concern.

One of the things the federal government has done is suspend the accumulation of interest for the loans up until 2014, so that there's not an added burden on the first nations while we continue negotiations. We've taken some measures there and the department is absorbing the loss in terms of the forgone interest.

In regard to the implications of the impacts, it's an issue that we're going to need to look at very closely. We are also going to need to renew our authorities in this area within the next couple of years. So we'll be coming to the government with advice on how this should be handled in the future. That's certainly a big issue and, if there are some specific questions related to the B.C. process, I can ask Mr. Barkwell to add to that, if you need more.

**Mr. Ray Boughen:** I'm just wondering what the dollars are spent on. There seems to have been a large number of dollars spent, and I'm wondering on what.

**Mr. Patrick Borbey:** The accumulated loans total right now for the B.C. treaty process is $424 million. That's across all the first nations. That's the current situation.

**Mr. Ray Boughen:** And those dollars were spent in travel, meetings...?

**Mr. Patrick Borbey:** Every year there has to be a work plan presented at the table and approved by all three parties, and that work plan then determines the level of funding. So you're right: it will be driven by the travel that's required. In cases where there are isolated communities, for example, that might be a bit expensive.

You have legal counsel and negotiating teams that are funded for the first nation. You have the frequency of meetings. The intensity of the meetings will also drive some of those costs.

We try to review that to make sure it stays reasonable across the country and that there's a comparable level of funding. We try to match the funding as much as possible with performance of the tables. We're starting to try to do a better job of monitoring the tables on a regular basis and reporting to the minister on progress and the cost associated with that progress.

● (1220)

**Mr. Ray Boughen:** What was Canada's response to the common table proposals?

**Mr. Patrick Borbey:** We have seen a number of responses. The first major response came in August 2009 when Minister Strahl reported on a number of issues, but since then, the current minister has also responded to some of the issues.

Maybe I could ask Mr. Barkwell to give you a sense of some of those items.

**Mr. Jim Barkwell:** Six issues were raised. I'm not sure if I have the list right in front of me. The six elements that were addressed in the common table were: certainty and recognition; constitutional status of lands, also known as section 91(24) lands; self-government; shared decision-making and resource revenue-sharing; own-source revenue and taxation; and fisheries.

As a result of the common table process, the two governments, both on the federal side and on the provincial side, made formal responses and agreed to participate in technical level working group discussions on two specific topics that were part of the common table: achieving certainty in treaties, and first nation interests regarding section 91(24) status of lands.

**Mr. Patrick Borbey:** We are now rolling out some of those new measures. There is a new recognition and reconciliation language that will now be offered to first nations. This is the first time in the context of the B.C. treaty process that we're rolling it out in one particular table first to make sure that it works well and responds well to the aspirations of the first nations.

We also have a certainty model that I think we would say is leaps and bounds beyond the old cede, surrender, and extinguish model that, unfortunately, some people still think is what the federal government is trying to achieve. The new model recognizes that aboriginal rights exist and that they continue to exist even in the context of a treaty. They are not extinguished by the treaty, and future rights, if they're claimed and found, can also be exercised.

I think we have some models that go further in meeting the aspirations of first nations, but it takes some time to roll them out at the various tables.

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

Mr. Genest-Jourdain.

[*Translation*]

**Mr. Jonathan Genest-Jourdain (Manicouagan, NDP):** Good afternoon, Mr. Borbey.

To lead up to my question, I am going to go back to the words in your presentation. Among other things, you mentioned modern-day treaties between claimant groups. In your position, you probably well know that the concepts of band council and community management organizations are currently being questioned by first nation members. Based on that observation, does your department give consideration to claims from traditional family groups, acting as clans?

I would also like to ask another question about the representatives. I will be quick. When it comes to international law, we know that Canada focuses on the notion of democracy and the treatment of nationals and members of the population in diplomatic exchanges or economic and political exchanges. Will aboriginal groups be included as well? Is Canada going to make sure there is a community representative and that fundamental rights are upheld by those organizations before starting negotiations with any given group?

● (1225)

**Mr. Patrick Borbey:** I am going to ask my colleague Mr. Billingsley to answer that question.

**Mr. Perry Billingsley (Director General, Policy Development and Coordination, Treaties and Aboriginal Government, Department of Indian Affairs and Northern Development):** In answer to your first question, we currently have the band council system in place. But in order to move towards self-government, we are trying to find a government system that the council deems to be both legitimate and practical for the members of the community. All these issues are obviously to be taken into consideration in a 21st century. So we have to look at bringing the traditional and the democratic systems together and find solutions. And that entails negotiations. We have been successful with a Yukon community where we found a way to tailor the clan system to the democratic system.

**Mr. Jonathan Genest-Jourdain:** You are telling me that the band council is currently the only representative recognized by your department. Is that correct?

**Mr. Perry Billingsley:** Yes, that's the system we have to deal with. We have to comply with the legislation the way it is, but a big part of negotiations and consultations still includes consultations with the people of the community.

**Mr. Jonathan Genest-Jourdain:** We are talking about a government-to-government relationship and I would like to know whether those concerns will be brought forward. Are we going to make sure that we have the people's approval and that there is not going to be some sort of totalitarian regime imposed on community members, the way it is at the international level?

**Mr. Perry Billingsley:** In our discussions and negotiations, we need to have a system in order to ratify the agreement and make sure that people are consulted. Not only do people have to vote on the self-government agreement, but they also have to vote on the constitution of the community that will be created.

**Mr. Jonathan Genest-Jourdain:** So the ratification by community members takes precedence over the consent of the nine people in charge. Is that what you are saying?

**Mr. Patrick Borbey:** Yes. The Charter and the Constitution continue to apply regardless of whether a treaty is signed.

**Mr. Jonathan Genest-Jourdain:** We sometimes see acts of protest on the ground. The nine people in charge often ratify an agreement, but then the same agreement is rejected by the people. That is what is currently happening in the community I am from. Does this type of problem arise? Does your department take it into account?

**Mr. Perry Billingsley:** We take it into account when ratifications fall through, which we have seen in the past. When that happens, we stop the agreement and the constitution. The agreement does not come into force.

[*English*]

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

Mr. Wilks, you'll have five minutes.

**Mr. David Wilks (Kootenay—Columbia, CPC):** Thank you, Chair.

Thank you, gentlemen, for being here today.

I would like you to go back to page 12 of the notes you provided to the committee, specifically to this: "While the complexity of the issues often leads to extensive negotiation time and expense, we continue to look for ways to improve these processes and to expedite the conclusion of agreements...".

That's where my question comes from. What is your department doing to improve implementation of the modern treaties? Can you expound, each of you, on what you're trying to do so that we understand it?

**Mr. Patrick Borbey:** Thank you.

This is really a two-part question, because we are looking at ways of improving the treaty-making process, but we're also actively working on ways of improving our implementation of modern treaties. I will turn in a second to my colleague, Mr. Gagnon, who is the king of implementation in our department.

In terms of improving the negotiations, one of the things we're looking at is whether we need to have closer accountability and reporting with respect to progress at the table—I alluded to this a little earlier—and better linking of financial commitment efforts with results and outcomes. That's certainly something we want to spend more time on. On an annual basis, the minister reviews the progress at each table. We are now looking at increasing that frequency so that there is even more accountability for progress.

That's one area.

Another area is that we think that our negotiators should perhaps be advancing the tough issues a little bit earlier in the process. The traditional approach is to start the negotiations, build trust, build credibility between the partners, and build the capacity in the community to be able to absorb the changes, but leave some of the tough issues until later on.

In some cases, this has worked. I think somebody told me that in the Nisga'a case, that kind of approach really did work: they built the trust, and it eventually led to a treaty.

I think we have achieved a level of sophistication now such that we should be able to put forward tougher issues earlier in the process, so that we find out right up front if there is going to be too much of a gap at the end of the day. Then, both parties or all three parties know where they stand, rather than leaving some of the tough issues to be dealt with later on.... That's one area we're exploring.

I'd like to ask Steve to comment now on implementation.

● (1230)

**Mr. Stephen Gagnon (Director General, Implementation Branch, Department of Indian Affairs and Northern Development):** Thank you, Patrick.

Thanks for the question.

By way of context, land claim implementation has been fairly heavily scrutinized over the last decade or so, I would say. The Auditor General has made a number of reports. Those reports have been picked up by various parliamentary committees. The public accounts committee of the House and the Senate committee on aboriginal affairs have looked at various aspects. The Land Claims Agreements Coalition, which is a group representing each one of the land claimant groups, has made representations.

I don't want to oversimplify, but the theme was that Canada needed to do a better job of implementing land claims. It was constructive criticism that we've taken to heart. We realized that we needed to organize ourselves better internally.

Among things we would look to improve was intergovernmental coordination. You may or may not know that in order to get a treaty, we need to go through a very robust intergovernmental approval system, whereby we need to go to cabinet a number of times and we need to consult with a number of departments.

There's a committee of senior ADM-level officials, which Patrick chairs, that looks at issues concerning negotiation. We've tried to adapt that existing committee to also now start looking at implementation issues, so that we can start getting the same kind of scrutiny for post-effective-date issues that we had before.... We've also piloted some regional caucuses to make sure that people in the NCR are communicating with the people in the departments at the community level, where they actually do the work, to make sure that the messages are consistent.

Another area in which we thought we needed to do a better job and which we have looked at improving is communicating roles and responsibilities to colleagues in other departments. Our department is responsible for managing the obligations, but many departments have direct responsibilities for fulfilling aspects of land claims, such as Fisheries and Oceans and Natural Resources Canada, for example.

We are trying to develop tools. In May, we published and put online a general guide for implementers to set out roles and responsibilities and to talk about where you can get information and that sort of thing. It talks about the federal process. We're pleased with the reception we're getting with that.

This has also given Patrick and me an opportunity to make presentations to departments that want to get a better sense of where they fit into the implementation scheme and where we do.

The other area in which we are looking to make improvements concerns how we report and monitor on land claim agreements. In 2008, I believe, Treasury Board issued a contracting notice that required all departments that do contracting in any land claim area to report on that contracting. Our deputy is responsible for posting those reports, but each department needs to now record when they spend money, even in some cases up to using credit cards, in land claims areas.

We have developed something web-based that we call CLCA.net. It includes a public report to which we post quarterly and annual reports.

**The Chair:** I apologize. I'm going to have to jump in. We've overrun the clock a bit, so I'm going to turn to Mr. Rafferty for five minutes.

● (1235)

**Mr. John Rafferty (Thunder Bay—Rainy River, NDP):** Thank you very much. I have a very quick question.

Thank you, Chair.

Thank you, witnesses, for being here.

This is probably a question for Mr. Gagnon.

You talk about the certainty of rights for all parties as one of the things you do in transferring title and in dealing with relationships with other governments. You said an interesting thing just one moment ago, Mr. Gagnon, about managing the obligations and, I guess, the outcomes.

Just to help me understand whether it involves a treaty or a specific claim, for example, from a numbered treaty or a numbered reserve, what is the ATR system, the attached to reserve system? Can you explain what it is and the process by which it works, if you're the right person to do that? Or Mr. Barkwell, or anybody...?

**Mr. Stephen Gagnon:** I could take a stab at it. It's another part of our department, but I don't want to give you the bureaucratic answer. The ATR is the additions to reserve process. It is really a process that applies—often in the specific claims in the treaty areas—because there was unfinished business in terms of making sure that the lands were transferred, but it's also a process by which you can add reserves that aren't laying specific claims.

I don't know whether that helps to answer your question, but it is the means by which we add lands to reserve, and there's a specific context, as you said, in the numbered—

**Mr. John Rafferty:** In the treaties you are talking about and dealing with, does that same process happen? When you make a settlement, is there a possibility, as part of any cash outcomes that they might receive, for example, for them to increase the size of their treaty lands or...?

**Mr. Patrick Borbey:** I can address that, because at the end of the day, our objective in signing treaties is to get people out of the Indian Act. The ATR process is an Indian Act process. When a treaty comes into effect, for the lands that are provided, whether they're previously reserve lands or new settlement lands as part of the treaty, the lands that the first nation owns will be completely outside of the Indian Act. They will own it in fee simple and then it's up to them to decide how they want to manage it. They no longer are under any responsibility for the Indian Act.

So in addition to reserve process, it's really related to decisions that are made, and quite often specific claims: land that was not provided in the past or was improperly taken away and that's returned, or that the first nation can buy on the open market. Therefore, it has to meet all the Indian Act requirements. There are environmental requirements. There's a requirement for agreements with neighbouring municipalities for servicing. There are tax issues. A number of issues that have to be resolved before that land can be formally added to the reserve.

It's a process that takes a long time—too long—and it is something that is under the responsibility of one of my colleagues, Sarah Filbee. You may want to consider a question in the future on this issue.

**Mr. John Rafferty:** Thank you very much.

If I have some time left—

**The Chair:** You have two minutes.

**Mr. John Rafferty:** —I think Mr. Bevington has something to add.

**The Chair:** Sure.

Mr. Bevington.

**Mr. Dennis Bevington (Western Arctic, NDP):** Thank you for joining us today.

In the Northwest Territories, certainly, we have a lot of things going on within your department. One of the problems that people from the claimants groups come to me with is the lack of continuity with the negotiators from the federal side.

We're dealing with processes where the claimants groups are borrowing from their likely cash settlement at the end. We see the negotiators change. We see the progress of their claims slow down. Is there a fair way of dealing with the people in terms of who is responsible for the pace and cost of these negotiations? There's a question of the—

**Mr. Patrick Borbey:** Yes, you have a number of elements there.

In terms of the negotiators, it's a mix. We have full-time public servants who are hired as negotiators and work on specific files. Sometimes they leave the negotiations at tables. In other cases, the minister names a chief federal negotiator—somebody under contract—and quite often it's for the higher-profile, more difficult tables. Sometimes it's towards the later part of the process, when we need a closer, in some cases, somebody with a lot of private sector experience.

We have a mix of the two and we provide direction to both. They work under our direction. They work under the same kind of mandate that's approved by cabinet. So that's a little bit of the mix.

In the case of the north, yes, it is a bit of a challenge to find qualified negotiators. We had a negotiator on the Dehcho process for many years; you know who he is. We were sorry to see him leave for personal reasons—nothing to do with frustration over the process—but we've picked up with staff negotiators since then. Actually, I'm quite surprised at the progress that we've been able to make, because I was worried also about that table.

So yes, that is an issue in terms of continuity when we're using contracted negotiators.

On the issue of the overall cost, yes, we do insist on seeing work plans—and realistic work plans—on what can be achieved: how many meetings; what can be done between meetings by technical working groups; and how we can reduce costs associated with travel by doing more video conferencing—which is a little bit difficult, sometimes, to accept, but sometimes the logical thing to do is to quickly touch base.

We are looking at ways to reduce that cost for us, as well as for our partners, first nations, or territorial and provincial governments.

● (1240)

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

Mr. Payne, for five minutes.

**Mr. LaVar Payne (Medicine Hat, CPC):** Thank you, Mr. Chair, for my questions and comments through you to the witnesses.

First of all, I'd like to welcome all of you here today.

It's nice to see you again, Patrick.

I was quite interested in page 10 of your presentation to us. You talked about emerging evidence on aboriginal groups and self-government, and particularly the outcomes, more so in terms of the impact assessment on aboriginal self-government. You talked about first nations having better education and better employment and labour force outcomes, and certainly that's all part of the economic piece that I think most of our committee is very interested in moving forward with.

Could you give us a little more detail on how you see the differences in education, labour, and those kinds of outcomes?

**Mr. Patrick Borbey:** Thank you for that question. It's certainly exciting for us to see this kind of emerging evidence, because it does take some time. We're starting to see it through the combination of evaluation work done by the department and work done in Perry's shop on the impact assessment. I'm going to turn to him in a second.

I'll just let you know that we need a few more months to be able to ensure that all of that work is finalized and translated. Our intention, really, is to share it as broadly as possible and make it available to the committee and to the public at large, because I think it's important evidence to put out there. It's not yet conclusive evidence but it certainly gives you those kinds of key indicators.

I'll turn to Perry.

**Mr. Perry Billingsley:** What we try to do with the impact assessment is look at something that is similar to the United Nations human development index. We looked at education and a number of indicators on labour force participation rates, on unemployment and employment, because those two differ, and we did find and have found on a couple of occasions significant improvements and significant differences between self-governing first nations and, essentially, status Indians residing on reserve.

We used Statistics Canada data. Our objective is to have this as publicly available as possible. In fact, we would like a university to pick up this exercise so that we can get more solid understanding of what's going on.

So these are the indicators, but I'm always very cautious. What's the old expression? Correlation isn't causation.

But one of the things, if we think about what's going on, is that it has to do with communities making decisions for themselves, combined with.... Communities that have self-government agreements have a greater voice in terms of cooperation with the communities that surround them and in their relationships with provincial and territorial governments and the federal government.

It's not always easy. It doesn't always go well. We've had some pretty tough negotiations with self-governing communities, but they get to make decisions at their own pace in respect to their own priorities, building on and aiming towards their own goals. We think that's what makes the difference. It's not our policy: it's the communities making the decisions.

**Mr. Patrick Borbey:** Some of it is also qualitative. I was talking to Chief Kim Baird earlier this week and I asked her about post-secondary education. She was very proud to report that they had 15 or 16 applicants this year for funding for post-secondary and they could fund almost all of them. I asked her what the situation was before the treaty and she said they were lucky if they ever had three on an annual basis. It doesn't sound like a lot, but for a community like that to have three times the number of people going through post-secondary education and hopefully coming back to their community to contribute and build capacity, it's huge for her. She's very proud of that ,and we're proud of it as well.

● (1245)

**Mr. LaVar Payne:** It sounds very positive. Do you have any data that you could share with us about the economic outputs? That would certainly be beneficial for me and for the other members of the committee.

**Mr. Perry Billingsley:** We're in the process of translating our latest impact assessment, so once that's accomplished, we'd be happy to share it with as many people as possible. We'll be posting it on our website as well.

**Mr. Patrick Borbey:** In fact, we'd like to see if we could have a symposium of some sort to bring people from various universities, first nations, and aboriginal groups together to talk about it and interpret and debate it, to have not just us as public servants, who are probably a little bit biased, debate it, but to have other people debate it, come to certain conclusions, and do further work and further research.

**Mr. LaVar Payne:** I think those are very important steps you're taking. They will certainly be beneficial to all those who are intending to go into that process.

Do I have any time left?

**The Chair:** No. I was just going to cut you off.

**Mr. LaVar Payne:** Thank you, Chair.

**The Chair:** That's great. These questions are always longer than we expect. It's problematic when the member spends half their time asking the question. We understand that this is our own problem. This is not a dig at any member. I know it's a challenge to keep the question short so the answer can fit into the time allotted.

Mr. Bevington, for five minutes.

**Mr. Dennis Bevington:** Thanks, Mr. Chair.

Another issue that keeps coming back to me from land claims groups is this issue of mandate with regard to the negotiators. People are sitting around a table trying to come up with some answers to these particular issues at the table, and they do, and then somebody doesn't have the mandate to complete that answer. Is there some work being done to ensure that we get a little more orderly progress in terms of those mandates?

**Mr. Patrick Borbey:** It's a good question and it does come up a lot. Sophie Pierre's report certainly does allude to this.

It's important to understand that our overall mandates are guided by the policies. The comprehensive claims policy, the B.C. treaty process, which has its own legislation, and the inherent right policy. That's the overall framework we have to operate in. We have to ensure a certain amount of consistency across the country in the application of that framework.

But the actual mandates are approved by cabinet. These are provided by cabinet to the negotiator. These are cabinet confidence documents. I know that people have suggested that we should be transparent in sharing our mandates. It's not a good recipe for negotiations when your cards are on the table, so we can't do that. Our negotiators have their mandate, they know what their marching orders are, and they know they can go this far but not beyond that.

That does create that kind of dynamic at the negotiating table, but the first nations in the province or territory also have their mandates provided by their authorities, and they also have to stay within them. So finding that right point of fulcrum between our mandates is not always easy. In some cases, what comes back to the table is slightly different, and we need to have some interpretations and adjustments. I agree that sometimes this takes too long in terms of our consultations.

**Mr. Dennis Bevington:** Is it a practice of the department to reduce the land and money quantum after an offer has been made?

**Mr. Patrick Borbey:** To reduce it after...?

**Mr. Dennis Bevington:** Over the course of negotiations, have you seen it happen where the land and resources quantum has been reduced?

**Mr. Patrick Borbey:** That would be a new one. We'd have to look at the particulars. It may certainly be a situation where there is a desire for more land and less desire for capital transfer, but to me that doesn't sound like negotiations.

**Mr. Dennis Bevington:** My understanding is that it has happened within the Métis claim that's being negotiated now in the Northwest Territories.

**Mr. Patrick Borbey:** That the offer is lower than...?

**Mr. Dennis Bevington:** The offer that was on the table in previous years has been reduced.

**Mr. Patrick Borbey:** Now, that may be associated with some kind of a driver such as the population covered—

**Mr. Dennis Bevington:** I agree.

**Mr. Patrick Borbey:** There may be some technical things, but normally, no, we don't—

**Mr. Dennis Bevington:** Normally it would not happen this way. Is there a policy that says once you put an offer on the table you're going to stick with that offer and you're not going to go back on it? Is there any...?

● (1250)

**Mr. Patrick Borbey:** Perry, I don't know if you've run into any of these circumstances.

**Mr. Perry Billingsley:** I'm afraid I don't know the specific circumstances, but in terms of Canada's overall approach to negotiations, that sounds as if it would be running against the honour of the crown in terms of negotiations. So I—

**Mr. Dennis Bevington:** Okay. I'll take your answer back, but this is not what happens.

**Mr. Patrick Borbey:** But if it's in the context.... We know this table quite well; I can certainly follow up on my side and find out. Again, we have to be careful what we can share with you in terms of confidential negotiations.

But that's unusual.

**Mr. Dennis Bevington:** Do I have some more time?

**The Chair:** You have 55 seconds.

**Mr. Dennis Bevington:** With the case of the Acho Dene Koe, this is something B.C. is holding up. Is the federal government actively pursuing British Columbia to get to the table on this?

**Mr. Patrick Borbey:** Yes. We're continuing our work. I think we're completing a study to be able to bring this to a head, if I remember well.

Jim?

**Mr. Jim Barkwell:** I'm afraid I'm not familiar enough with the specifics of that case to advise on that.

**Mr. Patrick Borbey:** A traditional land use study is being completed. Once that is completed, certainly we will want to engage actively with B.C. to bring them to the table, because we're prepared to negotiate but we need our other partner.

**The Chair:** Mr. Trottier, for five minutes.

**Mr. Bernard Trottier (Etobicoke—Lakeshore, CPC):** Thank you, Mr. Chair.

Thank you, guests, for coming today and speaking with us.

I'm especially heartened by your earlier comments about where first nations have self-government, there are far better outcomes with respect to education, employment, and the labour force. You've probably looked at a number of other measures. You said that both qualitatively and quantitatively you've looked at these things, and there is a definite improvement in all those kinds of quality-of-life outcomes.

Where would you say are the best prospects in terms of future treaties or self-governance agreements? Are there political, cultural, historic, legal, or economic factors that are driving those better prospects versus others?

**Mr. Patrick Borbey:** That's a good question. As I said before, we have about a hundred negotiating tables on the go right now, so staying on top of each one of them and measuring progress is a bit of a challenge.

We've had recently some good successes. I mentioned the minister's signing of the Sliammon final agreement, so that's one that could be very quickly brought to the next stage, which would involve coming to the House for legislation. We have Yale, as I mentioned earlier on, where the legislation is basically ready to go, and we're looking for the signal that the House wants to see it.

We've just reviewed an agreement on education with the Mi'kmaq of Nova Scotia. This has been in effect I think over 15 years now. It is a sectoral education agreement and is one where we now have sufficient evidence to determine that the first nations covered by that agreement have better education outcomes than the average Nova Scotian. You can see that with empowerment and a certain amount of time, the impacts are really huge there. That's one.

Recently, the minister signed an umbrella agreement with the premier of New Brunswick over the Mi'kmaq Maliseet negotiations there.

We also have the prospect of our first agreement in the Prairies for self-government. We have two that are kind of racing to the finish line.

We have the Blood Tribe in Alberta, which has been responsible for its own child and family services in a delegated model for a number of years. We now have a self-government agreement whereby they will take that over on an ongoing basis as a government responsibility. We've already initialled the final agreement, so we're waiting to bring that forward for eventual introduction in the House.

We also have the Sioux Valley first nation in Manitoba, which is the first comprehensive self-government agreement in the Prairies covering all areas of jurisdiction. This is a Dakota-Lakota community, which historically has a different relationship under the historic treaty process, so we're really proud to have been able to find an opportunity there.

Recently we initialled the agreement for the Labrador Innu land claim, a huge portion of the country that's currently not covered by a land claim.There are a lot of economic development initiatives there in terms of the hydro projects and, of course, two communities that have struggled in recent years have made huge progress over the last four or five years and see the treaty as their way to be able to leapfrog a lot of development into the 21st century.

Those are some examples. There are a few others that are going on. I get a little excited, but—

● (1255)

**Mr. Bernard Trottier:** Obviously there's some enthusiasm and optimism there, and if you look at the success stories, and you compare it to some agreements where there's less progress being made, what would you say are the contributing factors? What's driving success versus lack of success?

**Mr. Patrick Borbey:** We see a number of factors. There are some pretty fundamental differences at the table that haven't been worked out. Land and capital transfer quantum is a huge one. In some cases, the first nation does not agree with the basis on which we determined the transfer and wants to have amounts of land or cash that are out of proportion with those of other agreements we've signed in neighbouring communities.

Sometimes it's the land selection model that people can't agree on, that is, how lands will be selected. Only a small portion of the overall settlement land can be selected. For example, in the case of Yale, it's 1.9% of the overall settlement area that's actually selected to be owned by the first nation. They have some specific views on where they want to select lands, and we have some views on what they can or can't do in land selection.

The issue of self-sufficiency coming out of a treaty, a self-government agreement, is fundamental. This means that the first nation has to accept a change in taxation regime and that there will be some fiscal responsibilities they have to take on. Over a transition period, they need to be able to put some of their own revenue toward the cost of their services. It's a fundamental principle that in some cases can lead to a breakdown.

The issue of certainty can also cause a breakdown. Quite often it's not between us and the first nation; it's about how much risk the province is prepared to take with a certainty model that might be a bit more favourable toward the first nation. People are still comfortable with the concept of extinguishing rights, even though we don't want to pursue that kind of model. We have to make sure our provincial colleagues are in step with us.

Then there are the elections, the political instability that we sometimes have to face in first nations. You may have a chief and council who are pro-treaty. Maybe you were making a lot of progress. Then, all of a sudden, you're in an election and a different leadership is elected. They might not necessarily be against treaty, but they have to come to the conclusion that all the work that's been done is valid and that they want to continue. In some cases, they decide that the way it was done is not the way they want to proceed.

Also, of course, you have human factors. At any negotiation, human elements come into play. Sometimes things go sideways and you have to intervene. You have to change the negotiator. You have to bring them back on track. There are all kinds of factors.

**The Chair:** We are out of time, big time.

Anyway, we want to thank you for coming in today. I expect you'll see an invitation from us again. There were more questions than you had time to answer. We apologize for that, because it was our fault. We were consuming our time with votes.

Thank you for your testimony.

Committee members, I want to move in camera as quickly as we can. We can't address all future business, but we have some important housekeeping stuff that needs to be dealt with.

**Mr. Patrick Borbey:** Thank you very much. Those were excellent questions. It will be a pleasure to come back and answer more questions.

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

[*Proceedings continue in camera*]

**Published under the authority of the Speaker of the House of Commons**

## SPEAKER'S PERMISSION



**Additional copies may be obtained from: Publishing and Depository Services**
**Public Works and Government Services Canada**
**Ottawa, Ontario K1A 0S5**
**Telephone: 613-941-5995 or 1-800-635-7943**
**Fax: 613-954-5779 or 1-800-565-7757**
**publications@tpsgc-pwgsc.gc.ca**
**http://publications.gc.ca**

**Also available on the Parliament of Canada Web Site at the following address: http://www.parl.gc.ca**

**Publié en conformité de l'autorité du Président de la Chambre des communes**

## PERMISSION DU PRÉSIDENT



**On peut obtenir des copies supplémentaires en écrivant à : Les Éditions et Services de dépôt**
**Travaux publics et Services gouvernementaux Canada**
**Ottawa (Ontario) K1A 0S5**
**Téléphone : 613-941-5995 ou 1-800-635-7943**
**Télécopieur : 613-954-5779 ou 1-800-565-7757**
**publications@tpsgc-pwgsc.gc.ca**
**http://publications.gc.ca**

**Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante : http://www.parl.gc.ca**