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Chair

Mr. Chris Warkentin

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● (1540)

[*English*]

The Chair (Mr. Chris Warkentin (Peace River, CPC)): Committee members, I'm going to call this meeting to order. This is the 40th meeting of the Standing Committee on Aboriginal Affairs and Northern Development.

Today we have witnesses joining us to continue our study on land use and sustainable economic development.

Today we have two witnesses here in the room with us. Our other witness, Dr. Le Dressay, is joining us by video conference.

We'll start with our first witnesses, John Gailus and Christopher Devlin. Thank you so much for joining us. We appreciate that you've taken time out of your busy schedules to bring testimony today.

We'll turn to you for about 10 minutes, if we can keep it to about that length of time for your opening statements. Then we'll hear from Dr. Le Dressay, and then we'll turn it over to committee members, who will ask questions.

Thanks again for joining us. We'll turn it over to you.

Mr. John Gailus (Partner, Devlin Gailus Barristers and Solicitors): Thank you, Mr. Chair.

My name is John Gailus. I'm a partner with Devlin Gailus. We're a law firm in Victoria, British Columbia. We're lawyers. Please don't hold that against us. With me is my partner, Christopher Devlin.

By way of background, I'm a member of Haida Nation, Skidegate Band, which is pretty much as far west as you can get in Canada.

After law school, I spent four and a half years working as a land management leasing officer for what was then the Department of Indian Affairs and Northern Development. I ended up being promoted, if you can call it that, and was the senior land management leasing officer for the west coast of British Columbia.

During that time I had the responsibility of working on a great number of files dealing with land designations, leasing, and leasing disputes—that was the time of the Musqueam Park dispute—as well as additions to reserves and the creation of new reserves. I kind of carved out a bit of a niche and decided that I was going to use my law degree. I went into private practice in 1999 and have been doing that ever since.

We deal almost exclusively with first nations and first nations organizations. I hope we can share with the committee some of our experiences with the pitfalls and policy problems we see.

We think the work you're doing is extremely important. It's a fairly comprehensive study you're doing. I could probably speak for a lot more than 10 minutes. What I've tried to do today is look at this from, I suppose, 30,000 feet. We can take some questions and maybe provide you with some specific examples, if you have some questions on that.

First of all, I've looked at some of the evidence given by a number of the witnesses to this committee. We don't necessarily agree that the Indian Act is an impediment to economic development. The policies and maybe the application of those policies are really what lead to the delays. But that's common, I suggest, in any jurisdiction. With the possible exception of the federal government, you're usually going to have to seek approvals from some other level of government if you want to develop your land. Whether you're in a municipality or a province, you're going to have to get the necessary permits and approvals in order to do your project.

The problem, as I see it, is often with third-party proponents and lenders not being familiar with the process or not being willing to educate themselves.

The act is there, but the policies I see are kind of one-size-fits-all. There's no proportionality between the project and the policy. I'm sure you've probably heard that from a number of other witnesses. Essentially, whether you're developing a corner store or a shopping centre, you have to follow the same policy. If you want to do a gas station or an LNG plant, you still have to go through the same policy to get that approved.

So what do first nations do? Well, they don't follow the act. They go and just build it. They build the gas station. They build trailer parks. They don't have the proper permits in place. We see this non-compliance that comes about as a huge contingent liability for the first nation but also for the crown.

There are opportunities out there. And we've seen that in spite of the Indian Act, there have been many successful developments, in spite of the hurdles. We're in B.C., so an example I have would be Park Royal. The Burrard Tsleil-Waututh nation is developing a whole host of condominiums. The Musqueam, in spite of that dispute, is a very successful first nation. There are the Cowichan, with the Cowichan mall, the St. Mary's band, and the Campbell River band.

What these reserves all have in common is that they're near urban centres. When you're talking about economic development, geography is going to play a huge role when it comes to on-reserve development.

Isolated communities aren't going to have the same opportunities as the Musqueam and the Westbank. So we can't really apply their model to these first nations.

But, these first nations also have a number of off-reserve opportunities when you are looking at oil and gas, mining, forestry. There is economic development out there for these first nations, but oftentimes it's not on reserve.

We think the FNLMA is a good step forward, but first nations are often inheriting land management issues—legacy issues, we call them—that haven't been addressed by INAC. They spend much of their time dealing with land disputes amongst their members as to who has entitlement to this or that piece of land, without getting on with the business of economic development.

I want to speak briefly about additions to reserve. I know you have had an opportunity to hear from other witnesses. Clearly, the process is cumbersome. We're often dealing with the province—which wants to keep all the resources on the land—municipalities, and third-party interests. It can take a long time to disentangle all of those interests when you are dealing with ATRs. I did manage to complete an addition to reserve in three weeks, though, when I was working for the federal government. However, that was pursuant to a court order. Government can move quickly when it's told to.

When we are talking about social need, first nations have to do years and years of study just to get to the point of doing the actual negotiations to acquire the land. There are appraisals and environmental assessments. You may have these third-party interests you have to negotiate with. I see there is a problem with that process.

I want to speak just very briefly on the new band and new reserve policy. This would be a situation where either a group of members is looking to start their own band or break away from an existing band. That process, I submit, is set up for failure. The first nation has to fund the process themselves. They have to show there is not going to be any increase in the budget as a result. That is one glaring example of where the policy needs to be amended. There is a bit of a disconnect between one nation that can show a social need and get funded, whereas another one has to fund the process themselves.

What we're seeing in British Columbia is that ATRs aren't getting done if a first nation is in treaty negotiations. The treaties that have been negotiated to date have removed the reserve status from those lands—your Nisga'a, your Tsawwassen, and your Maa-nulth. The governments are saying, we're not going to bother doing the ATRs because you guys are going to have a treaty soon, and we're going to have to basically un-reserve these lands as part of the treaty process. Generally speaking, the policies, whether we are talking about designations, leasing, or additions to reserve, need to be responsive and flexible. That's often a challenge we have as lawyers. I can tell you, as someone who was working in the government, I had that challenge when I would have a policy that didn't seem to fit with the particular issue.

What's missing is that economic development. At least in terms of the Indian Act, economic development isn't a priority for AANDC. I think that's the right acronym now. Both human and financial resources aren't being allocated to deal with these sorts of issues. It's not necessarily the fault of the individuals who are there working away. They have heavy workloads. These human and financial resources need to be brought to task if first nations economic development is to be successful.

Those are my comments.

● (1545)

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

We will turn now to Dr. Le Dressay for 10 minutes.

Can you hear me all right there, Dr. Le Dressay?

Dr. André Le Dressay (Director, Fiscal Realities Economists Ltd.): Can you hear me?

The Chair: Yes. We will turn it over to you for 10 minutes. Thanks so much for joining us.

Dr. André Le Dressay: It's a privilege to appear before this committee. Over the years, I have watched this committee advance first nation initiatives and improve first nation legislation. The research and work you're doing right now is important to first nations and all of Canada.

As an introduction, I am the director of Fiscal Realities Economists. We are a group of economists located in Kamloops and Georgina Island, Ontario.

About 20 years ago, then Chief Manny Jules asked us for some advice on how to raise economic growth in his community. That began a 20-year research and development project with Manny, the First Nations Tax Commission, a number of other first nations, and a bureaucrat who believed in investment-led growth, Mr. Bob Kingsbury.

We consider ourselves among the luckiest economists alive, because we've had the opportunity to help mix the science of development with the art of politics, and facilitate hundreds of millions in investment on first nation lands. It is an honour to share what we have learned during this time with this committee. We have provided a brief about our research and some our suggestions, so I will focus this statement on four questions that might interest you.

First, what causes first nation economic disparities with the rest of Canada? The answer is simple and obvious to anyone who has ever visited first nation lands. First nations are not receiving their share of private investment. Investment generates employment and public revenues. It allows communities to provide quality local services and infrastructure, which attracts more investment. This is a circle of growth that most Canadian communities experience. Investment can come from external sources like a business locating in a community or internal sources such as individuals investing in housing or starting a business.

Instead of a virtuous circle of growth, many first nations are caught in the vicious cycle of dependency. This circle starts with public transfers that are insufficient to build business-quality infrastructures, provide quality local services, and fill the institutional gaps created by the Indian Act. This creates a poor business climate, so first nations don’t attract private investment, which means fewer jobs and lower public revenues, and the transfer-dependency cycle starts all over again.

Second, why is there so little investment on first nation lands? In 1999, my business partner, Greg Richard, and an economist who worked for us at that time, Jason Calla, completed an important study. It demonstrated that the costs of completing an investment on the best-located first nation lands were four to six times higher than they were on comparable off-reserve lands. It was, for economists, our eureka moment. If you can lower the costs of doing business for first nations, you can create a virtuous circle.

Next, what causes these high costs of doing business? Much of our work has focused on this question over the last 20 years. To begin, a sound investment climate includes a role for both the public and private sectors. The private sector looks for a competitive rate of return resulting from an advantage in location, resources, labour, or technology. The public sector supports these private decisions through secure private property rights, quality infrastructure, good local services, and transparent, responsive government at a reasonable rate of taxation.

The high costs of doing business on first nation lands are not a result of an uncompetitive first nation private sector. They are a result of an uncompetitive first nation public sector. Generally, first nation infrastructure, local services, property rights, local government powers, and administrative responsiveness are below regional standards. Stated differently, many first nations are missing the institutional framework to facilitate private investment.

Under the current system, with a lot of patience and resources, it is possible to close many of these institutional gaps. In Tk'emlups at Sun Rivers, where our office is located, an acre of land sold for $8,000 in 1996. The value of that same acre has risen to over $500,000 after Tk'emlups created the best possible legal, administrative, and infrastructure framework possible under the Indian Act at a cost of several million dollars and over a four-year time period. Similarly in Westbank, an acre of land in 1991 sold for $10,000. Now that same acre is closer to $750,000, but first it took 15 years and many millions of dollars, a self-government agreement, new infrastructure, and numerous laws.

It can be done. But you might be interested in the last question. How can you improve the first nation investment climate in a timely and cost-effective manner? It has been our observation that successful first nation changes have four elements.

● (1550)

First, they require first nation leadership. Second, they must be optional so that first nations can exercise their freedom of choice. Third, successful implementation requires the support of first nation institutions that help implement the legal and administrative requirements. Finally, when legislation is necessary, that change requires the political will of the federal and sometimes provincial governments.

If these ingredients are in place, here are five suggestions that could help move interested first nations towards a more competitive investment climate.

First, provide the option for interested first nations to have the same collective and individual property rights as other Canadians. This could be accomplished through the proposed first nations property ownership act, sometimes called FNPOA.

Second, provide interested first nations with an option for a turnkey legal framework that is more harmonized with adjacent jurisdictions. This could be accomplished through the proposed FNPOA. This will save interested first nations years of implementation time and millions of dollars. This will mean interested first nations will not longer have to build the economic development car before they can drive it.

Third, encourage first nations to improve their fiscal relationship through participation in the First Nations Fiscal and Statistical Management Act, also called the FSMA. The FSMA is the beginning of a new fiscal relationship where first nations have clear expenditure responsibilities and exclusive revenue authorities to meet those requirements. The FSMA should be enhanced to provide more revenue authorities, such as the first nations goods and services tax, and to accommodate transparent formula-based transfers so first nations are better able to deliver quality services and build competitive infrastructure.

Fourth, provide bursaries to students interested in accredited certificates in first nation tax administration and first nation applied economics at the Tulo Centre of Indigenous Economics. This training uses our 20 years of research and the success of the First Nations Tax Commission to train students on how to fill the institutional gaps that facilitate investment on first nation lands. Over 70 first nations have taken some of these courses, and increased bursaries would enable more to build this necessary administrative capacity.

Finally, and this has already been stated, expedite additions to reserves. For those first nations without access to markets and comparative advantages, additions to reserve offer economic opportunities. The current ATR process is far too slow and costly. ATRs could be made faster through greater use of the FSMA and the potential of the proposed property ownership act.

None of these changes are costly, and some of them only require legislation. The benefits to first nations in Canada could be significant. Raising the productivity of first nation lands by facilitating more investment could reduce much of the disparity between first nations and other Canadians. Moreover, the fastest growing element of the Canadian labour force is first nations people.

The sustainability of Canada's social programs are about to become increasingly dependent upon the productivity of first nation peoples. This is why the work of this committee is so important.

● (1555)

The Chair: Thank you very much, sir.

We'll start now with our rounds of questioning.

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

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

I want to thank all the witnesses, including Mr. Le Dressay, who is joining us by teleconference.

Mr. Devlin, you and I have seen each other on this committee before. It's nice to see you back.

Mr. Le Dressay, I don't expect a response on this. You indicated in your opening that first nations are not receiving a share of investment. I would also argue they're not receiving a fair share of the resources that are developed on their traditional territories. It's not just investment; it's the resources that already exist.

I have a question for Mr. Gailus. Thank you for your presentation.

I'm from British Columbia, and I live on the Cowichan people's traditional territories. I'm very familiar with the mall on Cowichan lands. A number of developments that you cited, though, are actually certificates of possession. For example, with regard to the Cowichan mall, there are a number of individual families who own that mall.

When we were in Westbank,the chief and council indicated that certificates of possession certainly present some opportunity for economic development, but they also provide serious challenges because of some of the development that's happened prior to the time that self-government or FNLMA took place.

Can you comment on what you would see as being important to recommend to this committee around certificates of possession, if anything?

Mr. John Gailus: In terms of the Cowichan mall, that land has been surrendered—that is the old term. The revenues, though, do go to the former CP holders. So they actually did go through the formal process under that. I know that Westbank is mostly certificate of possession lands. I think the other ones that I suggested, though, are band lands, if we call them that.

I suppose the policy that AANDC has now, as I understand it, is that they won't grant a lease over 49 years to a CP holder, and they're likely going to seek the consent of the council. I have experienced the situation where a CP holder had developed his lands without the consent of the council, hooked into the sewer and water, and had come after the fact to INAC and said, “Now I want to get a lease”, which led to some litigation. My name is all over it—a case called Tsartlip—trying to do the right thing, I suppose, as a lands officer at the time.

We weren't able to bridge that schism, if I can call it that, between the CP holder wanting to develop his lands and the council saying, “No, we want to save those lands for community members”, even though they were held under a certificate of possession.

As a practical matter, in light of Tsartlip, in light of the policy, you're not going to see a lot of large-scale developments on CP lands unless the council is on board. Just like when a first nation wants to do a large-scale development and needs services, where they have to go talk to a municipality, using Tsartlip as an example, if it's the council that has the keys to the sewer and the water, well then, the council's going to have to be on board for those developments to go forward.

● (1600)

Ms. Jean Crowder: Go ahead, Mr. Devlin.

Mr. Christopher Devlin (Partner, Devlin Gailus Barristers and Solicitors): I was just going to add that in some respect it's not much different from if you have a bunch of small, fee simple parcel holders. If you're looking for a large development, either all the CP holders are going to have to get together to bring together a parcel that's economically viable to develop—in the Cowichan example, the land was surrendered with the consent of the CP holders and the expectation that they would share in the rent—that's the first thing, or you can have one band member go around and buy up those CPs to accumulate a parcel.

The other issue, though, is that you have to have not only band council consent, from a regulatory perspective, for development, even if it's on CP, but then there's also the issue of whether those revenues that will come from that economic development on CP land.... The leases, for example, tend to go to the CP holder, so then how does that benefit the band as a whole, right?

Those are the kinds of issues that council will struggle with. Particularly if you have a very enterprising CP holder, who has gone around and accumulated a sufficiently sized parcel to have a big box store or whatever, and will gain substantial revenue from that, the band council will rightly say, “Well, how's the rest of the band going to benefit from this?” Those are tensions. They can do it through tax and that kind of thing, just like a municipality can, but it still gets debated.

Ms. Jean Crowder: Do I have time?

The Chair: You have a minute and a half.

Ms. Jean Crowder: In a minute and a half, can you talk about the whole issue in British Columbia about the constitutional protection under section 91(24) and giving up aboriginal title as bands enter into treaties?

I know some bands have resolved that in some way, but it is creating some tensions in British Columbia around that requirement to give up lands or to give up that constitutional protection. Some people argue that Canada's position may largely be driven by the desire to remove itself as a fiduciary. Can you comment on that?

Mr. Christopher Devlin: Oh, I get that one in a minute or less.

Yes. It has created huge tension. Often the first nation has to make a political choice. If the deal is you give up your reserve land in exchange for whatever the package is under your treaty, then they have to weigh that.

Is it worth it?

Certainly there is great debate over the nature and the value of the collective interest in aboriginal title as held in a reserve versus the economic opportunities that are more easily accessed if the land is not held as a reserve. For example, at the end of the day, the treaty lands that are being offered in British Columbia are some form of fee simple.

Jurisdiction remains with the first nation, but they can be bought and sold, and so those are fundamental quid pro quos that each community, I think, has to grapple with. Each community makes different decisions. Some communities say no, the collective interest prevails, and we'll figure out a different way of unlocking economic potential, and others will choose the economic potential that's more readily accessible with the fee simple option.

The Chair: Thank you very much.

We'll turn to Mr. Payne now for seven minutes.

Mr. LaVar Payne (Medicine Hat, CPC): Thank you, Chair.

I thank the panel members for coming and Mr. Le Dressay for appearing on the video screen with us today. It's important that we get your testimony, as of course, this is a very important study, as you've already suggested.

I would like to start off with questions for Mr. Le Dressay. In terms of what you have written here in a research paper, and comparing the municipal boundary expansion to additions to reserve, you stated that additions to reserve are too slow, too cumbersome, too unfamiliar, and many witnesses, of course, have stated that same thing when they've come to our committee.

Could you tell us what best practices from municipal boundary expansion projects could be applied to the ATR process?

● (1605)

Dr. André Le Dressay: Yes.

First, the research in that paper demonstrated a useful statistic, I think. It's that the municipal boundary expansion process—depending on the circumstances, the ones we compared—was six times shorter than the additions to reserve process.

Two reasons seem to demonstrate why that occurred. One was that it's much easier for the municipalities to expand their boundaries because there is jurisdictional harmony once they expand them. When a reserve expands its boundaries, you have a change in jurisdiction from provincial to federal, and so there are all sorts of harmonization issues.

The other aspect that results with respect to that particular issue is that the federal government is unable to—I shouldn't say unable to. It's almost like a game of fiscal ping-pong, I guess that's a better way of phrasing it. When it becomes federal land, there is potentially a liability for the federal government with respect to the cost of development on those lands. The federal government wants to make sure there is a great deal of economic viability and ultimately fiscal viability on those lands. Those requirements take a long time for first nations to fulfill and demonstrate.

What could be done to speed that up? Two things.

First, first nations are missing a lot of the legal framework that is commonplace within provincial systems. In my little research brief that I provided to the committee, we listed 30 or 40 laws that are essentially missing, by and large, on first nations lands, which you almost have to recreate.

If there was a turnkey framework that provided those laws, and there was some sort of regulatory harmony between those and the provincial system, that would greatly speed up the additions to reserve process.

Second is the demonstration by first nations of the economic viability and the economic potential. I think it doesn't become a game of fiscal ping-pong. It becomes an issue of this growth being beneficial to the whole region.

I think there's a real potential to see ATRs as economic instruments, which most first nations view them as. To realize that potential, you have to close the institutional gaps as quickly as possible.

Mr. LaVar Payne: Also, in the briefing material you provided to the committee, you suggest that ATRs could be made faster through greater use of the First Nations Fiscal and Statistical Management Act and the proposed first nations property ownership act.

What are the benefits of the FSMA and the FNPOA, and how would those two speed up this process?

Dr. André Le Dressay: The FSMA would speed it up because it would demonstrate that the first nations have, at least in terms of the institutional gaps, local revenues and local service powers. That's very important for local governments in establishing service agreements. There is support from those institutions to help first nations create those service agreements so that local governments don't see ATRs as tax losses; they see them as potential service agreement gains. That's one thing that would definitely speed up that part of the negotiation.

The proposed property ownership act, I think, would have two aspects that could speed up additions to reserves. First, because it's proposed that it come with a turnkey legal framework, it would have a lot of that harmonization already in place with respect to development approval processes, heritage management, and other aspects of the institutional gaps.

The second thing is that, because it envisions property rights very similar to those that exist off first nations lands, the transfer of the third-party interest would be much simpler, because all that would be happening would be that they would maintain their interest, but they would now be under a different jurisdiction.

It would make those processes associated with ATR much quicker.

● (1610)

Mr. LaVar Payne: Okay.

You've used the phrase “turnkey framework” a couple of times. Would that be applicable right across all first nations? We quite often hear that each first nation has its own particular issues and traditions and that sort of thing. That kind of leaves me wondering.

Dr. André Le Dressay: Obviously, first, that would have to be optional. First nations have to exercise their freedom of choice, and then it'll be their choice. What it would have to contain is regulatory harmony, as much as possible, within their regional context. A different turnkey framework would exist in Newfoundland than would exist in British Columbia, because there are different regional practices. But that doesn't mean you wouldn't be able to have that application in Newfoundland or B.C. It would just be a slightly different legal framework.

I'm trying to remember the rest of the question.

Mr. LaVar Payne: That was it. It was just on the framework and whether it would apply.

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

Mr. LaVar Payne: Darn, I still have another question.

Thank you.

The Chair: Thank you very much.

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

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

Mr. Le Dressay, the first of your four recommendations is, of course, the proposed first nations property ownership act. As you know, as we've criss-crossed the country, there have been lots of concerns expressed about this in terms of the almost existential threat to a reserve's integrity. There's the potential of having a checkerboard.

Even when Mr. Jules was here, he could really only name four or five reserves that had expressed any interest in this at all. So it seems that the majority of chiefs and councils aren't really interested in this.

I wonder, as Mr. Payne asked with respect to the turnkey legal framework, if that is only obtainable through the proposed legislation. Are your third and fourth recommendations possible without it?

Dr. André Le Dressay: I think the only way you can establish the turnkey legal framework is through a piece of federal legislation, and that piece of federal legislation is being proposed right now. That might be a good place to put it. I'm not saying it can't be in other places.

Can you build administrative capacity without the property ownership? Of course you can.

I do want to make one thing clear because you mentioned the checkerboard. I think there's a general misunderstanding—and it certainly was mine until it was explained to me by a leader up in Kitselas—in that there's a difference between when we say a property is held in fee simple by an individual and what a government owns. This is how he explained it to me. He said, people think that because they have fee simple ownership, they own the property, but here's a little experiment for you. Stop paying your property tax and find out who owns your property.

I think that's what's certainly contained in that particular proposal. The difference between government property rights, I guess, is in some cases that they can own the property, but they also have the jurisdiction, the land, and tax powers. They also have the reversionary rights, and they also have expropriation powers.

It doesn't matter who owns the land. Those powers always exist. I'm from B.C. If I were to purchase land in Saskatchewan, it doesn't all of a sudden become B.C. It's still Saskatchewan because they still have the underlying jurisdiction, the reversionary rights, and the expropriation rights.

In the exact same way, that's how the proposed property ownership act would work. First nations would always retain the jurisdiction, the tax powers, the land powers, the expropriation powers, and reversionary rights. And so it's always their land regardless of who's there.

● (1615)

Hon. Carolyn Bennett: I think the question has been that the ability to sell the land to someone who's not a member of the community puts everything at risk.

Maybe I should ask the first two witnesses what do you think of the proposed legislation, and why do you think there's been so little interest in it from the rest of first nations communities?

Mr. Christopher Devlin: I haven't reviewed that particular piece of proposed legislation but stepping back on the fee simple question generally, you talked about existential questions and the nature of the aboriginal title held in reserve lands recognized by the Supreme Court of Canada in Garron. I think many first nations take that very seriously.

I think there's also a fundamental difference between first nations that are located in urban or semi-urban areas and the bulk of first nations lands, which are in the hinterland, and frankly have almost no value to them unless they happen to be sitting on a big pool of oil.

In those rural communities even if you had a legislative framework in place—even under the Indian Act there are economic opportunities that can be accessed, and we can talk about those even under existing regulatory framework—when you're in the hinterland when you have no industry around, you can't put a Walmart on your reserve. No one will come and buy things there. That often I think is a real driver as well.

For the communities that are in urban and semi-urban areas or they're on a major highway and there's easy transportation access, then I think the kinds of questions about ownership and property ownership become more relevant. But most first nations aren't there, and I think that may be one reason why you're not seeing an overwhelming number coming forward saying we want that. As my partner said, I think the ones that are blessed with a certain geographic advantage, are the ones that are rightfully driving this debate.

Mr. John Gailus: I agree with what Mr. Devlin said.

I think when we talk about the existential angst, it really comes down to: what is the nature of these lands? What is the nature of the relationship with the federal crown if we go under this fee simple model as opposed to...?

When you go back to the definition of a reserve, legal title is held by the crown for the use and benefit of the first nations. For many of those first nations that's the public trust that we're talking about.

In addition to the economics of it, I think there is a distrust, frankly, if the government was pushing this forward to say we're going to turn it all into fee simple. That's the same issue with the treaty negotiation process that's ongoing in British Columbia as well, and why many of those first nations aren't buying into that process either when they're surrendering their aboriginal title and the reserves are being turned into some form of fee simple title.

The Chair: Thank you very much.

We'll turn now to Mr. Wilks for seven minutes.

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

Thanks to the witnesses for being here today. My questions are directed toward Mr. Le Dressay and we'll go from there.

In the 2000 ruling of the Musqueam Indian Band v. Glass, the Supreme Court of Canada decided that, for the purposes of calculating residential rental rates, the fair market value of properties on reserve lands should be determined by applying a discount of 50% to the market value of comparable fee simple, non-reserve properties, to account for the costs of reserve-related factors.

Since then the decision has been used as evidence of a difference in the market value between reserve lands and non-reserve lands.

It was also noted in the financial impact of affected real estate market and first nations lands that first nations such as Westbank and Kamloops have implemented market-friendly tenure systems and governance structures for residential development that resulted in elevating the value of reserve land similar to non-reserve land.

In your opinion, which reserve characteristics affect land value—for example, land codes, residential bylaws, etc.?

● (1620)

Dr. André Le Dressay: In the brief we provided you, we went through all the aspects of the first nation governance that would be required. We divided it up into three processes.

It was based on our research that looked at the beginning of an investment to the end of an investment process. We divided it up into that which creates greater security over property rights, those which create greater certainty with respect to local services and the cost of those local services, and those which provide better access to capital. We have a list of laws in those areas that can be quite effective.

Westbank has been very good in filling in a great number of those laws. In the case of Sun Rivers, where our office is located, a lot of those laws are located in what's called the development and servicing agreement. The key is to create investor certainty, and as I mentioned, it is possible to do this. It takes a long time and costs a lot of money. That's why we're advocates of a turnkey legal framework, and I'll use that analogy again.

Quite often when you give first nations lots of law-making powers, which a lot of legislation has done so far, of course that respects first nations' right of self-government, but what it does is put the onus on them to develop those laws. It's almost like giving them a disassembled car and saying, “Okay, go build it and then your economy will work.”

We don't do that with any other government in Canada. We say, “Here are the keys to that car. Make some smart policy decisions to develop your economy.”

That's why I'm a strong advocate for the turnkey legal framework.

Mr. David Wilks: You also mentioned that location is the primary detriment in real estate values. What do you suggest for those that are in remote first nations communities?

Dr. André Le Dressay: I'm going to give you a different answer. I hope it will eventually get to the answer. I think the answer is that it's always better to have some access to credit than to have none.

I want to step back for a second. There are three actors in every single economy. There are governments, businesses, and households.

Governments, as you know better than most I suspect, are constrained fiscally. There's only so much money you have. Households are constrained by income and by credit. Businesses are constrained by their ability to trade and their ability to invest.

If you have opportunities to reduce any of those constraints, you improve the functioning of those economies. Even in isolated areas it's better to have some access to credit—to somehow improve the property rights for residents, for example—than to have no access to credit. At least that's some improvement.

As the other two witnesses mentioned, there is potential for resource development, and I believe another one of your colleagues also mentioned the importance of sharing in resource revenue on traditional territories. There are opportunities for those that may not have direct comparative advantages in location or labour.

Mr. David Wilks: Thanks.

Could you also briefly touch on how leasehold interests operate on reserve lands, and what the economic benefits are of leasehold interests on first nations communities?

Dr. André Le Dressay: I think leaseholds for commercial purposes are pretty common practice, both on and off first nation lands. With leaseholds for residential purposes, depending on the nature of the residential purposes, you can have comparable values.

With respect to long-term residential properties, there is a little observation from the people who sell homes in Sun Rivers. These are some of the nicest lands in Kamloops. When people found out they were getting a lease—in this case it was a 114-year lease because there was some sort of build-out and then a 99-year lease—65% of people said that's okay and 35% of people said “no interest”.

My first comment about the lease is, yes, it's an effective property right. Is it the most effective property right in Canada? The answer is no, from a residential perspective.

Mr. David Wilks: Mr. Chair, I'll defer the rest of my time to Mr. Payne.

● (1625)

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

I have one question, as I didn't get to Mr. Gailus.

I know you folks specialize in areas of ATR. Do you have any recommendations on how the present system could be improved, in 30 seconds or less?

Mr. John Gailus: I think there is always going to be the potential for delay. I don't think there's a one-size-fits-all solution.

I talk about proportionality. If you have a willing seller.... So we're talking about fee simple and of course the crown purchasing that land and turning it into a reserve, and there aren't those potential impediments in terms of third-party interests or needing to talk to the province or the municipality. The policy needs to address those sorts of issues, or small areas that are being returned to reserve.

In B.C., we had the cut-off claims settlements. We have a history of lands that were pre-empted by churches, as does Ms. Crowder's constituency. Those take the same amount of time as the ones where you have hydro lines running through them and having to deal with the municipality for services.

It's trying to have a policy that is flexible enough to address the easy ones. You don't have to call it an expedited process, but having that policy guidance to say, on this one, we can just barge ahead. We don't need to go through all of the 13 steps set out in the policy to make it work.

The Chair: Thank you very much.

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

[*Translation*]

Mr. Jonathan Genest-Jourdain (Manicouagan, NDP): Good afternoon, Mr. Devlin, Mr. Gailus and Mr. Le Dressay.

I appreciated each of your presentations. I would nevertheless humbly like to point out that, in my opinion, you failed to mention an element that ensures a community's socio-economic advancement. I am talking about the hoarding of capital. That practice consists in pooling the money that comes from the use of resources, which belong to the community and should benefit its whole population.

I hail from a community in northern Quebec, on the border with Labrador, called Uashat. I have too often seen certain things in those communities across the riding, as well as in Mamit Innuat. The community business people are often the ones who have a real impact and get their hands on natural resources or set up their businesses on community land. In my language, we call those people *minachta*—meaning that they don't share. Ultimately, they or their own family are the only ones who benefit from those advantages. They are minimally concerned about redistributing those benefits for the good of the community. In a community that basically used to operate on the model of sharing, that may be bordering on the capitalist and materialist model.

Could you tell me what you think about that?

[*English*]

Mr. Christopher Devlin: Thank you for the question.

I have worked for communities where the collective interest is held very near and dear to their hearts, and they refuse to issue certificates of possession to anyone as a result. It's all communal land and there are no certificates of possession whatsoever. There's no subdivision of the land. We've also worked for communities where practically the entire community is subdivided. There's almost no common band land left. So for the bands to do any kind of economic development for the band, as a whole on the reserve, can be extraordinarily difficult.

You're going to have individuals who take advantage of the situations they find themselves in, in any community. I don't think that's where your question is directed. I think it's more about what can be done from a legal framework. I think it's very important to understand that in different jurisdictions and different what used to be Indian agencies across the country, there were different policies in place. Some of those were benign neglect, but others were to try to turn first nations people into little fee simple suburban fiefdoms.

In some of the examples of first nations where we've worked, the entire reserve has been subdivided into CPs, and the result is that some people who have the good fortune to have road access as part of that subdivision have been able to develop their certificates of possession, and others who have equal-sized lots, because no road allowances were made by the Indian agent at the time, have landlocked parcels. So you have these inequities among property holders on reserve, but those inequities tend to be the result of what Mr. Gailus referred to in his opening comments, these legacy issues of the previous administration by the former Indian Affairs.

Part of the challenge now, when those communities wish to do large-scale development, is having to grapple with these legacy issues. In our capitalist system, you can't fault someone who has the good fortune of being geographically blessed with the CP along the highway or was able to buy out his brother's or his sister's CP from their estate or whatever, and has pulled together a parcel, and now they have a McDonald's and a gas station or maybe even a small mall or a larger hotel. They're doing very well compared to their landlocked cousin who doesn't have road access. Those are very challenging issues for first nations to grapple with.

I don't think the legacy issue can be dealt with in one big legislative fix. I think you have to look at each community, look at the history of those communities, and try to figure out how to deal with those legacy issues on a community-by-community basis.

● (1630)

The Chair: There are about 10 seconds left if you wanted to add anything, Mr. Gailus.

Mr. John Gailus: Not in 10 seconds.

The Chair: Sure.

We'll turn to Mr. Clarke now, for five minutes.

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

I'd like to thank the witnesses for coming. It's fabulous to have someone come here through video conferencing as well, to provide testimony to this committee.

One of the interesting things mentioned during one of the speeches was that the costs to first nations for economic development are four to six times more than for the non-aboriginal communities, and the challenges they have to face. In recent years several proposed changes have been enacted to the legal, political, and economic context of reserve lands through voluntary or opt-in legislation, such as the First Nations Land Management Act, designed to address the barriers in the Indian Act that impede economic development and investments on reserves.

How have these initiatives influenced the economic initiatives and opportunities for first nations people, collectively and individually? If one of you wants to take a shot at that, go ahead.

Dr. André Le Dressay: I think that question is directed at me.

Mr. Rob Clarke: Yes.

Dr. André Le Dressay: The First Nations Land Management Act, the First Nations Fiscal and Statistical Management Act, and the First Nations Commercial and Industrial Development Act were all directed at that particular finding, that the costs of doing business on first nation lands are too high. The reason they're too high is that the legal, the administrative, and the infrastructure framework that exists off first nation lands isn't present. We have to find a way to help close that gap.

Yes, the FNLMA could be very effective in closing that gap. Some first nations have used it effectively to close that gap.

I suggested earlier that gap could be closed even more quickly if you had some of the legal framework that's available under FNLMA, if it were more of a turnkey approach, so that first nations didn't have to develop scores of laws. They could just have a lot of that legal framework in place for them and then make some good policy decisions to encourage development. That's one possible element of the FNLMA that might be improved.

The other thing I was mentioning earlier in terms of the cost of doing business is property right security. A lot of the high cost of doing business on first nation lands is a result of a lot of legal work in order to create as secure a property right as possible for investors. As I mentioned earlier, there's an opportunity to help reduce that particular constraint, as well, through the proposed property ownership act.

All of these things are voluntary and opt-in. It's critically important for first nations to have options, in order to have those options available to them, if it's their desire, to facilitate more investment.

● (1635)

Mr. Rob Clarke: What factors affect the probability of first nations opting into these various regimes?

Dr. André Le Dressay: Quite often it's opportunity. If there are economic opportunities and these regimes will help them realize those economic opportunities, the probability of their joining is much higher.

Sometimes there's an interest in the first nations to want to assert their jurisdiction, and they see these as an opportunity to assert their jurisdiction and to move beyond the Indian Act. You have those types of motivations for some first nations. But it ultimately comes down to leadership within those communities and community decisions.

Mr. Rob Clarke: What factors may affect the economic development outcomes?

Dr. André Le Dressay: The outcomes depend upon your ability to create a climate for investment, if your principal advantage is location. It depends upon what your comparative advantage is. If you're trying to develop your economy through resource development, then there's a different answer to that question. But if your principal advantage is location, then what influences the outcome is being able to create as much investor certainty—in order to take advantage of your location advantage—as compared with your neighbour, as exists in your region.

The Chair: Mr. Devlin, I think you wanted to jump in there on one of those answers.

Mr. Christopher Devlin: I did. I wanted to say two things in response to those questions.

The first is this. One of the economic costs goes back to those legacy issues that I was just talking about. We have one client who adopted a first nation land management code and spent the last three or four years trying to deal with legacy issues but has not been able to really move forward because they're still dealing with issues and a real mess of legal interests on that reserve that were left over from Canada's administration.

Even if you have the law in place, even if you have the code in place, you still have legal interests that remain unresolved from the previous administration. That continues to impede the ability to move forward, even if you have a code in place or something else.

The second thing I would say is that another factor not widely perceived is that first nations have huge, varying degrees of size and capacity. You have some first nations with 5,000 to 10,000 members. They have a much better capacity for personnel and institutional frameworks for investment. But when you're talking about a community of 250 people, the number of adults who have sufficient education and who can even begin to be in a leadership role and understand the legal regimes that are in place is vastly diminished. There are simply only so many people who can run that community.

The economic opportunities might be there but for the fact that there are only three people or a handful of people in that community who have the capacity to do everything, from running the community to administering the housing to writing the laws. That can be a real inhibitor to unlocking economic potential—the size of the community—even if it has been blessed with geographic location. If you have only 250 people, there's not much to draw on.

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

Mr. Bevington, we'll turn to you now for five minutes.

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

Thanks to the witnesses.

I'm going to start off with Mr. Gailus. I want to explore your knowledge of the capacity within the Department of Aboriginal Affairs and Northern Development for land management, as you saw it from your history there. Is there sufficient capacity, personnel, within that department to effect the myriad of changes that are required—the third-party interests that are required to be analyzed for each land transaction?

Mr. John Gailus: The short answer is no.

Mr. Dennis Bevington: Describe your experience there.

Mr. John Gailus: Certainly. This is mostly from my own personal experience and it's a little dated, but I still have a great deal of interaction with people who work at the department. Part of my practice is dealing with designations, leasing, and that sort of thing.

As I see it, there are two challenges there. One is that the complexity of the transactions going across a land management leasing officer's desk is getting greater. For those non-FNLMA first nations or self-governing first nations, you're getting potentially more complex transactions and there's a need to seek Department of Justice assistance. They're part and parcel of that. You have your DOJ lawyers, and then you have your lands managers dealing with these complex issues and not being able to deal with them oftentimes in a very timely manner.

That's a resourcing issue that I see in terms of transactions I'm doing for my clients, for instance. The turnaround time for me is in terms of weeks, versus the turnaround time for the department and for Justice, which is calculated in months. There's that opportunity which may be lost, given the delays that come out of that.

It oftentimes is a situation where this person is overworked and they have too many things on their plate, or it's the Justice lawyer. Sometimes it's hard to tell where the roadblock is, but it seems to me that there doesn't seem to be enough competent bodies to address these issues.

There's a fairly large turnover in the lands department. I might be dealing with a lands officer today and then the next day it's somebody new, and trying to get that person up to speed as best I can is often a challenge.

● (1640)

Mr. Dennis Bevington: To Mr. Le Dressay, when you talk about four to six times higher land development costs and the difference with structural land outside of reserves that is under municipal control, how close of a comparison can you make?

Are you talking about raw land outside of on-reserve land that you're completely servicing from square one? Is this what you're comparing in your cost structure?

Dr. André Le Dressay: When we did the study, we actually looked at projects that were successful. We looked at developing a project, and the four areas we looked at were Sept-Îles, Siksika, which is outside of—I'm trying to remember the town in Alberta—Squamish, and Kamloops.

We looked at four successful first nation developments, and we looked at four successful developments in adjacent communities. We measured each stage of the development—the securing of the property right, the negotiation of the deal—all the way through. We measured each element and compared the cost, and it was four to six times longer and four to six times more expensive. Those are some of the best located first nation lands in Canada, so you can imagine how much higher the costs would be in other lands.

Mr. Dennis Bevington: Was a great part of that the difference in cost in building infrastructure?

Dr. André Le Dressay: In almost all of the cases it did involve some infrastructure, but a lot of the biggest cost was creating the property right certainty. Creating the certainty for investment was principally one of the major differences in cost, and it's because of that legal framework that's by and large missing on first nations.

The Chair: Thank you very much.

We're going to turn now to Mr. Rickford, for five minutes.

Mr. Greg Rickford (Kenora, CPC): Thank you, Mr. Chair, and thank you to the witnesses.

I'm in a bit of a difficult situation here because I took some time to go through a lot of the work that all three of you have done, and when I realized I only had five minutes to ask questions I was in quite a state.

To that end, I would recommend to the analyst, given some of the important work all three of these gentlemen have done, that we consider them for the phase two part, because there's some important work—I say, rather selfishly—on some of the issues that you were scratching away at in a previous answer, Christopher, with respect to small communities and some of the inherent problems with capacity around economic development, whether it was on reserve or off reserve. I am particularly interested in the Ring of Fire and the communities that are involved in that development, and how that would fit with the work, and I'd be interested in your impressions.

So I'm just going to focus in the last couple of minutes here on ATRs because this has been coming up pretty consistently, and I think we can all agree that we'd like to see some changes. The Senate committee is taking a look at that. We haven't had a chance to appreciate that body of work.

I'm going to ask you a quick question, John, with respect to the three-week process, the fastest ATR known to mankind, perhaps. Could you briefly, in a minute or so, tell us, was there a test in there with respect to why and how that could be done in three weeks, or was this just simply some sort of prima facie situation that was dealt with speedily by the courts?

● (1645)

Mr. John Gailus: I think the case is called the Charles v. Semiahmoo case. That is the one where the land had been surrendered for a customs facility that was never built. So the Federal Court of Appeal made an order and the file landed on my desk and they said, get it done. Get the 14 or 16 signatures that we need to get an order in council on this within a month.

The judge was pretty clear. He said, I want to see you guys back here in a month and I want you guys to negotiate the compensation and these lands need to be turned into a reserve.

Mr. Greg Rickford: And was there a test in there, John? As we, as lawyers, would traditionally pull out of any decision or process—

Mr. John Gailus: To be honest with you, there wasn't. The one advantage was that the lands were already held by the crown, the federal crown, so we didn't have to deal with the province. It was simply Public Works transferring the administration and control to INAC. There weren't the hoops around appraisals and surveys, and fortunately, there was a legal description that we could use to do it. So it was a fairly straightforward process.

Mr. Greg Rickford: I'm going to spend some time with that another time. I just want to get to Dr. Le Dressay here, with two caveats. One, I've heard many mayors say that the problem with municipal legislation, particularly deriving from the province's authority, is that they become effectively wards of the province. We've heard that. So there's a little caveat there when we start to talk about comparisons, but I read with great interest "Comparing Municipal Boundary Expansion to Additions to Reserve", a brief but precise document that identifies the fact that the MBE is a piece of legislation and so there is greater certainty, and in stark contrast, of course, ATRs are policy and therefore less clear. The criteria don't jump out at you. Tests are what lawyers would often look for.

On page 2 you lay out a best practice description. I'm really interested in this and I want to give you the opportunity to tell us today whether you think this has a broader application to ATRs, in relation to the federal government's responsibilities in ATRs, regardless of whether they're going to be for economic development—because we know sometimes ATRs are not. But is this a potential blueprint for us to look at more substantively as we, as a committee, try to come to some solutions on this particular point?

Dr. André Le Dressay: Of course, I stand behind some of the best practices that we recommended, but as a committee, you also have to consider the following with respect to making the ATR process more like the MBE, to take some of the best practices out of the municipal boundary expansion situation. Of course, what makes the municipal boundary expansion situation simpler is that you're not changing jurisdiction. That's the fundamental sort of difference between the two. So how can you make that jurisdictional change as seamless as possible?

There are good practices in the municipal boundary expansion about doing good planning and making good communications and good public processes in order to make those who are affected by the change more comfortable. But there are also some legal aspects with respect to harmonization that would make those, who would provide legal advice to both the provincial and federal governments, much more comfortable as well, and I think there's a real opportunity there.

So I think that those best practices are only as effective as the legal framework that allows ATRs to happen, and of course, as you mentioned, it's principally policy-based.

The Chair: Thank you very much, Mr. Le Dressay.

We'll turn now to Ms. Hughes for five minutes.

● (1650)

Mrs. Carol Hughes (Algoma—Manitoulin—Kapuskasing, NDP): Hi, and thank you very much for your input.

I'm going to go in a bit of a different direction. I want to ask so many things, but I know I'm going to run out of time.

One of the things we have been discussing in the committee is the environmental gaps on reserve that subsequently lead to a lower standard of health and well-being of people living in the community.

Similarly we have noted that this was addressed in a report that was just released by a first nations institute on governance. The report found that nearly a quarter of all aboriginal adults are living in overcrowded dwellings and over 50% of adults are living in houses contaminated with mould and mildew. Over one-third of adults cannot trust the water that comes into their homes.

What impact does this have on the workforce and economic well-being in first nations communities, and what possible solutions to the health and environmental gaps existing on reserves would you recommend? Because it all does build into the economic development. As you know, if the infrastructure is not in place, no matter what the changes are, you're not going to be able to entice the positive changes we're looking for.

The Chair: Ms. Hughes, was that directed at somebody?

Mrs. Carol Hughes: I'm going to leave it open for them to comment.

Mr. Christopher Devlin: I can go first, if you like. I'll make it quick.

That's a huge question. What leads to overcrowding on reserves and inadequate housing is really a huge issue in itself. There are systemic problems with housing on reserves. If we go to what Dr. Le Dressay said about the First Nations Fiscal and Statistical Management Act and having better fiscal regimes on reserves, that would then lead hopefully to better accounting practices, which would then allow first nations to continue to get their housing grants every year.

One of the problems—and this was my comment earlier—is that when you have small communities with people with poor education, they don't understand reporting in the way they should. You have a lands officer somewhere else in the country who has never been to that community, doesn't have a personal relationship with them, and then says they're not going to get their grant for the next year. Then they get behind in housing, and you have generations and generations of people living in housing.

You also have substandard construction on reserves. In part, that's a regulatory gap, and in part, it can be a local contracting problem.

If you did have better fiscal management and regulation, that hopefully would mean less withholding of resources by Canada for housing, and then you would have people living in better housing conditions.

I'll leave that point there so everyone has a chance to answer.

The Chair: Mr. Le Dressay, I believe you wanted to jump in as well.

Dr. André Le Dressay: I'll follow up on what Chris said.

First nations don't have anywhere near the same financing tools as local governments. Local governments generally finance infrastructure through fixed sources. They have property taxes. They have money in reserve. They use development cost charges or something akin to development cost charges. Quite often they'll use private sector contributions or developer contributions, which are slightly different, and they'll use debenture financing. They'll also rely on transfers from other governments.

Without the use of the Fiscal and Statistical Management Act, first nations would have two of those and maybe three. So, as a result, they don't have anywhere near the financial capacity to pay for infrastructure that you would in the local government context. That's one thing that might benefit first nations.

The other question was more to do with some of the environmental issues. I assume this committee will be studying this. What is the environmental regime on first nations lands? Is it a combination of provincial assessment practices? It should be, of course, the federal environmental act, but how does it ultimately manifest itself within first nations lands? There are some real opportunities to create a much more seamless environmental management system on first nation lands so you don't have potential environmental issues.

● (1655)

The Chair: Thank you so much.

We'll turn now to Mr. Seeback for the final five minutes of this round.

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

I wanted to pick up quickly on something that you were talking about, Christopher. You briefly mentioned the First Nations Fiscal and Statistical Management Act. So there are two things, right? There's also section 83, which gives the authority to levy property taxes on leasehold interests. You also have the FNFSMA—that's a lot of acronym there.

About 120 first nations are levying property taxes on reserve, I think, and 79 are participating in the FNFSMA. What are the main differences between those two regimes?

John or Christopher, either one...?

Mr. Christopher Devlin: It has been a while since I've looked at it—

Mr. Kyle Seeback: I think that, in fact, Dr. Le Dressay is probably the better one to answer that question, but essentially, if you're under the FNFSMA it's a voluntary act, and you subscribe to a much more rigorous fiscal management regime, right? Under section 83, you pass your bylaw and away you go.

So the institutional framework that's in place is a more rigorous one and a more comprehensive one under the FNFSMA, and I believe the department now strongly encourages first nations who want to engage in property taxation—

A voice: To go to....

Mr. Kyle Seeback: —to go under the FNFSMA.

Mr. Le Dressay, do you want to comment on that?

Dr. André Le Dressay: I'll do it hopefully quite simply.

Under the FNFSMA, a first nation could achieve a credit rating. Under section 83 of the Indian Act, they couldn't.

Now, ask yourself why. The answer is quite simple. The Indian Act doesn't provide anywhere near the regulatory certainty that's required for anyone to give them a credit rating, whereas the FNFSMA has all those aspects in there. Once you have a credit rating, you have access to capital.

Mr. Kyle Seeback: Again, for any of you, what do you think are the main economic benefits of a property tax regime? I think some of them are obvious, but maybe there are some that aren't quite as obvious.

Dr. André Le Dressay: Is it okay if I go first, Chris and John?

Mr. Christopher Devlin: Absolutely.

Mr. John Gailus: Yes.

Dr. André Le Dressay: There was a recent book.... And as an economist who's not named Steven Levitt—who wrote *Freakonomics*—it's always good when an economist becomes famous. A couple of economists have become famous by writing a book called *Why Nations Fail*. They've analyzed nations all throughout the world, and they've come to one conclusion. I'll just read it to you:

> To be successful, states must provide secure property rights and a strong relationship between local taxation and local services for the majority of people in society.

They have concluded, after studying nations throughout the world, that the key for successful economic development is secure property rights and good property tax systems whereby people willingly pay their taxes and receive good services in exchange. So I think property tax in the role of economic development is absolutely vital. It's the most clear connection people have between taxation and services, and those services ultimately improve their property values. So the value of property tax to improve first nation economies is quite high.

Mr. Kyle Seeback: Go ahead, John.

Mr. John Gailus: I agree with everything André says.

When you're looking at economic development, there is something that's not really talked about much, and it is that a first nation that has a property taxation system, whether it be FNFSMA or section 83, can use that, particularly if they're in an urban area and have a municipality next door, to actually attract businesses by pegging a lower tax rate, for instance.

It's something that's not talked about a lot, but certainly with the clients we have, when we're talking about those sorts of things, we suggest to them that this might be a better way to attract business as well—to look at having competitive tax rates with neighbouring municipalities.

Mr. Christopher Devlin: I would just add one last comment, though, which is that, again, property taxation is not a panacea. Like all of the things we're talking about, part of it is only if you're blessed with a location advantage, right? We have clients who are in the hinterland. They could have a property tax bylaw and they'd only be taxing their own members and no one else, so even if they had all that security of a property regime and a tax base, it wouldn't make any difference.

I mean, even the FNGST can be a difficult sell in rural communities where there really isn't.... It's really just a cash transfer, for the most part, and even that can be difficult to sell to remote communities. So the closer you are to an urban or semi-urban centre, the more likely it is that these are going to be advantages for economic development.

● (1700)

Mr. Kyle Seeback: I think you said quite clearly that for your clients, you'd recommend the FNFSMA as opposed to operating under section 83.

Mr. Christopher Devlin: Yes.

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

I believe that we're going to turn back to Mr. Genest-Jourdain. My understanding is that you had a short question.

[*Translation*]

Mr. Jonathan Genest-Jourdain: Mr. Le Dressay, do you understand French well? Are you getting the interpretation?

[*English*]

Dr. André Le Dressay: My mom wishes I did.

[*Translation*]

Mr. Jonathan Genest-Jourdain: Your first and last names are francophone.

In your remarks, you talked about the city of Sept-Îles as an example of success. I may be wrong, but it seems that you have been on site. I am wondering if it was brought to your attention that the suicide rate on the Uashat-Maliotenam reserve—which is very close to the city of Sept-Îles—is the highest in the province, and even in Canada. In addition, over half of the adults are dependent on welfare, and there are social problems beyond belief, including addiction to hard drugs among young people. That addiction begins around the age of 9 or 10.

Is that part of your analysis of success in terms of the economy and the socio-cultural and economic development?

You may go ahead.

[*English*]

Dr. André Le Dressay: Our study was done in 1998, and it was to do with the development of a Sobeys, which was the main tenant of a shopping mall, and the development associated with that. As you know, that particular community borders the municipality of Sept-Îles quite closely. It provided an opportunity to evaluate how long it would take to build a similar development like that in Sept-Îles versus the first nation community, Uashat.

With respect to the socio-economic indicators, our study was principally focused on the cost of completing that development.

[*Translation*]

Mr. Jonathan Genest-Jourdain: Thank you.

[*English*]

The Chair: Thank you very much for that clarification.

I'm going to take the chair's prerogative. I have a question here, and it has to do with pre-reserve designations. There are certain provinces where there's an ability for pre-reserve designations that allow for first nations to begin doing some development on what might become reserve land after the ATR process is complete.

I'm wondering if any of you have done any analysis as to whether this is a process that actually speeds support of economic development in cases where the ATR process sometimes drags out. And has there, in fact, been any analysis by any of you on the different jurisdictions that allow for third-party interests on ATR, as opposed to those that require those to be cleared up before the addition to the reserve can be completed?

Do you have any suggestions as to whether we should make a recommendation regarding either the pre-reserve designation and the ability for development on it before the process is complete or regarding the acceptance of third-party interests in the process of the ATRs?

Mr. John Gailus: I think I can field that.

I had that scribbled down. I think some of the prairie provinces allow for that. They were lands that were subject to treaty land entitlement settlements.

In my view, certainly if you can be doing the processes in parallel rather than sequentially, it's going to be a way quicker process. We've heard about the designation process and how lengthy it can be given that there's often a requirement for two votes rather than one, given the double majority requirements. It would make sense to have your vote prior to the land gaining reserve status and to have essentially two orders in council going forward together.

I can tell you from experience that.... Let's back up. On third-party interests pre-reserve that then get converted into Indian Act interests post-reserve, you have two orders in council going forward in concert. You look at one that's 11 and the next one's 12 in terms of the orders in council issued.

In my view, I think a great recommendation for those lands would be that, while you're dealing with your third parties over here, whether you're granting them federal interests.... Certainly I've had experience with one of the additions to reserve I did that was subject to a specific claim. It had third-party interest, and we had to negotiate FRPA leases, as they were then called, over those lands. It's FRPFIA leases now. In fact, the addition to reserve was subject to those interests. We didn't actually convert them into Indian Act interests. They're actually just federal leases on those lands. I think that would be a recommendation this committee could make, certainly for areas that have been identified as having economic potential and where there's an opportunity to allow for that process to play out.

● (1705)

The Chair: You bring up the issue of the double majority. I wonder if you have any suggestions as it relates to that, if you feel it's necessary or if there's any suggestion to lower the threshold in the cases of the ATRs and the hindrances that might develop as a result of not getting those two votes completed.

Mr. John Gailus: I see two problems with the designation process, and one of them is the double majority requirement. It's one of those unintended consequences that comes from the Corbiere case, which dealt with the elections on reserves. Subsequent to Corbiere, the designation requirements were updated, in that off-reserve members were allowed to participate and were counted in that double majority.

One of the problems, and we see this in elections as well, is that you might get 30% of the members, or 40%. I'm sure that certainly for section 74 nations—those who conduct their elections under the Indian Act—the department could provide you with those figures.

By not participating—so the individuals get the mail package and don't bother participating—they're essentially counted as a "no" vote, and then there is the requirement of a second vote. Clearly we need the designation process still in place. I think that's something you can trace back to the royal proclamation, and probably even before that. So we're not going to get rid of that.

We should look at, though, whether or not 50% plus one is the right threshold in terms of determining what your quorum is. To use corporate law principles, what is your quorum for a vote?

The second problem is that when you get to your second vote—this is the result of a case called Hill, I believe it was—where, in terms of calling a second vote, the court indicated it has to be the minister or the deputy minister who signs off on that. So it's a strange situation where you have a regional official in Vancouver, let's say, where we do most of our practising, signing off the notice for the first referendum, but then a need to go through all the bureaucracy to get either the minister or the DM to call a second vote.

It strikes me—well, first I was surprised when INAC didn't appeal that—that it would be an easy legislative fix to clarify that the same person who called the first vote could call the second vote.

That's a really frustrating thing that I've had to deal with on a couple of occasions.

The Chair: We appreciate that. Obviously you've been on the ground and understand those issues. Thanks for highlighting them.

Colleagues, looking around the table, I can see we've exhausted the speaking list.

To our witnesses, thanks so much for coming. I'm certain we'll hear from you again, as some of my colleagues have mentioned. I suspect that as the years pass there will be times when we'll need your expertise again. We certainly appreciate your taking the time to testify before us today. Thanks so much.

Colleagues, there are just a couple of things I want to do by way of committee business.

I circulated a document that is just a clipping from the guidelines between the press and members of Parliament. There were some questions, as it happened, in the ethics committee with regard to a member of the press. You'll see in paragraph two that there are some general discussions in terms of the close-up of documents, shots of documents, or allowing the press to have access to documents at the table, which is not permitted.

Therefore, we look to committee members to help uphold that requirement and that agreement between the press and members of Parliament. I had been unaware of it, and when I sat at ethics committee I was made aware of it. I thought it would be important that other colleagues knew that as well.

The second thing, colleagues, is that we don't expect to sit on Thursday, as we expect that we'll probably still be in votes. We've made the witnesses aware of that. We didn't want them to come all the way out here only to be turned away. I just wanted to make you aware of that as well.

Thank you so much.

Again, to our witnesses, thanks so much.

The meeting is adjourned.

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