HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Indigenous and Northern Affairs

INAN • NUMBER 069 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Monday, September 25, 2017

Chair

The Honourable MaryAnn Mihychuk

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● (0900)

[*English*]

The Chair (Hon. MaryAnn Mihychuk (Kildonan—St. Paul, Lib.)): Good morning, everybody.

It is our great pleasure to be in the traditional territory of the Tsawwassen and to be here in a beautiful hotel. We want to thank you for your hospitality in British Columbia.

We, as the national Standing Committee on Indigenous and Northern Affairs, are on a cross-Canada tour to discuss land claims, both comprehensive and specific land claims.

I need to get the meeting to order because we have very precise rules. We want to give you enough time to present, to have a wholesome opportunity for members of Parliament to ask questions, and for you to present your perspectives.

Thank you again for coming forward. You have 10 minutes to do your formal presentation, and then we'll take the rest of the hour to do a question and answer process.

I turn it over to you. I am not sure who is starting out, but welcome.

Ms. Celeste Haldane (Chief Commissioner, British Columbia Treaty Commission): Thank you.

First I would like to acknowledge the Tsawwassen First Nation as well as thank the committee for the invitation for the treaty commission to come and briefly present this morning from a modern treaty perspective.

The key point I would like to raise is that the treaty commission is the independent body that oversees negotiations for the reconciliation of indigenous rights through modern treaties. The evolution of case law in Canada and, internationally, the UN Declaration of the Rights of Indigenous Peoples have further clarified that treaty negotiations are a constitutional imperative mandated by section 35 of the Canadian Constitution. As such, the treaty commission's role is critically important in assisting the three parties, Canada, British Columbia, and indigenous nations, to live up to this constitutional and legal imperative. A new era of recognition of indigenous rights is at hand, and the B.C. treaty negotiations process is well placed to embrace this change and leave the country in reconciliation. Reconciling must not only include the sharing of land and resources but also the sharing the jurisdiction, the sharing of sovereignty.

True self-determination for indigenous peoples, as mandated by section 35 of our Constitution and the UN declaration, cannot happen without it. I understand the importance of your committee's work and the questions that you're trying to answer when it comes to nationhood, nation to nation, as well as proper title and rights holders.

For starters, the recognition of indigenous rights must be a lasting nation-to-nation relationship through treaty negotiations, which requires the recognition of indigenous rights, not extinguishment. The notion of extinguishment has been rejected outright by indigenous peoples participating in negotiations and has no place in modern-day treaties. The treaty commission recommends continuing to support the ongoing work of rights recognition because this is a fundamental component of reconciliation. The rights recognition mandate must be at treaty negotiation tables, and at the heart of nationhood is the thorny issue of overlap and shared territory.

Overlap disputes between indigenous peoples interfere with the implementation of the declaration by disrupting negotiations and slowing the advancement and implementation of treaties and reconciliations in general. These issues are made more complicated by the fracturing of indigenous peoples by colonialism and the creation of colonial and neo-colonial indigenous entities.

Indigenous peoples are best placed to resolve overlapping and shared territory issues amongst themselves. These issues and their resolution have been a part of traditional indigenous governance for thousands of years. It's an essential function for self-determination and self-governance. The treaty commission has been involved in this type of work, supporting nations and engaging with nations to resolve their territory and overlap issues. We have some examples, and I would be more than happy to discuss this issue later on. We also covered it in our previous annual report that looked at shared territory and overlap issues, which are best resolved amongst indigenous nations. That's why one of our recommendations to the Government of Canada is that there be dedicated funding to support first nations' or indigenous nations' efforts to resolve shared territory and overlap issues.

I'll provide a brief update as to where the status of treaty negotiations are in British Columbia. We have 14 first nations in advanced negotiations with seven nations in final agreement stages. We have seven nations in advanced AIP negotiations. Five of these are multi-community with several Indian Act bands coming together to build their vision of nationhood.

These efforts must be supported and are Canada's best opportunities to advance reconciliation in their nation-to-nation relationship. The completion of several of these advanced negotiations is possible within the next two years. To accomplish this, political will is needed from all parties. From the federal government, this political will must mean that the current efforts and energy devoted to reconciliation and nation-to-nation relationships as expressed in the 10 principles must find their way to these advanced treaty negotiations.

● (0905)

Another way to advance these negotiations is with a recommendation that the treaty commission puts forward, around loan funding. The required borrowing provisions in the comprehensive claims policy must be eliminated for given loans that are currently outstanding to communities that have been engaged in treaty negotiations. There is, I know, a lot of work happening at the federal level to address this issue. To the extent that any community has repaid any portion of its loans, that community should be reimbursed for those funds.

Reconciliation is a shared prosperity, and from the treaty commission's perspective, reconciliation means a true sharing of prosperity: of lands; of resources; of economic, social, and cultural as well as governmental space. Nowhere does the sharing of prosperity become more of a reality than at the community, local, and regional levels. Understanding that shared prosperity has the ability to advance reconciliation significantly in British Columbia and in Canada. When a first nation prospers, the entire region prospers—the theme of our 2017 annual report. My understanding is that a copy of our 2017 annual report has been provided to the committee.

The treaty commission has long held the view that modern treaties, when fairly negotiated and honourably implemented, are a successful mechanism for the protection and reconciliation of indigenous rights and can generate significant economic benefits for indigenous peoples as well as for the local, regional, provincial, and Canadian governments and their communities.

If we're going to maximize the full potential that treaties bring to advancing reconciliation, then consideration needs to be given to addressing some of the recommendations the treaty commission has provided in both our verbal as well as our written submission.

I will turn briefly to my colleague Tom, who will share his perspective on implementing a modern treaty within his community.

Hay ce:p qa'.

● (0910)

Mr. Tom Happynook (Commissioner, British Columbia Treaty Commission): Thank you, Madam Chief Commissioner.

First of all I want to bring your attention to the annual report. On the front cover is a photo from the Tsawwassen First Nation, who are implementing their treaty. You'll note that the very first section is about the Tsawwassen First Nation's treaty. I just want you to have a look at that.

Several years ago, a big wind storm blew trees down in Stanley Park here in Vancouver. We have a beautiful campground setting right on our beach, Pachena Bay, and it also blew some trees down there. We were still under the Indian Act. It took us seven months to get permission from the minister in Ottawa just to move those trees from the campground to a playing field in the middle of our village. Then we had to get permission to sell them. Luckily, we have a really great relationship with the forest company, and they purchase all the wood that our Huu-ay-aht forestry company produces. We sold the trees, and the money went into our trust account in Ottawa. That's when, through proposals to the minister, we were able to beg for access to that money. The money was still in the hands of the Minister of Indian Affairs in Ottawa.

I spent 20 years at the Maa-nulth Final Agreement negotiations. We concluded our treaty, and our implementation date was April 1, 2011. We're six years into implementation now. We are close to the community of Bamfield. The West Coast Trail ends up in our village. We now own the local store, the local restaurant, the local motel, the local pub, two fishing charter resorts, the airport, and we have our campground, our forest company, and fishing licences. We are free from the shackles of the Indian Act and are now just blossoming into nationhood.

I wanted to share that story with you.

The Chair: That's a wonderful way to end that presentation.

Thank you so much.

Now we have the First Nations Summit, with Cheryl Casimer and Melissa Louie.

Ms. Cheryl Casimer (Political Executive Member, First Nations Summit): [*Witness speaks in Ktunaxa*]

First of all, I acknowledge Tsawwassen First Nation for allowing us to do this important business on their territory.

Also, thank you for the opportunity to make a presentation to you in your study on specific claims and comprehensive land claims agreements.

We have prepared a kit for you with a USB that includes my speaking points; the summit's submission to the federal working group of ministers on the review of laws and policies related to indigenous peoples and a list of recommendations that form part of that report; the national treaty loan amounts described for you; principles of a new first nations-crown fiscal relationship, a stand-alone document; a copy of the British Columbia Claims Task Force report; and copies of the British Columbia Treaty Commission Act and the Treaty Commission Act, B.C.

As a bit of background on the First Nations Summit, we were established in 1993 to support first nations' engagement in the made-in-B.C. treaty negotiations framework. The First Nations Summit is one of the three principals, along with Canada and British Columbia.

Our mandate arises from the tripartite 1991 B.C. Claims Task Force report, which was jointly developed by first nations, Canada, and B.C.; the 1992 agreement to set up the B.C. Treaty Commission as the independent body to facilitate treaty negotiations; and subsequent federal and provincial legislation and the First Nations Summit chiefs' resolutions.

The summit is the only body with the exclusive mandate to support first nations in conducting their own direct treaty negotiations with Canada and B.C. A critical element of the summit's efforts includes the identification of concrete, actionable steps to overcome negotiation barriers. In first nations-crown treaty negotiations with B.C., we are facing a number of process and substantive issues that pose significant challenges in treaty negotiations and must be overcome in order to reach treaties, agreements, and other constructive arrangements.

Addressing process and substantive negotiation issues and barriers must be undertaken in the context of implementing the Truth and Reconciliation Commission's calls to action and the United Nations Declaration on the Rights of Indigenous Peoples. Any review and redesign of the made-in-B.C. treaty negotiations framework or any federal or provincial initiative that might impact the made-in-B.C. treaty negotiations framework, including review and revision of Canada's comprehensive claims policy and related laws and policies, must include the summit from the outset and be consistent with the United Nations declaration and existing case law.

As to some key federal and provincial commitments, the summit acknowledges that we are currently discussing these important issues with the Standing Committee on Indigenous and Northern Affairs in a new political and legal environment that has important implications on these discussions. The summit welcomes the federal and provincial governments' unequivocal commitment to implementation of the Truth and Reconciliation Commission's 94 calls to action and the United Nations Declaration on the Rights of Indigenous Peoples, and parallel reviews of federal and provincial legislation. Further, B. C. has made the welcome and necessary commitment to implement the historic Tsilhqot'in Nation decision regarding aboriginal title and rights issues.

We collectively have a historic opportunity to positively and dramatically transform the relationship between all levels of government and first nations government. There is absolutely nothing to fear in the Truth and Reconciliation Commission's 94 calls to action and in the human rights standards in the United Nations declaration. We must put our minds together and combine our collective best efforts for constructive and long-lasting solutions.

Yesterday, during the reconciliation walk, the Attorney General of Canada, Minister Jody Wilson-Raybould, once again reaffirmed and recommitted that in order to have a positive crown-indigenous relationship, we must do it together.

In terms of our path forward and opportunities for collaboration, the summit takes this opportunity to highlight that full and effective collaboration from the outset of undertaking this important work is consistent with key international instruments and documents as outlined in the 46 articles of the United Nations Declaration on the Rights of Indigenous Peoples, the American Declaration on the Rights of Indigenous Peoples, and the outcome document of the September 2014 World Conference on Indigenous Peoples, all three of which Canada has agreed to.

As we move forward, what is required to accomplish transformation of barriers and challenges is new attitudes and tone in leadership and in the bureaucracy as a whole.

● (0915)

This work requires strong, bold leadership from all levels of government, including those bodies monitoring government initiatives. In this regard, the summit is optimistic about the perceptible shift in leadership at the federal level, with Canada's new 10 principles guiding its relationship with indigenous peoples, as well as the recent dissolution of Indigenous and Northern Affairs Canada and the creation of the two new ministries: Crown-Indigenous Relations and Northern Affairs, and Indigenous Services. These are a hopeful sign that Canada is serious about decolonizing its approach to indigenous issues, and to building a new relationship from a more appropriate foundation.

In reflecting on Canada's commitment to achieving reconciliation with indigenous peoples through a renewed, nation-to-nation, government-to-government, and Inuit-crown relationship based on recognition of rights, respect, co-operation, and partnership as the foundation for transformative change, we stress the recognition of aboriginal rights, especially through mechanisms such as modern-day treaties, agreements, and other constructive arrangements.

The summit has prepared a 50-page submission, which sets out key perspectives on the status of treaty negotiations in B.C. and key challenges and barriers. Further, it contains 30 recommendations to transform first nations-crown treaty negotiations in B.C., as well as highlighting key intersections between treaty negotiations and the new federal framework for reconciliation, including the reform of Canada's laws and policies.

In 1991, the B.C. claims task force reported, and the subsequent made-in-B.C. treaty negotiations framework was established in response to the profound failures of the federal government's comprehensive claims policies, which required first nations to prove their connection to their lands through a cumbersome and inappropriate process. The task force report provided a blueprint for a new and different made-in-B.C. negotiations framework. The policy-set direction in the task force report has over time been displaced by Canada's increasing reliance on its pre-existing, outdated, and unacceptable comprehensive claims policy. The intrastate negotiations have become position-based, as government bureaucrats are assigned to oversee the process, and in many cases, negotiate treaties. This is not helpful or conducive to reconciliation.

The summit continues to remain mindful of the Supreme Court of Canada's statements at paragraphs 20 and 38 of the Haida Nation v. British Columbia judgment, which provide that “Treaties serve to reconcile pre-existing Aboriginal sovereignty with assumed Crown sovereignty” and also that “negotiations, the preferred process for achieving ultimate reconciliation”.

The BCTC, established in 1992 by agreements among the principles, which are summit, Canada, and B.C., started its operations in 1993. Its role is set out in the B.C. Treaty Commission Agreement, and in ratifying legislation and resolution of the principles. The BCTC's independence is a fundamental component of the made-in-B.C. treaty negotiations framework. Among other responsibilities, the BCTC facilitates negotiations in B.C., a role that could be expanded to include dispute resolutions.

At various points in time since the inception of the BCTC, concern has been raised that Canada and B.C. have encroached too closely on the independence of the treaty commission. The summit continues to advocate that Canada and B.C. must meaningfully commit to fully respecting the independence of the B.C. Treaty Commission's allocation of negotiation support funding, and the principles that no one party should have unilateral control over first nations-crown treaty negotiations in B.C., and no party should have its expenditures reviewed by another party to the negotiations.

To provide important context about the importance of the made-in-B.C. treaty negotiations framework, it should be noted that 57 of the 99—or 58%—of the comprehensive land claim and self-government negotiating tables are in British Columbia.

This is all about relationships. We seek Canada's and B.C.'s commitment to take a leadership role in working toward reconciliation with first nations in B.C., including the negotiations of viable, fair, workable, and equitable treaties, agreements, and other constructive arrangements. It is not always about full comprehensive treaties; it can be a number of arrangements. Further in this regard, we are seeking Canada's commitment to a process that will ensure the decisions of the courts relating to lands, territories, and resources are fully implemented. We also seek Canada's commitment to finding creative solutions and working toward reconciliation and moving beyond dialogue regarding barriers to negotiations, and to the implementation of agreed concrete commitments, and to implementing steps to overcome challenges. We can see 30 recommendations in our submission related to that.

● (0920)

Governments must provide space for engaging bodies, such as the First Nations Summit, the first nations governments, and other key parties in developing instructions concerning the scope and content of the mandate.

The last point I wanted to make is about our negotiation support funding. Very quickly, that support funding is a hindrance to first nations in the negotiation process. There needs to be serious consideration given to the forgiveness of all existing treaty loans. To date, they total $528 million across Canada. We know that mounting debt is deducted from the final capital transfer payment, which erodes the net value of the treaty. There is also tremendous uncertainty regarding what happens to the debt if the parties are unable to reach a treaty.

The Chair: Thank you.

The final panellist of this session is the Union of British Columbia Indian Chiefs.

Welcome. I look forward to your presentation.

● (0925)

Chief Judy Wilson (Secretary-Treasurer, Union of British Columbia Indian Chiefs): *Weyt-kp*. I am Chief Judy Wilson from the Neskonlith Indian Band. I'm the secretary-treasurer for the Union of British Columbia Indian Chiefs, who represent over 100 first nations in B.C., largely those outside of the B.C. treaty process.

The union has supported and advanced the rights, title, and self-determination of our indigenous nations since its inception. Our mandate is to work towards the implementation, exercise, and recognition of our inherent title rights and treaty rights to protect our land and waters, through the exercise and implementation of our own laws and jurisdictions.

I'd like to thank the [*Inaudible—Editor*] people, on whose ancestral lands and territory we're meeting today, Madam Chair, with the standing committee on claims. We have provided some speaking notes, and we also have a formal submission that will be forthcoming.

Basically, we included some recommendations based on the recognition of title rights and four basic principles that we put forward.

The first is that all claims are human rights issues. This is articulated through international frameworks such as the United Nations Declaration on the Rights of Indigenous Peoples and the Organization of American States American Declaration on the Rights of Indigenous Peoples.

The second is that indigenous nations are rights holders. Canada cannot assume underlying title and then issue a new proprietary interest. This assumption reflects the colonial doctrine of discovery, which meant the British crown could unilaterally declare sovereignty over our territories. Instead, the free, prior, and informed consent of indigenous nations is required in the development of any of our land.

The third principle is that structural and systemic changes are needed. Canada must shift its idea of sovereignty and federalism to one that is inclusive of our indigenous legal orders, title rights, and treaty rights.

Fourth, all policies and processes must include joint development, reviews, and oversight. We can't say that's happening today, Madam Chair. It's been more unilateral, and continues to be, and we need that change. We need to be full and equal partners in any processes of legislative reform and ongoing oversight.

One exercise I looked at last year for myself was to look at all the reserve lands in Canada, and to find that actually they can fit almost onto Vancouver Island. Our lands and territories in Canada are vast. To take those lands and put us on tiny reserves is a violation of our human rights and displaces our people. That's a very small percentage of the lands that we hold now, and the rest are assumed crown lands. I just wanted to make that illustration.

In 1973, as you are aware, Canada made a unilateral decision to formulate these policies, but also to split comprehensive and specific claims—no one's mentioned that to date—into two separate processes. This created a lot of different barriers for our people. While the claims drag on, our territorial lands and resources are being taken. Trillions of dollars are being removed from our lands as these processes drag on. Our lands are being taken up, destroyed, and degraded.

Canada needs to understand these urgent issues for our indigenous nations. Early in August, the United Nations Committee on the Elimination of Racial Discrimination called Canada out on its discriminatory practices of violating the land rights of indigenous peoples. The committee called upon Canada to reform its policies. I was one of the delegate members who travelled over to Geneva to make those presentations, along with other indigenous nations from across Canada.

With its unilateral development and release of its 10 principles, Canada again failed to recognize the independent standing of indigenous peoples in international law.

I wanted to shed a bit of light on B.C. and how our issues are distinct. There's a small number of historical treaties signed in B.C. that are uniquely affected by the failure of the comprehensive and specific claims policies and procedures. The result is the crown governments' wide-scale denial of indigenous title to our territories. Canada still demands that we extinguish our inherent rights, but we cannot disassociate ourselves from the land. We are tied to the land. We are part of the land.

We also have hundreds of historical reserve claims, many of which are stuck in, or rejected by, the current process. Jody would have more statistics on that, and it's a large number here in B.C. As a result of all these injustices, B.C. nations have been at the forefront of land rights policy for decades. We know what would work for claims reforms. We struck a B.C. specific claims working group in 2013 at the union to work for a fair and just resolution to specific claims.

● (0930)

I'll talk a little bit about the comprehensive claims now.

The current policy still continues to demand termination agreements that result in de facto extinguishment of our indigenous title. The policy doesn't reflect the legal and political realities of the landscape. My colleagues mentioned Chilcotin and the UNDRIP and CERD and also the nation-to-nation relationship, but those are still bases for doctrine discovery.

We have several recommendations on the comprehensive claims; they are in your package. These include to work collaboratively with nations and to work collaboratively on any forums or policy to enable the agreement, other than the current process. Another recommendation is to create a nation-to-nation decision-making process.

I'll jump right to specific claims now. I am halfway through my remarks.

The background on the specific claims is as follows. Through UNDRIP we have the right to redress in cases of our lands being taken, used, or damaged without our free, prior, informed consent. The specific claims process must be the mechanism for this redress, but the indigenous nations face barriers at every turn. The process has been plagued with systemic biases and conflict of interest; a number of recent reviews and studies have shown that. Failures of the process affect B.C. nations disproportionately. Also, half of all claims come from B.C., and 53% of rejected claims come from B.C. as well.

I'll skip right to the recommendations.

Recommendation number one is to work collaboratively with indigenous nations to develop a truly independent process. The root of all the biases and barriers has been the conflict of interest mentioned earlier. Canada adjudicates all claims against itself. I can't see anywhere a place where that would ever be fair.

Real reform must begin with the creation of an independent process for claims adjudication, including the initial assessment of how a claim is validated. This needs to change; this is what all of our nations have been calling for, for decades. All previous policies have failed because they have not addressed Canada's conflict of interest.

I want to point out that optionally, the tribunal could play a larger role in assessing and adjudicating claims; however, the final form that this independent process takes needs to be decided collaboratively, with indigenous nations as equal partners. As you know, many of the tribunal decisions have been appealed, and that is a process that shouldn't happen that way.

Recommendation number two is to work collaboratively with indigenous nations to create structures of joint decision-making and oversight.

Recommendation number three is to provide sustainable research funding for this.

There is some summary that we have in our brief. I'll skip that and go right to the questions to the committee.

What is the overall objective and what are the expected outcomes for the study?

Can you provide more specific guidelines for the written submission and the types of evidence that would be most helpful for the study?

How will the findings shape current reform processes? Also, we want to know how the AFN-INAC joint technical working group review of specific claims and the working group of ministers on the review of laws and policies related to indigenous peoples will work together.

Canada has publicly announced that it's working towards this new relationship. How will Canada address the concerns of indigenous nations that the 10 principles continue to perpetuate colonialist doctrines and attitudes?

Those are the questions that we thought would help in moving our formal submission to you, along with some of the dialogue that we'll hear here today. These are all outstanding.

I appreciate the committee's time and effort in bringing this together so that we can start to have a real dialogue on what Canada is doing with all its policies and legislation, on how we're going to move towards a true nation-to-nation relationship based on recognition of the title rights of our people, and on how we can move into the way we will take to reform this and co-exist, as our ancestors said in 1910. We already had a framework laid out on fifty-fifty sharing and also on how we would work together to be great and good in this country.

Sxuxwyéyem.

● (0935)

Thank you, Madam Chair.

The Chair: Thank you.

Now we'll move into the question period. The first round of questions comes from MP Gary Anandasangaree.

Mr. Gary Anandasangaree (Scarborough—Rouge Park, Lib.): Madam Chair, I'm going to pass the mike to Mike Bossio. He will start the discussion.

Mr. Mike Bossio (Hastings—Lennox and Addington, Lib.): Thank you all so much for being here today to assist us in this very important report to hopefully provide guidance in order to move to the successful conclusion of a lot of the outstanding land claims, issues that exist right now in our country.

First, I just want to get a sense of the difference between the BCTC and the First Nations Summit. If I understand correctly, the FNS comes into play pre-negotiation to try to assist indigenous communities in establishing the right to claim, and then BCTC comes in at the negotiating process to assist indigenous communities through the claim. I know that might be really simplistic, but I'm trying to get a sense of where one begins, what the relationship is between the two, and their involvement in the process.

Ms. Celeste Haldane: Thank you. The First Nations Summit is a principal to treaty negotiations process. They're the political body. Where the rubber hits the road for the BCTC process is when nations submit their statement of intent to the Treaty Commission. That's where the negotiations start happening within that process. That's the clear distinction in a nutshell.

Mr. Mike Bossio: In your brief, you said:

> The honour of the Crown and Canada's international obligations demand that many different options for agreement be on the table, including non-treaty arrangements and consultation and accommodation processes.

In your view, what can some of those different options look like? I assume you're talking about, in one sense, comprehensive versus specific and that we can't get stuck in these two very clearly defined areas, that options need to exist above and beyond that. Can you give us a sense of that?

Chief Judy Wilson: I can answer part of it. I had my hand up; I think that's how we have to do it.

Part of it is that it wasn't really being advanced in B.C. The former provincial government had over 400 types of agreements. There were economic development agreements, resource agreements, and strategic engagement agreements. I was at a table in March of last year where our former premier told the minister, “I think we can say this works better than treaties”. I thought that was so atrocious, because that was not honouring the relationship with our people, even our inherent title and rights. She was bypassing addressing the issue of historical issues of title and rights and going to one-off agreements, as we call them.

The issue is that they did not want to look at the real issues on the table; they bypassed them. I didn't think that was fair, because they still had continued access to our lands and our resources through those 400 types of agreements, and those are still questionable.

Mr. Mike Bossio: Okay, thank you.

Cheryl, go ahead, please.

Ms. Cheryl Casimer: First of all, I'm not certain what you're trying to achieve with the question. Could you clarify again what you are seeking?

Mr. Mike Bossio: What do you see as the different options that need to be on the table? Those are good things to get on the record as part of the report, to guide us through this process.

Ms. Cheryl Casimer: The First Nations Summit, as a principal to the process, supports and advocates for those first nations that are participating in the made-in-B.C. treaty process. For the most part, those first nations that we represent are actually sitting at tables with Canada and British Columbia, working towards a comprehensive agreement.

What we have done recently as a principal, along with Canada and British Columbia, is to try to look at ways of achieving reconciliation through other means, aside from comprehensive agreements. We struck the multilateral engagement working group. Through that process, our technical team and our political team have been looking at other options.

You might want to just look at a sectoral agreement that you can enter into with Canada and British Columbia. You might want to look at a core agreement as well. We try to identify different options that first nations could look at in terms of how they might be able to advance that relationship.

● (0940)

Mr. Mike Bossio: Thank you.

Finally, you make a great statement here in the brief that, “at the root of all the bias and barriers, there's a basic conflict of interest, where Canada adjudicates claims against itself”—I think most of us could agree on that—and that “Real reform must begin with the creation of an independent process for claims adjudication”.

What do you feel that independent process needs to look like so that there's balance? How do we achieve that balance?

The Chair: Mr. Bossio, could you direct your question to a particular—?

Mr. Mike Bossio: It's to UBCIC; I think it's part of their presentation.

The Chair: Okay.

Jody Woods.

Ms. Jody Woods (Research Director, Union of British Columbia Indian Chiefs): First I'd like to thank the Tsawwassen for allowing us to do this work on their territory.

What we hear consistently from chiefs and communities is that they want a process established.... Calls for this have been coming since 1947. You'll see in the appendix of negotiation or confrontation that there is a list of 18 separate calls, mostly from government bodies or studies like this, calling for a truly independent process.

The key feature of it is that Canada not assess claims against itself. Currently, that's what happens. A claim is submitted, and Canada then assesses its validity. That validity is right now determining such things as access to negotiation dollars and access to full and fair negotiations. In order for this process to work and to bring about reconciliation, it has to be independent and it has to facilitate negotiations.

The Chair: Questioning now moves to MP Cathy McLeod

Mrs. Cathy McLeod (Kamloops—Thompson—Cariboo, CPC): Thank you, Madam Chair.

It's great to be in my home province. Normally on a Monday when the House is sitting, I have to travel.

I really appreciate your coming here today. Hopefully, being in Vancouver has made it a little bit easier to actually present to the committee.

I'm the only one from British Columbia. We have a very different and unique set of circumstances in British Columbia. Certainly, given Mr. Bossio's initial comments, I wonder whether it might be helpful—we have three very important organizations here—to hear a quick sentence from each of you about how you complement each other and how you take a different direction concerning where you think we need to go. I know it's a complicated question, but for the support of my colleagues, it might be helpful for them.

Chief Judy Wilson: Thank you, Cathy. I think you have a bit of a history of our organization, so you know very well how our organizations are rooted.

The union is rooted in our advancement of title rights and the protection of our land and water. We are definitely a non-treaty organization.

The way we came about as the First Nations Leadership Council was to work together. We didn't want government and the province to split us up, which historically has been the way they divide and conquer us.

The First Nations Summit does important work on their historical treaties, but so also does our organization, like others that are outside of treaties and don't believe the treaty process is the answer for them. We're still talking about one thing: we're talking about our inherent land.

The issue is, the province assumed jurisdiction over our lands. This is called the colonial doctrine of discovery whereby those assumptions were made, whereas we have never ceded, surrendered, sold, or exercised our title rights away.

The union does a lot of research work into this specific claim, and the comprehensive claim has its process through the treaty processes. It's really important that we work together.

● (0945)

Mrs. Cathy McLeod: Thank you.

Can I ask for the view of the summit?

Ms. Cheryl Casimer: Further to what my colleague, Chief Wilson, mentioned in terms of the leadership council, the executives of the First Nations Summit, the Union of British Columbia Indian Chiefs and the B.C. Assembly of First Nations make up what is called the leadership council. It is not a legal entity. It's just an initiative that brought everyone together, recognizing that it made more sense to work with each other in order to advance first nations issues collectively.

One of the main areas that we have full agreement on in terms of reconciliation is based on four principles that we developed as a collective of all chiefs in British Columbia. We've been using those to advance our issues around recognition and rights. You will find them in my presentation, on page 5, number 29, where it talks about the four principles.

First is acknowledgement that all our relationships are based on recognition and implementation of the existence of indigenous people, inherent title and rights pre-Confederation, and historic and modern treaties throughout B.C.

Second is acknowledgement that indigenous systems of governance and laws are essential to the regulation of land and resources throughout B.C.

Third is acknowledgement of the mutual responsibility that all of our government systems should shift to relationships, negotiations, and agreements based on recognition.

Finally, we must immediately move to consent-based decision-making and title-based fiscal relations, including revenue-sharing, in our relationship negotiations and agreements.

Those are the principles that move us forward in the work we do as the leadership council.

Mrs. Cathy McLeod: Thank you.

Ms. Celeste Haldane: I would say we all have the same goal when it comes to recognition and reconciliation. There are different pathways that indigenous nations are choosing to move their reconciliation forward based on self-determination and the inherent rights that indigenous peoples have to the lands and resources.

When it comes to the role of the treaty commission, we're an independent body and we're the only tripartite body in Canada to advance reconciliation. At the end of it, the goal is a modern treaty here in British Columbia to address the outstanding issues that we have since Confederation and even prior to Confederation. Our main roles are to facilitate, so our day-to-day work is to actually facilitate tripartite negotiations. Our body is also responsible for funding first nations that are in the treaty negotiations process, so we are the level playing field when it comes to indigenous nations negotiating through the modern treaty process in B.C.

Our other key mandate area is communications and public education. We utilize a variety of techniques, but at the end of the day the goal is to ensure that we have nations advancing reconciliation and recognition of their inherent rights as indigenous peoples through a modern treaty negotiations process. I hope that helps the discussion.

Mrs. Cathy McLeod: Thank you.

To go back, Chief Wilson, you talked about the splitting of the process. Can you elaborate on that piece a bit? Is the splitting an appropriate split between the comprehensive and specific, or...?

Chief Judy Wilson: In 1973 Canada made a unilateral decision to split comprehensive and specific claims into two separate processes, which created more new barriers to justice and restitution for indigenous nations. I believe that was just to slow down the process. After that, we had justice at last, in a review of the whole thing, but there are still barriers created with the conflict of interest.

It was still a failed way of.... If we have learned anything from it, it's that it wasn't appropriate.

Jody, do you want to speak to that?

Ms. Jody Woods: One of the direct problems was that it linked the resolution of specific claims to extinguishment. It meant that communities that were in any kind of comprehensive claims process had to sign off on their rights to have Canada's historical wrongdoings resolved and compensated for. That was one of the key barriers, and it was set up by that.

Mrs. Cathy McLeod: I see other people want to comment.

The Chair: We are out of time on this round, so we'll have to save that.

We are now moving questioning to MP Romeo Saganash.

● (0950)

Mr. Romeo Saganash (Abitibi—Baie-James—Nunavik—Eeyou, NDP): *Meegwetch*, Madame Chair.

[Member speaks in Cree]

Those were words of thanks.

It's certainly a privilege to have you before this committee. A lot of experience stems from this province in treaty negotiations and jurisprudence that is important for this country.

I want to start, because we touched on it briefly, with the whole issue of extinguishment. I'm from northern Quebec, where we signed the first modern treaty back in 1975, and I've always had a hard time reading section 2.1 of the James Bay and Northern Quebec Agreement whereby the Cree and the Inuit surrendered, ceded, and conveyed all of their rights in and to land.

I'm not sure that this provision is constitutional; such is my view. Certainly the Human Rights Committee back in 1999 declared that the extinguishment clause that we find in the James Bay and Northern Quebec Agreement was contrary to the right to self-determination. That's as early as 1999. I understand the rationale behind such a provision, but I want to hear your thoughts. Are there any other models that you would suggest for achieving the certainty that governments usually ask for?

Chief Judy Wilson: In 1910, our ancestral chiefs developed something called the Sir Wilfrid Laurier memorial. It already laid out a blueprint for us. It was based on coexistence and on sharing....50% of the resources. The other thing was that it had a relationship role in it. Our ancestral chiefs were very wise to say your laws won't interfere with us, and our laws won't....

They were establishing that we had our inherent laws. That was in 1910, and there was a failure of government to recognize that on a nation-to-nation relationship basis. They want, though, to hem us in on the basis of extinguishment and ceding and surrendering our title. We are distinct nations. We have our own orders of government. We have our own lands. We have our own languages. All of those things went into our 1910 Sir Wilfrid Laurier memorial. Even back then, they had it all framed out.

Ms. Melissa Louie (Legal and Policy Advisor, First Nations Summit): Thank you for your question. It's very relevant and very timely.

Here in B.C., I think we need to be really clear that we negotiate through the made-in-B.C. treaty negotiations framework. It's not under Canada's comprehensive claims policy. There's a really important distinction there in terms of the certainty aspect, or extinguishment, as we've heard it referred to throughout this morning.

In B.C., the made-in-B.C. treaty negotiations framework is moving away from any notion of extinguishment. In the modern-day treaties, you'll see that it becomes a non-assertion legal certainty technique as distinct from an extinguishment technique, and it has been that way for a number of years. What we've seen lately is the federal government shifting to a rights recognition framework, and we've heard Minister Jody Wilson-Raybould on several occasions actually speaking to the fact that treaties are meant to be evolving; that there is not a final relationship. We're moving away from language like “final agreement” because it's not appropriate; we're moving to a framework of treaties and rights recognition.

In terms of what types of approaches could work, in B.C. we've been exploring the non-assertion technique, which needs to be paired with an orderly process and periodic reviews to get at the heart of the fact that these relationships need to evolve and that rights are not stagnant. The Constitution and section 35 don't set out that rights are final and that once you establish them, that's it, the end of the story. They're meant to evolve. They're meant to be living, and the rights recognition framework is bringing us to that point.

I'm not sure whether Cheryl or my colleagues have anything to add.

● (0955)

Ms. Celeste Haldane: I think you articulated it quite well. The treaty commission continues to support the movement away from extinguishment. It was never seen as the underpinning of this process at all.

I agree that relationships need to evolve and there needs to be that space. There's that space within the Constitution, in that there is the evergreen model or the living tree model, and we are continuously supporting the evolution here in British Columbia when it comes to the rights recognition model.

I think there's enough room to explore what works here for indigenous nations and what works also for the federal government, and it is to ensure that case law is reflected and upheld, that there is a process inherent within the treaty negotiations process that actually envelops the new jurisprudence created across the country, and that relationships also must have the ability to evolve. That's the process we support here in B.C. There is amazing work under way to continue to push that forward, so our role is to continue to support that dialogue.

Mr. Romeo Saganash: Thank you.

I have one minute. There is one important question that I want to hear all three presenters on as well.

You quoted the Tsilhqot'in case. One of the interesting passages in Tsilhqot'in is where the Supreme Court says that section 35 rights and the Charter of Rights and Freedoms are “sister provisions”. In a way, I think we need to move to a human rights-based approach in terms of land claims in this country.

You all spoke about the UN Declaration on the Rights of Indigenous Peoples. Should that be one of the bases or the minimum standards that we find? Should that be the basis of a new approach in this country?

The Chair: We only have a few seconds.

Chief Judy Wilson: I think the biggest issue is fully implementing the United Nations Declaration on the Rights of Indigenous Peoples, not domesticating it under Canada's law and not reducing it to something else. It is a full international law that needs to be implemented totally.

The Chair: Thank you.

Questioning now will be for short periods of three minutes.

MP Gary Anandasangaree.

Mr. Gary Anandasangaree: Thank you, Madam Chair, and I too want to acknowledge the Tsawwassen people for allowing us to be here today.

I know that B.C. is unique with respect to the different jurisdictions in relation to comprehensive claims. I want to home in on a couple of questions.

You mentioned that there are 14 advanced negotiations taking place. I believe that five of them you mentioned are multi-nation frameworks. How does that process work? Also, what is required to have that level of co-operation among the different communities? Is it based on geography? Is it based on some shared tradition? What's the basis of that coming together?

Ms. Celeste Haldane: That's a great question. I think what that exemplifies is nationhood. When we're talking about and looking at nationhood in our country, that exemplifies it. These are nations that have entered into our process together to collectively negotiate. Some are negotiating at separate stages, but it really does represent a true nation that has entered into our process.

There's always room to have further discussions, because some that have entered our process are singular, but some are multi-nation, and yes, it takes a lot of political will amongst those nations to continue to negotiate. We continue to support them in a process.

Mr. Gary Anandasangaree: In your conclusion, you said that the ultimate goal would be to be free from the Indian Act. I think some of the issues that you mentioned were about hotels and tourism and so on. Is there a broader consideration on issues of education and control over health care and so on? Or is that already included in the treaty you've negotiated? If so, what lessons can we learn from that?

Mr. Tom Happynook: We are now able to focus our money on education. We're now able to also fund trades schooling, so that was a big one for us. We have youth who are now interested in getting a trade and so on or in going to school.

Health care we left with Canada. We had some thoughts about drawing down health jurisdictions, but we changed our mind. We figured that we could go bankrupt in a matter of months.

● (1000)

Mr. Gary Anandasangaree: Is that one of those sectoral areas that can have a broader...? For example, can you do the treaty and still do a multi-nation agreement on health? Is that allowed or is that...?

Mr. Tom Happynook: We purchase health services from the Nuu-chah-nulth Tribal Council. We still have that relationship. But it's in our hands. We get to decide whom we want to partner with to provide health care services.

The Chair: That concludes our formal panel number one today. We're going to take a short break for about 15 minutes, and we're going to be recommencing at 10:15.

Thank you very much for coming. I appreciate it.

I'm sure all of us had a good foundation on B.C. treaty negotiations.

Meegwetch.

● (1000)

(Pause)

● (1015)

The Chair: Welcome, everybody. First of all, I want to apologize for my pronunciation. It is going to be brutal.

Welcome to our standing committee hearings on land claims. I wish to introduce the Sto:lo Xwexwilmexw and the Te'mexw treaty associations. As we begin to explore land claims, the history of land claims, and the implications, we want to welcome you to the process.

B.C. is a special place. I come from the Prairies. I know a little about numbered treaties.

You come from a place where we've heard of successful negotiations of modern treaties. We look forward to your insights and the wisdom you can provide to us.

I open it up for you to begin. Each group will have 10 minutes to present, or if you've decided to split it some other way, that's fine, too. Then, we'll go into the rounds of questioning.

Welcome. I will turn it over to you.

● (1020)

Mr. Robert Janes (Legal Counsel, Te'mexw Treaty Association): Mr. Schaepe will start off.

Dr. David Schaepe (Technical Advisor, Treaty Negotiating Team, Sto:lo Xwexwilmexw Treaty Association): Thank you very much. It's a pleasure to be here on behalf of the Sto:lo Xwexwilmexw Treaty Association. Our chief negotiator, Jean Teillet, and I are grateful to have this opportunity and are here on behalf of our six chiefs in leadership: Chief Maureen Chapman, Chief Angie Bailey, Chief Derek Epp, Chief Mark Point, Chief Alice Thompson, and Chief Terry Horne, who is also a member of our treaty negotiating team.

I'm going to run through primarily 11 points we've put together that we want to bring to your attention with regard to issues around the comprehensive claims process, specifically, though, as it relates to the B.C. treaty process, with which we're engaged.

I also want to acknowledge being here on Tsawwassen lands in the Tsawwassen treaty nation area.

The content we're providing in this presentation is based on experiences of the Sto:lo Xwexwilmexw Treaty Association in comprehensive land claims negotiations and in participating in the B. C. treaty process since 1995—for the past 22 years. We're currently approaching the conclusion of stage four—agreement in principle—out of the six steps of that process.

This presentation, as I say, focuses on 11 key points and recommendations that are drawn from our experience over those past 22 years. We'll also be providing a written submission in a follow-up as this is a pretty high-level bullet-point type of presentation to begin with. We do need the time and more substantial space to add the detail that we feel we need to inform these points more fully.

First, I'll speak to certainty provisions with regard to rights recognition, as opposed to extinguishment. Second, we'll speak to core treaties and the need to review and transform the process of treaty as it links to the rights recognition basis and to the implementation of UNDRIP. The third part substantially is the introduction of shared decision-making over land and resources off treaty settlement lands.

Fourth is the area of jurisdiction and law-making. Fifth, we'll speak to fee simple land acquisition. Sixth, we'll speak to treaty settlement land status and administration. Seventh is negotiation funding, debt forgiveness, and grants. Eighth is community well-being catch-up and the need for fiscal reform to allow for that catch-up to happen.

Ninth is community well-being social reform and the need for social policy reform, specifically around indigenous children and families. Tenth, we'll talk to stage four in the B.C. treaty process as a barrier to treaty-making. Finally, on point 11, I'll talk to public education and reconciliation and the need for more substantial public education and understanding of reconciliation.

I'll go fairly quickly through these points with a bit of detail.

The first point is with regard to the need to change certainty provisions. We need to do that, and our recommendation is to immediately move towards the implementation of a rights recognition model and language consistent with UNDRIP and a human rights foundation to treaty-making fundamental to reconciliation, and not pursuing and eliminating altogether any aspect of extinguishment as a factor of treaty-making and the core to what treaty-making is. Again, that also moves us away from the current language. It still embodies to some extent extinguishment when we're talking about modification in non-assertion models. We need clear language that is specifically and explicitly based on rights recognition and non-extinguishment.

Extinguishment is a non-starter for many of our community members and fosters an ongoing critique of treaties. When we move into rights recognition, it opens the door to a wider range of support . Also, this moves us into the next point here, which is a wider range of options for treaty-making that are not full and final, where the rights are not nailed down in the four corners of the treaty, as is all too often the objective of treaty-making at this point in time.

The second point is on core treaties and the need to review and transform the process of treaty-making. We see core treaties as the foundation for developing relationships across the spectrum of rights, based on the principles of the Tsilhqot'in decision and the implementation of UNDRIP. That includes authority, management, access and use to be implemented, revisited and revised, and updated as a matter of creating a living treaty model, the evergreen living tree model.

● (1025)

Core treaties can contain elements of but not necessarily all the rights that exist. We don't need these to be considered full and final, because we don't want them to be considered a full and final agreement but rather a treaty. In the SXTA, we've resisted the idea of this being a final agreement. We've insisted on it being called a treaty, an agreement establishing relationships between nation and nation—again, consistent with UNDRIP and with Canada's 10 principles—and have said that these relationships in these documents and these treaties can be and should be reviewed every few years in an orderly process for change.

Tied to recognition, core treaties, and treaty-making is the aspect of shared decision-making as something we're putting forward as, again, substantial, and that needs to be developed, implemented, and recognized within treaty-making. The sharing of decisions, based on the recognition of title that indigenous peoples are owners of the land and the resources and therefore have a say in how those lands and resources are used and managed, is substantial. It is also an element of the fiscal policy that we mentioned before. Fiscal policy is an element of the resources that are being extracted, and where, when, and how that happens needs to be a factor of the decision-making by indigenous peoples, but also, the revenues resulting from that extraction need to be understood as part of the revenues of the indigenous peoples themselves.

There's a Halkomelem saying that will be challenging for the interpreters. [*Witness speaks in Halkomelem*] It means: “This is our land. We have to take care of everything that belongs to us.” Very simply put, it expresses that idea: the concept of ownership, title, and the need to take care of and steward the land. Shared decision-making off treaty settlement lands is a significant factor of the process to be reformed.

On what we'll call jurisdiction and law-making, we want to say simply that there's currently too much bureaucratic detail, particularly as included by B.C., in treaty documentation and treaty text. Treaties should simply set up prophecies for relationships. Implementation should allow for and provide mechanisms to be worked out, developed, and changed as needed, through orderly process, much of which could be done as side agreements to trim down what is central to the treaty itself.

On fee simple land acquisition, in many cases crown land is limited, particularly in southwestern British Columbia. It's also a critical need. There is a critical need that exists for fee simple lands to be included in a substantial quantity as treaty settlement lands. Mechanisms for fee simple land acquisition under a framework of willing seller-willing buyer should accommodate the need for incremental acquisition over an extended period of time. This shouldn't be constrained by relationships with local municipalities. This should be something that can be done over time without interference from local governments.

Treaty settlement land status needs to be a unique status, not a subsection 91(24) status or provincial fee simple status, and something that recognizes indigenous title apart from the lands set out under the Indian Act or otherwise set out as provincial grants. That motivates a need for an indigenous title land registry system that can be taken care of affordably and in an available way for treaty and other first nations to administer.

On negotiation funding and debt forgiveness, debt accumulated through loans to first nations supporting comprehensive land claims processes needs to be forgiven. The debt issue is a huge disincentive to treaty participants and critics both. Capacity funding support needs to be granted and loans need to be forgiven.

As I said, we'll be submitting a written version of this in more detail.

What I want to say is basically around the need to reform fiscal and social policies and the ability to govern and have direct participation in taking care of children and families. We've received resistance to that, but when we're looking at the need as an outcome or an element of treaties that's substantial in order to deal with this catch-up period, to bring the status of health and well-being in indigenous communities up to a common level and standard, that motivates the need for reform in fiscal relationships, taxation, OSR, and involvement in jurisdiction on the fundamental elements of society, such as children and families.

● (1030)

Next, stage four is a barrier to treaty-making. Simply, it takes too long, it's too complex, there are too many hurdles, and what we hear from the communities is why is it taking so long? Why don't we see any results? We need the revision of stage four to provide earlier and greater access to a more substantial tool kit, and pre-treaty land transfers, protections, and benefits. We need to substantially look at how stage four is taken care of.

I'll end with education and reconciliation. The government needs to develop meaningful public processes filling the gaps between truth and reconciliation, so the public can better understand why these processes are in place, what we're trying to do here, what the needs are for supporting the treaty process and comprehensive claims.

Thank you very much.

The Chair: Thank you.

Please, go ahead and do your presentation. You have 10 minutes.

Mr. Robert Janes: I'd like to acknowledge that we are on the territory of the Tsawwassen First Nation.

The Te'mexw Treaty Association, which I act for, represents five indigenous nations on southern Vancouver Island that are in modern-day treaty negotiations. They each are signatories to the historic Douglas treaties, so they are somewhat different from many of the first nations. Their treaty negotiations are largely defined by the fact that they are in urban—for example, Songhees is in Victoria, for all intents and purposes—or suburban first nations, and much of their land is under fee simple title, either in cities, or under the E & N Railway grant. Despite these challenges, we've signed an agreement in principle, and are moving aggressively towards reaching a final treaty agreement, but we do face some significant obstacles, including the continued shortage of land, and the lack of a federal mandate around fisheries.

The uncomfortable question that many of these first nations ask, and which comes to the mental block we've been talking about today, is, if Canada and B.C. could not honour the historic treaties that Canada has signed, or the imperial government signed, how is it that we can expect that the governments of Canada and British Columbia will honour modern treaties? When we talk about moving away from the Indian Act, there is more to that than just saying, presto, the Indian Act disappears. For these first nations, they need to know that they are going to secure the core resources that they need, the core jurisdiction that they need, to ensure that they can continue to maintain their nations as living integral communities within Canada, with their own systems of government, able to support themselves, able to maintain their cultures, and able to keep themselves together. That is the thing we are struggling with in the treaty negotiations, how to secure that given the peculiar history of Canada.

There are really two points I wanted to make to you. I'm largely addressing this to you as the federal leadership. The first is that there has to be real leadership in committing to what you've heard from several speakers today in terms of moving away from the concept of treaties being full and final. There has to be a different concept that sees a relationship that can evolve, that allows for things to be tried out to develop the stronger relationships between first nations that respects their existing rights, respects their existing cultures, and does not insist that they draw a line on the past and move on.

The second point I want to make is about how the federal government works. The federal government has to practically address the reality that it does not have an effective mandate process. It does not have a process that allows it to act creatively, that allows first nations to explore ideas. It is constantly behind, it constantly causes delay, and this reflects the way in which the government departments work in a very siloed fashion, without core leadership.

Let me speak to my first point. The modern treaties have constantly faced this question of certainty. There have been various terms used over the years to achieve this: extinguishment, cede, release, surrender, modification. Some people even have contentions about the non-assertion model. At its core is this idea that the modern treaties are supposed to be full and final settlements of all the issues of the first nation. When you're down in the community talking to the community about this.... I have go out as a non-indigenous lawyer to talk to rooms full of people who aren't going to talk about this in a legal way, but they're going to ask me, how it can be that we can be asked to draw a line on the past and say, okay, the rights that we had, the culture that we had, the history that we had, the grievances that we had, and the concerns that we had are now in the past? Now, we have a shiny new document with many, many, many more words, most of which nobody can understand, except a few lawyers and perhaps a few judges, and that we are now moving forward with that being our government, those being our rights, that being our means of expressing our culture.

What many first nations see is that the modern treaty process, in many ways, has become a way for Canada to draw a line on its colonial past, and to ask for forgiveness—and in fact, insist upon forgiveness—before first nations are able to move forward.

● (1035)

First nations see this being done in a context in which they don't even get a chance to test drive the relationship. In many ways, first nations look at this relationship as one in which for 150 years, one bad thing after another has happened to first nations. They are hearing Canada and British Columbia say to them, “It will be different this time.” Needless to say, a lot of ordinary people in these communities, and a lot of leadership in these communities, look at me and say, “Why should we believe you?” From our point of view, I actually think the answer is to stop asking this. Instead, look at the modern treaty negotiations as a chance to negotiate arrangements that recognize that first nations are coming to the table with existing cultures, coming to the table with existing rights, and coming to the table with grievances that don't have easy answers. The modern treaties are a chance to create a framework in which those problems can be managed, where, over time, people can see if these solutions are working. They can evaluate how the treaties are working and adapt them to changing circumstances—or adapt them because they fail, adapt them because they haven't achieved the ends that everybody hopes they will achieve, whether it's social ends, fiscal ends, or the maintenance of culture.

In Quebec, the Quebec government worked out arrangements with the Cree that, for example, really worked on a time-limited basis. In a sense, some people joke, it's “renting” certainty. The federal government has been dead set against this approach historically, although there has been a recent openness at the civil service level to exploring new approaches. In order for those approaches to stick, the political leadership is going to have to fall behind in the same position.

With that, I'll move to the second point, which is about the reality of the way in which the federal negotiators carry on their work. Each department has its mandate. Each department has its objectives. Each department has its goals. The only department that really has reconciliation as one of its goals is the Department of Indian Affairs —or Indigenous Affairs, or Aboriginal Affairs; the name may change from time to time. The reality is that the federal negotiators largely come to the table and say, “This is what this department needs. That is what this department needs.” Largely, since they don't have the land, they don't have the money, they don't have the taxation power, and they in fact play very little in the way of an active role in negotiation, leaving it to the province to really lead the way.

The process of actually getting any mandate change from the federal government is painfully slow, largely because the federal negotiators have to walk as water carriers, going back to each agency, trying to convince each agency to change their position when they have the time to think about it. Then somewhere down the road we'll hear back from the INAC people, saying, “Oh, here's what DND, Finance, taxation, CIPO...or whoever has the say.” That has to change. We need to see the custodial agencies engage when they have land. If we're going to talk about recognizing indigenous intellectual property, then CIPO, the Canadian Intellectual Property Office, has to be engaged. It can't just be a messenger. The taxation people can't just drop around once in a while to let us know what the tax regime is going to be. They have to be actively involved in dealing with individual nations on what's happening there.

With that, I'll make a final comment on what I think could be something that's great or something that's a disaster. The proposal that's on the table now to divide Indian Affairs or Indigenous Affairs into two departments is a danger and an opportunity. It's an opportunity if the new ministry to lead negotiations is given a real mandate and real power to lead across departments, to bring the idea of reconciliation out across the government, and to create a whole-of-government approach to reconciliation, not just to consultations. The danger, I fear, is that we could end up with yet another silo, except one that now doesn't even have access to the programs and services that Indigenous Affairs presently has, and is yet another supplicant having to work around each of the departments, trying to get a mandate. This is just not a way to run treaty negotiations in this day and age.

Thank you.

● (1040)

The Chair: Thank you very much.

We're now moving into the question and answer period.

We'll start with MP Harvey.

Mr. T.J. Harvey (Tobique—Mactaquac, Lib.): Thank you very much, all of you, for being here.

Certainly as we found with the first session this morning, these opportunities don't have near enough time to discuss the issues at hand, but give us a brief snapshot into them.

I want to start with Mr. Janes on your three points. I'll start in reverse order.

Would you like to speak a little more on how you feel the opportunities and challenges surrounding INAC as it pertains to indigenous land claims could be best addressed?

Mr. Robert Janes: First, the new department has to be given sufficient resources to run the negotiations. One of the practical realities that you see on the ground is that there aren't the resources in terms of personnel, policy, etc., to really advance negotiations. Many of these files are run off the side of peoples' desks, to be blunt about it.

Second, and I don't know how to do this—I don't know the mechanics of government well enough—but whenever you deal with any ministry, they live in fear of Treasury Board. You never hear of anybody saying, oh, we'd like to do this and we don't have to check with Treasury Board. Everybody knows that Treasury Board has this overarching mandate, which everyone lives in terror of and that everyone wants to appease.

To some extent, the system has been put in place, particularly for the agencies that deal with indigenous people, to have the new department thought of that way. When the Department of National Defence is making decisions about disposing of land, for instance, they think they have to check in with the new department directed to reconciliation and negotiations. The people in Finance have to think they're not just running their own little negotiations, but they have to be integrated with the larger mission being designed by the new department.

As always, the power of departments to some extent depends on their ministers and on all kinds of political circumstances that are beyond anyone's control. However, there has to be a real mission delivered to it, which probably should be reflected in the letters to all the ministers that give them a chance to run reconciliation across the country. I don't know exactly how you do that, but I think that with the tools that are available, whether in mandate letters or the legislation creating the ministry, the creation of policy documents has to be addressed.

Mr. T.J. Harvey: In the first part of your speech, you spoke about land as it pertains to first nations, the lack of land specifically, with the bands you are representing, as well as a lack of a mandate around fisheries. Would you like to elaborate a little on the mandate around the fisheries piece?

Mr. Robert Janes: Fisheries negotiations at our table broke down about 10 years ago. About 16 months ago, they were revived. A federal negotiator was appointed.

Without speaking out of school too much, we've spent 16 to 18 months and, as of late, we've been told that they do not actually have instructions to be able to agree to a table of contents about what should be in the agreement we're working on. They don't have a mandate to talk about what type of fish they can negotiate about, and they don't have a mandate to talk about how much fish.

It's literally at that level. There are people coming, well-intentioned people, nice people, but they have not been given any instructions. It's largely I think, one, because DFO is somewhat paralyzed; two, there may be staffing issues. But fundamentally, this is not a priority.

● (1045)

Mr. T.J. Harvey: Mr. Schaepe, you spoke about the difficulties with stage four of the process.

In your opinion, what would a refined stage four look like? How could it be better addressed?

Dr. David Schaepe: Okay, I'm going to also open it up to Jean to help with input on questions. Jean has tremendous experience.

We've been in stage four since 1998. That vast amount of time the SXTA has been in treaty, over 22 years, it has been in stage four aiming to develop an agreement in principle. Ultimately, when you're looking at the extent of detail that's required in negotiating substantially the 28 items that were set out as substantive issues to be addressed, very quickly, in stage three, in stage four there is far too much detail, in my opinion, in having to flesh out the quantity of detail in each and every one of those chapters.

It's a complicated process for sure. It does take a long time for sure. It runs into issues with the table being shut down during periods of election, and that has happened quite a few times in our experience, particularly on the provincial side. There is the turnover in negotiators, again particularly on the provincial side, that costs us time. Almost every time you get a new provincial negotiator it takes a year to get them up to speed to understand what is going on. There have been inefficiencies in terms of the human resourcing of the tables that's taken time from us, and there is this abundance of content that is required to get into stage five.

I think there could be refinements on both sides of those and there could be a way of flowing through—in not so much a singular step-wise process—the need to go from developing a list of substantive issues to a conclusion without placing such a huge gap between the point so far down the road leading to a final—I won't say final, leading to a treaty.

The Chair: Does number seven, capacity support funding, feed into that point as well?

Mr. T.J. Harvey: It does because of the amount of time you're taking. Certainly it's an irritant and a substantial one when the longer you take, the more debt you are accumulating. There are tool kits that come around when you get to certain points of time in terms of incremental treaty agreement possibilities, early transfers of land, that could all come sooner, and at the end of the day it's all aggravated, including the debt issue, as the longer it takes the more debt is accumulated.

The Chair: Thank you.

The questioning now moves to MP Kevin Waugh.

Mr. Kevin Waugh (Saskatoon—Grasswood, CPC): Thank you.

I'm just going to pick up on that on the SXTA. What kind of numbers are we looking at when you say “debt forgiveness?” You have done 22 years on this. What are the kinds of numbers when you say you want debt forgiveness? I understand you are only one area, so....

Ms. Jean Teillet (Chief Negotiator, Sto:lo Xwexwilmexw Treaty Association): Let me tell you this first. We started off with 19 bands in treaty. Along the way, because of the length of time and the absolute intransigence on the part of the federal mandate to move anything other than throwing something down on the table and not negotiating.... For a lot of these things, there are no negotiations going on. A lot of bands left in frustration, and the whole thing collapsed in 2005. Then six wanted to come back, and Canada insisted that the six had to assume the debt of all the other 13 bands that left or they wouldn't let us come back into the treaty process. We have about a $13-million debt, and it's not even ours, but there is an insistence that we're supposed to pay that. I regard that as highway robbery and absolutely inappropriate behaviour on Canada's part to insist on that. That's the debt load.

Just to tie the debt load into the previous question from Mr. Harvey about the stages, part of the problem is that the stages started out.... I've been in the treaty process for a long time. I started out on the Yukon treaties, then the Northwest Territories treaties, and now in B.C. I've been at this since 1992, through three totally separate treaty processes. I've watched these stages move from ideas. You go to sort of an idea of a framework agreement, and then you move into agreement in principle where the agreement in principle is about 12 pages long. Now they are imbedded in cement. There are like 25-foot walls around each stage. The agreement in principle is no longer an agreement in principle. It is a final agreement. They are not principles anymore, it's the whole agreement in there.

The problem is this: there are different tools, money, and options that are available to you at each stage. As stage four got bigger and became the whole ship, the tools that you can get in stage five become less available to you. This is the rigidity that has sunk into the process. That's why it's damaging. The fact is, that's where the money is all accumulating, because of this instance on virtually getting final agreement in the AIP process so that the final stage, where there's more money available to you to do all the kinds of work that you need to do, where there are possibilities of early transfer of land so you can get some economic development going, is held off until the last stage. None of this is helpful. All of it just creates more debt load. It creates more bureaucratic mess, and it leaves you in this long period of time.

We're in a position where even our Canada negotiator says that our table has been put through more than any other treaty table in this country. They still won't give us an AIP. They keep moving the markers. We have to do this; we have to do that. They're making it virtually impossible for us to get an AIP. This is not fair negotiating, and it's Canada doing it, not B.C.

● (1050)

Mr. Kevin Waugh: Robert, are you having the same problems?

Mr. Robert Janes: We've managed to get through the first stage, but I do want to underline something that is sort of a real evil that's easy to miss here.

Fundamentally, the message is that the federal and provincial governments have the staff to negotiate about five final agreements at once. You create a real competition between the people who are at stage four trying to get to the head of the list so that when the next person pops off stage five they can be in there. If you don't make it on to that list, then you're stuck with a real dilemma. This goes back to your money point. You can't just down tools. If you fire your adviser, your lawyer, or your negotiators and say that you're going to take a five-year break until you're ready to step in to the queue again, you'll never reassemble that team. It's gone. Your choice is to keep on incurring debt to stay alive in stage four, or you die in stage four. That's one of the things that's really ramping up the debt, sometimes non-productively.

Mr. Kevin Waugh: Wow. Those are big numbers.

Mr. Robert Janes: I think the total number was mentioned here this morning. I think across Canada—

Mr. Mike Bossio: It's $528 million.

Mr. Robert Janes: Yes, the total number is $528 million.

Mr. Kevin Waugh: Wow.

In the one minute I have left, to go back to your opening statement, David, can you comment on the foundation and relationship of your core treaties?

Dr. David Schaepe: The core treaty fundamental idea here, of implementing UNDRIP and a recognition of a human rights-based approach to treaty-making, links back to core treaties—meaning, to create a treaty that sets out relationships, including jurisdictional relationships, authorities, relationships to land and resources, and so on, with aspects of rights being recognized but not having to do that fully and finally. A core treaty is something that perhaps identifies priorities for moving forward in relationships under the rights recognition paradigm, but not to the extent that it has been, or what treaties were set out to be in the past and that still pervades the present, where they're full final and all of the rights are defined and tacked within the four corners of that treaty, set in stone and not to be moved from there. We're not creating potion stamps anymore. The core treaty would allow for a progressive approach to recognizing, defining, and reconciling rights and relationships between nations.

Again, it may not include chapters like fish. You might be able to proceed without having to include all of those things.

● (1055)

The Chair: Very good.

The questioning now moves to MP Romeo Saganash.

Mr. Romeo Saganash: Thank you, Madam Chair.

Thanks to all three of you for your insights on this important issue.

As I said earlier, I come from a territory where we signed the first modern treaty. I find the idea of a full and final agreement unrealistic, in a way. Maybe you're aware of this, but the James Bay and Northern Quebec Agreement has been modified over the years at least close to 20 times. There are some 20 complementary agreements to the James Bay and Northern Quebec Agreement. That relationship is evolving over time.

I also use the example of Quebec, where the Innu and the Atikamekw have been negotiating for 35 years now. One of the issues that have always bothered me is the fact that we all know that negotiations take time, but at the same time we're negotiating over our lands, territories, and resources, development continues on those lands, and Canadians benefit from the development of those resources that belong to somebody else.

To all three of you, how do we address that injustice?

Ms. Jean Teillet: *Tanshi.*

The idea of the full and final agreement I think is a non-starter these days.

The problem is that Canada is looking to be risk averse. You want a bulletproof vest around you so that no aboriginal people can come after you ever again. That was the whole idea of the treaties. That's what extinguishment was about. You were getting rid of the people. You were getting rid of their rights to the land. You wanted it so that they were gone, just gone out of your lives, except for what was in the four corners of that agreement.

With this whole idea of chasing what I call the unicorn of certainty —it is a unicorn, an idea—nobody's ever seen it. It doesn't exist, and the chasing of it is a waste of time. So just drop it and move on to the idea of relationships.

Aboriginal people need jurisdiction, their own jurisdiction. However, there are three things that underlie the changes that need to happen. Number one is that you have to have an acknowledgement that up until now, Canada has been built on the idea that you own all the lands and resources, that you get all the decision-making about the lands and resources—or it's split between you and the provinces—and you get all the benefits from them. Government gets all of that.

The idea that has to change and that the treaties should be changing, and not under the name of certainty or full and final, is that for aboriginal people, title means they have ownership of that land. Tsilhqot'in and Delgamuukw both said that has an inescapable economic component to it. They get ownership, co-ownership of the land, they get shared decision-making on the lands and resources and what happens to them, and then you should get shared benefits from them.

When I say benefits, I don't mean just 2% of the revenue resource, I mean equity deals here, where you are a co-owner in that. Then you get part of the decision-making about how your lands are resourced. That's what I think should be in the treaties, and that's what this whole country should be all about. That is what this new move forward should be.

So drop extinguishment, drop certainty, share jurisdiction, share decision-making, share the lands with the people. I think that's what will move us forward. If we go forward with that and a relationship based on that, whether you call that a treaty or not—UNDRIP calls it "treaties, agreements and other constructive arrangements"—that's what we should be looking at.

I think those are the answers to how we move forward.

● (1100)

Mr. Robert Janes: I agree with everything that Jean has said, but I would also add to it.

The Supreme Court of Canada, in Haida, has given us a framework, predating UNDRIP, to start addressing this. They've said that arrangements around the management of crown lands don't have to wait for treaties or court cases.

While it's been bogged down, and I've probably helped to bog it down in lots of legal niceties and such like that, in the context of treaty-making, even in British Columbia, there was open discussion at the beginning about interim measures to protect resources. Those interim measures, for example, in the case of the people I work with, could involve acquiring lands. They could involve actively making decisions not to dispose of crown lands.

In larger areas, for example, it could be "Look, one of the things we're going to commit to is that with the lands that you've identified as potential treaty lands, we're not going to let things develop without your consent or a reasonable effort to enter into an impact benefit agreement."

These things are well-developed ideas now.

Partly what happens is that there's a real imbalance of power in many of these negotiations. If you're not a first nation that has a lot of money to fight the company, you're out of luck.

It would make a huge difference if the governments were getting behind the first nations that are in the process and saying that these areas are identified for treaty negotiations and we can't let them go out.

Mr. Romeo Saganash: I have about a minute left.

David, you spoke about moving away from certainty provisions into rights recognition mode.

What kind of framework should we use from now on? The Truth and Reconciliation Commission calls to action 43 calls on the Government of Canada, provinces, territories and the municipalities to use the UN declaration as the framework for reconciliation. Is that the path that this committee should also follow?

Dr. David Schaepe: I think I see it as the highest standard of the relationship, so to me it makes sense to pursue UNDRIP as a standard for creating the relationships. It has rights recognition as a foundation. It has this recognition of indigenous peoples as involved in managing their own lands and in having that need for consent. It forces us down a line by using that as a structure to figure out how to implement those things, how to make it work, and how to make it happen.

It goes back to a lot of what Jean and Robert were saying, which is that aspects of shared decision-making are I think fundamentally tied to implementation and the use of that structure. It moves us fundamentally away from some of the prophecies in the legalities of Canada being the sole decision-maker. Move towards rights recognition, away from consultation, and there are huge efficiencies in working towards shared decision-making on, for one example, an UNDRIP foundation.

The Chair: The questioning now moves to MP Mike Bossio.

Mr. Mike Bossio: Thanks to all of you for your testimony here today. My mind is reeling with all kinds of different directions that I want to go in with this.

A lot of what you've talked about is the whole-of-government approach, a focused nation-to-nation relationship, and the fluid nature that has to come into play through that relationship. As my colleague MP Saganash said earlier, an extinguishment of rights doesn't even really jibe with our Constitution and the Charter of Rights and Freedoms, right? I think he's right that it probably wouldn't stand up in a court of law if it went to the Supreme Court, so I agree with you.

In looking at that, do you agree with splitting up INAC into the nation-to-nation whole-of-government approach of one minister and the services approach of another? Mr. Janes, you mentioned this. You agree that this is the right direction to go in, but only if the mandate letters of all of the ministers and all the other departments that have to interact or have to be a part of a negotiation are at the table....

The reason I completely agree with where you're coming from on this is that last year, as part of our environment committee, I had the benefit of visiting with the Salish nation and also with the Haida people. They had issues, with the biggest one being, once again, that there's just no land that is affordable to buy now amongst the islands that exist off Vancouver Island, and, with the Haida people, getting all of the different departments together to sit down and finally hammer out and negotiate an agreement. You might get Parks Canada and the Minister of Environment to the table, but then have a hard time getting Fisheries to the table to establish....

Do you agree, though, that if we can get a minister to break down those silos and take a whole-of-government approach, that is absolutely what is necessary to move this process forward?

● (1105)

Ms. Jean Teillet: I can take a first kick at that.

I think that in a way it has to be approached.... We have one sort of model in government already, which is the environmental idea that the environment should override, sit on top, and guide what everybody's thinking about. Protection of the environment and protection of the animals and the land override what Fisheries says and what Mines and Natural Resources says and all that kind of stuff. That's the sort of idea that I think we need with the new branch or new department of Aboriginal Affairs. It's that it can actually say to Fisheries, “Get—

Mr. Mike Bossio: To the table....

Ms. Jean Teillet: Yes. It can say, “Get to the table and get here with a mandate and do it, or if you don't, we're going to do it for you, and you might not like what we do. It's in your interests to come here.”

That means they need some kind of mandate from the federal government that gives them that hammer so they can do it in order to make this happen. I think that's a model we could look to, which we already have with the environmental protection.

I think Robert probably has some ideas.

Mr. Robert Janes: I want to give you a sense of how ridiculous it is now, and how it could not get worse. Songhees, for example, is one of the nations in my group. The total amount of land that has been identified for Songhees is a half hectare. Two parking lots might be available. The largest piece of available crown land in Songhees territory is the Royal Roads campus. Songhees, Royal Roads University, and Colwood have all entered into an integrated process to discuss the future of the campus and where opportunities might be, with reconciliation being the view. INAC is dying to talk about it at the treaty table.

DND is going through its disposition process, as laid out in the federal Treasury Board directive, and it's saying we don't have any role in the treaty talks. The treaty talks are not something we think about. We have decided we're going to send this to CLC; we're not really interested in hearing about any of this. How could this land be arranged in the best way to make sure there's something for the treaty process? It's so bad that the only way INAC is able to find out what's going on is that after we meet with DND, the INAC negotiators phone us to find out what DND is doing, because DND won't talk to them.

It's more than just the mandate letters. The mandate letters are the starting point, but even with things like the Treasury Board directives, which speak to how federal crown lands should be disposed of, you have to look at it and ask if just a custodial agency should be running that part of the process. If there's anything that can get first nations heated up, it's land and fish. To have a process that is just devoid of any meaningful mention of the treaty process is, frankly, insane.

Mr. Mike Bossio: Following on the logic that Jean put forward, under the Minister of the Environment, there's the Canadian Environmental Protection Act, the Environmental Assessment Act, the Species at Risk Act, navigable waters, Fisheries Act, there are a number of different acts out there. I somewhat agree that from a mandate letter standpoint, there aren't enough teeth to enforce the whole-of-government approach. Is it possible, though, with the Indian Act, to establish other legislative tools or mechanisms that can exist outside of it that will draw in and bring about that enforcement to bring them to the table, or is it up to the minister to hammer away at these different groups?

● (1110)

Ms. Jean Teillet: My understanding is that each minister has legislated instructions about how that department runs. I think this should be written into those pieces of legislation. Not just your mandate letters from the Prime Minister, but written into legislation.

Let me say one thing about implementation. We're talking about implementation of the treaty process, of getting to treaties, but implementation of the treaties once they're out has all these imbedded problems. They get filtered onto the other side of the treaty process, where people forget or don't know what's in the treaty, and they don't understand the relationship of the treaty to what they're doing. We just had a big blow-up in the Yukon about the financing of the treaties. The federal government tried to impose a formula funding agreement on all the treaty first nations up there despite the wording in the treaty. We had to fight them very hard, and we had federal Finance officials looking at me across the table saying, but our policy says this, and I kept saying, yes, but the treaty overrides....

The Chair: I hate to cut you off at this point, because it seems rather authoritarian from Canada.

Ms. Jean Teillet: Okay. We're used to it. It's what we live with.

The Chair: Thank you for that.

The final round goes to MP Cathy McLeod. We have a few minutes. Please go ahead.

Mr. Mike Bossio: Can I recommend that at the beginning of all of this that we inform all the witnesses to please provide further testimony outside this process, outside these hearings, so we can make them a part of our reports?

Ms. Jean Teillet: We have committed to providing you with written submissions in addition to our oral testimony today.

The Chair: Cathy, it's your turn.

Mrs. Cathy McLeod: Thank you, Madam Chair.

I have a quick aside and then I want to get into my questions. It's unfortunate we have so little time with each group because I think there's a wealth of information.

I want to quickly pick up on that Treasury Board divestiture process. If you have recommendations in terms of how that process should be looked at, not only in areas where a treaty is being undergone, but in areas where there are specific claims.... I had an example in my area, and I was quite stunned to see what the actual process was, so I welcome recommendations in terms of that piece.

I'm going to go to David.

I want to pick up on two points you made, and I think in some ways they're interconnected. One, you talked about the purchase of fee simple and we did hear that in many communities, especially in urban areas, it's a big issue, but it is also, believe it or not, an issue in the more rural communities. For example, the NStQ is in its final stages. It also relates to the public education piece and the inclusion of third parties as part of the way to some better solutions.

You have a rancher who wants to sell his land, and you have others who perhaps, with the decisions that are getting made, are losing some sort of key ability to move their cattle from summer to winter ranch land, and those solitudes aren't working. I guess I would talk about the purchase of fee simple, i.e., a willing rancher, a nice opportunity that is not taken advantage of, and the ability of the third parties to say, “I think we live in the valley together”. They've lived in the valleys together, and I think we've moved away from having some good conversations with other people in the community.

You have a short time for a complicated issue.

Dr. David Schaepe: There are all kinds of tremendous opportunities to acquire properties that are of interest to indigenous peoples when they're in fee simple hands. The relationship there sort of falls into the local level of municipalities and local governments that manage and affect fee simple properties. Number one, there's really no challenge to finding willing seller-willing buyer relationships to be able to acquire land as needed over a long period of time. Do not have cut-off points on that in a treaty kind of situation. Tell us which five properties you want, and you have 20 years to get that, and then that expires when the clock goes off.

We're saying that needs to not happen. We need to have the ongoing opportunity to buy lands that are of interest and value for economic purposes, for cultural purposes, for any number of purposes that this indigenous society needs when they're otherwise locked up into the peripheries of the hillsides and the mountains, away from the city centres, away from town centres, and away from economic centres.

There are ways to do this. It's not a challenge. The challenge is to change the policies, to bring fee simple properties into TSL under those authorities of indigenous peoples and their governing systems, and to work together on land use planning.

Again, back to the management aspect of things, share in the common vision and plan for what these areas should look like. That's an area that's been ignored, and first nations and indigenous peoples have suffered with the consequences of municipalities and local governments building around them with no consideration for their reserves and what become places where people live surrounded entirely by industrial zones. Incompatibilities have occurred, and I think there are ways to approach that in harmonizing land use planning and bringing in a fee simple acquisition policy.

● (1115)

Mrs. Cathy McLeod: I've always thought that having some of those third parties, whether it's local government or that education piece, which I think was your number 11....

I probably don't have enough time, but you talk about the agreements being living documents, and you've spent 25 to 30 years creating some solutions. Can you give me a really specific example of the living document concept? What might be something that is a good example of what needs to stay out of the four corners, as it is right now, but change with time?

Dr. David Schaepe: Jean talks about this a lot, a treaty, this type of agreement and its core needs to set out mechanisms for relationships, jurisdictions, and authorities. Then on the side, set out the details for how that gets done, the mechanics of it, the bureaucracy of it.

I'd say, in my own experience, the best example I could put forward is outside of treaty, but provincially in a strategic engagement agreement process that sets out how we're going to engage working through consultation processes, but it's very principled in its core document and allows for improvements, under a progressive improvement paradigm, to be made on the side that managers can do, and it doesn't have to go back to ministerial approval. It allows for the process to evolve and change with agreement between the parties so that it gets better and better over time. I don't see why that can't be a small example of what could happen on a larger scale within a more comprehensive treaty.

The Chair: Thank you so much. That concludes our panel for today.

I want to thank you for coming out. I know it's a very formal kind of process that we have here, and sometimes conversations get cut off, but I appreciate your understanding. Once again, I thank you on behalf of all of our committee members for coming forward. We appreciate your insight.

We'll be back to take the third panel at 11:30.

● (1115)

(Pause)

● (1130)

The Chair: Welcome, everybody. Let's get started.

I want to welcome you to the session, and recognize that we are on Tsawwassen traditional territory.

We are holding our first session of hearings on land claims, specific and comprehensive, starting here in British Columbia, where things are very active and very complicated.

You will have 10 minutes to present. We have two groups today for this panel, so 10 minutes each, and then we'll open it up for questions.

I would ask MPs to direct their questions, if possible, to the specific person they would like to answer them.

Mr. Mike Bossio: Would you remind them of further submissions?

The Chair: Yes. We are always receiving submissions, but they need to be in by the middle of October. We are anticipating that we'll have more hearings in Ottawa, but they might conclude by the end of October. It would be good for you to submit your presentations prior to that so we can use them in our consideration for the report writing.

I would like to welcome the Nlaka'pamux and the Nisga'a, who are here to present. I will open it up to you.

Chris, go ahead.

Mr. Christopher Derickson (Councillor, Westbank First Nation): There is one more community, if you turn the page: Westbank First Nation.

The Chair: I am sorry. We actually have three groups, so that's 10 minutes each. Let's get started, because I know there will be questions.

Please, go ahead.

Grand Chief Robert Pasco (Grand Chief and Tribal Chair, Nlaka'pamux Nation Tribal Council): I'm Grand Chief Robert Pasco, and with me is the executive director of our tribal council, Debbie Abbott.

I want to acknowledge the homeland of the Tsawwassen people. I also want to say *Ya dk shin wen wen*, which is good morning to you all.

I'm hear to speak to our experiences with the specific claims process. One of the things right off the bat is that the terminology "specific claims" is the wrong one. We're really not claiming anything. We're trying to correct something that someone else made incorrectly. That's one of the reasons why we have such a problem. It's the language. Just like "comprehensive claims" which I heard this morning; we're not claiming anything. We're just trying to correct things to the way they should be.

I want to start out by giving you a layout of where we're from. I'm cognizant of the time. Our nation is in the Fraser Canyon. There is a transport corridor through the canyon. We have two railroads that go through there and a high-tension transmission line. We also have the Trans-Canada. The Fraser is also a famous river for salmon as you all know, but it hasn't been very good for salmon this year. It has been one of the worst years we've ever had.

Some of you have probably heard of Hells Gate. That's right within our homeland. I'm not sure who named it, but that's not our name for it. It's a rough passage area. When our reserves were set out, a lot of them were set out as fishing stations. As time went on, the railroad came in, and it took a chunk. Everybody has taken a chunk until we're left with very little. Whenever they wanted to take a piece of land, they just enacted something. They put forth a reason and legalized it in whatever way they thought was right without any consultation with us. Ever since the reserves were formed, we've been living with that problem.

I want to present a situation where I really became involved, and where we became involved. It was back in the early 80s when the federal and provincial governments, the CN railroad, and all governing agencies agreed there should be double tracking. They agreed it was going to go ahead, they signed off on everything, and then they established a federal environmental review panel. I was asked to sit on the this panel.

As we went around the countryside going through our hearing, indigenous people would get up and say, “Look, here's the problem we have.” As time went on, more and more of these things came forward. Our chairman at that time was Bob Connelly. He was in Ottawa. He was head of the federal environmental review panel. He stated that it wasn't in our mandate. We would go into our committee meetings after our session. Then the day came when we were writing the final report. There were all of these excuses that we didn't have a mandate to deal with indigenous issues. All of us told the committee that we were going to run into trouble. We were ignoring something here. The government had approved it to go ahead. Now we were just nickel-and-diming this thing.

To make a long story short, just when we were writing the final report, I got a phone call from Lloyd Hostland who was the head engineer at CN. He said to me, “Chief Pasco, we're going to start double tracking at your place.” I said, “Oh, yeah?” They were going to go 100 and some feet into the river there, and they were going to double track.

Anyway, I had to resign from the panel, and a lot of things happened.

● (1135)

Eventually, we got an injunction and it's a long-standing injunction that's going today. David Crombie was the minister at that time and John Fraser was the minister of fisheries. Anyway, they all came out. They could see the dilemma we were in. We went down a railroad track and we showed David Crombie some of the communities and some of the issues of the communities. There were a lot of them. He went back and said, “Okay, we're going to develop an accelerated process"—I'm going to run out of time. We got into the specific claims process, an accelerated process, and that was 30-some years go. I had no grey hair.

Voices: Oh, oh!

Mr. Robert Pasco: My hair was black. I weigh about the same because I've been very active trying to pursue this. It hasn't worked and that's the bottom line.

I can tell you more, but I'm going to leave it up to Debbie to tell you the rest because I took a lot of her time.

● (1140)

Ms. Debbie Abbott (Executive Director, Nlaka'pamux Nation Tribal Council): Good morning.

I want to cut right to the chase and I'm mindful of the time. I have five recommendations I'd like to bring forward. We will make a full submission in time for the mid-October deadline.

First, I want to mention that we need to adopt the recommendations of the B.C. specific claims working group, and we need to continue to engage with first nations in B.C. directly. B.C. is so very different from the rest of Canada.

I have recommendations specific to dealing with our Nlaka'pamux claims.

The first is to visit our homeland. We need to ensure that any government official involved in claim negotiations and/or assessment visits the lands at issue in a claim with the leadership and community members advancing the claim. Many claims from our region arose out of circumstances where the government failed to show up to protect our interests. Resolving these grievances requires engagement on the ground.

The second is to consistently fund the work of resolving these grievances. Multi-year funding for research units would ensure efficiencies and work planning and execution. Fund our communities to participate fully in negotiations. Finally, fund whatever government department or independent body will be party to the process at adequate levels.

The third is to communicate with our nation directly. There are opportunities for efficiencies and cost savings for these transportation corridor claims. We have ideas on how to move these forward. Appropriate government representatives with decision-making authority need to engage with us directly.

The fourth is that joint oversight ensures government emissaries act in a principled and disciplined manner in keeping with the honour of the crown and UNDRIP. Joint oversight is the only way to keep the government accountable for its actions or inactions.

Finally, the last recommendation is to create fundamental systemic change, which provides for jurisdiction of the Nlaka'pamux and other indigenous nations.

I have one point. We've heard so many committees in the past. I have a question for you. After all of our efforts to inform the Government of Canada about specific claims and after all the reports and studies and commissions that have happened since 1948, what is the purpose of this study that you have undertaken now?

Thank you.

The Chair: Very good.

We're going to move to the Nisga'a. You have 10 minutes to present.

Ms. Eva Clayton (President, Nisga'a Lisims Government): *Amaa hiihlukw.*

Madam Chair, members of the committee, I will begin by expressing our appreciation to the committee for inviting us here to speak with you on the subject of the Nisga'a treaty. With me are two fellow officers, Secretary-Treasurer Corinne McKay and CEO Collier Azak, and Ms. Marg Rosling, one of the members of our general counsel. Our chairperson, Brian Tait, sends his regrets.

First, modern treaties are different. As most of you are no doubt aware, the modern treaty process, also known as the comprehensive land claims process, commenced in 1973 as a direct result of a decision of the Supreme Court of Canada in the Nisga'a case known as Calder v. Attorney-General of British Columbia. The federal government of the day, under the leadership of the first Prime Minister Trudeau and Jean Chrétien, then minister of Indian and northern affairs, agreed that it was preferable to negotiate a "just and equitable settlement of the land question", as it was referred to by the Nisga'a Nation, than to continue to go to court over our differences. Shortly afterwards, in 1975, as our friend and your vice-chair Romeo Saganash knows so well, the James Bay and Northern Quebec Agreement was entered into, thereby becoming the first of the modern treaties.

Nisga'a negotiations began in 1976, but the road was not easy, largely because of the ongoing refusal of the provincial government to participate. The Nisga'a people and our leaders persevered. We participated in the constitutional process of the 1980s. We played an important role. We not only persuaded the Government of Canada and the provinces to include subsection 35(1) of the Constitution Act of 1982, which recognizes and affirms aboriginal and treaty rights, but we also successfully participated in obtaining subsection 35(3) a few years later, ensuring that the rights in land claims agreements are treaty rights.

Our comprehensive land claims table thereby became a constitutional negotiating table, as we negotiated the constitutional relationship to exist between the Nisga'a Nation and the crown. British Columbia finally joined our negotiations in 1990. An agreement in principle was reached in 1996, and the Nisga'a Final Agreement was completed in 1998. The Nisga'a treaty was the first treaty with indigenous people in Canada, and perhaps in the world, to fully set out and constitutionally protect our right to self-government and authority to make laws. This was controversial at the time, and led to a lengthy ratification process. Our people ratified the treaty in November 1998. The provincial legislature and Parliament each passed settlement legislation in 1999 and 2000, respectively.

Our treaty came into force on May 11, 2000. That was a historic day for the Nisga'a people. It marked the end of a 113-year journey and the first steps to a new direction. On that day, the Indian Act ceased to apply to us, and for the first time the Nisga'a Nation had the recognized legal and constitutional authority to conduct its own affairs. The Nisga'a treaty ended the uncertainty with respect to land ownership as well as hunting, fishing, and other rights throughout our traditional territory. It opened the door to joint economic initiatives in the development of our natural resources. Like other modern treaties, our treaty benefits all Canadians.

As the committee knows, there is a variety of different arrangements with indigenous peoples in different parts of Canada. Unfortunately, this has led to many people in offices in government failing to bear these important distinctions in mind.

● (1145)

For example, modern treaties are very different from specific claims agreements. Comprehensive land claims agreements deal with most or all of the entire range of rights and relationships between the crown and indigenous people. Specific claims, on the other hand, address particular breaches of past treaty or other obligations in restrictive matters such as Indian reserve creation or law. Comprehensive land claims agreements receive constitutional protection; specific agreements do not.

Similarly, there are first nations such as our friends from Westbank and Sechelt who have entered into self-government agreements that have eliminated most or all of the Indian Act from their governing arrangement but that do not deal with a great range of subject matter that makes up the content of modern treaties. Moreover, like specific claims agreements, those self-government agreements, while of vital importance to their parties, are not given constitutional recognition and affirmation under section 35 of the Constitution Act.

While we fully respect and acknowledge the efforts that all of those nations and other groups have taken to pursue their aspirations, members of the committee must not make the mistake of treating us all alike.

There have also been legal developments as a result of the Supreme Court of Canada rulings that, even where an indigenous people have not entered into a treaty or proven its aboriginal rights, the crown has a duty to consult with them about potential infringement or adverse effects on their asserted rights. Unfortunately, in our experience, government officials are now treating these asserted rights as being equivalent to the defined treaty rights that our people established only after years of struggle and compromise. I repeat, modern treaties, such as the Nisga'a treaty are unique in their content and constitutional character.

Unlike asserted rights or rights set out in specific claims or stand-alone self-government agreements, they have three essential aspects. One, they are solemn contracts, enforceable between the parties. Two, they are given the statutory force of law and are thereby enforceable against everyone and must inform officials' administration of other laws. Three, they are a list of constitutionally protected rights defining the relationship at the highest level known to law. For these reasons, modern treaties such as the Nisga'a treaty must be considered on their own without confusing or lumping them together with asserted rights, specific claims agreements, or a self-government agreement that has been negotiated without a comprehensive land claim agreement.

Implementation remains a challenge. Even though it has been more than 17 years since the effective date of the Nisga'a treaty, we continue to face ongoing challenges with its implementation. Too often, it has seemed as though as soon as the ink is dry on a modern treaty, all government officials forget about their solemn obligations and move on to other things.

This shared frustration led to a meeting in 2003 of all indigenous modern treaty signatories. We agreed to work together as the Land Claims Agreements Coalition in order to try to persuade the federal government to adopt a new modern treaty implementation policy based on four fundamental principles.

One, there should be a recognition that the crown in right of Canada, not the Department of Indian Affairs and Northern Development, is party to our land claims agreement and associated self-government agreement. Two, there must be a federal commitment to achieve the broad objectives of the land claims agreements and self-government agreements within the context of the new relationship, as opposed to mere technical compliance. Three, implementation must be handled by appropriate senior-level federal officials representing the entire Canadian government. Four, there must be an independent implementation and review body separate from the Department of Indian and Northern Affairs. This could be the Auditor General's department.

Thank you.

● (1150)

The Chair: We have our third group, the Westbank First Nation.

Mr. Christopher Derickson: I want to thank the committee for the opportunity to be here today. My name is Chris Derickson. I am a councillor with Westbank First Nation.

I was a bit perplexed when we were asked to come and present, because this was on specific claims and we don't have any specific claims or land claims before Canada right now. But I can give a perspective to the committee of something different, something like what the Nisga'a party just alluded to.

We are a self-governing first nation, one of the few self-governing first nations in Canada. I think we stand as a model that self-government in Canada can work, not just for our members, but for Canadians. If you've ever been to Westbank—I see some heads nodding—the transition between the local municipalities of Kelowna and West Kelowna is seamless. You cannot tell when you are on WFN lands.

In fact, I heard a story once of an INAC official, or somebody, who was on our reserve lands and was talking to somebody about Westbank First Nation. He looked out over our reserve lands, which included a golf course, hotels, and residential development, and said, “You know, I've heard about this Westbank First Nation. I'd really like to go visit them and see their land someday. Where are they located?” Everyone in the room laughed, because they were standing on our land.

I am an example of somebody who has grown up, for the most part, outside of the Indian Act. I've grown up in a community, and I've seen changes in our community to the point where, while I've studied the Indian Act in school, I do not know the Indian Act in practice. We have members coming up who don't even remember the poverty that used to exist. Now, we have not come to the point where we've solved all of our social issues. Things aren't perfect, but we are managing a new type of challenge, and that's what I want to share with the committee today, and hopefully bring to the forefront of Canada's mind that you can't forget about these other agreements that exist, like the Nisga'a treaty and the Westbank First Nation Self-Government Agreement.

If you were to see our lands and the development, I think it would be very clear and you'd be able to figure out very quickly that there has been a lot of change in 10 years. The rate of change is absolutely astronomical. Our economy has grown at a rate about 20 times faster than the B.C. economy. This includes the downturn in 2008. When everything else was crashing, we continued to grow. We just had a population increase last year of 27%. That's non-member residents on our lands. If we were a municipality, we would be the fastest growing municipality in Canada by far. We've outpaced the growth of the district of Lake Country, the city of West Kelowna, and the city of Kelowna. We've done this all under our model of self-government, which includes a WFN constitution, a comprehensive community plan, and several laws, all of which have been developed by our members. This brings a level of certainty and predictability to our governing structure that allows investors to come in, and not just investors—non-member, non-indigenous residents moving in by the hundreds every year, and continuing to move in.

Of course, the growth we are experiencing is not sustainable. In fact, I would argue that we are coming to the end of what's sustainable under the current agreement we have with Canada, in particular the fiscal relationship we have with Canada. With all the commerce taking place on our land, we've contributed about half a billion dollars in GDP to the Canadian economy since 2014. We have also raised taxation revenues for Canada, just through the commerce that exists on our land. About half a billion dollars in select taxes, tax revenues have been collected by Canada from our lands. In the province of B.C., I think that number is up around $367 million in taxation revenues collected.

Yet, we still exist under this archaic FTA process with Canada, where we negotiate for a financial transfer from Canada just to cover the basic services that we provide to our members. Meanwhile, we see all the revenues coming into our lands that we don't have access to. We think that if we are going to move forward beyond self-government, if we want self-government in this country to be successful, then we need a fiscal relationship that will support that success in the long term, and we need to see a more progressive and modern approach to that fiscal relationship.

● (1155)

Now we are in negotiations with the other first nations across Canada that are self-governing to redraft a new fiscal policy, but we would urge this committee, we would urge the government, to fast-track that because we, at the basic level, cannot provide the same level of municipal services to our residents that a municipality can. We don't have access to the gas tax, to all these infrastructure grants. We're doing it where can by working with the local municipality and regional district, and we're also doing it by strong and prudent financial management. We collect about $12 million in property taxes from our member residents, and we know over the long term with the growth we're experiencing we need to continue to find new ways to raise revenues and to generate new revenues for Westbank First Nation.

If I can just switch gears, because we're also involved in another table with the Okanagan Nation called [*Inaudible—Editor*], the reconciliation table. We're one of the six members of the Okanagan Nation Alliance. We're currently negotiating with Canada how Canada can deal with the nations, and the nation rebuilding that has to take place for aboriginal title to be recognized in the province of B.C. Under the new Chilcotin regime, we know that aboriginal title rests with the nation and not with the individual communities, so we see Canada having to take a tandem approach to rebuilding nations at the nation level, while still offering first nations the opportunity to become self-governing at the community level. There is an opportunity cost. It took 15 to 18 years to negotiate self-government. I think about Chief Pasco next to me. He said he was young in an expedited claims policy process. We have done a good job of creating an economy based around negotiations. If these negotiations are fast-tracked or if there's an easier mechanism for first nations to enter into, think of how far ahead these other first nations could be. We know WFN's not unique. Plenty of first nations around this country are in urban, semi-urban, or even rural communities, where self-government would only benefit their people. As I said, not just our people, but Canada benefits from these agreements as you can tell from the revenues we've raised, the jobs that are available on our land—400 businesses—but we need that tandem approach.

I would also like to encourage Canada to continue down the path of pursuing these reconciliation tables and ensuring that they're properly funded, ensuring that they have a proper mandate to negotiate with the proper rights holders and to ensure they're supported by the proper policies.

have three recommendations that we'd like to leave with the committee.

The first, which I just finished speaking about, is strengthening the importance of the rights recognition and self-determination table between the Okanagan people and Canada.

The second is to replace the various comprehensive land claims policies, and the Government of Canada's approach to implementation inherent in the negotiation of aboriginal self-government, with a new recognition policy that's consistent with UNDRIP, the 10 principles recently released by Canada, and the direction from the courts.

Finally—and this is something I want to stress—priority needs to be placed on ensuring that Canada's approach to financing self-governments is modernized and keeps pace with the growth, especially first nations like Westbank. I can't say we're barely keeping up, but we're on a very steep learning curve. It's important that these self-governments are provided with the revenues required to support the ongoing implementation of self-government.

With that, thank you for your time.

● (1200)

The Chair: Thank you so much for those very interesting three perspectives.

We're now moving into the question period, and we're going to start with MP Anandasangaree.

Mr. Gary Anandasangaree: Thank you very much for that very insightful presentation.

I want to focus primarily on comprehensives claims and modern treaties with respect to the differences between communities and nations, and how that process evolves and how you reconcile that. If nations are across a number of jurisdictions, for example different provinces, what mechanisms are currently available? And if they're not available, what should the government be doing to encourage the collaboration of communities and nations?

This is for the Nisga'a and the Westbank.

Mr. Christopher Derickson: To tackle the first part of your question, you asked about the difference between nations and communities.

We've been segregated into these made-up Indian Act bands that were imposed upon us. Meanwhile, we always saw ourselves, at least in the Okanagan, as being a part of the larger Okanagan nation. There are currently seven communities within the Okanagan nation that make up what we see as the Okanagan nation. We respect the autonomy of each first nation within the Okanagan nation to pursue their own interests, to pursue their own journey towards self-government, or not. Not all Indian Act bands are ready to move out from under the Indian Act. I think we respect that. First nations, and I speak generally, all see themselves as being part of a larger nation, of a community of first nations, and being a part of that whole.

In terms of the second part of your question about what mechanisms are in place for those nations to coalesce—

● (1205)

Mr. Gary Anandasangaree: To support the communities to reconnect as a nation.

Mr. Christopher Derickson: Within the Okanagan nation we have what's called the Okanagan Nation Alliance . It's basically a society where all the chiefs and councillors meet on a regular basis to address issues that are on a national scope for us.

Did you have another question?

Mr. Gary Anandasangaree: Yes.

The cross-jurisdiction, but I don't think that really applies to you, because you are based in B.C. primarily.

Ms. Eva Clayton: The Nisga'a Nation is set out under the treaty as a federated system where we have four Nisga'a village governments, with the Nisga'a Lisims Government being the central government. As well, we have what is known as a Nisga'a house, Wilp Si'Ayuukhl Nisga'a, where we meet every four months as one nation. The mechanisms that provide for this federated system come from the Nisga'a treaty, the appropriate Nisga'a legislation that sets out these mechanisms, as well as the Nisga'a constitution.

Thank you.

Mr. Gary Anandasangaree: An earlier speaker in a previous panel said one of the objectives is to basically get out of the Indian Act altogether; get the nations out of the Indian Act. It seems like both nations have managed to do that in the last 20 years or so.

Reflecting on the first phase of this, what kinds of control mechanisms have you been able to develop for key social services such as education and health care? Has that improved the lives and outcomes of individual members of the nation?

Ms. Corinne McKay (Secretary-Treasurer, Nisga'a Lisims Government): Within our treaty we have several opportunities to pursue different programs for our people. We have a programs and services delivery act where we cover programs. We have requirements for education. We provide post-secondary education, we provide funding through School District No. 92 for K to 12, and we have funding for a nurses' school and headstarts. Within that programs and services delivery act, we also have child and family services where we have an agreement. It was incorporated through our fiscal financing agreement in the last round of negotiations. Our general counsel Margie was involved with that. We have delegated services to the Ministry of Child and Family Development to Nisga'a child and family services.

Mr. Gary Anandasangaree: Ms. McKay, can I ask you about outcomes?

For example, if you focus on education, compared to pre-agreement and pre-governance, do you see improvement in education? Are you able to share any numbers or any empirical evidence with us suggesting that the outcomes are improving as a result of self-government having control over education, for example?

Ms. Corinne McKay: We have within our nation three doctors, Ph.D. graduates. I have been able to receive a master's degree in business administration through the support of the Nisga'a Lisims Government.

Our former president, the late Dr. Frank Calder, was a table officer for the Native Brotherhood and lobbied Indian Affairs for support for our students for first nations education. We just recently had an education conference where we had role model panels that showcased all of the work that's been achieved through the support of our government.

● (1210)

The Chair: Thank you.

The questioning now moves to MP Cathy McLeod.

Mrs. Cathy McLeod: Thank you again to the panel for some very interesting presentations. I think what we have here are three very different examples of nations and communities choosing different paths in terms of how they feel they need to move forward. Perhaps it would be fair to say that it's not a one-size-fits-all path for particular nations or communities in terms of what they want to move forward with and where they want to go.

We did have a question from Debbie Abbott, and I want to quickly respond to it. We hope, through your testimony, that.... Again, the world is constantly changing and the court cases frequently are giving new direction. Like in the treaty implementation process, I think we need to continually reflect on what we're doing, how we're doing it, and where we're going. Certainly, my hope is that we're going to have some very solid recommendations that the government is actually going to take action on. That's speaking for me. I was very keen to look at what was happening and to come out with some recommendations to move forward on.

I have a number of questions, and I hope I'll have time to get to everyone.

I was having a conversation with my colleague Romeo Saganash on this whole issue of finality that was embedded in the concept from the federal government, which we heard in previous panels. He said that we've had to make additions and corrections many times over the years, so it was not really ever final.

For the Nisga'a, have you had many changes that have been added? Can you talk to me a bit about what's happened and where that's gone?

Ms. Corinne McKay: I'm not clear on the question, but with our self-government, one of the issues that recurs frequently is that we're having to travel to Ottawa to remind our federal counterparts of provisions. We know that the treaty was an agreement between the federal and provincial governments, and we have to remind Canada and its different ministries of their obligations under our treaty. We have some provisions in our treaty that were not considered.

One example is environmental protection. We have a chapter in our treaty regarding the environment and have had to go on several trips to remind our federal counterparts of the provisions in our treaty. Such issues are not covered by our current funding, so we have chronic underfunding as a result of having implementation issues with our treaty.

Mrs. Cathy McLeod: Does it sound fair to say that it's a very long process to come to a treaty, but that we still have not got to the seamless implementation process yet?

Ms. Margaret Rosling (General Counsel, Nisga'a Lisims Government): We handed out some material before we sat down this morning. You're free to take it with you. It elaborates on some of the comments that President Clayton made in her opening remarks.

In the middle of the paper, you'll see the real thrust of what the Nisga'a Nation wants to make sure the committee hears today: the real challenges that modern treaty nations have found in the implementation of the modern treaties. Although there have been many successes, and the Nisga'a Nation has thrived in many ways under its modern treaty that's been in effect for the last 17 years, some of the implementation of the treaties has been a challenge. This led to the establishment of the Land Claims Agreements Coalition, which I'm sure you're familiar with, back in 2003. The coalition acts as a group to try to work with the federal government to be more successful and to implement the modern treaties. There is a need, we say, for a comprehensive policy within government for implementing modern treaties and for ensuring that there is an appropriate review body that reports directly to Parliament on the success that we're having in implementing our modern treaties.

● (1215)

Mrs. Cathy McLeod: Thank you.

Christopher. can you tell me a little bit about Westbank's path to self-government? You probably weren't there at the very start of the process, but how did your leadership decide to head down that path as opposed to some of the other options that might have been available? You don't have the grey hair that Chief Pasco has.

Mr. Christopher Derickson: Not yet. There is some coming in.

There's more information if you want to know the story of Westbank.

We had a federal judicial inquiry into the affairs and dealings of a previous council back in the 1980s. Out of that inquiry, one of the chief recommendations was that WFN needed to be a self-governing nation because the Indian Act structure of governance wasn't enough, or robust enough, for a first nation as entrepreneurial or as aggressive as Westbank was in pursuing business at the time. Because that was a recommendation coming from a federal inquiry, it forced Canada to the table, and we moved into self-government negotiations at that point.

That road to self-government went through several iterations of self-government agreements that we brought back to our community for votes. It took three different votes for self-government to finally be passed.

The Chair: That's seven minutes.

We're going to move the questioning on to MP Romeo Saganash.

Mr. Romeo Saganash: Good afternoon, and thank you for being here.

I want to start by saying that, from experience, I've learned that once you negotiate an agreement or a treaty, the real challenge starts from there. I always give the example of the James Bay and Northern Quebec Agreement. In section 28, it says that, on an equal basis, Canada and Quebec will build a community centre in each Cree village. It's as clear as I just said it. However, for more than 25 years, that chapter was never implemented because both Canada and Quebec claimed that there was no definition of a community centre in the James Bay and Northern Quebec Agreement. We had to take both Canada and Quebec to court in order to implement that.

Eva, you said in your presentation that implementation remains a challenge for your nation. I'd like you to give us a couple of examples because even Corinne said that you have to travel to Ottawa to remind governments of the obligations under your treaty. I'd like you to elaborate a little bit on that and perhaps propose some recommendations as to how we can deal with those kinds of issues in the future.

Ms. Corinne McKay: The way we see moving forward from here on implementation is in the information that's been presented and in recommendation number four. There must be an independent implementation and review body separate from the Department of Indian Affairs and Northern Development and it could be the Auditor General's department or a similar office. Annual reports would be prepared by this office.

One of the challenges we've had in dealing with implementation that falls under the auspices or within the Department of Indigenous and Northern Affairs is that there's always a challenge with the corporate memory, people change and move on to different positions and we have to start the whole process over again. If we have a department that's independent, that's objective, then we can deal directly with the one department. In all of our dealings we have to go to different ministries to deal with the obligations in our treaties because it's not just with implementation. We have met with the Minister of Fisheries, the Minister of Transport, and we've met with virtually all of them.

We have to address the chronic underfunding under our fiscal financing agreement and this funding that we have needs to be in a new relationship in our fiscal financing agreement. We know that many of the provisions that we have to follow are inherited provisions from Indian and Northern Affairs. We just have to pick up what's working and leave behind what isn't and create a new relationship.

We know what we are obligated to comply with within our treaty and we are well versed with the abilities we have and the rights we have in our treaties. We have always viewed that treaty as a book of opportunities and it defines the relationship between our Nisga'a Nation and the federal and provincial governments.

● (1220)

Mr. Romeo Saganash: My time is almost up, but I want to talk reconciliation with you, Chris.

You mentioned that one of your first recommendations was on the rights recognition and reconciliation table that needs to strengthened. I want to read you a quote from the Supreme Court of Canada in the Haida Nation case. The Supreme Court said:

> Reconciliation is not a final legal remedy in the usual sense. Rather, it is a process flowing from rights guaranteed by s. 35(1) of the Constitution Act, 1982. This process of reconciliation flows from the Crown's duty of honourable dealing toward Aboriginal peoples, which arises in turn from the Crown's assertion of sovereignty over an Aboriginal people and de facto control of land and resources that were formerly in the control of that people.

Is that the basis of your talks, what was set out by the Supreme Court in terms of reconciliation?

Mr. Christopher Derickson: At the Okanagan nation level, yes. It's a focus on recognition of our rights and title to our traditional territory.

Mr. Romeo Saganash: One of the other criticisms I would have, and anybody can take this one, is don't you feel that there's an inconsistency with federal policy and the constitutional issues that we have with our treaties, agreements, and so on and so forth? Because I'm not too sure how those two jibe, having a policy on lands claims, for instance, and the constitutionality of the documents, treaties, and agreements that we have? Is it something that needs to be considered as well in our work?

The Chair: A very short answer, please.

Ms. Margaret Rosling: If I may, I think that the concise response is that implementation of modern treaties is really suffering from the fact that there is not a policy for implementation of modern treaties and a review body that is mandated to ensure that those treaties are implemented. Until such a time as that is done, the implementation of the treaties and the success of modern treaties are really going to be at risk.

● (1225)

The Chair: Thank you.

The questioning now moves to MP T.J. Harvey.

Mr. T.J. Harvey: Thank you, Madam Chair.

I want to start by answering Ms. Abbott's question as well as I can. I am from New Brunswick and I grew up in large-scale agriculture, but very much a family farm. The connection that I feel to the land in New Brunswick, given my personal life circumstances growing up, is really strong. I've spent the last 15 years advocating for the rights of agricultural producers across the country, specifically young farmers, because that is the demographic of people that I fit into.

Since getting elected and having not had very much relationship with first nations or indigenous communities in my riding, I've cherished the working relationship that I've garnered with the two indigenous communities there. It has become one of the most important relationships to me, and I would consider the chiefs in both of those communities to be among my best friends. Having had the opportunity to sit on the natural resources committee for the last two years, I think it's important that we recognize that these should not be silos. The environment, natural resources, health, and indigenous issues should all work collaboratively together. I don't like the four-quadrant approach. I like more of a model that's based on something like the rings around a star, where the centre is the centre of the conversation and each of the issues spin around the centre simultaneously. I think that better reflects where we should be trying to go as a nation.

That's my best shot at answering your question.

The second statement I would like to make is to Chief Pasco. In New Brunswick we have a saying, and given your speech earlier.... I don't have any questions for you, but I think you're good people and I appreciate your comments.

Mr. Derickson, my questions have to do with the comments you made about self-governance, especially taking into account the overarching success you've had on some levels as a first nation community since you became self-governing. You talked about the economic challenges that come from managing growth under a rigid process. Could you elaborate on how you think the process could be re-evaluated or changed to better reflect the growth in GDP or economic activity, and numbers of people who live there, to keep pace with your growing community? How could that model be used for other communities that wish to do the same thing, or that wish to govern using a different model?

Mr. Christopher Derickson: I think the short answer is that we simply need to be provided with access to the revenues that are being generated on our lands. You need to be mindful that we don't have the designation of a municipality, so that excludes us from accessing all the grants that a municipality has, the infrastructure dollars, the gas tax. Until there's a recognition from the province that results in a change, or for instance when Canada is drafting those grant applications and they remember that there are first nations like Westbank out there that need to access those dollars and because those funds are designated for municipalities, we don't have access to them.

A new fiscal relationship, a new tax-sharing arrangement with Canada, would be advantageous. We don't want to only be self-governing; we want to be self-sufficient. By all accounts, we've raised the revenues necessary to become completely self-sufficient, not needing any dollars coming from Canada other than what we're already raising on our lands. I think a relationship like that for first nations in situations similar to ours would be ideal.

● (1230)

Mr. T.J. Harvey: Ms. McKay, each of the panels we heard this morning addressed common themes, such as the specific changes process or adequate funding, direct communications with indigenous peoples, joint oversight, creating fundamental systematic change of the policies that are being worked on collaboratively.

My question is open to any of you within the panel. What are the changes that you feel would be the most reflective of what you would like to see in terms of changing the game on this issue?

Ms. Corinne McKay: I'd like to start and then call on our general counsel, Margie, to complete the response.

We are currently participating in developing a new fiscal policy. We are working with our modern treaty colleagues through the Land Claims Agreements Coalition. There is some good work being done at that table. It's not easy work and quite demanding. With the work of the development of a new fiscal policy, we would hope that any policy honours the Nisga'a treaty, because the options are a challenge to the federal government. There is a lack of compliance with the treaty. We are optimistic of that process.

The one issue I want to raise before I pass the mike over, simply because you spoke to the issue in our first nations community, is the determinants of health. We have heard the World Health Organization say that for every dollar you invest in children, you save $7 in social costs. Through the work we are all doing as first nations, and we're doing this not only for our people in our communities but for the generations coming behind, we want that investment to benefit us all as Canadians.

I'll turn the mike over to Margie.

The Chair: I'm sorry, we've run out of time.

I want to thank you, on behalf of all the MPs, for coming and presenting your stories, your recommendations, and your in-depth questions about why the government is still asking...when that wisdom was provided many, many decades ago.

We hope we've provided some responses to you that makes sense. We look for a better and a stronger Canada, and a better working relationship.

One of the areas that we as members identified was the land claims issues, and that's why we're here. We're hoping to advance these issues and make things better.

Meegwetch. I thank you for coming.

We're going to take a break for lunch.

● (1230)

(Pause)

● (1330)

The Chair: Welcome.

This is the continuation of hearings by the Standing Committee on Indigenous and Northern Affairs. We are here on a study pursuant to Standing Order 108(2) of specific claims and comprehensive land claim agreements.

I want to recognize that we are here on Tsawwassen traditional territory, and we're starting our process across Canada here in British Columbia.

You will have 10 minutes to present, then we'll go into rounds of questions, and you'll have an opportunity to answer.

We will be working on the report for the next couple of months, if you wish to submit something more robust. As long as it comes in by the middle of October, it should be able to supplement our study, help us produce a report that we're all proud of, and make some positive changes for Canada and, of course, for the nations that are involved in this trying process.

I want to welcome you here.

We have Havlik Metcs Limited, Morgan Chapman. We also have First Nations of the Maa-Nulth Treaty Society. Sioux Valley Dakota Nation from my home province is not here.

I will begin with you, Morgan.

Ms. Morgan Chapman (Research Associate, Havlik Metcs Ltd.): Thank you, Madam Chair.

My name is Morgan Chapman. I'm here presenting on behalf of Havlik Metcs Limited. We're based in Vancouver, Calgary, and Victoria and we're here representing over 15 first nations in Alberta and British Columbia, namely the Lesser Slave Lake Indian Regional Council's treaty and aboriginal rights research program, and the Treaty 8 Tribal Association's TARR program. We also service several independent first nations that are not members of consolidated claims research units in British Columbia.

What I'm going to lead with today is something that you might not find in the material I provided a bit earlier, but is a theme that's come up in the prior presentations this morning. That's about the implementation of treaties. Our Treaty 8 first nations that we serve in Alberta and British Columbia signed their historical treaty in 1899. There are still numerous components of that treaty that have yet to be implemented. Those are the types of claims that we bring forward to Canada through the specific claims process.

As a firm, we've endorsed the 2012 National Claims Research Directors' joint submission, Justice at Last, with the main title “In Bad Faith”. Once Justice at Last came into effect under the specific claims process, we lost a number of categories of claims that were specifically rooted in those of an ongoing and variable nature or were breaches of treaty promise. We can no longer bring those categories of claims forward.

That is a unilateral policy change that was implemented by the government without consultation with the members of first nations communities who were taking advantage of the previous process and continue to take part in the process going forward. Claims today that we can bring forward are based on lands or assets promised under the treaty or issues of fraud on behalf of government agents. Those are three really big categories that we can still deal with. The Specific Claims Tribunal Act in that capacity has been used to strangle the specific claims process and the claims brought forward by first nations communities.

Changes to the act are needed in order to prevent that continued strangling of claims brought forward by first nations. As was also mentioned by Chief Judy Wilson this morning, the government itself wrote the rules to suit itself. It's always the judge, banker, jury, and executioner on the claims that are brought forward against itself. Court is seldom a desirable option because of the high cost, and the crown resorts to technical defences such as statutes of limitations.

On the funding side for specific claims, between 2010 and 2015, our personal clients received up to a 57% cut to the funding used to research and submit those claims to the government. Our colleagues on the other side of the table at Indigenous and Northern Affairs did not receive a cut. We were asked during that same time period to address workloads and changes implemented via unilateral policy implementation, namely the minimum standard, and we identified that as creating a 35% increase in our workload as a firm. That impact has cost us literally thousands of researcher hours just within our own firm. It has stalled the submission of claims, and it has been done by using make-work projects such as transcriptions for documents that are relatively clear, requiring clearer copies for documents that were photocopied askew or had highlighter marks on them but were still legible, and these are often things that do not impact the validity of the claim brought forward by the nation.

Other issues that we've experienced were cuts to other institutions such as Library and Archives Canada, and the inability of those institutions to provide us with records also strangled our progress on any claim research or submission.

One of the other big changes coming into Justice at Last was this idea of black-box processing of claims. Our firm used to have quite a high level of engagement with our analyst compatriots on the department side, and under the first few years of Justice at Last, namely the last 10, we lost that ability to collaborate with the analysts and have any sort of discussion. Counter-research reports used to be issued and submitted to the first nation that identified Canada's acceptance of a claim, on what grounds, or a denial of a claim. Evidence given to the first nation to explain those types of things are no longer received.

Members of the committee have not yet had an opportunity to read and review the 2016 Office of the Auditor General report. I would strongly suggest that document form part of your research into the issues around specific claims. Many, many, of the issues brought forward by first nations communities and by my colleagues in other claims research units from British Columbia—and I'm sure you'll hear from across Canada—have been bringing these claims forward for a number of years.

● (1335)

The Auditor General's report that was released last year solidified those claims as having evidence. So any issue that we've brought forward, the Auditor General found evidence of that issue being brought forward. There was proof, and it's undeniable. I would strongly recommend that you take that report into consideration.

We have seen some positive changes since the release of the report. We have been able to reach out to analysts. We have had some of those collaborative opportunity approaches come forward, and we've also seen a return to at least some information-sharing from the department when it comes to a reasoning for a claim being accepted. We haven't yet quite got to the point of a claim being accepted as valid after this period of change. But we are seeing some positive hints. Our biggest thing is we'd like to see those changes entrenched in the legislation because right now, it's at the whim of the director of the department or the head of INAC or the now-split department. Until those types of changes are solidified in legislation, there's no guarantee that this type of behaviour and that level of engagement with the first nations communities and the CRUs doing this work is going to be continued.

When we talk about the resolution of claims and the negotiation process, one of the biggest entitlements that you've heard today is this full and final release. The problem when it comes to the specific claim side is the government was willing to acknowledge partial acceptances, so they would find one of a number of allegations made in a file's specific claim to be valid but not find an outstanding legal obligation for the other allegations made by the first nation.

When it came time to negotiate those claims, if the claim was found to be a value large enough to determine that negotiations were possible, to agree to negotiate the first nation would have to agree to give up any right to pursue the other aspects of the claim where Canada didn't find an outstanding legal obligation. The way one of my directors has put it is Canada agrees to negotiate as long as the first nation agrees not to.

Another thing you see lots of is the elimination of the claim backlog. Again, this is a large part of the idea of partial acceptances, of getting a part of your claim recognized. That ends up pulling the claim back out of that process. It lands back in our CRU's lap. We end up splitting and resubmitting these claims, which doubles or triples workload for an issue that had it ended up at a negotiation table, Canada might have found a legal obligation or might have been willing to discuss those issues and resolve the concerns of the community.

As we've all identified, 10 minutes today is not a lot of time to go through all these issues, so as many others have said, a more fulsome report will be coming from our firm, we hope.

A couple of quick things, I didn't quite catch the time, but I'll keep going.

● (1340)

The Chair: You have two minutes.

Ms. Morgan Chapman: Change in federal negotiators; you've heard about that today. I can give you a few more concrete examples. We have one community that's now on its ninth federal negotiator. If you do that over the term of the negotiation, nine federal negotiator changes and a year uptake on each of those negotiators to come to the table, and again you've heard this morning, many of them come without a mandate. They come without the ability to offer anything more than an update on Canada's decision-making and are not able to make a decision.

I'm going to flip quickly into my recommendations and hope that I can get through most of them in my remaining time today. Obviously, there are many more but the Specific Claims Tribunal's power and authority need to be expanded and enhanced, particularly with respect to mediation and negotiations case management. We asked at one point for mediation with Canada and we were denied because to participate in mediation, both parties have to agree, and Canada refused to agree to mediate.

First nations must have the right to invoke the Specific Claims Tribunal's intervention without Canada's consent at any point in the process and not just after three years of collapse within the negotiations framework.

An independent specific claims funding allocation body should be established to fund all aspects of resolving outstanding claims. The Specific Claims Tribunal Act should be amended to eliminate restrictions on the types of claims. Any breach should be valid.

The Specific Claims Tribunal Act should be able to award non-pecuniary damages for breaches of solemn and sacred treaty promises where the honour of the crown is at stake.

The Specific Claims Tribunal Act should have the authority to hear claims before three years have elapsed if Canada has been stalling or impeding negotiations.

The Specific Claims Tribunal should have the authority to reduce or eliminate outstanding negotiation loans incurred as a result of the federal foot-dragging, policy flip-flops, or bad-faith negotiations.

And finally, we need to eliminate the early review submission process by the specific claims branch so the claim should start with a finding of validity by the Specific Claims Tribunal.

Our hope is that this process will encourage Canada to honour the four pillars outlined in Justice At Last.

In summary, all of Canada's practices in an effort to save funding and reduce costs at the specific claims branch have ended up frustrating first nations to the point where they are driven out of the process entirely and wind up in court or at the tribunal, which are both a more costly endeavour than if Canada were to have honourably negotiated fair settlements for these claims from the start.

● (1345)

The Chair: Perfect. Thank you for your presentation.

We now have our second delegation.

Chief Charlie Cootes (President, First Nations of the Maa-nulth Treaty Society): First of all, I want to thank the Tsawwassen people for allowing us to take care of this important business on their traditional lands.

The Maa-nulth first nations treaty society represents the five first nations signatories to the Maa-nulth treaty. Specifically, we are the Huu-ay-aht First Nations, the Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations, the Toquaht Nation, the Uchucklesaht Tribe and Ucluelet First Nation.

The Maa-nulth Treaty came into effect in April of 2011 and is currently the only modern treaty concluded with multiple nations. The fact that it took our five communities a decade and a half to negotiate and ratify this instrument speaks to the complexity and the difficulty of treaty-making and the process for reconciliation within Canada.

Treaty-making is complex, expensive, and politically difficult. As a result, any submission and short presentation intended to provide an analysis of Canada's policy on modern day treaty-making can only scratch the surface. Because of time and resource constraints, we will limit this submission to a few observations and recommendations.

However, speaking as parties who have completed a modern treaty, we have paid the price for making a treaty and have learned a great many lessons. We have a deep understanding of what is required to negotiate a treaty, how a first nation transitions out of the Indian Act into treaty structures and self-government, and how to function as governments and economic entities in a post-treaty world.

Each of the Maa-nulth first nations can now point to their governments that are founded on community-approved constitutions, comprehensive self-made legislation, and a respect for the rule of law. Each of our communities can now point to significant economic success stories, and each of our communities can now identify instances of cultural rejuvenation and reconciliation with our neighbours. These general successes cannot and should not be seen as a completed undertaking. They are merely the first step in a long and complicated journey to reconciliation.

What we will suggest in this submission are simply a few observations and recommendations on how to make that journey easier for everyone. We've limited our presentation to identifying three areas.

First, on modern treaties and reconciliation, from our experience, modern treaties should be seen, not as an end in themselves but as a constructive tool in successfully terminating the historic colonial relationship that has characterized our experience with non-aboriginal governments and societies. A modern treaty is a tool that enables us to define our own institutions of government and to empower those governments to better meet the needs of our citizens. While these are tools that make immediate changes in the structure of our relationship, the success in the use of this tool can only be measured over time. True reconciliation can only happen over time.

Neither reconciliation nor treaties should be viewed as a single event at fixed point in time. Reconciliation should be viewed as an ongoing process, and treaties as a living expression of a relationship. Moreover, the ability to confidently conclude that success has occurred, and that reconciliation is taking place, requires an ability to be informed by facts and data. In turn, future steps to enhance reconciliation must be shaped by the factual and statistical data accumulated over time in the post-treaty experiences of first nations. Laws and policies in the future will be better served by a sound statistical base.

Second, on modern treaties and statistical data, based on our experience in negotiations over many years, it is our view that the treaty process as currently administered is seriously deficient in its ability to contemplate a post-treaty relationship between our governments.

● (1350)

During our negotiations, the Maa-nulth chiefs introduced the proposition that treaties were living documents and, as such, had to be revised on a regular basis in order to determine the health of the relationship.

While we were successful in persuading Canada and British Columbia to incorporate the concept of a periodic review of the treaty every 15 years, we were not able to find wording to give precise guidance on how this review would take place. It is our understanding that the governments at that time were afraid we were simply looking for an opportunity to renegotiate the treaty at a later date. In fact, this was very much not the case. While we had no desire to renegotiate our treaty, we felt it was imperative we build a degree of flexibility to allow future generations to make economic, legal, and policy decisions that ensured that the objectives of the treaty were met. We felt, and still feel, it is critical to know which aspects of our treaty are working and which are not.

While the provisions in our treaty are not specific in this regard, it is our view that the periodic review process should be informed to the greatest degree possible by a statistical baseline of information. We therefore strongly urge Canada and British Columbia to adopt policies to foster data collection in post-treaty first nations; as well, to use various generally accepted criteria of social, economic, and policy indicators in this process; to work directly with first nations in this data collection and to invest the necessary resources in this data collection. It is our view that this information will allow for better governance and will benefit both the Maa-nulth and the federal and provincial governments. More importantly, we believe this information can be of immense assistance in bringing about true reconciliation.

On modern treaties and loan funding, in addition to acknowledging that modern treaties are living documents by which reconciliation is achieved over time, the Maa-nulth treaty nations strongly believe that the process itself must be fair and equitable. To the extent the current federal policy requires first nations to borrow money in order to participate in treaty negotiations, we believe that the process is inherently inequitable. First nations should not be required to pay to solve a problem they did not create, a problem that has had profound adverse effects upon our communities for generations. We agreed to this policy approach and to borrow a great deal of money because we felt we had no alternative if we were going to bring about an end to the historic colonial relationship.

However, the existence of these loans has proved to be both a political and an economic hardship. If Canada truly wants reconciliation with first nations, we urge you to, first, eliminate the required borrowing provisions in the comprehensive claims policy; second, forgive the loans that are currently outstanding for communities that have been engaged in treaty negotiations; and third, to the extent that any community has repaid any portion of their loans, those communities should be reimbursed for those funds.

With that, we thank you for the opportunity to express our views on these matters. It should be noted, however, that there are a great many more aspects to the claims policy about which we have views and recommendations.

Given the magnitude of the task you have taken on and the limited time we had to prepare and present our perspective, we would like to recommend that the standing committee allow Maa-nulth communities further time to prepare a more comprehensive analysis of your policy. If this were to be the case, we would be most willing to appear before you a second time and to speak to your recommendations.

Once again, thank you for this opportunity.

● (1355)

The Chair: Thank you. You're always invited to submit a brief, if that cannot happen.

We're now moving into the question and answer period. This round is seven minutes for each and we will start with MP Bossio.

Mr. Mike Bossio: Once again, the more we drill down into this, the more difficult it becomes to ask questions that are going to tease out the information we know we need on this. That's why it is vitally important that submissions be made. Even if you don't have the time to provide detailed answers, please send in further submissions that answer some of those key questions.

I had the opportunity to have a conversation with my colleague, Romeo Saganash, and we were talking about the Northern Cree treaty. You said earlier today that there were approximately 20 negotiations that have happened in that time. In that sense it has been a living document.

Last night we were talking and I think you said that over a 20-year period the premier had met with the Grand Chief of the Cree four times, but then since the last negotiation was completed they now meet each other twice a year. They're able to deal with issues—boom, boom, boom—as they come along.

I notice that you mentioned in your submission that you've negotiated a bill to revisit this every 15 years. Have you had a first 15-year revisit yet? No?

Sorry, I apologize. I forget when the agreement was signed.

Chief Charlie Cootes: In 2011.

Mr. Mike Bossio: Okay, so we still have a significant period of time.

Now that you're six years into it, do you feel that 15 years is still the right period of time, or should this be an ongoing discussion that happens between the minister and the premier rather than waiting 15 years to find out that, man, we really bungled this up in this area or that area?

Chief Charlie Cootes: I feel it should be an ongoing process, meeting with the ministers to discuss some of the areas we're having difficulty implementing.

When we're negotiating a treaty, there are intentions around the table with all three sets of negotiators from the province, the federal government, and our first nations. There are intentions that somehow don't make it into the written document of what we meant by the statements that are in there, which can be easily misinterpreted by anyone reading our treaty as creating an argument against what the intention was.

Mr. Mike Bossio: When you're in that process—and Morgan, you can jump in as well—is it always just a provincial representative, a federal representative in the indigenous community, or are there any...? We were talking earlier in another discussion about how the Ministry of the Environment will have Fisheries there, they'll have Parks Canada, they'll have MNR there, and a number of different bodies there to negotiate a specific agreement with a proponent of either a project or with an indigenous community, like for what is happening in Haida Gwaii where they're trying to protect their oceans around the Haida.

Would you find that it would be far more beneficial that, rather than having these silos, you would have a whole-of-government approach where a number of these departments that are actually involved in the final negotiation behind the scenes were at the table with the authority to negotiate in good faith at that specific meeting?

Chief Charlie Cootes: I'm going to ask my colleague, Gary, to respond.

Mr. Gary Yabsley (Legal Counsel, Ratcliff and Co, First Nations of the Maa-nulth Treaty Society): I'd like to go back to where you started. That was the first part which was the length of time pertinent to the 15-year review because in the negotiations for the treaty that was one of the critical issues, and we delved into it. Maa-nulth proposed initially that the review happen every 10 years. Governments were reluctant, as Chief Cootes said, particularly the former federal government, because we were simply looking to reopen the negotiations every 10 years.

There were two pieces to it. We had thought 10 years was an appropriate amount of time. The timing was tied, in part, to the acquisition of adequate data about whether the treaty was working or not. One of the issues that came up was that 10 years wasn't going to be enough time, so we wouldn't know after 10 years, so they pushed hard, and eventually we moved it from 10 to 15 years.

● (1400)

Mr. Mike Bossio: You're actually at seven years, so is the data there already?

Mr. Gary Yabsley: No, and that's one of the points that Chief Cootes is making here. Apart from the timing of it, and this gets to your question, the other element was the focus of it. Our thinking at the time was to consolidate it into a comprehensive review based on data, so we knew whether or not there were economic changes, whether or not governance was working at the community level, whether or not cultural values were being rejuvenated—

Mr. Mike Bossio: —programs or—

Mr. Gary Yabsley: Exactly. There is a range of criteria by which we could say this is working or not, and if it's not, why not.

Mr. Mike Bossio: Do you even have anecdotal evidence to point in the direction that we need to do a review now, because if we wait 15 years, the problems we're already experiencing today are only going to become that much worse?

Mr. Gary Yabsley: That was our original thinking, so that's why we pushed for 10 years. Where your question is going is, are we better served with a shorter period with well-founded data to help us understand? I think the answer is absolutely yes. That was our original thinking.

Mr. Mike Bossio: Just to go further on that same notion...

I'm sorry, Morgan, you haven't had a chance. I will let you jump in instead of asking another question.

Ms. Morgan Chapman: I'm going to speak a bit about the idea of the treaty issue. Given that we're a historical treaty as opposed to a modern-day treaty, our treaty is fixed. Our first nations understanding of what happened at the treaty meeting is extremely different from what was written down and what is interpreted by Canada. Frankly, Canada has used that to their advantage, and their poor record-keeping about practices related to our treaty has also been taken advantage of by Canada.

I'll leave it there.

The Chair: Mr. Bossio, you have 10 seconds.

Mr. Mike Bossio: I will take that to just quickly say I posed this question to another group, and I'd like you to submit an answer on it. Do you feel, given the nature, and how diverse these negotiations are, that we need to embed within legislation the enforcement of trying to bring forward a more fluid nature to treaty negotiations, because we don't have anything like that today?

The Chair: Mr. Waugh.

Mr. Kevin Waugh: Thank you, Madam Chair.

My question will be directed to you, Morgan with HML, because you are a little different in that you are an advisory firm. You represent several groups from B.C. and Alberta. What is the difference? Let's start there. As an advisory firm, you mentioned Vancouver and Calgary. There was another location maybe, was there?

Ms. Morgan Chapman: Yes, one of our directors is based in Victoria, so our main offices are considered to be Vancouver and Calgary, but to speak to your issue between Alberta and British Columbia, because we work with Treaty 8 first nations, our experiences are generally pretty similar. Where we start to see differences breakdown in a lot of cases, from what I've heard from my colleagues and superiors, is when it comes to negotiations.

As an example, we are representing two communities. Not only did we do the specific claims research...the mission that was sent in for their treaty land entitlement claims, we are also working with them on their negotiations. We're in two very different places despite the negotiations starting at very similar times. In Alberta, we've actually been able to secure land selection and received, my understanding is, some very good feedback and participation from both Canada and the provinces in those negotiations.

In British Columbia, we're in the exact opposite position. We have a framework for the negotiations, but we're not able to deal with the land. My understanding is a lot of that is British Columbia not coming to the table. That is the struggle that I understand a lot of communities in British Columbia face. The province has been adversarial, or not as willing to come to the table on those issues, and have those discussions, or there are other issues at play today—I don't maybe have to share with you—but I'm certain that my superiors would be more than happy to address in a formal written submission to the committee.

Mr. Kevin Waugh: We heard the difference when we came to the Vancouver area. You represent both areas, Alberta and B.C., and that's why I wanted to drill down a little bit, because our committee isn't going to Alberta, and we wanted to know the differences between the two provinces.

● (1405)

Ms. Morgan Chapman: I think you will see it a lot more in the negotiations. You're going to see it in the different types of claims. My understanding is that treaty land entitlement issues in British Columbia are a lot more difficult to address, mostly because historically British Columbia has been less willing to provide additional reserve lands. From the outset, the communities we service that were not given their full treaty land entitlement now have to submit claims because British Columbia didn't want to come to the table and fulfill those obligations. My understanding is that Canada has not been able to compel British Columbia to do so.

Mr. Kevin Waugh: We'll move now to Chief Cootes. Thank you for your presentation here today.

Let's talk about the modern treaties. You've had some success, it sounds like. This is one of the few areas we're going to hear today that has had some success in modern treaties.

Chief Charlie Cootes: Every time I read the treaty it seems to get better and better. I have to say that about a lot of the treaties, and I don't say it about many documents.

This has liberated us from the colonial type of imposed government we had with the Indian Act, and it allows us to make our own laws. Every decision we made in the past as a band government took months and months to get permission from Ottawa to tell us we could cut down a tree, put in a trail, or make a decision in our council.

It gives us the freedom to serve our people. One of the major differences is that our treaty is structured from the bottom up. Funding comes to all of the five nations. If we choose to participate in the central government, that's our choice. We can kick some money up to an organization such as the Maa-nulth Treaty Society, or we can do it on our own. It's much more cost-effective to have some services provided collectively.

We have a set amount of resources for fisheries, hunting, and all of those. Some are allocated; some are not. The ones that are allocated have been the hardest hit in our negotiations. It was all about compromise when we were negotiating—whether we got enough over here or over there. At the end of the day, we have to give up something to get something that balances in order to move our nations forward and generate wealth.

One of the hardest hit areas was land and fisheries. I wanted to point that out because our allocations are fairly inadequate in some areas and quite adequate in others. We don't have a balance across the spectrum of species of fish that we're entitled to.

Mr. Kevin Waugh: We've heard a lot about land claims and fish. We haven't heard about culture. Talk to us a bit about the culture. Is it like it was when you moved to the modern treaties?

Chief Charlie Cootes: What the treaty made us able to do was to make our own decisions and act on them immediately. We made a decision to build an administration office. All our nations are doing something economically right now that's huge for them and that would not have been possible prior to the treaty. We built a self-sustaining building that is perfect for us, and we wouldn't have been able to do that before the treaty. It's our big cultural centre, our rental units, and all of that. You don't have to worry about mortgage payments, because we designed it to pay for itself. We had the ability to negotiate arrangements with the bank that they had never done before, with favourable interest rates over a 25-year period. Things like that we've been able to do.

One thing we haven't been able to do is get a satisfactory arrangement where we could be involved in pools borrowing, because we have to give up some government jurisdiction to the agency. In case of default, you let another organization come in and take over your financial affairs. That's unacceptable to us as a treaty nation, so we don't do that. We're not participating in pool borrowing. We go and devise and negotiate our own deals as opposed to coming under a first nations finance authority or something like that. These are some of the positive things for Maa-nulth that are happening.

● (1410)

The Chair: The questioning now moves to MP Saganash.

Mr. Romeo Saganash: Thank you, Madam Chair, and thank you to our panel.

I want to start with you, Morgan. The Nisga'a proposed an independent review body for implementation of treaties. You also mentioned it in your recommendation. Their suggestion on this review of the implementation of modern treaties is for an impartial independent body, which could be within the Office of the Auditor General. Are you on the same page in that respect?

Ms. Morgan Chapman: I won't speak for all the communities in that, because I'm sure that each individual community that we work on behalf of may have a vastly different idea of how that would look.

Based on our work with the Office of the Auditor General during the report last year, I will say that their level of independence and their ability to look at an issue very objectively were very welcome. The report was very favourable for first nations.

If that is a proposed option, I think it would be one to consider, yes.

Mr. Romeo Saganash: Chief Cootes, you talked about your treaty as a living document or a living expression of our relationship with Canada. I didn't quite get what you said about the 10-year review that's supposed to come up. Is it provided for under your treaty that in 10 years a review is supposed to take place?

Chief Charlie Cootes: Yes. It's every 15 years.

Mr. Romeo Saganash: Every 15 years?

Chief Charlie Cootes: That's right. That's what's in the treaty at this point.

We have issues that have come up from day one and have continued to this year. It was 2012 or 2013 when we started preparing for the 15-year review. We have a set of criteria that was developed, and it tracks all the relevant things that we should be tracking in regard to the treaty. It's a very good process if we implement it properly and do it on an ongoing basis.

Mr. Romeo Saganash: It's basically locked in that the review is going to take place in 15 years and there's nothing in between. Does the treaty provide for situations where a court, for instance, makes a decision or a ruling on something about the treaty that would require a change? Would that be possible?

Mr. Gary Yabsley: I think there are two parts to that. The 15-year review in fact is an ongoing 15-year review. Every 15 years there is a review. That review in and of itself does not prohibit any of the parties in the treaty from asserting in a court or politically that there has been a breach of the treaty—in our case, saying that governments have not lived up to the obligations they've made in the treaty. Both exist, either as a matter of what is in the general provisions chapter of the treaty or as a matter of the right to go to court.

Mr. Romeo Saganash: In northern Quebec, as you know, there's a Quebec forestry act that is of general application throughout. We argued for a long time that, given the specific provisions in the James Bay and Northern Quebec Agreement, ,there should be a separate forestry regime in northern Quebec, in the part of the territory that's covered by the James Bay and Northern Quebec Agreement.

That happened after a ruling from the Superior Court of Quebec, whereby the Superior Court of Quebec confirmed that the provisions of the Quebec forestry act were incompatible with the terms of the James Bay and Northern Quebec Agreement, in particular because there are hunting, fishing, and trapping rights of the Cree that are contained in the agreement, but you cannot exercise what are constitutional rights if there's no forest. That brought about the change in 2002.

I want to be clear about what you're saying. If a situation similar to what I've just described happens in your area, the treaty allows for that change or review or amendment to take place?

● (1415)

Mr. Gary Yabsley: If in fact what you're asking is whether in a similar situation one or all of the Maa-nulth first nations could institute a court case saying that the province had not lived up to an obligation it made in relation to forestry, or that what the province was doing by way of legislation or policy violated the rights that Maa-nulth had been assured in the treaty, then the Maa-nulth first nations could do exactly that. They could go to court and say, “B.C., you have not lived up to your constitutional obligations.”

Mr. Romeo Saganash: On that point I think, in general, one of the main problems with treaties throughout the history of treaties has been their implementation.

Chief Cootes, can you talk a bit more about that, about what are the specific implementation problems that you have encountered since 2011. You said that from day one you guys had problems. Can you elaborate further on that?

The Chair: You have about a minute.

Chief Charlie Cootes: I mentioned one of them and it had to do with the pooled borrowing. As well, we were having problems accessing certain categories of capital that Canada made available to other nations.

I think one of the things that we need to have in place is a relationship with Canada where if we have issues with Canada, then we should have a government-to-government process that circumvents the long lineup of waiting time or the expense of.... It's so expensive to travel from the west coast to Ottawa to have 15 minutes to half an hour with a minister.

I'll wrap up there and keep it simple.

The Chair: All right, I understand the questioning is going to be split, but we'll start with MP Anandasangaree.

Mr. Gary Anandasangaree: Thank you very much for joining us this afternoon.

Chief Cootes, you had mentioned a number of times the importance of data collection. I'm wondering if you're able to share with us any relevant data that speaks to the success of the self-governing model that you've undertaken, especially with respect to social indicators, education and health care. I don't know if you've had enough time—it's only been six years—so it may not be fully available, but at least to the extent that you can share, can you provide some information to us?

Mr. Gary Yabsley: I think it's still a little too early for that kind of data. It's difficult. It's since 2011 and you wouldn't be collecting the data probably until 2012 or 2013 and then you're into what would now be a three-year period and it's hard to define trends.

Maa-nulth has identified through its internal work a whole range of criteria that it's starting to do, but it does not have the resources to adequately do, given either the governance or the economic or the cultural indicators that we alluded to. My best guess would be that you're probably looking at a five- to10-year period to be able to respond to that question knowingly.

Mr. Gary Anandasangaree: Ms. Chapman, I believe you were the second speaker today to discuss the impartiality and the fact that the government and the adjudication are all one and the same. Do you have specific information that suggests the level of adjudication is not impartial or is it just the appearance given that the funding is coming from the government? There are the parties, the government.... The adjudicative bodies also to some extent are an arm's-length body of the government.

● (1420)

Ms. Morgan Chapman: I think you're getting into very complicated territory and I might not be in the best position to answer that question fully, but I think there are two parts to it. There is the issue of optics, so you have the judge, jury, executioner idea that's a perception, both from the inside and the outside, but then you also have things like the Specific Claims Tribunal and their recent findings and the fact that they're largely finding in favour of first nations claims, which Canada has itself rejected already.

That, to me, is the biggest indicator that it's not being as objective in its analysis and assessment of claims. Some have definitely gone to judicial review, which, again, is another process that I don't believe any of our communities have been involved in at this point. I think some other communities that have spoken today would probably be in a better position to address that specific aspect, but that alone to me indicates that there is a problem.

Mr. Gary Anandasangaree: Thank you.

I will yield the rest of my time to my colleague.

Mr. T.J. Harvey: Thank you. I appreciate that.

I just wanted to touch on something, Ms. Chapman. At the beginning of your speech, you talked about the value of the claim and the ability of the community or the first nation to pursue that claim depending upon what its value is, the threshold. Could you elaborate on that a little, because I am fairly ignorant on the subject?

Ms. Morgan Chapman: Sure. If a claim is valued by Canada at less than $3 million, I don't believe they receive any negotiation loan funding. Historically, I believe those have been given as “take it or leave it” offers by the government. They are usually very nominal sums.

I don't believe any of our communities have been faced with that yet. Actually, I take that back. We have had some partial acceptances that were definitely nominal values, which, had they landed on the negotiation table, might have had a very different outcome. A lot of those “take it or leave it” offers are what you are now seeing as “closed claims” on the specific claims report. In a lot of cases, first nations opt not to respond to them because they are quite insulting offers, to be frank, when you're talking about a historical loss dating from as far back as 1899 to modern day and you're getting pennies on the dollar, if even that.

Mr. T.J. Harvey: Is there an ability to appeal that amount on behalf of the first nation, if they just say, “It's under $3 million, so we're going to offer you this much”?

Ms. Morgan Chapman: My understanding is that this could then go to tribunal. I believe that, in recent months, the specific claims branch has been talking about coming up with a different process, but again, I think it would have to go back to being legislated, because right now the mechanism.... I could be speaking out of turn, so I apologize if I don't have my understanding of that part of the policy 100% on point, but I don't believe there is much avenue for a first nation to refute that.

A lot of the feedback I am hearing from our communities is that, before any valuation offer is made, we should be going right to a negotiation table as soon as outstanding legal obligation is found on the part of Canada. Until you actually have the opportunity to speak and discuss what Canada is finding, why they're coming up with that valuation, and what it actually means in practical terms to the first nation.... You heard a couple of the other communities say that Canada needs to come and put boots on the ground in the communities to actually see the impact of those claims, because they're coming back as very nominal issues, when in actuality you have communities that are divided by highways, industrial development, or whatever other options. The NNTC representatives spoke about the railroads this morning. You don't understand those impacts on a community until you're there, boots on the ground, and can see them. It's the same for our community. You don't understand the impact those changes and rulings have.

Mr. T.J. Harvey: Thank you.

Lastly, Chief Cootes, just before my time is up, because now I'm running short, I just wanted to reflect on something you said during your speech. I can't remember the exact words, but it was around the idea that the first nation communities are somehow responsible for funding their portion of an agreement to a problem they didn't create, dating back hundreds of years to injustices that were done against the first nation. I just wanted to say that I had never heard it put quite that way. The way you put it definitely gave me a bit of insight into it, so I wanted to thank you for that.

● (1425)

The Chair: The questioning now moves to MP McLeod.

Mrs. Cathy McLeod: Thank you, Madam Chair.

This is a very simple thing. We've heard a couple of times today that it is very expensive and time-consuming to go to Ottawa to have these discussions. Certainly, I live that regularly. Does the government make technology easily available? In this day of Skype conversations that you can record and see people.... I can appreciate that telephone conversations aren't very satisfying, but is that something that you have ever approached and asked the government to do? Are they receptive to those conversations happening by using technology? It's a silly question, but I've heard about this a few times today regarding B.C.

Ms. Morgan Chapman: I can speak very generally to that. A lot of our communities don't always have access to the high-speed Internet that you would need to actually facilitate that type of meeting.

Mrs. Cathy McLeod: I appreciate that.

Ms. Morgan Chapman: That is a big barrier, when you talk about bringing technology into the discussion.

Mrs. Cathy McLeod: It was just a thought because I've heard so many people talk about the very onerous requirements, and I agree that having a conversation can be better.

Chief Cootes, you concluded in 2011. What year did you start?

Chief Charlie Cootes: We started talking about treaty negotiations in about 1992, as B.C. presented this morning, in an organization called the First Nations Summit, but it started previously in the congress. Then we started in Nuu-chah-nulth later on in the 1990s, and we went so far with 14 nations. Eventually, two drifted off and we were left with 12 nations.

When it came time for the agreement in principle to be voted upon, six first nations voted in favour of the agreement in principle and six first nations opposed it. As a result we were in a dilemma and went into limbo for two or three years before a number of our leaders of those nations who voted yes got together and approached the government to restart negotiations. They had a few conditions. We met those conditions, and we started renegotiating the Maa-nulth treaty.

Mrs. Cathy McLeod: On the total loan component, do you remember what the dollars and the percentage of your final settlement ended up being?

Chief Charlie Cootes: For Maa-nulth, our total loan exceeded $20 million to conclude the treaty. Looking at some of the court cases on single issues today, they can reach $20 million and more. We negotiated 26 chapters of individual things to come to an agreement, so I think we used our funding really wisely to cover a broad base of things over which we have jurisdiction, partial jurisdiction or complete jurisdiction. I think that's the great thing about our treaty.

Mrs. Cathy McLeod: When some of your communities decided not to proceed, I presume you had significant challenges with overlap issues. Did those end up getting dealt with before a final agreement, or is that still a process that's happening?

Chief Charlie Cootes: We dealt with them as best we could. We've had a challenge, and it's since been resolved in one of our nations. It didn't alter anything for Maa-nulth. The treaty had profound impacts when we went from the big table to the small table. I don't know if you're interested in the detail, but in families you have intermarriages between nations and there was fighting in the homes, there were impacts on the schools and all those things when our nations separated and we started our own treaty tables. The treaty caused a lot of things that we have had to overcome. That's why it's a piece that is very necessary in our lives to deal with, to protect, because it has done great things for our Maa-nulth nations. It has its hang-ups and its problems, but those are in an area of a 10-year review and we're trying to make better after the first 10-year review meeting.

● (1430)

Mrs. Cathy McLeod: I think it would be interesting, but perhaps too detailed for what we're doing today, but if out of your original group you have a number that are in treaty and aren't dealing with talking to...six months...of the department making decisions that should have been easy and simple. When you talk about data, are the communities saying you moved ahead and they didn't? Have you ever talked with the other partners in terms of saying what's good and what's bad?

Chief Charlie Cootes: Yes, we do communicate. Most of our communications are with other nations around British Columbia. We go and meet and present and talk about treaties with nations that invite us to come and talk about our treaty. It's lesser among our group, but there are noticeable differences between how we do business. We still collectively meet as 14 nations to carry out our tribal council business.

I'll leave it there, because it's a long story.

The Chair: That concludes our time for today. Thank you for coming out and sharing your thoughts with us. I encourage you to submit other briefs if you wish. To everyone who presented, *meegwetch*; thank you very much.

That concludes the public hearing session of today's meeting of the standing committee. I'd ask the committee to stay for a short informal discussion.