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Chair

The Honourable Mark Eyking

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• (0850)

[English]

The Chair (Hon. Mark Eyking (Sydney—Victoria, Lib.)): Good morning, everybody, and welcome to Tuesday. Welcome, panellists.

We're doing the TPP right now, how it affects Canadians and other countries. We have a very busy committee. We're dealing with softwood lumber and the TPP; we're finishing up the European agreement, but our main focus is on the TPP.

We've travelled to the western provinces already, as well as Ontario and Quebec. We'll be doing the Atlantic provinces in the fall. We'll be connecting with the territories also in the fall. We have been taking submissions from Canadians across the country, and MPs will be hosting some town halls. We'll be getting all that information. We're hoping to have this study done by the end of the year to present to Parliament.

Today we're going to be focusing on the effects the TPP will have on the indigenous community. We're appreciative of the witnesses who are coming forward today.

We have, as an individual, by video conference from B.C., Mr. Hunter. Good morning, it's good to see you.

Mr. Troy Hunter (Barrister and Solicitor, Sea to Sky Law Corporation, As an Individual): Good morning. Thank you.

The Chair: We'll be connecting with you in a minute.

Also as an individual witness, we have Pamela Palmater. Welcome.

From the Assembly of First Nations, we have Perry Bellegarde. Good morning. William David is also with the Assembly of First Nations.

From the Métis National Council, we have John Weinstein.

We're going to get started. If you have any questions for Mr. Bellegarde, it would be appreciated if you could get them in early. He has to leave at 10. He's going over to the other side, to the Senate.

National Chief Perry Bellegarde (National Chief, Assembly of First Nations): Yes. I'm going to do the pipeline one.

The Chair: Without further ado, we'll get started. Perry, you can go ahead and kick-start it.

National Chief Perry Bellegarde: Thank you, and good morning, friends and relatives.

[Witness speaks in Cree]

That's a little bit in Cree.

I'm very happy to be here. To the men and women, I acknowledge the creator for another beautiful day. To the respected members around the table, I greet you all in a humble, respectful way. I'm very honoured to be here to offer my remarks on the trans-Pacific partnership. My remarks focus on the impacts of international trade agreements on first nations treaty and inherent rights. The current approach to the TPP is not consistent with the government's commitment to rights recognition, respect, co-operation, and partnership. That's the first point I want to make.

We have several recommendations for action on the TPP affecting all first nations and indigenous peoples.

The government should immediately consult with all first nations, especially those who will be directly affected, on the potential impact of TPP on first nations rights, especially the right of self-determination.

The government should meaningfully involve interested and affected first nations on future bilateral negotiations related to the TPP, particularly bilateral negotiations with the United States. This is going to be good timing, because of the three amigos summit coming up on June 29. It's good to get this on to the agenda. The government should prepare and release an assessment of the TPP's impact on human rights. The government should also establish a first nations trade commission service, and it should also establish a trade investment fund for first nations and indigenous peoples.

There are a number of issues we won't be able to discuss given the time constraints of this appearance, but the Assembly of First Nations can and will follow up with a more fulsome written submission. Today I plan to touch on four points: one, investor state dispute settlement and first nations; two, impacts of the TPP on first nations self-determination; three, full and effective participation of indigenous peoples in implementing the TPP; and four, positive measures to facilitate first nations engagement in international trade.

Regarding the first point, investor state disputes and first nations peoples, our first concern relates to the investor state dispute settlement, or ISDS, provisions of the TPP. The ISDS provisions are not new to first nations. For example, the North American Free Trade Agreement contains an ISDS chapter. This is of particular concern to first nations, given that many federal and provincial actions to recognize the rights of first nations may be deemed indirect expropriations to investors under the TPP or other trade agreements. The ISDS provisions obligate Canada and investors to adjudicate the scope and content of first nations rights between each other. Some of the worst legal cases have resulted from third parties arguing about the scope and content of our rights without first nations present, most notably the St. Catharines Milling and Lumber case.

We know from our experience with NAFTA that investor state disputes related to first nations rights are likely. We know that a Canadian investor challenged a law passed by the State of California to protect an indigenous sacred site. We also know that an American investor once issued a claim implicating first nations treaty harvesting rights. We also know that several state-owned enterprises and investors from TPP countries are currently attempting to approve projects that might adversely impact the rights of first nations peoples. Finally, we know that some provisions of the Canadian Environmental Assessment Act have been deemed discriminatory under the North American Free Trade Agreement.

As to the second point, the TPP will have a dramatic effect on first nations self-determination, particularly self-government. This is especially true for first nations that have treaties or self-government agreements containing clauses on international legal obligations. For these first nations, the international obligations of Canada become the obligations of the first nations government. Depending on the content of the TPP, clauses on international legal obligations will curtail first nations constitutional rights under such agreements. This is why many of these agreements also contain clauses that obligate the government to consult with first nations before agreeing to any new obligations that might impact the right of self-determination recognized through the agreement.

• (0855)

We're calling on Global Affairs Canada to immediately conduct and share with all first nations an analysis of all potential impacts of the TPP on first nations self-governance.

The third point is that further negotiations are needed with first nations. The TPP text is not the final text. We know several countries will continue to exchange notes related to the implementation of the agreement. Therefore, we are calling for the immediate and full inclusion of first nations governments in future negotiations on the implementation of the TPP.

We further call for the development of a human rights impact assessment for the TPP. This follows from a recommendation from Olivier De Schutter, the former United Nations special rapporteur on the right to food, who called for a human rights impact assessment for all new international trade agreements. Such an assessment would use the UN Declaration on the Rights of Indigenous Peoples as a basis for assessing the impact of the TPP and ensuring that

implementation of this trade agreement would support the rights of indigenous peoples rather than undermine them.

The fourth point has to do with creating a first nations trade commissioner service. The TPP, as with any trade agreement, could serve to facilitate greater economic growth for first nations people. Engagement with international markets could function as a catalyst for re-emergent first nations trade. To help achieve this potential, the federal government should develop a first nations trade commissioner service, functioning on a parallel track to the Government of Canada's trade commissioner service. The FNTCS would develop and deliver supports and programs to first nations businesses and entities interested in exploring the broader market.

Much like the TCS, the first nations TCS would provide services and advice on export issues, establishing companies abroad, market access issues, guidance on how to participate in global value chains, and support for expanded partnerships between first nations companies and other players in the global market.

As an example, with respect to potash, Chief Reg Bellerose from Muskowekwan is developing a trade agreement with India, directly. It has to tie in with rail, with shipping, but he's secured a market in India.

The Chair: Could you wrap it up, because we're well over time.

National Chief Perry Bellegarde: Last, another support for first nations trade growth would be the creation of a trade investment fund for first nations. By investing in first nations value chain enhancement, indigenous businesses would grow by creating further employment opportunities, increasing incomes for first nations business employees. This fund would promote the economic vitality of first nations by adding value in communities most affected by development by providing sustainable and predictable financial supports for first nations business entities interested in reaching new international markets.

These specific programs and incentives, like the development of an indigenous trade investment fund, should empower first nations by helping ease barriers such as access to capital and trade literacy.

Very quickly, Chairman, that's my presentation. I'll leave it at that.

Thank you.

The Chair: Thank you, Chief.

I remember you were in Eskasoni. It was good to see you in Cape Breton, and it's good to see you again.

National Chief Perry Bellegarde: Okay.

The Chair: We'll go to the Métis National Council, and the chief of staff, John Weinstein.

Go ahead, sir.

● (0900)

Mr. John Weinstein (Chief of Staff, Métis National Council):
Thank you.

President Chartier of the Métis National Council is not here today. He thanks the committee for having invited him. He's in Santo Domingo where the Organization of American States is considering, and possibly ratifying, a new international indigenous rights instrument.

He did meet with Parliamentary Secretary Lametti on May 30 and we did go through a lot of the issues pertaining to indigenous peoples. We set out our positions on them in a letter to the parliamentary secretary on May 30. That letter is available.

Very briefly, for the Métis nation, the whole issue of free trade is historically rooted and is actually an integral part of their existence because Métis are really children of the fur trade. In fact, historically, the growth of Métis identity on the Prairies was the result of the struggle over free trade with the Hudson's Bay Company.

In fact, this Sunday marks the 200th anniversary of the Battle of Seven Oaks in Winnipeg where the Métis defeated the Selkirk settlers and the armed forces of the Hudson's Bay Company. The issue there was regarding attempts to place restrictions on Métis free trade. Following that battle their struggle against the Hudson's Bay Company continued, culminating in 1849 when Louis Riel's father led a group of armed Métis that forced the courts to release a Métis free trader, William Sayer.

The conflict revolved around the insistence of the Métis to be able to trade freely with the United States. The Métis had their own lawyer in London, Alexander Isbister, who took their case to the British parliamentary committee that was challenging the monopoly, or investigating the monopoly of the Hudson's Bay Company. It's a long-established tradition for the Métis to be very keen on free trade, but again, on terms to protect their national interests.

Today, the issue is looked largely through the prism of jobs. The labour force participation right of Métis is getting quite high. In some cases higher than the national population, but the impact of trade agreements like this on the industries with which their communities are interfacing is critical. The biggest employers, for instance, would probably be Manitoba Hydro, Cameco, the energy companies. The impact of the trade agreement on those companies is critical.

The provisions of the TPP to protect preferential policies such as procurement or the indigenous financial institutions is of critical importance to the Métis nation, because so much of the job creation can be attributed to the efforts of Métis nation capital corporations that have financed a lot of small business that have created a lot of jobs. It would be absolutely imperative to protect that and to protect the preferential procurement policies which have also contributed greatly to job creation and small business development.

As I said, the more detailed positions are set out in the letter to the parliamentary secretary. We'd appreciate any opportunity to continue in these discussions. As a final issue, the national chief said that binational relations with the United States for the Métis nation are

critical right now because, in fact, in terms of labour mobility, green card access and the rest, it's actually much worse today than it was 20 years ago. That is a big issue.

The Chair: Thank you, sir.

We'll go to Pamela Palmater.

● (0905)

Dr. Pamela Palmater (Chair in Indigenous Governance, Department of Politics & Public Administration, Ryerson University, As an Individual):

Bonjour. Good Morning. *Ni'n teluisi* Pam Palmater. I'm from the sovereign Mi'kmaq nation that rests on unceded territory in most of the Atlantic provinces.

First, it's my responsibility and honour to acknowledge the traditional territory on which we sit.

In terms of my background, I've been a practising lawyer for 18 years, specializing in legislation and laws impacting first nations, both domestically at parliamentary committees and at the United Nations, most recently on the treaty negotiations for transnational corporations and the lethal harm it does to indigenous communities.

The most important point here is that trade and treaty are the foundation of Canada, not just politically but legally. Canada would not exist but for the relationships cemented in treaties which originated from trade, and trade is a joint jurisdiction of sovereign first nations in this country with Canada. The current TPP agreement violates that jurisdiction, but worse than that, legally it violates the Constitution.

By not including first nations, by not having consulted with first nations—and a five-minute presentation, with all due respect, is not consultation with all the first nations in this country—we have violated Canada's Constitution. The TPP itself violates Canada's Constitution.

The Supreme Court of Canada has already recognized that many first nations, including the Mi'kmaq, sustain themselves and govern themselves through trade. They fought to the death to protect their trade routes and their jurisdiction to manage and govern trade. That right has never been surrendered or ceded and still is valid today. You can see that in the Mi'kmaq treaties of 1760-61 and 1752, which not only mention trading rights but Mi'kmaq rights to trade anywhere to their best advantage. I would argue that also includes trading with other nations like Canada, the United States, and the rest of the world.

These rights and agreements are the foundation of Canada, and because these rights and agreements have been incorporated into the Constitution, if they are not respected or included in the TPP, they naturally violate the Constitution, making the TPP not able to be ratified. Without substantive amendments to the TPP, Canada cannot legally ratify this agreement, whether every Canadian is on board or not. We have a problem with the legality here, both domestically and internationally.

Aside from treaties, and the treaty right to trade and jurisdiction over trade, there are also first nations that have aboriginal title lands. We know from the Tsilhqot'in case what aboriginal title land means. It means the exclusive jurisdiction to determine what happens with the lands and resources and benefits in that territory. Exclusive means exclusive. Nothing in the TPP can happen on any aboriginal title lands in this country without the consent of first nations. That's not just aboriginal title lands in B.C., but the Mi'kmaq don't have land surrender treaties, so all of our lands are unceded as well.

Domestic law requires, at a minimum, consultation, accommodation, and Delgamuukw said even consent. Tsilhqot'in confirmed consent. International law, which the Prime Minister has now recommitted to in his commitment to implement UNDRIP, requires free, informed, and prior consent. There's simply no way around that. First nations haven't even been involved, and we're being asked to comment now on a done deal. We wouldn't be sitting here with this problem about whether we consent or not had first nations been engaged from the very beginning at international negotiations.

Even worse is the human rights aspect in all of the instruments and documents that Canada has ratified. All of the UN experts, all of the special rapporteurs on food, health, the environment, independent judiciaries, democracy, indigenous peoples, unanimously agree that the TPP violates these international instruments, and in fact could spark international insecurity and violence in these countries. Canada is no exception to that. It protects the investors and not the states. Canada should actually be a little more self-interested in the erosion of state sovereignty that the TPP has done with all of the excess powers given to investors, even setting aside what indigenous interests are.

I have 5,000 recommendations. I couldn't possibly list them all here, so I'll just hit the highlights. One is that I agree with the UN experts that there should be a moratorium on the TPP process until there is a fair, open, and democratic process within Canada, not just with Canadians, but a special process with first nations who have not been engaged to date.

● (0910)

There should be a joint consultation process, and there's a whole bunch of recommendations under that. Indigenous peoples' lands and resources must be protected from the TPP. There are options. You can either exempt indigenous lands, resources, rights, and interests from the TPP's application, or you can have specific protections like New Zealand has.

I would argue for a stronger treaty protection than what New Zealand has, but they at least argued for a treaty exemption for the Treaty of Waitangi, because of their constitutional obligations. Canada didn't even bring that to mind and didn't even have that discussion, despite the fact that it's in its own Constitution.

International human rights obligations have to be specifically incorporated within TPP. Investor state dispute resolution mechanisms cannot touch aboriginal rights and interests of any kind, domestic or international. It's simply not up to arbitrators or investors to have any interpretation or say over those rights.

Canada should specifically ratify, and include in the TPP, the Nagoya Protocol, which specifically protects fair and equitable

sharing of benefits from genetic resources. It should not just sign a side letter, but should specifically incorporate it.

Last, there should be a protocol that's specific to indigenous peoples being part of every single trade and investment process, and not just the TPP, but every one going forward and retroactively address the ones that they haven't been a part of.

Thank you.

The Chair: Thank you.

We'll go to B.C. now.

Mr. Hunter, you have the floor.

Mr. Troy Hunter: [*Witness speaks in Ktunaxa language*]

Thank you for having me this morning.

I was just notified on Friday of this invitation, so my presentation is not as polished as the others. However, I will begin.

I wrote an article about TPP promises and the aboriginal peoples in Canada—that was two weeks prior to the election—with uncertainty as to how it was going to go down. I wanted to remind Canada that there are ameliorative measures that need to be taken when it comes to indigenous peoples.

We talk a lot about levelling the playing field and closing the economic gap between indigenous peoples and everyone else. I will mention some statistics.

Indigenous peoples have the highest rate of unemployment in Canada with 14.8% for aboriginal peoples, whereas the national average is 6.3%.

Along with unemployment, the number of indigenous peoples incarcerated in the prison system has risen. The correctional investigator of Canada said that 25.4% of the incarcerated population are now of aboriginal ancestry and that efforts to curb the high numbers don't seem to be working, even though they take background factors into consideration in sentencing. He points to poverty, the history of colonialism, and the lingering effects of residential schools as reasons that so many aboriginal people suffer from alcoholism and other problems that land them in the justice system.

To make matters worse, it's been said that there are more indigenous children in care today than there ever were when residential schools operated. Statistics Canada recently announced that aboriginal children represented 7% of all children in Canada in 2011, yet they accounted for almost half, 48%, of all foster children in the country. In addition, it's been found that foster care predicts higher adult criminality for males first placed during adolescence between the ages of 13 and 18. Chances are that indigenous children that age, especially males, will have a higher possibility of criminal charges and ultimately prison sentences.

The problem of over-representation in the prison system and foster care is endemic to policies that work to destroy the fabric of indigenous peoples. In 2015, the Truth and Reconciliation Commission of Canada and Justice Murray Sinclair made a finding of cultural genocide with the following:

Residential schooling was only a part of the colonization of Aboriginal peoples. The policy of colonization suppressed Aboriginal culture and languages, disrupted... government, destroyed Aboriginal economies, and confined Aboriginal people to marginal and often unproductive land. When that policy resulted in hunger, disease, and poverty, the federal government failed to meet its obligations to Aboriginal people. That policy was dedicated to eliminating Aboriginal peoples as distinct political and cultural entities and must be described for what it was: a policy of cultural genocide.

This is not the vision our ancestors had in mind when the treaties were negotiated, or promised to be negotiated. There were promises of reconciliation made in the 19th century where the chiefs had received royal staffs or medallions with the notion that the crown would do them right. As required under the Royal Proclamation of 1763, they created a 1910 document from the chiefs in B.C. and handed it to Sir Wilfrid Laurier. That document talked about the history of colonization in British Columbia and promises that had been made by the fur traders in the North West and Hudson's Bay companies.

When the British occupied the land in B.C. in 1858, they brought with them a different attitude than those at the time of first contact. In B.C., they basically stopped negotiating treaties. The Royal Proclamation of 1763 required that the land that was unceded belonged to the indigenous peoples and that a treaty needed to be made. In B.C. there are very few treaties. The B.C. treaty process is pretty much a failed process. Indigenous peoples have to borrow funds to negotiate, and the tribes out here are having difficult times proceeding with that.

● (0915)

The findings in the St. Catharines Milling and Lumber case, when it went from the Supreme Court of Canada to the Privy Council in England, said that unceded land is basically under item 24 of section 91. It's land that's reserved for the Indians. British Columbia doesn't have the right to enter into an agreement that would impact the land.

When we talk about unceded land, such land also requires the consent of the indigenous peoples under the provisions of the Indian Act, because section 36 of the Indian Act provides that any land that was reserved, whether it's recognized or not, falls under the surrender mechanisms of the Indian Act.

The Chair: Could you wrap up, sir, and give your conclusion.

Mr. Troy Hunter: I can.

There's unfinished business within British Columbia. That's the treaty-making process.

After the unfairness that has occurred over the past 200 years, to enter into an agreement that opens up the doors for other people around the world to benefit and gain is not right. We need to have special measures that would take into consideration giving indigenous peoples some sort of monopoly over an energy corridor or whatnot. Some things have to change.

I will be making a proper written submission later.

Thank you.

The Chair: Thank you, sir.

I thank all the witnesses for their presentations. If there are any points that you didn't get across or things you want to add later on, we will be taking submissions. We will take anything you want to send to our committee and put it into the context of our report.

Without further ado, we will have dialogue with the MPs now. We'll start off with the Conservatives, for five minutes.

Mr. Ritz, go ahead.

Hon. Gerry Ritz (Battlefords—Lloydminster, CPC): Thank you, Mr. Chair.

Thank you for your presentations today. There are very interesting aspects in them.

I'm not a lawyer. I've never been under the ideological view that somehow trade agreements supplant our Constitution and our charter, in which treaty rights and aboriginal rights are embedded. I'm not quite sure how we leap a trade agreement supplanting all of that. It didn't happen under NAFTA. It's not happening under CETA. I'm not sure why we're targeting the TPP, as if somehow this is all going to fall apart.

I would like your points on that, if you can provide them, as to what specifically in the TPP is going to supplant our ability as a country to manage our charter and our Constitution.

National Chief Perry Bellegarde: Let legal counsel go first and then the bush lawyer will go second.

● (0920)

Hon. Gerry Ritz: That's me too, Perry. That's why we have such good discussions.

Dr. Pamela Palmater: There actually are problems with all of the trade agreements that currently exist. The reason you don't have anything in front of you is that indigenous peoples haven't had the funding to challenge them directly. The international and domestic processes are exceptionally expensive. It's one of the reasons the United Nations is recommending an international treaty to govern transnational corporations, because current countries such as Canada don't make any accommodation, take accountability or responsibility for the crimes that transnational corporations such as the Hudbay Minerals mining company, for example, commit not just in Canada but around the world.

If you look at the balance of protections, the vast majority of protections under the TPP go to the investors. The wording of the TPP is very specific and could be detrimental. The Waitangi Tribunal has already looked at this issue, for example. The question was whether or not the TPP violated their own constitution. They said it didn't, because it had a treaty protection clause for the Treaty of Waitangi. They said that even though that's the case, there are far too many protections for the investors and the wording, and that the interpretation is detrimental to the states themselves, let alone the indigenous peoples within them, because of what's considered a favour.

Hon. Gerry Ritz: In that particular example, first nations can be investors as well and are seeking that type of protection.

Perry, you brought up Reg Bellerose and his investment with Encanto. He's looking for those types of protections as he takes on partnerships with groups in India. They're not part of the TPP, but certainly ISDS clauses would give Reg and his band some sort of protection, in that they're opening up their lands to Indian investment and so on. I'm a little bit at cross purposes as to how that would not protect first nations as investors.

There's also a case from 2004, where then chief Fontaine intervened on behalf of investments in a tobacco company and actually won the case because of the indigenous rights that were there.

National Chief Perry Bellegarde: I think on the bigger issue, Mr. Ritz, in section 35 of Canada's Constitution, existing aboriginal treaty rights are recognized and affirmed. That's part of Canada's Constitution, but there are also a lot of key things that are addendums to Canada's Constitution, like the Royal Proclamation of 1763, like subsection 91(24), like the 1870 order in council. All of those are part of addendums, but existing aboriginal treaty rights....

We have an inherent right, section 35. It's the definition of the inherent right to self-determination. We still have unextinguished aboriginal title to lands and resources, so that's contained therein.

Indigenous peoples haven't been involved with the TPP. We have never been involved with NAFTA. We haven't been involved with FIPA, all these international agreements.

From an indigenous person's perspective, what is Canada doing going out there and selling all these natural resources to the world, when we've never given them up as indigenous peoples? That's where we come from. Again, the example of peaceful coexistence and mutually benefiting from sharing the land and resources, we can get into that.

In Saskatchewan, Manitoba, and Alberta, there's a whole other thing called the Natural Resources Transfer Agreement, which is something else we have to get into, because we say we share this much, the depth of a plow, nothing underneath. All these things come into play.

The basic bottom line is, when Canada is going out from a first nations perspective there is this title thing or this idea of assumed crown sovereignty, assumed crown jurisdiction. That's what we're going to start getting into, because the doctrine of discovery and the concept of *terra nullius* are starting to be viewed as illegal and racist doctrines. That's where we're coming from, so when Canada is going out, we're saying indigenous peoples have to be involved, free and prior informed consent, duty to consult and accommodate, but recognition of jurisdiction.

Hon. Gerry Ritz: Your concept, and I like it, of a first nations trade commission would be the venue, would that be the avenue?

National Chief Perry Bellegarde: That's part of it, Gerry.

Hon. Gerry Ritz: Thank you.

The Chair: Thank you, gentlemen.

We'll now to the Liberals and Mr. Dhaliwal, for five minutes.

Mr. Sukh Dhaliwal (Surrey—Newton, Lib.): Thank you, Mr. Chair.

Thank you to the presenters. Some of you have already touched on how you feel about the TPP. I would like to ask you if you want to add something. What are your feelings on consulting you in a meaningful and effective way, so that indigenous peoples' rights are protected in the TPP?

Dr. Pamela Palmater: Thanks for the question.

It's really several issues. One, it's a matter of joint jurisdiction, legal jurisdiction. First nations have not been involved in any of the process and they should have been involved because it involves our lands, resources, people's intellectual property, and the environment, all things that protect indigenous peoples.

The other major concern with the TPP and the problems with legal interpretation in litigation at international tribunals is that you have a country like New Zealand, which is very similar to Canada, which made a specific protection for the Treaty of Waitangi. Canada chose not to. When you're talking about arguments that are going to be made at international forums, if Canada intended for it to be protected, it would have and it did not.

The other problem with state positions is that we've just left a decade in which Canada denied it had human rights obligations and indigenous rights obligations in the international community. That was for at least a decade. Thankfully, Canada is changing its position, but those former positions can and will be used in TPP litigation when it comes to interpreting whether or not aboriginal treaty rights will be protected.

That's only on the positive protections. There's also a negative side. Even if Canada could argue that it's allowed to engage in favourable activities and decisions with regard to aboriginal people because of the Constitution, investors will argue that it doesn't have the negative right. If Canada decides there's going to be a moratorium on hydro fracking because of the damage to the environment, that's going to be a problem in litigation because they won't be able to hide under the clause of more favourable to aboriginal people, because it's a negative decision that's being made.

There are literally hundreds of problems like that with the wording in the TPP with regard to indigenous rights and human rights.

● (0925)

National Chief Perry Bellegarde: Again, slow the whole ratification of the TPP down to make sure there's full inclusion of indigenous peoples, because it's going to affect our rights, not only nationally but internationally, the crown had better get us involved sooner rather than later, because there will be legal.... We have to protect our rights, whether it's done politically and/or legally. If you don't start slowing it down and involving indigenous peoples, because of the inherent right to self-determination, our own lands, our own laws, our own languages, our own people, identifiable forms of government, five things for the inherent right to self-determination to be recognized internationally...well, we have that.

When Canada as a nation-state goes out, our caution is to slow it down. You had better involve us, because we have not only section 35 now, but we're also utilizing the UN Declaration on the Rights of Indigenous Peoples, and we're also going to be holding the Prime Minister and cabinet to account for their words publicly, about building a relationship based on rights, recognition, respect, and co-operation. Those are powerful words. To give them meaning, to give them effect, start including indigenous governments as you start going forward. It's a simple request.

Mr. Sukh Dhaliwal: If those issues are taken care of, do you feel that the TPP will bring opportunities for creating wealth in the indigenous communities?

National Chief Perry Bellegarde: There's no question, no question. I use Chief Reg as an example, but there are many examples. We have 634 first nation communities. Some are involved with lumber, some with potash, and some with uranium, and eventually it's going to be water. It's all of these things.

Inclusion is about wealth creation and job creation, but we also have responsibilities as indigenous peoples to protect the land and water. We need long-term sustainable economic development strategies, our full involvement and full inclusion. Yes to creating wealth, yes to creating jobs, yes, but also make sure that the land and waters are protected not only for our children but for your children and grandchildren. We're all in this together, so it would make sense to work together collaboratively on this.

The Chair: Thanks, Mr. Dhaliwal. Your time is up, but you might be able to add in later with another one.

We're going to the NDP and Ms. Ramsey for five minutes.

Ms. Tracey Ramsey (Essex, NDP): Thank you so much for being here today. I am truly saddened that it has taken this long to have first nations people at the table on this trade deal and other trade deals that we have entered into in the past 10 years.

I deeply respect your rights to self-governance and to your self-determination. I think it's clear that the TPP could threaten or limit our future options for building an honourable and respectful relationship with treaty partners. To me it looks like a direct challenge to reconciliation and to putting into effect the recommendations that came out of the TRC.

I wonder if you could speak to the ways that you see that the TPP could threaten that.

•(0930)

National Chief Perry Bellegarde: Go ahead, Pam. You have some points to make.

Dr. Pamela Palmater: I would just say that the TPP as it currently reads would not bring the kind of benefit, in my opinion, to first nations that's being talked about here. Canada's only specific mention is on the procurement policy, and that's where indigenous peoples tend to be relegated, jobs and training, beads and trinkets. We're talking about ownership of our own lands and resources, which are in the billions and trillions of dollars.

You give me my lands and resources, and I'll train and contract with my own people. That's part of the problem. We're not protecting the benefits, or the environment, or the devastating impacts that will happen with other people extracting from our industries. Part of the

problem here is that this can be addressed. New Zealand did manage to get a substantive amendment, after the TPP had closed, on intellectual property rights for traditional Maori plants and medicines that were important to them. There's no reason that Canada can't argue for the same.

UNDRIP alone requires free, informed, and prior consent, and you don't have it. UNDRIP has already been violated, as have numerous other international instruments. Our own Constitution has been violated. We haven't even been informed or consulted yet. We haven't even had the basic minimum of the consultation process.

There are significant legal problems, very limited potential benefits, and a great potential for harm for indigenous peoples and Canadians alike.

National Chief Perry Bellegarde: Yes, it's just simple to respect Canada's own Constitution and recent Supreme Court of Canada decisions, from the Delgamuukw case to the William case, especially since we hold up the William case. The Supreme Court of Canada says to recognize aboriginal rights and title. Again, from an indigenous person's perspective, we're sharing this beautiful country called Canada. We're sharing the resource wealth. We're not supposed to be poor in our own homeland, but that's what we see.

We need to be involved every step of the way, not only on domestic agreements when it comes to developing land and resources, but on international agreements. We have not been involved with NAFTA, and the United States is Canada's biggest international trading partner, but we're not involved as indigenous peoples and we want to create economic stability. Yes, from a first nations perspective, that's our way. It's balancing the environment and the economy always, so we have to be there.

With FIPA, we should be concerned greatly about FIPA and China and how they're going to be looking at coming into Canada. That's another agreement we weren't involved in, and this is all going to impact on rights and title.

Again, it comes back to creating economic certainty to make sure we're involved, to make sure that we balance the environment and the economy, but have our rights in section 35 of Canada's own Constitution respected.

Ms. Tracey Ramsey: Have you been consulted since the election? Under the current Liberal government, have you been consulted on the TPP? Currently, we're in the position where it's yes or no; there is no renegotiation to be had, there is no going back to the table. If that's the case, what is your position on TPP?

Dr. Pamela Palmater: No, we haven't been consulted. Most of the first nations chiefs and organizations I contacted before being asked to come here a week ago were saying, "TPP? What are the first nations issues?"

There's no money, no resources, and no information. No one's reaching out. You cannot say that you have consulted or even informed people if they haven't even heard of this process. Most people didn't even know what was happening here today.

National Chief Perry Bellegarde: I'd echo that as well.

Again, slow things down and get us involved. Before you build anything as the federal government, provincial governments, or industry, you build a relationship with indigenous peoples. That's the only way you're going to create economic certainty and involvement.

The Chair: Thank you.

We're going to the Liberals, and Madame Lapointe, for five minutes.

[Translation]

Ms. Linda Lapointe (Rivière-des-Mille-Îles, Lib.): Thank you, Mr. Chair.

I would like to thank the witnesses very much for being here today. I appreciate your contribution to our work.

I would like to follow up on Ms. Ramsey's question.

Ms. Palmater, you said that since the elections ...

[English]

Mr. Sukh Dhaliwal: Hold on.

[Translation]

Ms. Linda Lapointe: I always waste time with that.

[English]

The Chair: That's all right. We'll hold your time until everybody is hooked up.

• (0935)

[Translation]

Ms. Linda Lapointe: Thank you.

Ms. Palmater, you said that you have not been consulted since the elections and since we were elected.

For your part, Mr. Bellegarde, have you had a conversation with Minister Freeland?

[English]

National Chief Perry Bellegarde: We did have a telephone call.

[Translation]

Ms. Linda Lapointe: Okay.

[English]

National Chief Perry Bellegarde: We have to continue to build on the working relationship, no question.

[Translation]

Ms. Linda Lapointe: Thank you very much.

Mr. Bellegarde, you said that you had never been consulted on any of the international trade agreements. You mentioned NAFTA.

Since you were not consulted, have steps been taken in this regard?

[English]

National Chief Perry Bellegarde: Not yet. No, we have not done anything on any of these international agreements because of a number of things. Number one is capacity in terms of proper analysis as well as proper legal challenges. It takes resources, both human and financial, to do these things properly. There aren't those kinds of resources available to do a proper analysis and to do a proper legal fight.

Again, on all of these things, they can go back; I can go back 100 years to different pieces of legislation, both domestically and internationally, that impact in a negative way on our rights. Again, capacity is the issue.

[Translation]

Ms. Linda Lapointe: Ms. Palmater spoke about this before.

Have your organizations studied the costs and benefits of the TPP for aboriginal peoples in Canada? Have such studies been conducted?

[English]

National Chief Perry Bellegarde: No, we have not done any great in-depth analysis of the pros and cons of these things. That's work we need to engage in as soon as possible because these are huge agreements and there's a lot of work involved.

I just want people around the table—NDP, Liberals and Conservatives—to get the point that we need to be involved. We need to have inclusion to protect our rights, but as well, there are economic opportunities and employment opportunities, yes, but as well the rights protection is key. We haven't been involved historically in any meaningful way, shape, or form.

It's 2016 now, and we have to. I think it's really in the best interest of this country and the world to do that, respecting indigenous peoples rights no matter where you are.

[Translation]

Ms. Linda Lapointe: Mr. Weinstein, you spoke about labour mobility and green cards for workers under agreements with the United States. I suppose you were referring to the TPP and NAFTA. Can you tell us a bit more about that?

[English]

Mr. John Weinstein: Yes. There are many Métis communities south of the border. The Métis nation emerged before the 49th parallel was established. There are tremendous linkages between the Métis communities, for instance, in southern Manitoba and southern Saskatchewan and the Métis communities in the Dakotas, Minnesota, and Montana.

The U.S., unlike Canada, doesn't recognize the Métis at all. Historically, the political consciousness of the Métis was much greater in Canada, where you had the Riel resistance, and stuff like that, and Métis provisional governments. South of the border, the American government did not deal with them as distinct people. Either they took land as settlers, white settlers basically, or they'd go to Indian reserves. That was the policy. In fact, there are some reserves in South Dakota that are predominantly Métis, and where the Michif language has been better preserved than in Canada.

For the Métis people, in terms of kinship and history, that border is artificial. A lot of Métis historically would work down in the United States. For a long time, the U.S. policy, even though they didn't have a Métis policy, would allow the presidents of the Métis provincial organizations to write letters confirming that people were Métis, and then they could get green cards to work down there.

I'm not saying it's because of NAFTA, or prior to that the Free Trade Agreement, that all of a sudden that disappeared, but there's been a tremendous erosion in that. Now I think it's pretty much impossible for Métis to get green cards to work in the United States, even though a lot of them like to work down.... Some go to New York and L.A., but a lot of them work in Minneapolis and the Dakotas. It's a big problem that's had a tremendous impact on livelihood.

• (0940)

[Translation]

Ms. Linda Lapointe: Thank you very much.

[English]

The Chair: Thank you, Madame Lapointe.

That ends the first round.

We're going to the Liberals, and leading off the second round is Ms. Ludwig.

Ms. Karen Ludwig (New Brunswick Southwest, Lib.): Thank you all for your excellent, well-informed presentations. All I can say is, wow, thank you very much.

Listening to you, there were definitely some themes that I heard. They included the importance of strengthening our nation-to-nation relationship, the need for aboriginal economic stability and prosperity, the territory-to-market access, the legal interpretations, and also the slowing down of the process.

Mr. Bellegarde, you had mentioned the need for trade services for first nations, as well as trade investment funding. Are you familiar with any examples internationally that are good models?

National Chief Perry Bellegarde: Not off the top of my head.

I'm looking at my staff. No? Nothing.

There might be, but I can't think of anything off the top of my head, where, "Hey, yes, this is doing...". No. I'm drawing a blank.

Ms. Karen Ludwig: I'm going to make a note of that for our studies as well.

Thank you.

What about opportunities for exports and threats from imports? Looking at your communities and the distinct opportunities that are there, what are some of the opportunities you see for exporting from Canada, as well as the threats from imports?

I would also like to hear a bit more about labour mobility. We've heard from other witnesses about threats regarding labour mobility, but certainly, Mr. Weinstein, you're talking about the opportunities in labour mobility.

National Chief Perry Bellegarde: In terms of exports, I'll go back to Chief Reg Bellerose of Muskowekwan with potash. It's the

only first nation in Saskatchewan.... They're right in the potash belt. It's Treaty No. 4 territory. They've done a lot of work with Encanto to look at developing the market. They have an offtake agreement with India to supply so many metric tons to India. That's a huge opportunity. I think there should be proper supports given from indigenous affairs, because they have to go through all these hoops, and everything else sets there, and then of course there's foreign affairs and international trade. That's one piece. There's a huge opportunity there.

Then you go around the country. If you go into British Columbia, there's unextinguished aboriginal title to the forests. There would be a huge opportunity there as well for the first nations in that territory to do logging in a sustainable way.

You look where all the natural resources are, and then you look to the indigenous peoples in terms of export. You can even look on the east coast if you want to start exporting lobster or anything else. Look at Eskasoni. Look at Membertou. Chief Terry Paul is doing great things just outside Sydney at Membertou.

There are different places. You just have to look at each territory, look at the natural resource wealth and what is being exported. That is where you start looking at partnerships with indigenous peoples and governments. That has to get done.

In terms of the labour mobility piece, this is Canada's biggest gem. The fastest-growing segment of Canada's population is young first nations men and women. Investing in education and training is key. That has to be the big thing.

As well, the whole temporary foreign workers.... We have to get our young men and women involved, more so, getting them educated, getting them the skills, the training, and life skills so that they can be effective in these jobs. That is where we have to find that balance. I know the prairie provinces.... TILMA, the Trade, Investment and Labour Mobility Agreement, is one of the things between the provinces. However, a lot of our people stay home in their communities. You have to start looking at creative things, such as busing from the first nations reserve. All sorts of things can happen. The bottom line is that you have human capital growing here. Invest in human capital.

Ms. Karen Ludwig: Certainly, I would imagine that broadband Internet would also be an issue in a number of areas, so the trade of services would also—

• (0945)

National Chief Perry Bellegarde: Infrastructure, access.... Yes, definitely. It is all linked.

Ms. Karen Ludwig: Are there any threats from imports?

National Chief Perry Bellegarde: Let me think about that and come back to you.

Ms. Karen Ludwig: Okay.

Dr. Pamela Palmater: The biggest threat to indigenous trade import or export is Canada itself. Despite having treaties that guarantee the right to trade and our own self-governing and aboriginal rights to trade, Canada has made things like gaming and tobacco criminal acts. It does not recognize the Jay Treaty and our right to cross and work over the border, as the United States does. Many of our people are in jail or suffer fines from the Canada Revenue Agency in the hundreds of millions of dollars because of the crackdown on our own right just to maintain economies, let alone trade. Oftentimes we are prohibited or monitored when we do any international trade scenarios.

This isn't a process. We can't save the TPP. We are not in negotiations. It is a done deal. It has already violated the Constitution. It already violates our rights. It cannot be fixed. The worst and biggest threat to us.... We already have transnational corporations and domestic ones destroying our territories. Imagine allowing more international ones into our territories when we can't even sustain ourselves or protect our territories.

The Chair: Thank you.

We are going to the Conservatives now, for five minutes.

Mr. Hoback, you have the floor.

Mr. Randy Hoback (Prince Albert, CPC): Thank you, Mr. Chair.

Thank you all for being here this morning.

Mr. Weinstein, you talked about a letter to Mr. Lametti about your views. Could you send that letter to the committee?

Mr. John Weinstein: Yes.

Mr. Randy Hoback: Great, that would be appreciated.

Mr. Bellegarde, a lot of the things you talked about, your five points, wouldn't be just TPP-related; they would be related to any type of trade deal. Would that not be fair to say?

National Chief Perry Bellegarde: Yes.

Mr. Randy Hoback: Whether we are talking CETA, NAFTA, or let's say Canada-China or Canada-India trade deals, you would still want to have that.

National Chief Perry Bellegarde: Yes.

Mr. Randy Hoback: Okay.

You talked about trade commissioners. Are first nations able to use the existing trade commissioners who are already positioned around the world, or do you think it needs to be enhanced with aboriginal content, for lack of a better word?

National Chief Perry Bellegarde: It needs to be enhanced. Some things are there, but it is weak. Again, when you think of 634 first nations and 58 different nations, how are they involved in international trade? It is weak.

Mr. Randy Hoback: It is always a problem. You have all these people. All have different needs and wants, and you try to spread that around the world. It is pretty tough. How do we utilize what is there to the maximum benefit, including first nations?

National Chief Perry Bellegarde: I think you have to start looking at all your key government departments and have an

indigenous forum as part of advising the minister and the cabinet on each of these files. You have to have indigenous peoples involved within export, or whatever the department is. I don't know if they have that. If they do, they have to beef that up. That applies to every government department.

Mr. Randy Hoback: In the technical summary, I will just read one point. It states:

Ensures full policy flexibility so that Canada can maintain or adopt new measures concerning rights or preferences provided to Aboriginal peoples and minority groups.

When you go into the actual agreement, for example, under government powers or state trading enterprises, aboriginal is protected. It is identified right in the agreement itself. When I see that, it looks to me like we have a lot of flexibility to protect the rights of first nations and aboriginals within the agreement itself on the TPP. Are you aware of that?

National Chief Perry Bellegarde: I am not totally aware of it, to be quite honest. I have to get more of my head around that whole clause. The only thing I would say.... If that is the only clause they have in there, what is the practical application?

Mr. Randy Hoback: Gerry talked about how it is embedded into our Constitution and our charter. Basically, what it is doing is saying that all those policies and principles, even if they haven't been defined yet by us, are protected.

National Chief Perry Bellegarde: That's a good thing, but you have to build upon it and be clear on it. Is it going to respect section 35 rights? Are there going to be references to the UN declaration rights? Is it going to be the human rights-based approach, looking at the—

Mr. Randy Hoback: I'm a bush lawyer like you, so there's more to be fleshed out, for sure. I hear where you are coming from.

The ability is there. It's been put into the actual agreement itself. I guess we'd have to look at CETA to make sure it's there. Whether it's in NAFTA or other agreements.... When they talk about the three amigos coming forward, maybe that's something that should be added into any future agreements.

National Chief Perry Bellegarde: What's the mechanism to ensure that's respected?

Mr. Randy Hoback: That's always an issue.

National Chief Perry Bellegarde: What are the mechanisms that are there to make sure these rights are followed up, implemented, respected, and honoured? That's always going to be the big thing, the mechanism and the process.

Mr. Randy Hoback: Again, the courts are that mechanism. You have the ability through the courts to ensure that this is maintained.

When we look at the trade investment fund you talked about, how do you see that operating? I know you didn't get a lot of time to talk about it. Do you want to flesh that out a little more on what that would look like?

• (0950)

National Chief Perry Bellegarde: I'm going to turn to the best legal counsel, my technician who put the notes together. I just like talking.

Mr. William David (Senior Advisor, Assembly of First Nations): This is hardly my strong suit, sir, but the trade investment fund that I believe we're looking at is a consolidated fund to provide, essentially, capacity support that you would run with the trade commissioner service for first nations that are looking to engage in export, as well as for those first nations that may be impacted one way or another through the TPP and through foreign investments.

Mr. Randy Hoback: Right now I'm not sure what the current government is doing—and they might have a different title—but the previous government had workshops called Go Global, where they went to all the different cities throughout Canada and talked about how to utilize EDC, BDC, and CCC, Canadian Commercial Corporation, and learn from other people who are trading their experiences. How do we include first nations in that, to ensure they have the chance to participate in that?

My other question is whether, in these negotiations, and these are very public negotiations, there was anybody who said you couldn't be part of the consultation process.

The Chair: We just have a half a minute, so be quick on the answers.

Mr. William David: I'll be very quick.

To answer your first question, I believe it would really be better to have its own separate fund, part and parcel because of the experience first nations have had.

Mr. Randy Hoback: Build on first nation to first nation....

Mr. William David: With respect to the second one, as far as I'm concerned you have to be able to be informed. For example, the *travaux* have not been of use to us—

Mr. Randy Hoback: There are a lot of opportunities to be informed, and that's what I'm trying to say. Was there anybody preventing you from being part of it? Were you told, no, you couldn't be at this open house on TPP, or no, that you couldn't participate with the minister on this conference call?

Mr. William David: Nobody has ever provided us the *travaux* for the TPP.

The Chair: We have to move on.

We'll go to the Liberals now.

Mr. Fonseca, go ahead for five minutes.

Mr. Peter Fonseca (Mississauga East—Cooksville, Lib.): Thank you, Mr. Chair.

Thank you very much for your presentations and for just how broad and historically deep they were.

I'll just follow along on this Constitution and constitutional duty, and the legalities. I'm a bush lawyer myself here, and I just wanted to ask if you feel the previous government met their legal duty in terms of their consultation with aboriginal communities.

I'll start with Mr. Bellegarde.

National Chief Perry Bellegarde: No, no. With all due respect, it was unnecessarily adversarial to the extent that the former minister spent to the tune of \$107 million—which is the truth, and I'll look to my colleague—fighting inherent rights and treaty rights. It was totally a waste of taxpayers' dollars.

Just embrace inherent rights and treaty rights, peaceful coexistence, and mutual respect, and find the proper tables for dialogue. You would build this country better than it is now, if that were to happen.

It took 25 years for the William case to work its way through the Supreme Court of Canada, 25 years. It's something that we've been saying all along, to respect aboriginal rights and title that we have as indigenous peoples.

Again, it's a long-winded answer, but the answer is no, and I just gave a couple of examples.

Mr. Peter Fonseca: Could that 100-plus million dollars have been saved if the process had been changed, and if we'd had a more open, consultative type of process?

National Chief Perry Bellegarde: Of course.

Again, let's just sit down and talk. Respect our rights. We're sharing this great country together. We have inherent rights. We have treaty rights. Let's just make sure we sit down and talk to make sure this effects and impacts everybody. This great country was founded.

How was Canada founded? John A. Macdonald created a treaty commissioner, and named Alexander Morris, on behalf of the crown to come out and cut a deal with Indians, indigenous peoples. They needed a mechanism, and what they came up with was treaties.

Of course, my chief, Little Black Bear, didn't have the strongest legal advice, I don't believe, in 1874. He didn't speak a word of English or French, but he spoke many languages, Cree, Assiniboine, and Saulteaux. Do you really think he understood these words “cede”, “surrender”, and “relinquish”?

[*Witness speaks in Cree*]

What I said in Cree was, “Cede. Surrender. Relinquish. No, no, no.”

Again, it's the spirit and intent versus the legalistic interpretation. We can understand sharing. We can understand getting along as a family. We are all to mutually benefit from the land and resource wealth, but that's where we have to keep taking things.

Mr. Peter Fonseca: Ms. Palmater, did you find out or look into the protections that were brought forth for indigenous peoples in New Zealand, at how the Government of New Zealand engaged with indigenous peoples and how they got to that point where they were able to bring those protections into the agreement?

Dr. Pamela Palmater: I don't have all the details. All I know is that the Maori obviously were involved a lot earlier on, although probably not as early as they should have been or New Zealand wouldn't have been arguing after the fact for intellectual property rights for plants for Maori. However, they did successfully get in the treaty exemption provision, which is under the exceptions part of the TPP; whereas under the TPP all Canada has is something on government procurement, which is no more than what they've also set aside for regular Canadians.

There's nothing indigenous specific to the procurement process, but it doesn't mention aboriginal and treaty rights. Again, for legal interpretation they would say you specifically identified indigenous people for procurement, but not for aboriginal and treaty rights, so the presumption will be you didn't intend to include it. While that was the doing of the previous government, this government really needed to step up right away and get indigenous peoples together and ask what can be done about this, if anything, to save it, and it hasn't. Now we're at a point where it has to be a no. There's no way to save this legally.

• (0955)

Mr. Peter Fonseca: That was my question.

Without substantive amendments to the TPP, as you mentioned, in your opinion Canada would not be able to ratify the TPP for those whom you represent.

Dr. Pamela Palmater: Canada could at least make the case for substantive amendments with a view to ratifying it in the future like New Zealand did, but Canada has specifically chosen not to. I don't know if at this point in time you're at a substantive amendment or a yes or no, and if it's just yes or no, then it's no.

Mr. Peter Fonseca: And—

Mr. Sukh Dhaliwal: We're at seven minutes.

The Chair: How did you know, Mr. Dhaliwal? You're watching him, are you?

You just have a little bit of time to wrap up there, Mr. Fonseca.

Mr. Peter Fonseca: Yes.

In terms of the amendments you would want to bring in, do you have anything that you would like to put forward to this committee?

Dr. Pamela Palmater: I have about 40 of them. The main one is basically the exemption of the aboriginal and treaty rights, lands, and resources from the application of the TPP. That's the main one. Obviously, the wording would have to be very specific.

Mr. Peter Fonseca: Would you please submit those 40-plus, or as many as you have, to the committee in a written submission?

Dr. Pamela Palmater: Yes, I will.

Mr. Peter Fonseca: Great, thank you. I appreciate it.

The Chair: Thank you.

We're going to the Conservatives now.

Mr. Van Kesteren, you have the floor, for five minutes.

Mr. Dave Van Kesteren (Chatham-Kent—Leamington, CPC): Thank you, Chair.

Thank you all for being here. It's a fascinating discussion.

I sit here as a settler. My parents came from the Netherlands, so I'm on one side of the fence and I'm on the other side of the fence. I listened with interest to what all of you are telling me and there's merit in what you say. There's no question about that.

However, I think about the implications as we move forward. I mentioned that I'm the child of an immigrant. There are some here who have generations of white people who have been here and there are others who have just arrived in Canada.

When I'm sent to Parliament, most of the good people in my riding, I would say the vast majority, would say, "Dave, get this settled. We have to get this thing settled." I think that most of us would agree with that too, but if we're going to do that....

Chief, I listened to you, and Ms. Palmater, I'm listening to your side too as a lawyer. Is there consensus among first nations groups as to, "Listen. This is what we want"? I'm asking you to give me a short answer on both.

Could you prepare a brief and say that this is what they want? Is there consensus across the board?

National Chief Perry Bellegarde: There's consensus across the board to move beyond the Indian Act. That's number one. That's been here since 1876. We need to evolve processes to move beyond the Indian Act and basically start working towards self-determination.

I've always told our chiefs, and I still tell them, "If you don't want other people's laws to apply to you, then you occupy the field and create your own laws." For example, if we remain under the Indian Act for band membership, there's no more status Indians in Canada in 40 years because of Bill C-31 and 6(1)(a) and 6(2) on how you can get status under the Indian Act. We have to create our own citizenship acts, no question.

We have to start talking about portability of rights. Basically we need to establish processes to move beyond the Indian Act and there is consensus on that. However, it's not going to happen in one year. It's not going to happen overnight. There has to be a process for that. There is consensus on that.

Mr. Dave Van Kesteren: I'm going to kind of lead you where I want to go.

The Chair: If I could interject, and with all due respect, is it true that you have to leave in a few minutes?

National Chief Perry Bellegarde: Yes. I'm sorry, honourable members, but I have to get to the other meeting on pipelines.

• (1000)

The Chair: That's fine. There was a dialogue between you and Mr. Van Kesteren. I want you to finish up. We'll continue on when you leave, but I want to thank you very much for coming.

National Chief Perry Bellegarde: Thanks for the opportunity. I'll just stay until this one's done, and then I have to go to the pipelines one.

The Chair: Dave, go ahead.

Mr. Dave Van Kesteren: You talked about the original agreements. You talked about the plow. I have to think that most Canadians would say, “Get this thing done.”

However, when we start to go beyond, when somebody in Chatham-Kent—Leamington, for instance, finds out that the land their great-great-grandfather cleared no longer belongs to them—and this is what I heard from you, Ms. Palmater—that's when the constituents are going to rise up. You're shaking your head, so you know what I'm talking about.

How do we get beyond that point?

National Chief Perry Bellegarde: How you get beyond that point is you have to change all the curriculums in Canada, from kindergarten to grade 12, to teach treaty and aboriginal rights. You have to teach about the residential schools, the impacts of the Indian Act, and the intergenerational effects of these things. That's what has to happen.

We're not saying we want all 33 million people to leave Canada. We're in this together as indigenous peoples and non-indigenous peoples. We're to mutually benefit from sharing the land and resource wealth. That has to be taught, and people have to embrace it.

We say there are more than two orders of government in Canada, federal and provincial, and there are more than two founding nations, English and French. There are also indigenous peoples, nations within a nation. Nations make treaties. Treaties do not make nations. That's what we have. That's the concept we have: peaceful coexistence and mutual respect, mutually sharing the land and resource wealth. Those are the principles we have to teach to our children, your children, your constituents, my constituents. We have to teach them about those three orders of government. The feds are responsible for certain jurisdictions, provinces are responsible for certain jurisdictions, and some are intertwined, but also first nations governments are responsible for certain jurisdictions. That's what has to be mapped out, to respect that.

Mr. Dave Van Kesteren: Ms. Palmater, do you want to weigh in on that?

Dr. Pamela Palmater: The most important question you asked here today was whether there is consensus among first nations about the TPP. We're here to talk about the TPP. Canada would know that, had it consulted with first nations. That's evidence that Canada didn't consult with first nations. How is anyone supposed to know if there's a consensus on the TPP? Most first nations don't even know what's in the TPP, what the analysis is. They don't have any research assistants, supports, technicians. A minister talking to the national chief of the Assembly of First Nations, that is not nation to nation, and it's not consultation.

Mr. Dave Van Kesteren: You're right about that, but that wasn't my question. I asked whether there was consultation among first nations groups on how we're going to move forward.

Dr. Pamela Palmater: It's all on our own dime. All the research I did was on my own dime. Any of the other first nations, the few that have the time and resources to work on it, are working on it on their own dime because there's nothing to support them.

Mr. Dave Van Kesteren: Are you working towards a consensus? That's my question.

The Chair: Sorry, but we have to wrap it up there. We're going to move on.

We're going to move to the NDP. Ms. Ramsey, go ahead.

Ms. Tracey Ramsey: I want to speak about ISDS. I think you and others touched on it a little bit. I wonder if you could speak to the Bilcon case in Nova Scotia. They were talking about the development of a quarry on some aboriginal land. I don't know if you're familiar with it. The Bear River First Nation and the Mi'kmaq were involved in it. Despite the findings, despite an environmental assessment that said this wasn't something to do, under NAFTA, the tribunal voted against them and Bilcon was able to go ahead.

If you can, Ms. Palmater, speak a bit about ISDS and how it has affected aboriginal communities in Canada.

Dr. Pamela Palmater: I can't speak to the specifics of that case, but I can talk to it related to the TPP and other trade agreements whereby, whenever there's a dispute or there's arbitration, one of the biggest problems is that the majority of protections are with investors and not the states, and that according to all the United Nations experts, investors have been very successful in imposing fines or winning these cases against states that try to protect the environment or that try to protect food security or issues like that.

One of the issues with the TPP is that there's no process. There's no requirement that the arbitrators or anyone involved in the TPP know anything about indigenous rights and title. New Zealand specifically included a provision in theirs—I don't have the wording in front of me—which contemplated the fact that there should be a process that protects arbitrators and investors from interpreting treaty rights because that's a domestic issue, and it's a sovereignty issue as well.

There's no such protections in the TPP for Canada. Again, we have a problem. We are a country that was very specific about putting in that protection. The legal presumption internationally is going to be that Canada chose not to.

• (1005)

Ms. Tracey Ramsey: Okay.

I wonder if you could speak a little more to the constitutionality and how the signing of this agreement violates our Constitution.

Dr. Pamela Palmater: At its very core, the Constitution protects aboriginal and treaty rights. The Supreme Court of Canada has interpreted that to mean, at a minimum, information, consultation, accommodation, and at times, consent. Canada now supports UNDRIP and the United Nations' position that UNDRIP applies at all international forums. It's great that Canada supported it, but it would have applied either way.

As for free, informed, and prior consent, we weren't even informed let alone consulted, so that's already violated the Constitution. The fact that there's no robust or specific protections for aboriginal and treaty rights that are constitutionally based at a minimum also violates the Constitution because the jurisdiction to make decisions over aboriginal and treaty rights is taken out of the hands of the state with these independent arbitration units and individuals. First nations don't even get to make submissions.

One of New Zealand's recommendations is that the Maori be included, that they do joint statements at arbitration or international tribunals, that the Maori be able to submit amicus briefs, for example, and that they're part of the New Zealand team that goes to any negotiations or any litigation. Canada hasn't even contemplated any of that.

Ms. Tracey Ramsey: Okay.

The Chair: Thank you. That wraps up your time.

We just have one more MP, and that's Mr. Peterson.

Go ahead, sir. You have five minutes.

Mr. Kyle Peterson (Newmarket—Aurora, Lib.): Thank you, Mr. Chair. I want to thank everyone for taking the time to be here today. I thank Chief Bellegarde for his remarks and his presence with us today.

I have a few questions. There are a lot of bush lawyers around the table, but I am a lawyer, so I'm going to take this from a legal perspective. Some of my colleagues may refer to me as a bush lawyer.

Voices: Oh, oh!

Mr. Kyle Peterson: Mr. Hunter, you're in B.C., and I know you got up early to be with us today. I want to give you a chance to elaborate a little on a B.C. perspective, an aboriginal perspective, on this deal and trade in general. You were cut off on your time, so I'll give you a chance to elaborate on your earlier comments.

Mr. Troy Hunter: Thank you.

I haven't had a chance to consult with a lot of folks in B.C., other than a client who says that while they have resources and would like to do partnering and get economic development going in their community, what it comes down to is that there's been a lot of economic progress made in the past 100 or more years where indigenous peoples have been excluded from that.

The document that I referred to, the 1910 "Memorial to Sir Wilfrid Laurier", speaks very eloquently about that. They said that they were to be sharing the resources and waiting to get ahead, and all these promises had been made. Here we're talking about the TPP, and there's virtually no consultation with indigenous peoples, as far as I'm aware. I did have a cursory look last year at some of the measures, the new measures that could be implemented for indigenous peoples. I know there is a proposal for an energy corridor. That's what I suggest; perhaps that could be a special measure by recognizing it as a special reserve and making it federal land that's jointly operated by not just one band but many bands, as a joint band. There are possibilities that exist, but those conversations haven't even been held, as far as I'm aware.

The other thing is creating some sort of advantage for indigenous peoples. That's what's necessary here, because for the past 200 years there have not been those advantages. In order to level the playing field and close the economic gap, we need to make it more possible for foreign national corporations to make partnerships with indigenous groups that enhance the economy and the resources that are available to indigenous groups, and to take a sharing in that. That's from my perspective. I think that's what our ancestors envisaged being able to happen, and we need to take those special measures to make it happen here.

• (1010)

Mr. Kyle Peterson: I appreciate those comments. Thank you for your input.

On that note, I think I'm hearing a consensus. Correct me if I'm wrong, but nobody here is opposed to trade per se. Nobody here is necessarily even opposed to a TPP. It was more the process, the non-inclusion, the fact that there's a deal and you're just kind of being consulted about it now. Is that fair to say, or are you always opposed to international trade?

Dr. Pamela Palmater: No, of course not. First nations have been doing it a lot longer than Canadians have been, but it's not only the process. You can't undo the fact that we were excluded. It's the content of the TPP as well. Even if you had included us and this was the result, we would still be opposed.

Mr. Kyle Peterson: Right. I guess I was assuming that, were you included, the result would have been different because of your inclusion.

Dr. Pamela Palmater: We wouldn't have come to this result had we been included.

Mr. Kyle Peterson: Yes, that's what I was assuming.

Dr. Pamela Palmater: Yes.

Mr. Kyle Peterson: Okay, that's good.

Mr. Weinstein, is that fair to say for the Métis as well?

Mr. John Weinstein: I think we look at it from a somewhat different perspective. Instead of saying yes or no to the agreement, because I think practically we don't think we're going to really have that much of a meaningful impact on the outcome of that question, there is a third option, which is, what's in it for the indigenous people, and what type of measures will be taken to proactively ensure that indigenous peoples benefit from it?

One of the representatives here mentioned that there's a number of provisions in there that shelter section 35 rights, shelter procurement programs, shelter aboriginal financial institutions as state-owned enterprises so that their investment practices aren't challenged. That's fine, but that's really kind of protecting the status quo. It's just saying that the limited progress that we've made won't be reversed. However, in terms of exploiting the opportunities that come out of the TPP, it would be helpful if the government could indicate what type of measures are going to be taken to encourage joint ventures with foreign investors, things like that. That would really be key.

I know the current government has established nation-to-nation relationships with the three indigenous peoples as a priority, and we're involved in the environment and climate change talks, health accord talks, on that basis, which is very good. The same approach, I think, should be taken to the trade initiative. As I said, and as the AFN has pointed out, the MNC, indigenous peoples were the original free traders.

Some measures have to be taken. Whatever proactive measures could be taken or signalled to enhance the international trade position of indigenous peoples, there would be—

The Chair: Thank you, sir.

Thank you, Mr. Peterson.

I thank all the witnesses for being here today.

Thank you, sir, for being with us by video from B.C.

We're going to have a break for a couple of minutes for everyone to clear the room and then we're going to go in camera for future business.

[Proceedings continue in camera]

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