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Chair

The Honourable MaryAnn Mihychuk

Standing Committee on Indigenous and Northern Affairs

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● (0805)

[*English*]

The Chair (Hon. MaryAnn Mihychuk (Kildonan—St. Paul, Lib.)): Good morning. I'd like to call the meeting to order and recognize that we are on Treaty No. 1 territory and the homeland of the Métis people.

Welcome, everyone who is here. We are the standing committee from Parliament that looks at indigenous and northern affairs. We welcome you to these proceedings studying land claims. Pursuant to Standing Order 108(2), the study on specific and comprehensive land claims agreements is what we are complying with.

This is the second stop in our cross-country tour to hear from people about land claims. We were in Vancouver, and today we move on to Quebec City. We will have an opportunity to hear from more delegations in Ottawa at the end of September.

If you wish to submit reports, please have them in by mid-October. We encourage you to do that. It will become part of the official record. We'll use that information as part of our report providing recommendations to the Government of Canada.

In the first panel, we have MKO Grand Chief Sheila North Wilson; and from the Treaty Land Entitlement Committee of Manitoba, Chief Nelson Genaille. I see that Grand Chief Dumas is not here, but he may join us shortly. I thank you.

You each have 10 minutes to present your official remarks. Then we will have an opportunity for questions from the MPs.

Grand Chief Sheila North Wilson (Grand Chief, Manitoba Keewatinowi Okimakanak Inc.): Good morning.

[*Witness speaks in Cree*]

I'd like your translators to translate that, please.

Voices: Oh, oh!

Grand Chief Sheila North Wilson: My name is Sheila North Wilson from the Bunibonibee Cree Nation, and I also have family in Pimicikamak Cree Nation. I'm the Grand Chief of Manitoba Keewatinowi Okimakanak. I'm very happy to be here. Thank you for the invitation. Welcome to Treaty No. 1 territory.

I acknowledge my colleagues, Chief Nelson Genaille from the Sapotaweyak; Chief Jim Bear, who will be here shortly; as well as Grand Chief Arlen Dumas from the Assembly of Manitoba Chiefs; and all of you. It's nice to see everyone.

Good morning, again. On behalf of Manitoba Keewatinowi Okimakanak, I welcome you as committee members representing the three federal parties to Treaty No. 1 territory and Winnipeg. Winnipeg, of course, is the location of the MKO suboffice and home to many off-reserve MKO community members.

As I said in Cree, my name is Sheila North Wilson. Once again, thank you for the invitation to address you on the specific claims and comprehensive claims agreements policies of the federal government from the MKO perspective. Grand Chief Dumas will give you an overall perspective. Chief Genaille will be more more specific to TLEC, and I'll give you a little bit of the northern perspective, around the Northern Flood Agreement specifically.

To give you further background on Manitoba Keewatinowi Okimakanak, our head office is located in the heart of northern Manitoba, in the Tataskweyak Cree Nation, in the Treaty No. 5 territory, just north of Thompson in northern Manitoba. MKO Inc. is the secretariat of 30 northern Manitoba first nations, which together make up a population of about 73,000 people: Oji-Cree, Cree, and Dene.

As the grand chief, I'm elected to advance the interests and priorities of MKO rights holders in all socio-economic and political areas, including health, education, and treaty rights, and to advocate to all levels of government on behalf of northern Manitoba leadership. MKO chiefs and assembly have priorities to protect the rights of women and children, to ensure sustainability of our communities, to transfer indigenous knowledge and practices, and to ensure that our communities continue to be the basis of our identities and bastions of indigenous language and cultures in northern Manitoba.

My goal in appearing in front of the committee is to support my fellow leaders and our technicians in providing a common message to the committee on specific and comprehensive claims as the policy applies to Manitoba.

As you have heard and will hear, the Treaty Land Entitlement Committee of Manitoba has been mandated to act on behalf of the 21 entitlement first nations, many of which are located in the MKO territory. MKO encompasses close to two-thirds of Manitoba.

In negotiations with the federal and provincial governments, it is a table that came out of the Manitoba framework agreement that was signed in 1997, so it is a process that is specific to Manitoba, and parallel to the federal specific claims and comprehensive claims agreements policies. Our treaties help to define the MKO communities and peoples. Therefore, TLEC and its administrative office are close partners with three of the Manitoba PTOs—KO, SCO and AMC—in our collective efforts to advance treaty rights of Manitoba first nations.

The first point I'd like to make is that although we have the Treaty Land Entitlement Committee and the specific claims process, and the process has led to urban economic development zones for some MKO communities, I can't see the process, as it stands, meaningfully increasing the total reserve lands of first nations in Manitoba or across the country. That would be a pre-requirement and central to strong indigenous economies and self-determining communities.

Our land south of the 60th parallel, as described in section 91 of the 1867 BNA, amounts to approximately 2% of the total land mass of Canada. That means that 99.8% of the land mass of Canada is in the hands of the crown and the right of Canada—provincial, territorial, and private ownership. In Manitoba, the crown and the private land currently available to entitlement first nations is approximately 1.1 million acres. This is really insignificant and will not make much of a difference in the big picture of first nations land distribution when fully completed.

Even after the TLE, which you have heard has been slow and arduous, has played out and all of the identified treaty entitlement lands have been transferred, Canada and private ownership will continue to hold 99% of the ancestral homelands of indigenous people, comprehensive claims, self-government, and modern treaties notwithstanding.

On the Northern Flood Agreement of 1977, I would like to bring to the attention of the committee the unfulfilled promises of the Northern Flood Agreement, broken promises that continue to be at the root of economic and social problems in some of the larger MKO communities 40 years after it was signed.

The following is from the aboriginal justice inquiry:

> The Northern Flood Agreement was signed by Canada, Manitoba, Manitoba Hydro and the Northern Flood Committee representing the five First Nations (Nelson House, Norway House, Cross Lake, Split Lake and York Factory) whose reserve lands were to be flooded by the major hydro-electric projects planned. The agreement provided for an exchange of four acres for each acre flooded, the expansion and protection of wildlife harvesting rights, five million dollars to be paid over five years to support economic development projects on the reserves and promises of employment opportunities. The agreement was also to deal with any adverse effects to the "lands, pursuits, activities and lifestyles of reserve residents." The five First Nations were guaranteed a role in future resource development as well as in wildlife management and environmental protection. Certain water level guarantees were made and Manitoba Hydro generally accepted responsibility for any negative consequences that might emanate from the flooding. In return, Hydro obtained the right to flood reserve lands as part of the Churchill Diversion Project. Disputes over any adverse effects were to be settled by arbitration....
>
> Manitoba Hydro obtained what it wanted as it proceeded with this massive project. The reaction from Aboriginal people has been far from positive.

That's from the AJI, and I'd like to remind everyone again that close to 80% of the energy that Manitoba Hydro produces comes from this region, from MKO territory. At the time, the AJI recommended that the governments of Manitoba and Canada recognize the NFA as a treaty, honour and properly implement the NFA's terms, and take appropriate measures to ensure that equivalent rights are granted by the agreement to the other aboriginal people affected by flooding. The AJI also recommended that a moratorium be placed on major natural resource development projects, unless and until agreements or treaties are reached with aboriginal people in the region who might be negatively impacted by such projects, in order to respect their aboriginal treaty rights in the territory concerned.

On December 15, 2000, the then Minister of Aboriginal and Northern Affairs, the Honourable Eric Robinson, made a ministerial statement in the legislative assembly concerning the NFA. He noted that it was of immediate importance to the government to address the devastating consequences of the flooding of first nations lands for hydro development. In that statement, he also stated that the Government of Manitoba recognized that the NFA is a modern-day treaty and expressed the government's commitment to honour and properly implement the terms of the NFA as recommended by the commissioners of the aboriginal justice inquiry in 1991. The minister went on to note that the government acknowledged that comprehensive implementation agreements had been signed with four of the five NFA first nations as a method of addressing and implementing the terms of the NFA.

Canada has legal obligations under the NFA, and had, for example, previously announced the conversion of reserve lands of 10,281 acres of provincial crown land for the benefit of the Nisichawayasihk Cree Nation under the First Nations 1996 Comprehensive Northern Flood Agreement Implementation Agreement.

However, compensation for flooded reserve lands has not been completed by Canada, Manitoba, and Manitoba Hydro under the comprehensive NFA implementation agreements developed and currently in place with impacted first nations. Our communities impacted by hydro development continue to be some of the poorest first nations communities in all of Canada. This is unacceptable in light of the historical and modern age treaties such as the Northern Flood Agreement.

● (0810)

The Chair: You have twenty seconds.

Grand Chief Sheila North Wilson: I think I'll leave it there and just reference that we've heard, in the Prime Minister's speech to the UN, of the importance of the relationship. He mentioned the points that affect indigenous people directly, and we'll hold him to account on the words he spoke. Although we appreciate those words, we still have a long way to go to implement even, for example, the Northern Flood Agreement.

Thank you.

● (0815)

The Chair: Thank you.

The next presenter is Grand Chief Arlen Dumas.

Grand Chief Arlen Dumas (Grand Chief, Assembly of Manitoba Chiefs): Good morning.

My name is Arlen Dumas and I am Grand Chief of the Assembly of Manitoba Chiefs.

It's important to acknowledge the land of what is currently referred to as the province of Manitoba, which is the ancestral and sovereign territories of the Anishinabe, Cree, Dakota, Dene, and Oji-Cree nations.

I just want to express that there is limited time to properly prepare for such significant work. No funding or research supports were provided to help us present today.

All first nations in Canada should be directly engaged in matters such as this, which are fundamental to our land rights. Others will speak specifically to treaty land entitlement issues in Manitoba and focus on specific and comprehensive land claims policies.

Current policies are not consistent with first nations', domestic, or international laws. Canada is not acting in good faith when it comes to issues of first nations' lands. Policies cannot be fixed through minor amendments and will require a fundamental overhaul and replacement.

The problems with specific claims and comprehensive claims policies are based on the assumption of crown sovereignty and title. Canadian laws and policies make the assumption of Canadian sovereignty over our territories. This requires first nations to make claims to Canada versus the other way around.

We dispute Canada's claim of sovereignty over our lands, outright. We assert that our sovereignty remains intact and that treaties are a recognition of indigenous nationhood and sovereignty.

Number two is that aboriginal title of land is not a foundation of either policy. There is no doubt on the historical record that these lands are first nations' lands. Canada has recognized this many times over through various land acknowledgements. Federal policies have not kept up with Canada's own court cases confirming aboriginal title. There is no process to protect first nations' lands and resources before or during negotiations.

Number three concerns the inherent conflict in the review and decision-making process. Current processes use Canada's laws, policies, lawyers, judges, courts, and enforcement mechanisms, and this is profoundly unbalanced. The Specific Claims Tribunal, heralded as independent, still uses Canada's laws, judges and courts without equal review, decision-making and inclusion of first nations' laws and processes.

Number four is that the return of land is not a central tenet of either process. Land is central to our identity, culture, self-sufficiency, economic well-being, and nation building. All lands in Canada are rightfully owned by first nations and Inuit. Failure to make land a central feature of these policies is a fundamental flaw.

Number five concerns presumption of land surrenders for first nations' lands covered by treaties. Treaties throughout Canada are very significant. Numbered treaties are wrongly treated as land-surrendered treaties, which does not correspond with first nations' laws or understanding. Canada imposes its own interpretation of numbered treaties, which acts as a significant limitation on negotiations.

Number six is in regard to the extinguishment under the guise of certainty, which violates first nations', domestic, international, and normal laws. Extinguishment of rights is not consistent with first nations' laws, jurisdictions, or decision-making processes that protect rights of past, current, and future generations. UNDRIP and other international declarations, conventions, treaties, and laws are centred on the protection and observance of indigenous land and resource rights, not their extinguishment. Extinguishment for money is a bullying tactic to force impoverished first nations into prejudicial settlements.

Number seven is that policies focus on Canadian objectives and do not include first nations' objectives. Current policies focus on Canada's desire for extinguishment of our rights; the protection of the historical uses of our lands and resources by settlers regardless of its illegality or impact on first nations; and the desire of various industries, primarily large corporations involved in the extractive industries, to profit from our lands and resources. Nowhere in the policy does it mention protection and enforcement of first nations' rights to lands and resources, the primacy of our rights, or our right to be self-determining and self-sustaining within our territories.

Number eight is that policies do not take into account the profoundly unequal bargaining position of the parties. Negotiations can take many years, sometimes decades, but only Canada and private industries benefit from our lands and resources in the interim.

● (0820)

Interests of third parties are given priority over pre-existing and constitutionally protected first nation land rights. Limited funding in the way of loans prejudices the process by making one party indebted to the other and under pressure to reach a settlement, no matter how unjust. Canada does not act in good faith during these land settlement negotiations. The federal government is frustrating land negotiations in the additions to reserve process here in Manitoba through the treaty land entitlement process, by using other aboriginal groups, namely the Métis, to interfere with first nations land rights. Canada prioritizes the profits of corporations and industries over the constitutional rights of first nations. Canada uses its policies, forces, and military to impose its will on first nations with regard to land ownership and use. Canada adopts rigid negotiating mandates and positions.

Dispute-resolution mechanisms are not accessible to many first nations. The only alternative to prejudicial and unequal land claim negotiations is the courts. The courts are heavily biased towards Canadian laws, interests, and perspectives. Court cases are lengthy—lasting upwards of 25 years—and expensive—costing millions of dollars—and offer little substantive protections for our lands and resources in the meantime. Any acts we take to use our land in the interim are often met with court-imposed sanctions or arrests.

Here are some of the preliminary recommendations.

One, a new joint land resolution process must be negotiated directly between Canada and the rights holders, first nations, i.e., how they choose to be represented by first nation leaders, experts, and/or representative groups.

Two, a new policy must be based on the recognition and protection of aboriginal title with the return of lands and resources as the central feature.

Three, any new mechanisms must be joint processes that include first nations' authorities, laws, policies, and dispute resolutions, decision-making, and appeals.

Four, all federally imposed limitations on negotiations must be removed, including those in relation to land transfers and compensation for past and ongoing loss of use.

Five, any new policy must be consistent with international laws, including UNDRIP, and specifically including the legal principle of free, prior, and informed consent for all activities on first nations lands before, during, and after negotiations.

Six, an extensive and comprehensive joint review of all federal, provincial, territorial, and municipal laws, policies, regulations, bylaws, and other processes must be carried out to determine their compliance with first nations' domestic and international law-making processes in relation to first nations land and resources rights. This would include a comprehensive review of TLE processes to address ongoing issues of prejudices towards first nations in the additions to reserve process

Seven, significant funding and related supports must be provided for first nations to engage in research, legal reviews, consultations related to our lands, and resource interests.

The Chair: You have two minutes.

Grand Chief Arlen Dumas: Thank you very much.

I think it's very important to be mindful of the intention of these policies, and the fact that they have been in existence and have not provided meaningful or collaborative solutions that are essentially, fundamentally part of our relationship in Canada, in which we as partners both benefit in a meaningful way. While there have been a few examples of successful negotiations, unfortunately they are few and far between, and there needs to be a comprehensive review done so that we can ensure that we facilitate more of a meaningful development in regard to these issues. We're all reminded of how that relationship is supposed to continue to move forward and mutually benefit everyone who's involved.

I think it's also very important that the government quit using other groups to frustrate the process. The government needs to quit allying itself with industry the way it does, and actually start serving Canadians and first nations people alike, in order to properly provide for and continue to benefit the country, as we know it.

Thank you very much.

The Chair: Thank you.

We're into the question period.

Oh, I'm sorry.

First we have Chief Nelson Genaille.

My apologies.

● (0825)

Grand Chief Nelson Genaille (President, Treaty Land Entitlement Committee of Manitoba Inc.): Good morning.

[*Witness speaks in Cree*]

In plain English language, I welcome you to our traditional territory, the Cree territory. It really goes through our history, the Cree Anishinabek. They travelled through there, and the Ojibways later on. We have never seen Métis here. As we walk across Turtle Island.... You know, I'm a chief, which was formerly a headman back when treaties were signed in the time of my grandfather, so I like to welcome the grandchildren of the settlers here. I acknowledge you, every one of you.

I find it very amusing that I have to explain to you the comprehensive claims and the negotiations I go through and understanding treaties when, in turn, when you seek office, what is your intent in the first place? Is it under Canada, or is it under the settler? When I look at the settler, he only came here to farm, the dust of a plow. As my grandfather said to my mom, he was actually given the net, the shells, the oxen to provide a new way of life, to live this new way of life.

When I look at specific claims under TARR, an organization which is to research what was signed in the first place. We had economic opportunity under TLE, and were denied. Why is that? Why do we need to be so scared that we deny first nations their economic opportunity?

I cannot sell our furs any more to make a living, so I have to change and adapt. This past weekend we took our children out into the forest and hunted moose. Back in 2012 and 2013, I had to take an industry to court, and the Manitoba Government to court, because of what was promised in treaties. From my understanding the crown land was there for my use and benefit, so when government gives it to a proponent like an industry, like Manitoba Hydro, where does my land go?

Something that was taught to me by my mom and my grandfather was that when we go to pray, let's not bow our heads down and shut our eyes. Let's learn from the first time, because when we opened our eyes, our land was gone. So I take these key messages to my heart, what's left to me to understand. On negotiations and understanding specific claims, TLE has 1.1 million acres of unfinished treaty business. My property, in the town of Swan River, is 0.114 acres. It provides $6 million gross. That's the economy of Swan River. I get 10% of that. I still can't afford 275 houses for my community. That sits idle for eight years. Six times eight is $48 million. Are you prepared to give me $48 million so I can provide adequate housing for my community? I don't think so.

Are you willing to negotiate extractions from our territory of gravel, limestone, or gold? Right now, how much land does Canada have? That's your first question. You don't have any land. What did Canada do in 1930? They gave everything to the provinces of Canada. Did you ask me, grandson of a headman, to do that? No, you didn't.

● (0830)

So I find it very hard to explain what you need to know. What do you want to know? Do you want to know the truth or do you want me to draft up something that in your language you'll understand? Number one is accountability. We've been accountable to our people. Whenever we are not accountable, we get removed. Before the Indian Act, my grandfather was a headman until he passed on. That was our history. We were specifically given the task of being the leadership in our community and providing for our membership. I go to understand. In my community, it was the spiritual people who were in power, because they would provide for their community members.

Then when you look at specific claims, I could give you specific examples, like “Justice at Last”. Are they implemented? They're not even implemented. When states establish an inherent conjunction with indigenous people, it's not even transparent. It's not even a transparent process, because this is basically a boxing ring. If we want to box, I have to do a protest to stop you. That's what we have to do.

Under “Justice at Last”, the final arbitrator chooses to accept or reject the claim and they negotiate, but at the same time that's under their terms, which are basically Canada's terms. Following the five-year review, and developing the recommendations, nothing has happened, because you choose to turn a blind eye. There's a private member's bill that I fully support, but I don't have that power. You have that power to support. How come you do not wish to support? That's the question that you should ask yourself. Is that going to be truly justice at last when that happens?

Right now, there's a “no hunting moose” ban in my territory, but I do continue to hunt and take moose because I have to provide for my membership, for my people, because that was promised in treaties. When we asked for a joint process—rights holders, domestic, international—you failed to remember that you have to ask the real rights holders if you can come to our territory, if you can do business in our territory. That is what your first elders asked when they first came here. As soon as treaties were signed, where did the treaties go? You have to ask yourself that question. Where did the treaties go? I understand my treaty rights, but I also understand my indigenous rights to the land itself. We, as indigenous people, are married to the land. We live off the land and we need that land, but in today's day and age, it's for economic opportunity. I just bought another piece of property from the Town of Swan River. It's an old derelict building. Guess who had to clean it up? We had to. We had to get a company to clean it all up and remove the old building. We signed a municipal services development agreement; we made an agreement to set up business. This one is subject to make me $13 million for my community and that's gross. That's $19 million for these two properties that don't even add up to an acre yet. When you look at Canada and the extraction of resource across Canada, what is that dollar amount? What is the actual amount owed to the first nations, if not even an acre has given my community possibly $20 million?

Then we have this big green book here. In 1997, it was signed on May 29. After 20 years, we're not even halfway done. The Liberal government promised 10 years to conclude and finish this business.

● (0835)

How can we, when 140 years later we're still trying to finish the business of treaties that were signed? I just came back from Treaty 4 territory, where we were celebrating our annual Treaty 4 gathering. My people still go to Treaty 4 land in Fort Qu'Appelle, because that's where we come from. We are Plains Cree. When the superintendent said, “This is where you're going to live. We'll set aside 100 acres for you to live”, but my grandfather understood that the whole territory under Treaty 4 was what we were supposed to live off.

The Chair: Thank you.

Question period moves first to MP Gary Anandasangaree.

Mr. Gary Anandasangaree (Scarborough—Rouge Park, Lib.): Thank you, Madam Chair. Thank you, respective chiefs, for joining us. I too acknowledge the land that we're gathered on.

Just to pick up on the grand chief's suggestions with respect to a new model of dispute resolution, can you give us some sense as to what that framework should look like in terms of joint decision-making? Maybe you could walk us through an ideal way of addressing some of the structural concerns you've identified.

Grand Chief Arlen Dumas: I think if you make an objective assessment of what has happened historically.... In my statements I said that these processes are becoming misaligned or intentionally "disaligned" with current court decisions that have come down through the last 20 years. There are abundant examples. My honourable colleague mentioned the agreement he just presented before you, for which there's actually a contract, a legal framework that is developed for us to move forward on. However, the bureaucracy and the judicial system take liberties and interfere, and don't allow for meaningful development. As I said in my statements, there needs to be a meaningful collaboration between first nations and other leaders in order to ensure that these mechanisms are in line with the law, if we're to follow the rule of law, and that there is free, prior, and informed consent, as well as the UNDRIP.

I can't necessarily give you specific things, because we would need to do that work. We can build upon the failures of the past, continue to be aware of them, and move forward in a meaningful way. My honourable colleague here mentioned earlier that just through the wherewithal and the ability of his community where he is, he's able to provide additional resources so that he can look after himself and his community. That's what we all want.

Mr. Gary Anandasangaree: Grand Chief Wilson, could you comment with respect to specific claims and how a framework that is a lot more in line with the intention of joint decision-making would look?

Grand Chief Sheila North Wilson: I think the discussion has to be initiated and reinvigorated with the first nations and representatives on a more equitable basis in respect of sharing or transferring the land. I think the most basic part of this is the principles we see in UNDRIP. If we actually saw the implementation of UNDRIP, we would start to see a road map of how to start to create a process that would be more fair and equitable.

Chief Genaille speaks on behalf of his specific community, but we are the representatives of the rights holders. We're not the rights holders as an organization or as grand chiefs—that process has to be taken directly to the first nations and rights holders. While we're here to help with that and coordinate the messaging, it has to be respected that sovereign nations be engaged again and start to look at the practical ways to see the transfers.

For example, as Chief Genaille mentioned, in Swan River he bought some land and property, and he's able to do that, but it took years and a lot of negotiations for them to get to that point. It's the same with the Nisichawayasihk Cree Nation in Nelson House. The Cree Nation now have some property in Thompson itself.

We need to see more of those opportunities. We're all tired of the idea that we're dependent on government, because we feel we're not. I think when we look at the overall picture, we don't feel we are dependent, but we need better partners to work with us so we can take care of our own. That's the heart of it.

● (0840)

Mr. Gary Anandasangaree: Grand Chief Genaille, can you outline some of the challenges you face with respect to acquisition of land and negotiations with the government?

Grand Chief Nelson Genaille: Basically it's a changing of the guard. I met with many different ministers, with the PC government that was in charge, and with different mayors and councils as well as the bureaucrats at the INAC offices. Nobody they put in charge knew anything about the policies in place, and they all had to start over. I had to educate them. I should be given a doctorate degree for how many people I educated. That's including the ministers and even the mayor and council.

It's all about implementation. When a first nation selects a piece of property, it's done through a photo-based map. When third-party interests have been agreed to and resolved, we sign an RSM map, a regional surveyor map. Then once that's signed off, it's surveyed. When it's surveyed, orders in council are produced by Manitoba giving up the land, giving it to Canada. After another order in council, Canada gives it to us for our use. Even after that, who looks after it? It's the Queen. But when we look at the legalities, it's still my territory. When the treaties were signed, it was basically to allow settlers to use the territory of Treaty 4, where I come from.

The Chair: That's a good point.

We'll now move to MP Cathy McLeod.

Mrs. Cathy McLeod (Kamloops—Thompson—Cariboo, CPC): My thanks to all the presenters.

Thank you, Chair.

Something came up in our meetings in Vancouver, and I've had personal exposure to it in the riding I represent. It relates to comprehensive land claims and specific land claims. It relates to the government's policies on divestiture of what currently is their land. In Kamloops, there was an agricultural centre that the federal government decided it did not require anymore. I got that divestiture process from Treasury Board. Although first nation interests in that land was part of it, I was surprised to see these interests not playing a more prominent role in the process. Does anyone have anything to say about how the federal government's divestiture process should work?

Grand Chief Arlen Dumas: I'm not intimately familiar with the policy. However, I do have a general understanding and that's actually a good example of where there needs to be more of an effort for everyone to make an informed decision.

First and foremost, when we have opportunities like that, every effort should be made to make sure that everybody realizes the opportunity and the potential of those types of acquisitions. I believe here in Manitoba some of our relatives in the south are actually trying to acquire certain retired Canadian army barracks here in the city. For some reason, every possible obstacle is made to impede and stop that transaction from happening, whereas, if you take a look around the country, in Saskatchewan.... Even here in Winnipeg with Long Plain, the transfer of the urban reserve actually provided an economic stimulus to a part of the city that essentially was going to get shuttered had it been allowed to move forward. The whole city redirected traffic, and now I believe it's the busiest or the second-busiest gas station in the city, but there was a lot of effort to make that happen. Why can't we do that with this other example or the example that you used?

There needs to be more of an effort to allow for those things to happen and less interference by bureaucrats and people with other agendas, because there is an obligation by the federal government when those lands become available to make meaningful transactions with whichever first nations are around.

● (0845)

Mrs. Cathy McLeod: In the particular case that I am more familiar with, it was within the traditional territory and there was a specific land claim. The specific land claim was not part of that actual area, but certainly I thought there was a lot of opportunity. I thought there might be some more appropriate Treasury Board guidelines as we look at these opportunities.

Did anyone else have any comments on that particular suggestion?

Grand Chief Arlen Dumas: I'm sorry, but I just want to follow up on your last statement. I think, as I said, every effort should be made. Just because something doesn't fall into a box.... These negotiations are based upon a certain set of parameters, but if there's an opportunity there for us to be meaningful partners, why wouldn't we try to rule in favour of something that's going to be beneficial for everybody?

That policy should be reviewed to see if we could provide opportunities that are above and beyond.

Mrs. Cathy McLeod: Thank you.

You had a little bit of an opportunity, Grand Chief North Wilson, to talk about the 1977 Northern Flood Agreement, which I'm not completely familiar with. Could you clarify a little further in terms of which components of the agreement you feel were actually met and which components of the agreement have not been adequately addressed?

Grand Chief Sheila North Wilson: I think we'd have to go line by line to do that, but I think in the overall picture there are some gaps. We do see some benefits to the communities, for instance when you go through some place like Nisichawayasihk, where the most recent building they have is the interpretative centre. You walk in and you see it looks like a beautiful museum, a northern style museum. It's very modern, very informative.

Also with that building, they house the community kitchens, where hunters from the community come and they bring there what they hunt and fish, and then it's shared equally with the community or the people who want it.

When our people and our leaders and our technicians in this day and age find a way to implement those kinds of initiatives, they fully maximize them. But, for instance, one part of the agreement is to have youth centres in every community, the ones that are affected by the MFA, but we don't have such buildings.

We hear about the suicide rates that came out recently from Pimicikamak, which created a national dialogue on suicide. One of the most basic things they have asked for is a youth building for them to have as their own, so that they can do their own activities. That was part of the MFA that asked for and agreed upon, and it still hasn't been implemented.

We would have to look line by line at the items that were promised and that have not been upheld, but of course those don't include all the other ones that are not part of the MFA. For example, in Shamattawa, they're having trouble with the schooling and finding teachers to come there. I think if there were a better implementation of their treaty rights, we would see a different situation there.

That's one of the extreme examples but, of course, our other 30 communities have different perspectives and rights to the land and opportunities that they are being denied continuously.

Mrs. Cathy McLeod: Okay.

● (0850)

The Chair: Sorry, Cathy.

We now move to MP Romeo Saganash.

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

[*Member speaks in Cree*]

I think all of you talked about the policies and about how these policies do not necessarily respond to the challenges that we have, either in treaty implementation or in terms of the other issues that we face as first nations.

I have to tell you first, Nelson, that when you welcomed the grandchildren of the settlers, I did not feel welcome at all.

Sheila, when you talked about broken promises, even if I said to you, “Welcome, to the club,” it would be a bad joke.

I just want to acknowledge those two things first.

I'll ask the question that Gary asked, but from a different perspective.

You all talked about UNDRIP and the importance of having the UN declaration as a framework for moving forward in this country. I think we all agree, and I thank you for your full support for my private member's bill. That's exactly what Bill C-262 intends to do. Whatever we work on in the future, whether it's on treaty implementation or land recognition or rights recognition and so on, those need to be the minimum standards that we will have to use moving forward.

I'll ask my question in the opposite way from how Gary did.

Do we therefore need a policy for all of these things we are discussing today, or would it be simpler to use an instrument like the UN declaration or the jurisprudence that stems from the Supreme Court of Canada?

There are a lot of decisions that respond to a lot of the challenges that we're talking about, so is there a need for a policy? That is perhaps the first question I want to ask all three of you.

Grand Chief Sheila North Wilson: I'll start.

[*Witness speaks in Cree*]

I could hear and understand your different dialect, and I was very excited about that, because I was listening very closely. This is another educational moment here: we have different dialects of Cree. All four of us speak Cree, but we all have different dialects, and I have to listen particularly hard to Romeo Saganash.

Thank you for the welcome, and thank you for being here and representing Cree people at this committee.

Your bill, Bill C-262 is necessary because if that's what the governments need to find a way to practicalize the treaties, then let it be. I think that's what it is for a lot of us. If the treaties are too broad, too basic, or too vague, then have a tool like UNDRIP to set the process. I see hope in this. I think we have to fully implement it to start working at these deeper issues that are outstanding, and ultimately bring our people up to a modern day civilization where we're self-reliant. Thank you for that. I do believe that's the avenue we need to follow to take us to that next level.

Back then, we needed a process like that. Our people say that when the treaty-making process was happening, and even recently in the seventies with the MFA, our people weren't in the mindset of negotiating to those specifics, and a lot of it was in good faith. Grand Chief Dumas talks about our kindness all the time, and that's basically what our ancestors were going on. It is the basic human ability to tell the truth, to be kind, and to actually live up to your word. That's what our ancestors relied upon, but now we know how far that's taken us, and that broken relationship needs to be mended. We can't just go on basic human abilities. We have to have something like UNDRIP to take us to the next level.

● (0855)

The Chair: You have about one minute left.

Grand Chief Nelson Genaille: To answer that, on the eve of Canada's 150th celebration, 143 years after the signing of Treaty 4, Canada has to remove itself from this specific claim process and from identifying itself as the one that will to improve it. We should jointly recommend it to the UN for implementation, because Canada, through its grandchildren, has benefited.

My nation and my children, the generation after mine, have yet to benefit.

Grand Chief Arlen Dumas: I want to comment on that to my honourable colleagues—

Mr. Mike Bossio (Hastings—Lennox and Addington, Lib.): He can take some of my time.

Give as full an answer as you like.

Grand Chief Arlen Dumas: Thank you very much.

I appreciate that, because it's important. It's a very important question. I think that essentially it's a political question, and you never need policy or law to do the right thing or to do things in an honourable way, but unfortunately, if that is what the Government of Canada requires, then I believe we should have a wholehearted change to that process and develop something that will facilitate and force things to move in a direction that will benefit everyone.

The Chair: That's very good.

Questioning now goes to you, MP Mike Bossio.

Mr. Mike Bossio: I'd like to take that a little further, because I look at one of the successful agreements—Romeo and I have spoken about this and we talked about this in B.C. as well—the Quebec agreement that was established in 1975 and the 20-some iterations that have occurred as a result of that

How could UNDRIP inform the process? As you said, it's always great to be able to do the right things. To negotiate is the right thing to do, and we know that in reality every time we do that it, ends up blowing up in our faces, because today's group of politicians may say they agree with this, and let's do it, and then the election comes along and another group of politicians come in and say they understand this to be this way. So there does need to be some level of formalization.

Using UNDRIP and the example of the Northern Cree agreement in Quebec, what can we formalize even when there's a change of government, whether it's provincial or federal, to ensure we're going to find successful resolution to these issues once and for all? We know it's going to take more than one term.

The Chair: You only have one minute left.

Mr. Mike Bossio: Oh, shoot. Go ahead, please.

Grand Chief Arlen Dumas: I think that if there are willing partners, magic can happen. If people truly want to make a meaningful effort, I think we should all take a look at the successes of Nunavut over the last 30 years.

I think my relatives in Quebec are fundamentally a great example of meaningful.... It was by force, but it turned out to be meaningful. People have to be made to see a certain vision and put mechanisms in place that are going to make that happen.

Unfortunately, I don't believe that it's going to be the legal system, because the legal system will side with Canada before it will side with anybody else. We need to move in a different direction, because unfortunately, Canada will uphold industry before rights of Canadians.

● (0900)

Mr. Mike Bossio: That's why I figure we need to formalize it.

Grand Chief Arlen Dumas: That's right.

The Chair: We'll have a final comment from Chief Genaille.

Grand Chief Nelson Genaille: To conclude, after 20 years, we're halfway done.

When this was originally signed back in my community, we went to the town of Swan River. We had an open-house meeting with farmers, private landowners. They increased the price we negotiated within this book. And as we moved along, 10 years after the signing, I'll explain one specific story. A Polish farmer who came to a community's territory selling 100 acres of land. That's about a million bucks. We could not afford it, because what was negotiated was $197 an acre, but the community decided to buy it on one condition.

So they asked the farmer if he would sell it with this condition.

The farmer said he'd think about it, and asked about the condition.

They said they'd buy his land and he'd go back to where he came from.

He put his head down, thought about it, and asked where he should sign.

Are you willing to do that too? Then we'll have no problems.

The Chair: All right. There's something to ponder.

Voices: Oh, oh!

The Chair: No one said Manitoba would be easy.

Thank you so much. That was the first panel. You gave us a lot to think about.

Last night we did a tour led by the treaty commissioner. It went past Kapyong, through the main street strip, through some of the challenges that we see our indigenous people face day to day: standing in line to be fed, to have decent clothes. There is a lack of housing. The MPs and the staff here had an opportunity to see that briefly, but we understand that the relationship needs review and needs to be fixed. We're very grateful that you came to present today to our committee once again. I'm sure you've done this many times in the past. But as you say, with goodwill we can make change happen, and that's why we're back at the table: to learn and listen, and hopefully make a significant change.

Meegwetch. Thank you very much for coming out to this session.

● (0900)

(Pause)

● (0915)

The Chair: Welcome, everybody. We're starting a little bit late, so we'll cut into our next break time to be sure we're given a full hour for this session.

I want to first recognize our panellists and thank them for coming out to present to us on the issue of land claims, comprehensive and specific.

In this session we will have an opportunity to hear from you—10 minutes from Brokenhead and 10 minutes from Sandy Bay. How you want to split that is up to you. After that, we will have an opportunity for questions from the members of Parliament.

I'm turning it over to you, and you can decide who wishes to start.

Chief Jim Bear (Chief, Brokenhead Ojibway Nation): Thank you very much, and welcome to Treaty 1 territory. I would have preferred the forum to be held on the Brokenhead Ojibway Nation or even Sandy Bay First Nation. However, I was one of the signatories to the Treaty Land Entitlement Framework Agreement in 1997, and I was also first chair of treaty land entitlement in 1977. I wear this ring very proudly, but I'd feel a lot better if we reached conclusion one of these days soon.

Our nationhood, of course, consists of sovereignty and self-determination through our land and borders, our citizens, our language, our cultural identity, our governing bodies, our laws, our judicial system, and an economic base. The loss of our land is the main focus through the claims process, but it doesn't consider the loss of our governance, the loss of our law, our ability, our language, our identity, our culture, our spirituality, and our economic base of hunting, fishing, trapping, and gathering. The model should have been the Selkirk Treaty of 1817. It conforms to the spirit of the Royal Proclamation of 1763, which provided the constitutional framework for indigenous land entitlement and has been referred to as Canada's Indian Magna Carta.

The crown needs to honour the visionary leadership and friendship such as that of Chief Peguis and Lord Selkirk that led to the signing of the 1817 treaty. The settler communities have failed to honour the full spirit and intent of the subsequent treaties. In agreeing to its terms, Chief Peguis and Lord Selkirk promoted peace, order, and a spirit of mutual assistance and co-operation, which is at the foundation of Manitoba's unique history. At the signing, Chief Peguis allotted a certain area for the settlers; the rest was ours, and our laws were to continue to prevail.

However, in August 1871, our nation became signatory to Treaty No.1. With this signing, the promise was made that the consensus would be carried out and the land would be allocated to our nation on a per capita basis, 160 acres per family of five. Our nation is located only 40 minutes from Fort Garry, where our ancestors signed Treaty No.1. With the initial land allocation, our nation was allocated 13,184 acres, and a shortfall of more than double the land base our nation had been entitled to be allocated was created.

Today, only 30% can be readily developed, and the remainder is marsh area. Our nation, along with half of the Indian bands in Manitoba, became signatory to the 1997 Treaty Land Entitlement Framework Agreement in September 1998. Through this framework agreement, Brokenhead became entitled to receive an additional 14,481 acres to address the shortfall from 127 years prior. We have yet to obtain and convert over 13,000 acres to reserve status, and in between addressing our land allocation shortfall, other parts of our land were taken for the purposes of the railway, provincial Highway 59, and a hydro transmission line, all of which we are still working to resolve. Brokenhead is currently addressing the claim through the specific claims process for the railway, railway station grounds, and hydro transmission line, which currently involve 111.7 acres of our land. Other areas of our land have either been or still are occupied by the churches and the Hudson's Bay Company.

We also live in an era in which we are forced to create satellite reserves and jump through the endless reserve-creation hoops that continue to delay our use and the benefit of our land.

● (0920)

Our nation works hard to address the legacy and resolution of our treaty, per capita shortfalls, land selection, acquisition, third party interests, municipal relations, reserve creation through the additions-to-reserve policy, and the loss of use and opportunities of our land. We settled a claim through the pre-tribunal specific claims process in 1985. We settled for 210 acres, and this settlement did not represent the loss of use and opportunities, nor of any other additional losses. Quantifying the impact of losses is a lengthy and costly exercise that doesn't consider all the other losses I previously identified.

When we had our oral history evidentiary hearing in our nation, the hearing environment was very adversarial. One elder who provided oral historic knowledge was challenged by a mainstream technical and time-scientific position by the crown. One elder stated afterwards in private that, “The crown really worked hard to make a fool out of me.” I was so embarrassed for having put him in that position. I even almost felt like saying, “I am guilty.”

The funding process does not realistically consider the efforts required by a first nation to participate in the specific claims process fairly. Expensive time is spent by our community staff and leadership to come together to determine what, if any, evidence can be uncovered within our nation. When our nation is involved in this kind of land claims process, we require additional time and resources in order to reassure our nation's citizens that we're not losing or giving up any more land due to crown-first nation legacy issues.

The current process requires our first nation to submit a budget proposal to Canada that narrowly states the total actual costs of the process, which does not consider supporting the community-involved process undertaken to attempt to provide our historical evidence.

Legal processes and legal representation are prioritized rather than the potential contributions of our nation. As well, there are staff changes with Canada. Then our file is further delayed because of lack of communication. There doesn't appear to be any succession planning so that our file will continue to proceed.

It's very concerning that a majority of claims are not yet settled through the tribunal. As the delay proceeds, there are many missed opportunities, and loss of use, potential growth, and betterment of the nation are impaired.

BON increasingly continues to experience a negative impact of the historical taking of our lands for purposes such as railway transportation and hydroelectricity. BON is working very hard to catch up to the progress that has been made by our treaty counterparts during the past 146 years. As you have heard, we have been attempting to do this, basically with the same land base we were originally allocated in 1871.

● (0925)

The Chair: You have one minute.

Chief Jim Bear: While there are still third party occupants and outstanding specific claims to conclude for our first nation, we'd like to offer some solutions. The claims tribunal should be completely independent. It is not a fair process when Canada's reviewing, researching, and judging itself. Canada should appoint a minister of treaty and aboriginal land claims, or the settlement process should be streamlined to quickly address the claims process in a manner that minimizes delays.

We continue to experience more loss. Individuals who work on these files in this forum should be required to participate in indigenous education and awareness so that they can gain indigenous knowledge and protocol. We'd like to see that with anyone working on our files.

Also, the issues with files should supersede the election process, regardless of which party gets in. That's what we're trying to do in my community: the election process is just a blip and the work goes on to conclude, but this does not happen in the mainstream system.

Meegwetch.

The Chair: Thank you.

We'll move over to Chief Roulette.

Chief Lance Roulette (Chief, Sandy Bay First Nation): Thank you.

I'm Lance Roulette of Sandy Bay Ojibway First Nation.

It wasn't too clear exactly what type of information was requested from the Sandy Bay Ojibway First Nation. In 2007, Sandy Bay's claim was rejected as a result of some information not being conveyed from lawyer to lawyer in relation to how the claims process had worked for Sandy Bay. There was a denial in 2007. Sandy Bay then began to wait out the five-year period to once again re-apply for the specific claims process, and right now we're waiting to present this claim in the face of the issue of land claims and specific claims.

Some of the things we have noted and have seen throughout the process are, once again, getting access to the right areas, not only where the claim can be expedited, but more along the lines of how the claim itself can move along more quickly for Sandy Bay. It's been very, very difficult at times not only to overcome the barriers of accessing the right resources to move forward but also because the first nations begin to question whether the claim will be even harder, seeing that we are being requested to do our submissions, but at the same time, it's the same group that decides whether it's yea or nay.

A lot of the time we see an extension of certain negotiations that truly affect the first nation at hand and how they move forward. I want to speak more to the issue of the default and intervention within the first nations. It's been duly noted that the first nations have undergone interventions, and they are usually engaged through the overall debt associated with their contribution agreements. Most of the time these contribution agreement terms are non-negotiated, and that's one of the key factors, because, most of the time, to enable our systems to work adequately and properly, I believe that the contribution agreements need to be negotiated to fit what each specific first nation is going through rather than having a proposal or a formula driven for all of the first nations across Canada.

More along the lines of looking at the issue and the word “intervention”, what does the word “intervention” imply? It's the action or process of intervening or actions taken to improve a situation. Today when many first nations hear the word “intervention”, it throws shivers down their spines, because a lot of the time there's a stigma attached to it that they are deemed to have poor governance, which is usually an indirect statement and the main contributing factor to funding model limitations in the intervention programs which, as designed, do not truly fit what the actual needs of any first nation. The funding models are difficult to implement to improve our way of life, which is why we have such a high rate of suicides and a lot of health issues, and especially where we're situated.

In Sandy Bay's case, one of the problems we have encountered is that there's no additional funding for the actual needs rather than the needs of any first nation as they are perceived and identified in the current process.

Also, the flow-through mechanism needs to be a little bit more prompt at flowing funds. This includes sources that encompass infrastructure projects that surpass deadlines as a result of delayed funding. These delays lead to debt being created for a first nation and year-end monies being clawed back, when they should automatically be transferable from year to year.

● (0930)

Under the INAC guideline, the recipient has not met its obligations under that funding agreement. The obligations under the agreement are clearly spelled out, but it does not address the adequacy that is needed within many first nations to close that social and economic gap.

Some of the changes, whether they happen federally or provincially.... If you look at the issue of wage increases, I find that kind of unique in this section, because we are part of Manitoba's government union collective bargaining agreement. When wage increases occur from year to year, the first nation doesn't get the additional funding to address that specific issue. The increases in the cost of living also pose a huge problem, which then invokes the issue of intervention.

Some of the problems that have occurred through the specific claims process could be used as a leveraging tool to offset some of the costs once a first nation gets its claim. We have two systems impacting each other, and this creates either levels of intervention or spitefulness as a result of not being able to move forward as promptly as the 23-step process currently sets out.

In closing, I will note the specifics to identify during the process of self-sufficiency. Through general understanding, parameters are set in place to govern the areas of service delivery based on the perceived needs of the current model of intervention and the model of promoting poverty.

Whether you are a politician, an advocate, or a service provider, one thing that remains is how the decisions of today improve the access to needed services and programs that truly reflect the needs of many first nations communities under the level of intervention. It is also necessary to ensure progress by means of partnerships, dialogue, and healthy relationships.

In order for an intervention to work perfectly, we need clear timelines for transferring skill sets back and forth as well as for developing an exit strategy within many first nations communities. I think there are a few out there who are looking for a process rather than just saying, “Hey, you're 23% over your overall funding within your debt retirement. You are going to be running under a regional intervention committee, and you therefore need to go into intervention.”

A lot of the first nations communities need to be aware of what the timelines are in any level of intervention. We have first nations that have TLE but that are still under third-party management. What steps are being taken to help them become self-sufficient? I'm keying in more on the issue of intervention and how it relates to first nations, because we are going through the exercises ourselves.

In relation to the claims issue, I think there is still a lot that Sandy Bay needs to learn. We are still fairly new at this, and some of the barriers we have encountered are related to getting the dialogue straight across and having that last interaction.

Thank you.

● (0935)

The Chair: Thank you.

We're now moving into the question period.

We start with MP Mike Bossio.

Mr. Mike Bossio: Thank you, Madam Chair.

Thank you all very much for being here today to be a part of this important discussion trying to find solutions so we can get beyond everything changing at re-election, because that, I think, is really the crux of the situation.

Before we start, I know there are still a number of members from the previous panel as well. We have so little time in these questions. I encourage you to submit any further information you feel will be valuable. I know we spoke afterwards about some of the stuff we need to nail this down and to figure out.

From a legislative standpoint, we get a very strong sense that UNDRIP is the path to follow, based on a lot of the submissions in B.C. and here today to an extent. How do we formulate that within the legislative process to ensure that we do get beyond this election-to-election change, if that is the path we think could be beneficial? We want to do the right thing, but if we don't formalize it, then it's too easy for people to define the right thing to do.

Ms. Lorie Thompson (Legal counsel, Brokenhead Ojibway Nation): *[Witness speaks in Cree]*

Good morning. My name is Lorie Thompson. I am here assisting Brokenhead Ojibway Nation with their presentation this morning.

With respect to your question, I'll make it very simple and very brief: It's through a renewal of vows in the treaty relationship that was entered into.

● (0940)

Mr. Mike Bossio: The problem that I see with that, though, is that too many times past governments, over the last 200 years, have had their own way of defining what those vows are. Once again, I would like to think we all enter into these things with a good heart and that we want to bring about that positive change and make everyone's lives better. Unfortunately, we know the reality has been very different. You have lived it.

I'm looking at it and wondering how we can ensure that the spirit of those vows in those commitments and treaties and the relationship is honoured if the laws don't reflect it to ensure that this is going to be the case. Once again, from a legislative standpoint, if there are any mechanisms.... I know this is not a question you are going to be able to answer in a couple of minutes, so I would once again encourage... That's where I think we need to try to find some mechanisms and witness testimony that can help inform the report at the end of this stage.

Chief Jim Bear: I want to throw Quebec back to you. If you can do what you are doing for Quebec...we even precede Quebec.

Mr. Mike Bossio: That's a great point. One that I always raise is the Quebec agreement, but we all know that was hammered out and hammered out. How can we now formalize the process and use that as a template? I also know that every nation is different and has different realities. How can we take the underlying fundamental mechanisms that helped to make that a success and try to embed them in the legislative framework so that, once again, we can get past election-after-election changes in interpretation and ensure that these negotiations occur in good faith?

I know some have also recommended that we need to have joint processes for first nations and Government of Canada representation working as part of independent tribunals, both pre-negotiation leading up to the submission of the land claim itself and then post-negotiation of the land claim, and have independent bodies bring that forward. Would you agree that this would be one of the very key principal mechanisms that need to be in place?

Chief Jim Bear: Certainly those kinds of avenues can be explored, but the treaties do not make a nation. We signed as a nation. We had our own laws and everything. Canada has continually undermined it.

I guess what we're saying is that part of the process, which we've made part of our solution, is to get involved in indigenous knowledge but also knowledge of the treaty. Then all we want is the funding. We do need Canada. All we want is the government to honour us with our share of the natural resources that we have always been requesting.

We have our own laws. I have been asked to adopt the mental health law, judicial systems—federal and provincial. I cannot adopt broken laws. I think if you look at ours, in ours there are cost-saving factors. They're integrated; they're holistic, and there's reconciliation. The mainstream isn't that way.

All we want is not to be further imposed upon, and for the crown-to-nation relationship that we have to be honoured.

Mr. Mike Bossio: Thank you.

The Chair: The questioning now moves to MP Kevin Waugh.

Mr. Kevin Waugh (Saskatoon—Grasswood, CPC): Welcome to Treaty 1 territory, the homeland of the Métis.

I see here that in 1997—and you talked about it—you had the agreement, the MFA. You were awarded the rights to over 14,000 acres of land, but up until two years ago you had only 680 acres of that.

What has happened with all of this?

You've filed four other specific claims that have resulted in a variety of outcomes. Fill us in, if you can. You were awarded that back in 1997, and you talked about that. It says here 14,481 acres of land, but, as of March 2015, only 680 acres had been converted to reserve land. Can you talk about the process for that back in 1997?

● (0945)

Chief Jim Bear: In the treaty land entitlement process, first of all, the Province of Manitoba didn't want to settle so we took up their challenge. They didn't want to give us our shortfall, so we took the challenge and went to the people of Manitoba. We went to every forum, all the cities, like Brandon, Dauphin, Thompson, Winnipeg, and other places like that.

They gave their presentation. What we told Manitobans is that we will never treat them the way that we have been treated. Subsequent to that, we got it approved. But even in TLE—not a specific claim but treaty land entitlement—we're having all sorts of difficulties even getting a simple little frigging service agreement with the municipality.

The chair, Minister Mihychuk, is well aware of those types of things. What's a simple thing like that versus a specific claim? A specific claim should be a little more complicated than a TLE, but both are challenging.

Also, I hope you have an open mind in terms of that. You may say welcome to the Métis homeland but, to let you know, historically it's us, the first nations, who were originally here and indigenous to the land. We did not come nine months later than anybody, regardless of when a contact was made.

Mr. Kevin Waugh: Is the Métis situation an issue?

Chief Jim Bear: When it comes to third party interests, you guys have an issue with it. You're the ones who saw fit to include it in whatever processes you're making in terms of treaty land entitlement.

Mr. Kevin Waugh: Is Sandy Bay different? Maybe just talk about that, if you don't mind.

Chief Roulette, you're pretty passionate. You talked more about the provincial issue than the federal ones, but maybe just talk about the land claims that you're up against up there. Everybody has talked about the funding issues. We just came from B.C. That was first and foremost on everybody's mind, and I think it's first and foremost on your mind because it's pretty hard to follow through when you don't have the funds to work on specific land claims.

Chief Lance Roulette: Indeed, the barriers are all wrong for many first nations communities, especially in areas like education, which I'll use as a prime example. Provincially, you're funded at $15,000 or $15,000 plus per unit, our students. In Sandy Bay itself, we see about $5,300 per unit. We have a school of 1,100 kids. Right off the bat, our budgeting for the school itself is automatically put in a $1.3 million deficit, which is accumulated through our own-source programs. Among the barriers we're encountering along the line of the claims process right now, due to the rejection in 2007, is one that was brought down as a result of the first nations that claimed one of the...a few members who were a part of scrip of the overall White Mud Band. As you know, Sandy Bay, Long Plain and Swan Lake were part of the White Mud Band, prior to the separation of the three bands. Long Plain and Swan Lake have already received TLE agreements. Sandy Bay is not that different from Swan Lake and Long Plain, but not being included within that process or having our claim validated is basically a barrier on its own, as a result of, once again you guys requesting submissions but you guys making the overall decisions on the validation of the claim.

The past governments that had already done their submissions had the same notion. What would be the use of submitting, when the requests are coming in from the committee but also are going to be decided by the committee? A different process needs to be streamlined.

Every leader within our first nations community is very passionate about making sure that they try to provide the best outcome in life, not only for their people but also by trying to engage in partnerships to close the economic gaps. The passion is there for a lot of first nations and I think that Sandy Bay itself is also in a learning curve with specific claims and that is being shared with the community.

● (0950)

The Chair: Thank you.

That concludes the question period for MP Waugh. We now move to MP Romeo Saganash.

Mr. Romeo Saganash: [*Member speaks in Cree*]

Since Quebec has been referred to on a couple of occasions today, for the record I want to make something clear around this table. When we signed the James Bay and Northern Quebec Agreement, the federal government was absent for a couple of years. The Quebec government did not wake up one morning and say to us, “I like your big brown eyes. I want to sign a treaty with you.” It never happened that way, and even the successive agreements did not happen that way. It is with many thanks to the Cree for their efforts both politically and legally, and that's how it's always going to be.

This brings me to my question, and I've asked this question to many others who preceded the presenters here today, even the previous panel. A policy is a policy; it's not necessarily a legal document. It's a policy, while our relations to the crown and indigenous people's relations are constitutional in nature. To my mind, there's an incompatibility between those two notions.

I want to at least ask the question. A lot of these issues have to do with the implementation of our different agreements and treaties. That's been a regular theme throughout our hearings since we started in Vancouver.

The question is for all three of you. Do you think a policy is reflective of what a nation-to-nation relationship should be?

Chief Lance Roulette: Thank you, Romeo Saganash.

Especially in relation to a policy being a policy, no, I think if you look at it historically, the issues and the stigma also surround policies. We need to make sure it's a fair and equitable process, as we do for certain legislation that still needs to be adopted by Canada, mainly in relation to UNDRIP.

As you've seen in the past, and historically, you'll know that policies, namely the Indian Act, have basically been there to keep us down, at the minimum, where we're moving forward in relation to other economic development are all sealed in specific areas of land claims. For them to even be a fruitful indicator item within many first nations communities has proven to be problematic. The inclusion and the consultation process through developing a policy as such should be driven by both sides. Feedback, inclusion, and consultations across Canada would need to happen with Canada in order to have a clear win-win situation in developing a policy.

● (0955)

Chief Jim Bear: In terms of policy, yes, it is problematic. As far as I'm concerned, the transparency act, for example, is totally illegal and demeaning. We're all subject to blanket policy, and for a nation, I, for one, am opposed to that.

In terms of finances, we just had a meeting with our auditor, and upon conclusion, we set up a community session for October 16. We're very transparent in terms of finances. If a first nation is going to be delinquent, if somebody is going to be delinquent, it is the one that should be dealt with, and not everyone. Rather than looking at a fair process, the government, through its bureaucrats or whatever, comes up with a policy that it applies to everyone. It should be taken on a case-by-base basis.

In a lot of instances, I think too much is left to interpretation. We've experienced that in some areas, so we've had to really try to focus on governance so that everything is clear. You have lines of authority, roles and responsibilities, and so forth.

I'll just stop there.

Mr. Romeo Saganash: I have about 45 seconds left, I believe. I only get one shot at the can here.

Article 40 of UNDRIP says that “Indigenous peoples have the right to access to and prompt decision through just and fair procedures”. I think that this policy is not consistent with that provision. It was suggested that any policy cannot just be fixed by minor changes; it has to be consistent with our constitutional obligations and international obligations. Do you agree with that?

Chief Lance Roulette: That's a fair statement.

The Chair: Does anyone want to respond? We have only 10 seconds.

Mr. T.J. Harvey (Tobique—Mactaquac, Lib.): They can take some of my time to respond.

The Chair: Go ahead and respond, if anybody wishes to respond.

Ms. Lorie Thompson: Most definitely, consistency is lacking due to the fact that we're all sitting here. In terms of UNDRIP, ultimately the crux of everything is the right to self-determination. That was never ceded, and that encompasses everything, our way of life holistically, not just the lands. The land is what we come from, what identifies us, how we speak, how we treat each other, how we govern, and how we interact, nation to nation or externally. In terms of the implementation of UNDRIP, yes, I definitely agree. However, we have a lot of resources and information that we've gained throughout the years. We have RCAP, the AJI, and the TRC report. All of the information is in there, and now we have the MMIW inquiry ongoing.

In terms of that right to self-determination, when you impede that for a nation, genocide takes place. You are taking away everything that encompasses that human being and trying to turn them into something else. Within that process and within these processes of reclaiming our lands, a lot of healing has to take place as well, and that is something that needs to be provided with a huge focus.

Meegwetch.

● (1000)

The Chair: Thank you.

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

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

First of all, I want to thank you all for being with us today and taking time out of your schedules. I know you are all very busy, and we truly appreciate the time you've taken to allow us to come and have this conversation with you. I think it's an important conversation to have. I recognize that there has been a history of failing to recognize and implement a mutually beneficial relationship between indigenous peoples and Canada as a whole. I think that's a fair statement to make.

Given the UN Declaration on the Rights of Indigenous Peoples and the body of this study, which is around laying claims specifically, whether it's funding for the process or the overarching framework, would either of you like to elaborate on what you feel the best steps forward are in revamping the process, on a go-forward basis, to streamline this and allow for a best-foot-forward to occur?

Chief Jim Bear: I think we recommended that you people take training in indigenous knowledge, our interpretation of the land and all that it gives to us, and the loss that we have gone through. For anybody involved with the indigenous file, it should be mandatory that they have a true understanding of the whole thing and that you put factors in that are going to ensure that we get some kind of good response.

Considering what we've put in, what we are offered is embarrassing. I wouldn't do that to my worst enemy. I don't know whether I am the worst enemy, but certainly it's embarrassing to receive that. We just have to counter, and we shouldn't have to, if they truly understand our perspective in terms of loss. Then we should be given a reasonable offer, not an embarrassing offer.

Chief Lance Roulette: I would just offer once again that you are looking for the parameters of what would work. I think the clear message that was given by the panel before is one that's based on fairness, equity, honesty, and inclusion.

The Chair: You have two minutes.

Mr. T.J. Harvey: A question to follow....

Go ahead.

Ms. Lorie Thompson: I would just add a few points.

Of course, ultimately, as has already been stated, a joint goodwill good faith effort needs to be implemented, but we also need to look at establishing a priority-basis process, jointly or collectively, whatever the case may be, and we need you to meet us halfway, to respect and harmonize the processes that we have. Right now, we are dealing with minutes, but when we sit in circles with our elders, we are talking about days, when we need to listen and talk about things, so we need that forum to actually have a real conversation, instead of always being strapped for time. That time needs to be provided in order to address these issues.

● (1005)

Mr. T.J. Harvey: Perfect.

I'll just follow up on that context, as well as some of what was said earlier around the idea of blanket policies and how they can negatively impact the process when it comes to individual first nations, especially taking into account that there are significant differences in economic circumstances among first nation communities, depending on geography and proximity to large pockets of population. How do we go about ensuring that we have a fair and equitable conversation with each community, recognizing that it needs to be an individual conversation, but without getting mired in years and years of due process by not going for a broad-strokes approach? By using a more individualized approach, you are inevitably going to create more stumbling blocks, so how do we ensure that this process is fluid and done in a timely manner?

The Chair: That is a very good question to be saved for another time, since our minutes have run out.

I'm going to move the questioning to Cathy McLeod.

Mrs. Cathy McLeod: Thank you, Madam Chair, and again, I really appreciate the witnesses coming today and talking about this very important issue.

Chief Jim Bear, you talk about some recommendations, and you also talked about a very difficult specific land claim—I believe it was—for which your elder was so distraught about testifying. Can you tell us a little bit more about that claim and how the process unfolded, so that we can really understand on the ground what was happening?

Chief Jim Bear: I need the assistance of Lorie.

We had given a presentation in, I think, Vancouver.

Ms. Lorie Thompson: Yes.

Chief Jim Bear: From there, what was recommended out of those sessions was to try to have it in an environmentally friendly area, i.e., where it's occurring, on the reservation. So a forum was structured to be held in our community for our presentation, and it was to involve oral presentations by our elders. I think three elders participated. Again, Lorie will have to explain it in terms of the set-up. She's a lawyer, so she knows the judge, or whatever. I don't go to court very often.

In terms of the elders, the individual, who I guess was the crown representative, was very harsh. You would almost think the elder had killed someone, and that was the kind of questioning that was taking place. That's why I facetiously responded earlier that I felt like saying, “I'm guilty”. There was total disrespect for the elders. Even in terms of scientific.... If you live on the land long enough, you know what's going to happen. The other individuals who can understand indigenous knowledge are farmers, who live with the land and understand those types of things. It was very adversarial, though, and I basically felt sorry for putting the elders in a spot like that.

Ms. Lorie Thompson: Just to add to the technical and legal side of it, I will say that it took quite a bit of time convincing them that the oral history evidence was important and should go on record in terms of the type of claim. The response was that we don't usually provide it for this. Well, this is how we've always lived, never mind “usually”.

So there was that context; it was difficult to persuade. Even with Brokenhead's specialized legal representation, I myself had to do some convincing that our oral history evidence was important. Also, that's something that still needs some work in terms of what we bring to the table and our contributions and the context of where we come from. On those understandings, as I just said, they need to meet us halfway with what we are bringing to the table from our perspective, our cultural governance, and judicial-legal perspectives that we originally had. We still have them, and we still practise them every day in our nations, despite the Indian Act, and everything else that comes with that.

Within those processes, especially when we are trying to make historical impacts right.... Again, there was no funding for extracting the information and sitting with the elders. As well, during that process we lost elders who I want to name today: the late Carol Jones, the late Clarence Kent, and the late Lawrence (Happy) Smith. Those were individuals who were going to either give testimony or provide information, and within that couple of years' process they passed on and went on their spirit journeys. So time is important and it is of the essence.

● (1010)

The Chair: Thank you.

We're in a five-minute round of questioning now, so it's even tighter.

The questioning moves to MP Gary Anandasangaree.

Mr. Gary Anandasangaree: Thank you very much for being here. I acknowledge that we're on Treaty 1 territory as well.

With respect to the benefits of UNDRIP, maybe you can talk about how UNDRIP can have a direct impact on reframing the comprehensive and specific claims processes, and also maybe a brief discussion on how you see the future adjudication process. I know that's something you have mentioned, Chief Bear, that the adjudication process should be changed to a more joint framework that will incorporate many of the practices and traditions of the indigenous communities.

Chief Jim Bear: Definitely. Again, all it takes is dialogue, and we're prepared to do that. We don't want to be put in the position of the 1982 fiasco of the Canada Act, for which I would have liked, even at that time, to see principles and to have the opportunity to work on those principles in a fair and trusting win-win situation. That never did take place.

In terms of the claims process, we've made some recommendations as to what should happen in those areas, so the sooner the adjudication process.... Again, we are a nation. I know we aren't being treated as a nation, but we are a nation.

Mr. Gary Anandasangaree: If I may probe a bit further, I know in your initial statement one of the suggestions you made was for an independent tribunal. I'm trying to see what that would look like. What would the elements be for the tribunal to be truly independent, to your mind?

Chief Jim Bear: In terms of any summation, it should be an independent tribunal that is not obligated to the federal government for setting it up. If it is, then our ways have to be incorporated so that when we look at it, we know that at least we have some recourse once it has decided how it's going to respond to our requests.

Right now, everything is under the purview of the government and very little is in the way of the first nation. I think we've all said, and you've probably heard it all through Canada, that there is simply no funding to even prepare the submission and get an understanding of just what our loss entails. There are the oral traditions of our people, our view of the land, and a tremendous amount of research has to take place, and consultation has to take place. Then it's taken out of our hands and reviewed by those who I think have an obligation, but it doesn't reflect a fair process in terms of the first nation, because it's taken entirely out of our hands.

● (1015)

The Chair: We have a couple of minutes left because we started a bit late, so the questioning goes now to MP Saganash.

Mr. Romeo Saganash: Oh, surprise. Thank you. I thought I was done.

A lot of these issues we've talked about over the last two days, in Vancouver and here, have to do with implementation of the agreements that we have. There's a concept, at least in our world, of the need to uphold the rule of law. Upholding the rule of law means respecting the Constitution, and in that Constitution, our Constitution, are aboriginal and treaty rights. That's what upholding the rule of law is, and that seems to be the theme that has come up with every panel since we started.

I'd like to get a sense from this panel of your understanding of a nation-to-nation relationship. The way things are going today in Canada, is that a nation-to-nation relationship?

It's a very general question.

Ms. Lorie Thompson: In terms of the implementation of that relationship outside of the rule of law, it's just based on human respect, upholding the dignity of the human condition so that everyone can achieve that *mino-bimaadiziwin*, that good life, and respect the processes that are developed within each other's nations.

As for Brokenhead, in terms of addressing outstanding issues, they've taken initiative and created their own elders dispute resolution panel that has the opportunity to look at the facts and determine what the solutions are, based on respect and fairness, and to provide recommendations to the governance administration processes, and consider the well-being of the whole community while carrying out that function on a voluntary basis.

The Chair: Thank you.

That wraps up this session. Thank you very much for coming out and taking time away from the important work that you have in your own communities. It was nice seeing you.

Meegwetch. Thank you for your time.

We'll take a short break. We have about 10 minutes, and then we will reconvene.

● (1020)

(Pause)

● (1030)

The Chair: Welcome. This is our final panel in Winnipeg, and this is our second day. The committee is interested in hearing your views on comprehensive and specific land claims.

I want to thank you for taking time to come and present.

Before us we have the Manitoba Metis Federation, the Athabasca Denesuline, and the Ghotelnene K'odtineh Dene.

Each group will have 10 minutes to present, and after that we will have an opportunity to do a question period.

We will start with you, Jason, from the Manitoba Metis Federation.

Mr. Jason Madden (Legal Counsel, Manitoba Metis Federation Inc.): Good morning. Thank you.

My name is Jason Madden. I'm a Métis lawyer, a citizen of the Métis Nation, and legal counsel for the Manitoba Metis Federation in their land claim and self-government negotiations.

I'm going to start with a little bit of history, because I think that part of reconciliation is telling truths about our history. The story of the Métis is often done in little sound bites. However, it is not really fundamentally understood that Canada wouldn't be the Canada we have today without the constitutional compact that was forged here in 1869 and 1870 between the provisional government of the Métis and the Government of Canada.

I have a presentation that I've circulated. I think one of the things the Métis have been constantly struggling with is finding their place within Confederation, and also making sure that they stay on the map. There are two quotes that I want to highlight, one from Louis Riel and one from Sir John A., which show the dynamic or the differences of perspective about what actually happened or what was forged.

This is what Riel is writing in 1885 about the relationship. He says:

> When the Government of Canada presented itself at our doors it found us at peace. It found that the Metis people of the North-West could not only live well without it...but that it had a government of its own, free, peaceful, well-functioning, contributing to the work of civilization in a way that the Company from England could never have done without thousands of soldiers. It was a government with an organized constitution, whose jurisdiction was all the more legitimate and worthy of respect, because it was exercised over a country that belonged to it.

That's Riel's perspective about what was negotiated, and he later on refers to it as a treaty between the Métis and Canada.

This is what Sir John A. writes in his diaries, likely to one of his drinking buddies:

> ...it will require considerable management to keep those wild people quiet. In another year the present residents...will be altogether swamped by the influx of strangers who will go in with the idea of becoming industrious and peaceable settlers.

That's Sir John in 1869. That's the vision. Of course, yes, make the promise, whatever gets us through the day, whatever gets us what we want, and we will swamp them. Of course, that is the fundamental starting point of the relationship between Canada and the Métis Nation. If you're going to enable reconciliation, you need to talk truths about it.

Louis Riel is in vogue now. You see him on sweatshirts and on social media, but you have to remember what Riel fought for. It wasn't western alienation. It wasn't just French language rights. It was for his people, the Métis people. So if you're going to honour Riel, you'll have to have reconciliation with the Métis. That has been a long time coming, and we think that we're making progress, and we're going to talk about it in the context of the modern-day land claims agreement processes, as well as self-government. But I think it's important to remember that that's our history. Let's own it.

No one can go back and rewrite it or change it, but we also can't duck it.

Reconciliation and whether you call them claims—I hate the term “claims”. Get rid of it. It is so patronizing, that we are claiming to get something. There are historic grievances. There is unfinished business. But the idea that you have the underlying title is your assumption, and it's not true in law internationally. The idea that we are then claiming, coming cap in hand, as opposed to trying to tell truths about how this country was formed, and dealing with the unfinished business of Confederation, or these historic grievances.... If you do want a recommendation, let's get that vernacular out of the system, because it's pejorative and also incorrect, and embedded within it are biases that I don't think stand any more.

This is the original compact that essentially brings western Canada into Confederation. I think the Métis have gone through what we call several stages in that relationship. Post-1870 is a history, which I think is familiar to first nations and others, of dispossession, denial, and discrimination.

● (1035)

Post-1870, it's not just that they are going to swamp us with settlers; it's that there is going to be a reign of terror. There are going to be rapes. There are going to be beatings. There are going to be murders, and that's how they acquire the land. It's not simply diligent settlers coming in. All this leads to the Métis losing much of their traditional land base and actually scattering throughout parts of the province as well as into other parts of western Canada.

In the era following the Second World War, Métis veterans came back and began reorganizing and rebuilding the Manitoba Métis community. They had gone to fight for Canada and for international human rights, and the idea that they didn't have them on their own soil was deeply offensive. From 1967, you see the Manitoba Métis Federation form and Métis groups beginning to organize again in the Prairies.

The period from 1982 to 2016, I call “negotiations interrupted” and the “hunt for justice in the courts”. The Métis thought that in 1982 everything was going to change and negotiations were going to begin. They soon realized that all section 35 really meant for the Métis was the right to go to court. They did, and they have continued to do so over the last 15 years. I've been there five times and have been successful each and every time.

Through a trilogy of cases, from the Powley case in 2003, to the Manitoba Metis Federation case in 2013, to the Daniels case in 2016, the fundamental constitutional legal questions with respect to the Métis were asked and answered. In these cases, it was decided that the Métis have jurisdiction, rights equal to those of first nations and Inuit, and outstanding land claims that need to be resolved. We hope we're entering a new era of reconciliation, redress, and respect.

I want to talk about what's called the MMF land claim. In respect of section 35 of the Constitution Act, it's sometimes thought that a land claim must actually claim a specific piece of land. What section 35 states in subsection 35(3) is that “treaty rights” include rights that now exist, or may be so acquired, by way of land claims agreements. The idea for the MMF is that section 35 is to be read progressively and that ultimately aboriginal rights can be converted into treaty rights through negotiations.

The problem for the Métis is that in 1981 they filed their land claim with Canada, and some learned Department of Justice lawyers looked at it and said there was nothing there. In fact, we included the letter, and what they actually said was:

> Please find enclosed the Government's response to your land claim submission, as prepared by a legal advisors. You will note it is their considered [legal] opinion that the claim as submitted does not support a valid claim in law nor...justify the grant of further...research.

That was sent back to the MMF in 1981. Six months later they did what every indigenous group does—they retained Tom Berger. Thus began a litigation of 32 years. Now, the good thing about the Department of Justice lawyers is that they are always wrong on these sorts of things. Thirty-two years later, the Supreme Court of Canada said that there was indeed an outstanding claim, that this was a fundamental compact or promise for Canada, and that the honour of the crown was breached in the implementation of section 31, or the land grant. That took 32 years and millions of dollars in time and energy, but Métis were successful in demonstrating that they ought to be included after years of historical exclusion. Since 2013, a memorandum of understanding and a framework agreement have been signed, and Métis are beginning to finally get to the table in these negotiations.

I recommend that everyone read the report on Métis rights by Tom Isaac, the ministerial special representative. It is a short, well-written, and very helpful report that gives a far better synopsis than I can do in 10 minutes of the trajectory of Métis rights and how your existing policies in relation to land claims and self-government agreements need to be modified to include the Métis. He essentially says that the Métis have no place, that your policies are designed for first nations and Inuit, and that these policies exclude the Métis by their very nature. The idea that we have to take additional cases throughout Manitoba and other parts of the Prairies as opposed to getting to negotiations is absurd.

The other big issue for us is the policy. Right now I, as MMF's legal counsel, feel that I'm Charlie Brown and that Lucy has the football, because at any time it can be pulled since I don't have a policy framework to operate under for Métis negotiations. There is no legislative base.

● (1040)

I think that's one of the key messages that we want to send today. There needs to be some sort of framework to support Métis negotiations, so that football doesn't get pulled away at a later date.

The Chair: Thank you.

I'm sorry that it's so rigid. The committee tries to establish a process that's agreed to by all political parties, so that we all have a chance to ask you questions and make it fair, but it does seem very rigid. My apologies.

We'll move now to the second presentation.

Ronald, please go ahead.

Mr. Ronald Robillard (Chief Negotiator, Athabasca Denesuline Né Né Land Corporation): Good morning. My name is Ronald Robillard, and I am the chief negotiator for Saskatchewan Athabasca Denesuline. I have here with me Barry Hunter, who is the adviser to negotiations as well.

I have a presentation that I'm going to read to you. This is a submission on behalf of the Athabasca Dene leaders and the membership of Fond Du Lac, Black Lake, and Hatchet Lake.

On behalf of the Saskatchewan Athabasca Denesuline, we would like to thank the committee members for this opportunity. Following seven years of litigation, the Athabasca Denesuline have been working towards a negotiated settlement for the last 18 years. With regard to the background of the negotiations, the Athabasca Denesuline includes Black Lake, Fond Du Lac and Hatchet Lake.

Our history, culture, and way of life span thousands of years and were predicated on the movements of the Beverly and Qamanirjuag caribou herds. Our traditional territory parallels the range of BQ caribou herds, including portions of what are now known as Nunavut and the Northwest Territories. There is also a map attached to that.

The recent political boundaries have dissected our traditional way of life, making it difficult to exercise our way of life. We are dealing with regulation of multiple jurisdictions. Other social changes have negatively impacted our culture, our economies, and our traditional way of life. There is a feeling of disrespect and disregard for our treaty rights.

During the seventies and eighties, the Athabasca Denesuline became concerned that Canada was negotiating—without consultation or input—comprehensive claim settlements with other indigenous groups in the NWT, including the determination of territorial boundaries over the area of current and traditional use by the Athabasca Denesuline.

Canada's position that the Athabasca Denesuline have no unextinguished rights in the NWT is based on the blanket extinguishment provision of Treaties 8 and 10 and because the Athabasca Denesuline also have treaty land entitlements in Saskatchewan.

Failed efforts to get the federal and territorial governments to recognize our rights led the Athabasca Denesuline to launch a court action in 1991. The AD sought declarations that we have treaty or unextinguished aboriginal rights and damages for infringement of those rights.

In 1995, our claim was recognized by the Indian Claims Commission, which concluded that the Athabasca Denesuline have treaty harvesting rights north of the 60th parallel and recommended that Canada formally recognize the existence of these rights and afford them section 35 protection.

In 2000, we began out-of-court settlement negotiations with the intent of resolving the litigation, reconciling lost opportunities, and recognizing Denesuline rights north of 60. Although this out-of-court settlement that deals with some elements of a comprehensive claims package like land and resource management, there are no subsurface rights, royalty-sharing or self-government provisions, or other elements of a comprehensive claim.

Our concern is that despite these limits, the AD draft final agreement still requires comprehensive release from all past and future claims to aboriginal rights.

While we find this objectionable in principle when considering the time and costs of litigation and Canada's terms for negotiation, following consultation with our community leaders and elders, we proceeded with negotiating a settlement with Canada that included some significant but not all elements of a comprehensive claim.

The negotiation process has been incredibly challenging due to multiple territorial jurisdictions, provincial jurisdiction, an entrenched bureaucracy unable to adapt to the unique situation, and overlapping interests among aboriginal groups. However, we have reached a draft final agreement with the federal crown. We would like to focus the remainder of our presentation on some of these key challenges and accomplishments.

First of all, on overlapping indigenous interests, through compromise and negotiations, a historic agreement was reached between AD and GKD and the Inuit in 2007, supported by Canada. This arrangement outlined the understanding between the parties on the negotiation of AD and GKD land, harvesting and resource management rights in Nunavut, and required amendments to the NLCA to accommodate these rights.

This has set the stage for concluding negotiations of the rights of AD and GKD in Nunavut. Discussions with Akaitcho and NWT Métis in the Northwest Territories have been ongoing, but it has been challenging to reach overlapping arrangements.

● (1045)

Canada has applied different criteria for establishing settlement boundaries for various indigenous groups. Only the Athabaska Denesuline and GKD have had to prove to Canada and GNWT their settlement area through land use and occupancy research.

On the other hand, the other indigenous groups are negotiating settlement areas with Canada and GNWT covering most of our traditional territory in South Slave Region without similar evidence of traditional use and occupancy. The overall situation differs from that of Nunavut as there are no other final land claim agreements in the South Slave Region. The draft AD and GKD agreements are written with placeholders for resource management and other provisions to avoid adversely impacting the rights of other indigenous groups.

The AD agreement is currently undergoing a consultation process with these other groups. With regard to territorial issues, the Government of the Northwest Territories, unfortunately, opposes the draft AD final agreement with Canada due to the quantum of settlement land and resource management provisions. This opposition is due to their unjust characterization of the AD as non-residents and not deserving of the same rights and benefits as other northern indigenous peoples. Their opposition caps years of frustrating, half-hearted participation of the GNWT and their ultimate withdrawal from negotiations. AD have met with GNWT and Canada many times at great expense to seek a solution to a land quantum issue and particularly to get the GNWT back to the negotiating table.

We've suggested several possible approaches, but these have been rejected. Neither has the GNWT provided us with any clear alternative offers to consider. We no longer see them as party to the negotiations or settlement. As a consequence to GNWT's opposition, Canada has offered to conclude a treaty with us bilaterally. Most of the difficult drafting and technical land-use-related issues have been resolved. Canada and AD must continue with the bilateral approach to settling.

Until very recently, the Government of Nunavut had been back at the negotiating table. Upon their return, they began providing comments on the draft final agreements and implementation funding, and insisting that they must be ratifying parties to the treaty. We see no constitutional justification for their participation as parties to our treaty. By allowing the territorial governments to delay conclusion of the treaty on the question of their participation as parties to the treaty, Canada is allowing the narrow local concerns of territorial governments to prevail and act as a veto over Canada's constitutional treaty obligation and paramount objective of reconciliation. In the end, treaty-making is a nation-to-nation endeavour.

Frankly, seven years of litigation and 18 years of negotiations are long enough. During this time we have dealt with nine Canadian governments, 14 federal ministers, six federal negotiators, four special ministerial representatives, and myriad territorial administrations. These governments have come from across the political spectrum, and our issues have never been partisan. Each change necessitated a political reset and resulted in a significant delay to settling our agreement. Such lengthy time frames impact negotiations' credibility, as well as the timeliness and relevancy of the agreement.

In conclusion, Canada and Athabaska Denesuline have reached a bilateral draft final agreement that settles a long-standing dispute 25 years in the making. It must proceed to immediate finalization. The opposition of the territorial governments cannot stand in the way. The territorial governments do not have a veto if they are included as ratifying parties over Canada's constitutional obligation to conclude our treaty on a nation-to-nation basis as part of the reconciliation process.

The Athabaska Denesuline thank you for this opportunity to make a presentation. We have been in negotiations for the past 18 years. It's been a long process dealing with multiple jurisdictions and dealing with overlapping issues and so forth. A lot of our elders have sat around the negotiating table with us since we started back in 2000. A lot of them are six feet under the ground now. A couple of days ago we lost a chief negotiator who sat on the Manitoba side; he wanted to see the final agreement. I think 18 years is long enough, and I hope this matter is taken seriously by the governments. Their policies have to change to accommodate today's reality of how we do things. All we want is recognition of our traditional territory.

● (1050)

Thank you.

The Chair: It's very long and painful.

I don't know if I gave significant recognition to the Northlands Dene who are part of your group.

Mr. Wayne Wysocki (Representative, Ghotelnene K'odtineh Dene): We're two distinct groups.

The Chair: You're two distinct groups?

Mr. Wayne Wysocki: As you'll see and read here in the presentations, there are similarities between them, but they're—

The Chair: I see. I apologize. You should have been introduced originally.

Please, go ahead. You're going to split the time, with five minutes each?

Mr. Wayne Wysocki: We're going to take our 10 minutes, and then there will be time for questions.

The Chair: Okay.

Mr. Wayne Wysocki: Respectfully, on behalf of the Sayisi Dene First Nation and the Northlands Denesuline First Nation, collectively known as Ghotelnene K'odtineh Dene, I would like to thank the committee members for the opportunity to make this presentation.

My name is Wayne Wysocki. I'm a partner in a consulting firm called Symbion Consultants, and I've been working with the two first nations on a negotiated solution to the Samuel/Thorassie litigation since 2001.

Also with me is Benji Denechezhe, currently the chief negotiator for Northlands Denesuline First Nation, and Geoff Bussidor, the new chief negotiator for Sayisi Dene First Nation.

The traditional land of Sayisi Dene First Nation and Northlands Denesuline First Nation stretches from northern Manitoba into what is now Nunavut and the Northwest Territories. Both signed treaties. Northlands is part of the Barren Lands band. They're part of Treaty 10, which was signed in 1907. Sayisi Dene are adherents to Treaty 5, which was signed in 1910. In the seventies, the first nations established communities and reserves at Tadoule Lake and Lac Brochet. Throughout the 1980s and 1990s, both first nations sought to select treaty land north of 60, but were consistently denied this by Canada because they had signed treaties, and Canada's position was that they were no longer entitled to land north of 60.

In March 1993, just prior to the signing of a Nunavut land claim agreement, Ghotelnene K'odtineh Dene commenced litigation—Samuel/Thorassie versus Canada—seeking a declaration of their rights north of 60. In the spring of 1999, after spending nearly seven years in litigation, Ghotelnene K'odtineh Dene took their drums to Parliament Hill, demanding that Minister Stewart meet with them and agree to establish a table to negotiate their rights north of 60. Since then, these two first nations, along with the three Athabasca Dene first nations, have been negotiating with the Government of Canada to complete two land claim agreements covering settlement areas in the Northwest Territories and Nunavut. There's a map attached to our presentation that shows you all the settlement areas that have been agreed to pursuant to these negotiations.

These agreements have been negotiated in conjunction with changes to the Nunavut land claims agreement to ensure consistency. This has been achieved with the support of both Conservative and Liberal administrations. It has never been a partisan political issue, nor should it be. The issues have been complex because of transboundary claims involving three jurisdictions—Canada, the Northwest Territories, and Nunavut. Through hard work and reasonable compromise, Ghotelnene K'odtineh Dene have reached a close-to-final agreement with the federal crown.

The issue is that the two territorial governments are delaying finalization of the treaty. The two territorial governments have had full opportunity to be involved in all discussions and have been fairly consulted and accommodated with respect to their interests and concerns. Nevertheless, they have delayed the finalization of the treaty. Throughout these 18 years of negotiations, the territorial governments have consistently raised concerns about the substance of the treaty, which has led to their leaving the negotiating table or adopting positions leading to a stalemate.

Canada has appointed three outside facilitators over the last 11 years to overcome territorial government resistance. No one has been successful. Currently, the GNWT is not supporting conclusion of the treaty because it believes Ghotelnene K'odtineh Dene should accept the treaty that provides them with second-tier section 35 rights. The Government of Nunavut, which after a five-year absence began providing comments in late 2016, believes that its consent is required as part of the conclusion of the treaty, and that ratification cannot occur until it has been adequately compensated for treaty implementation costs. By allowing the territorial governments to delay conclusion of the treaty, Canada is allowing the narrow local interests of the territorial governments to prevail over the paramount objective of reconciliation.

Canada has the legal authority to ratify the treaty without territorial government concurrence. In fact, the rationale behind the crown-indigenous relationship as set out in a royal proclamation and the Constitution Act was to ensure that local interests did not interfere with the crown's fulfilling its obligations to indigenous peoples. The royal proclamation placed the sole responsibility for Indians and Indian lands in the crown and the right of the United Kingdom. The royal proclamation recognized the rights of Indians to unceded lands in their possession, and established that those rights to the lands could be ceded only to the crown. Section 91.24 of the Constitution Act passed this jurisdiction to the new crown and the right of Canada. The territorial governments are not the crown. The treaty does not change their jurisdiction. Therefore, there's no legal basis for their being parties to or giving consent to the treaty.

After 18 years of negotiations, it's time for Canada to exercise its authority and conclude the treaty bilaterally. Failing to conclude the treaty bilaterally, given the offer to the Ghotelnene K'odtineh Dene and the case law, would be inconsistent with the honour of the crown. Canada's offer was bilateral, and we accepted the offer as being the basis for negotiation.

● (1055)

At no point in the offer is the consent, or even the co-operation, of the territorial government required. The offer provided for territorial government participation in those matters within their jurisdiction. Not only have they fully participated in those matters, but they have also, on many issues that go well beyond their jurisdiction. The case law requires the crown, once it has entered into negotiations with an aboriginal group, to resolve outstanding claims and to negotiate honourably and in good faith. Outside considerations not related to the conduct of the indigenous negotiating parties do not override Canada's obligation to negotiate honourably. Further, the honour of the crown requires Canada to fulfill its constitutional promise to Ghotelnene K'odtineh Dene in a diligent way.

In addition to Canada's legal obligations, there are equally important political and moral reasons to conclude the treaty. This government has sent clear political messages that following policies and practices that do not accord with the constitutionally protected nation-to-nation relationship is not acceptable. Consistent with the promise of a renewed relationship, the Prime Minister directed his minister of indigenous affairs, in her mandate letter, that her overarching goal will be to renew the relationship between Canada and indigenous peoples. This renewal must be a nation-to-nation relationship, based on recognition, rights, respect, co-operation, and partnership.

Furthering the promises of a renewed relationship, on July 17, 2017, the Government of Canada proclaimed its principles respecting the Government of Canada's relationship with indigenous peoples. These principles are further evidence of the reset of the relationship between Canada and indigenous peoples. What is particularly significant about these principles is the focus of the crown/indigenous relationship in the negotiation of treaties, the importance of treaties in effecting reconciliation, and the right of all indigenous peoples to enter into treaties with the crown.

For the Ghotelnene K'odtineh Dene, the reset of the relationship and implementing the constitutional foundation of the nation-to-nation relationship for treaty-making means that territorial governments do not have a veto over their treaty, and territorial governments are not parties to their treaty. Nowhere has the Prime Minister said that the new relationship is subject to the consent of territorial governments or that recognition of indigenous and treaty rights is dependent upon the approval of territorial governments or that the crown support is dependent on support from territorial governments. Any further delay signals that this government has no intention of honouring its duty and the promises of its leaders.

Canada's moral obligation to move forward cannot be overlooked. There is a profound human cost attributable to Canada having allowed these negotiations to drag on for nearly 18 years. An entire generation has watched and waited for fair recognition of Ghotelnene K'odtineh Dene rights north of 60. Those people who were middle-aged when this claim was filed are now elders; those who were preschoolers are young adults; and most of the elders who encouraged their people to stand up for recognition of the rights in the early nineties have died.

Both of the original Ghotelnene K'odtineh Dene chief negotiators have passed on since these negotiations started. Peter Thorassi, chief negotiator for Sayisi Dene, just left us last week, and Jerome Deneshezhe was taken in 2015. Along with this loss of life, there's a loss of hope and a loss of confidence in the negotiators and community leaders. Patience is running out and cynicism is gaining momentum. Disregarding these obligations to move forward is a form of contemporary colonialism. We are asking this committee to advise Parliament that any further delay in concluding the treaty is wrong on legal, political, and moral grounds. Concluding the treaty is simply the right thing to do. We are also asking each and every one of you, as parliamentarians, to take this message back to your party caucuses.

Thank you.

If the committee can indulge us for a second, I'd like the chief negotiators to make some concluding remarks.

● (1100)

The Chair: You have a minute.

Mr. Benji Denechezhe (Chief Negotiator, Northlands Denesuline First Nation): [*Witness speaks in Dene*]

We presented the history of what took place, but I'm going to speak on the grassroots level about how our people are today.

When this government came into power, there was hope that reconciliation and nation building were priorities, and our people had hope, but now that hope is fading away since these are always delayed by bureaucrats not willing to move forward. At our grassroots level, our people are waiting patiently. We are very kind people and very tolerant, despite how we have been treated, and history says it all.

Today I'm here. I am speaking from my heart for our people. We all have a common goal. We would like something better for our children. For over 100 years that's what we've been trying to do, and we're still struggling today.

The minister last August in Tadoule Lake was crying. She had tears, and I have a recording of that, and she said never again will the Government of Canada treat our people.... Guess what? Today we are still having the same struggle.

I hope you can help us. If we have to beg, so be it. Please, we are asking you to help us get what is rightfully ours, because we've been waiting for justice for a long time. Our people are dying. The people who started this negotiation have both passed on, and we buried one three days ago who was my partner and colleague. As you can see, it is heavy for us at times.

This is not the first time I have come to present and talk in front of people, but when I start going, I think about the people back home. I hope you can hear us. We have been waiting long enough, and it's time to move forward and get on with what's already agreed upon by Canada.

Masi cho.

● (1105)

The Chair: Thank you.

We're now into a period of questions, and MPs will have an opportunity to ask the groups questions. We've heard from three groups, so I'm going to ask you to direct your question to who you would like to respond.

MP Anandasangaree.

Mr. Gary Anandasangaree: Madam Chair, I believe Mr. Bussidor has requested the floor for a few minutes. I wonder if we have consent just to give him a few minutes to conclude.

The Chair: Do we have consent?

Mr. Mike Bossio: I agree.

Mr. Geoff Bussidor (Chief Negotiator, Sayisi Dene First Nation): I don't know if you can hear me. I have a soft voice.

This is my first time publicly presenting on behalf of our band, the Sayisi Dene First Nation. I just inherited the chief negotiator's position. He passed on. We buried him two days ago here in Winnipeg.

According to one of the social workers who was involved with our relocation, the Sayisi Dene First Nation is the band treated the worst by the government in all of Canada. That's not a very good thing, but I don't want to dwell on that. What we're here for is to talk to the NWT issues.

I just want to mention that if you look at territorial borders from the past, from when Canada was first being developed, you'll see that the territorial border has been moving steadily up and steadily up and has been reduced and reduced. Our treaties were signed while we were still within the Northwest Territories' border, so we're actually territorial treaty people. My grandparents were born in the territories. My mother was born in Edehon Lake, which was in the Northwest Territories in 1931, but now that's been turned over to Nunavut. She's passed on, but there would be that question: what territory are you from? What would you answer to that? Anyway, those types of things happen.

I just want to let you know that our people have suffered enough. We're struggling to regain our territories, and if you could help us in that way, it would be appreciated.

My grandmother was a Dogrib, or part Dogrib, and my grandfather was part Nasiyu, which is an extinct tribe. They were underground dwellers. There's an island named after them at Duck Lake. It's called Battle Island. I don't know why they called it Battle Island, because it wasn't even a battle where they were killed off. But we call it Nasiyu Nughe, which means Nasiyu Island. That's where they lived underground on an esker.

I just wanted to give you a little bit of personal history and the relevance to the issues at hand. Thank you.

The Chair: Thank you.

Gary.

Mr. Gary Anandasangaree: Madam Chair, this is just a sidebar. Given that we have 21 minutes, would one round of seven minutes each be appropriate?

The Chair: Is that all right? Agreed.

Mr. Gary Anandasangaree: Thank you.

Thank you very much for the presentations. They're quite powerful. They're quite a reminder to us of the enormous work that we have ahead of us. I know the process here has taken a generation and that I see a lot of grey hairs, a lot of people who put a lifetime of work into this. I want to just start by thanking you and, really, acknowledging the work that you've done for future generations.

I want to talk about this relationship not just with Canada but with other nations and other jurisdictions, and I know the frustration you've expressed with respect to the territories. What can we do in terms of developing a framework that can actually bring different jurisdictions into one table? I think the situation you have is that Canada should go ahead notwithstanding the territories' position on this. But it may not be that easy to do given perhaps the framework that currently exists with the territories. I'm not a legal expert on it, but that's my initial inclination. Could you maybe assist us in advising how we can develop a framework such that before the negotiations or discussions start, we would have a set of principles that can guide us?

● (1110)

Mr. Wayne Wysocki: With respect to this file, we do have a framework. It starts with the Royal Proclamation, and it continues with the Constitution. It went to the offer. The offer was bilateral. There was a clear framework when we started these negotiations. Then there is a legal framework under which Canada is honour-bound to conclude these negotiations.

Respectfully, Mr. Saganash said, in the previous presentation, that the rule of law needs to be followed. The rule of law has to apply here. We have a framework. It's very clear. The Government of Canada is ignoring the framework. We had a promise from the Government of Canada, with this new government, that this framework was going to be respected, implemented, and reset in a new way. Reconciliation means following the frameworks that we have, honouring them, and building upon them.

With all due respect, the framework with respect to this file is extremely clear. It's clear from a constitutional perspective. It's clear from a legal perspective. It's clear from a political perspective. There is no need to try to reinvent a framework that would fit this file. The only thing we need is for this committee to make an absolutely clear recommendation to Parliament that this treaty needs to be concluded. Otherwise, this whole notion of reconciliation is being disregarded.

That's a point that this committee cannot overlook.

Mr. Barry Hunter (Negotiations Advisor, Athabasca Denesuline Né Né Land Corporation): I have another little piece to add to that. I agree fully with what Wayne said. I think your question presupposes that we didn't try to deal with the territorial governments. We've tried, for the majority of 18 years. At some point, one reaches the conclusion.... You know, doing the same thing over and over again and expecting a different result is the definition of insanity. We've reached that point.

In its bilateral offer to the Dene, Canada has reached the point where it's time to move ahead. It has literally been 25 years that this has been going on, and the last remaining obstacle is really the territorial one. While they can appreciate that it's an incredibly politically fraught difficulty, the fact is that every effort has been made to fix that, and it just hasn't happened.

Thank you.

Mr. Gary Anandasangaree: I have two questions. One is with respect to the positive side of this, which is the different nations coming together in this effort, so I'd ask you to briefly talk about that if you can.

The second one—and you may not be able to share that, given that discussions may be ongoing—is with respect to finality, full and final release. Is that on the table, or are you going based on a different approach that will be ongoing dialogue as opposed to finality?

Mr. Wayne Wysocki: There are two questions. The answer to the first one is that you are absolutely correct. The indigenous groups, including Athabasca Dene and Ghotelnene K'odtineh Dene, and with all respect to the Inuit, who are not here, we spent a tremendous amount of time, and the overlap agreements that we reached, which were the precursors to moving forward with these treaties, were called, by the former minister of indigenous affairs, models that should be applied across Canada.

Yes, we've done a tremendous amount of, basically, the crown's work, in figuring it out. When we did figure it out the first time, the crown said to us, “Well, we told you to go figure it out, but that's not our deal. We'll have to get a mandate to work on that”, and that took two years. Then we figured it out with the Athabasca Dene, and the crown said the same thing: “Well, we told you to figure it out, but that's not our deal”, and it took another three years before those deals were actually formalized in offers.

The second part of your question is about the dilemma we are now facing. We now have Canada signing on to UNDRIP and trying to decide how it is going to be implemented. We are on the cusp of a deal with Canada that is, quite frankly, looking to be a little stale-dated. That's the problem when these things drag on for so long.

What we've asked the Department of Justice to do, and we've had meetings with the minister's representative, is to include in our treaty clauses that would allow the treaty to evolve as Canada moves forward with the implementation of UNDRIP, as we are looking for novel and unique solutions that work. Despite the fact that we have certainty provisions in our treaty, we also want to have a true treaty relationship that is a beginning and not a divorce, and one that would evolve with the UNDRIP implementation.

I'm sorry for my overtime.

● (1115)

The Chair: Thank you.

That's all right. We're very good.

MP Cathy McLeod.

Mrs. Cathy McLeod: Thank you, Madam Chair.

You touched on something that I was thinking as I listened to the two presentations about Athabasca and Northlands: I wish I had a map. Is there a map that has both?

Mr. Wayne Wysocki: There are maps in the briefing materials.

Mrs. Cathy McLeod: Okay. I didn't come across it because I was listening.

You manage, within your work, to deal with the issues. You said you managed to deal with the issues with the Inuit. So really the issue is with the territorial governments. Is that the same...?

Mr. Wayne Wysocki: We're facing exactly the same issues. There are slight differences, but fundamentally they're the same.

Mr. Barry Hunter: I think the easiest way to think about the GKD and the Athabasca folks is that about 90% of their territory is in what's now known as Nunavut, and about 10% is in what's now known as the Northwest Territories.

Ours is almost the direct reverse. We have about 70% of the Athabasca Denesuline traditional area in the Northwest Territories, and about 30% that's in.... The Denesuline people were right along what became the 60th parallel and the border, and that's where the problem is coming from. At the time, as was mentioned, when the treaty was signed, they were actually in the Northwest Territories.

Mrs. Cathy McLeod: Maybe I'll go to Mr. Madden. There are no issues in terms of the Manitoba Métis here. Is this another overlap issue?

Mr. Jason Madden: I think one issue is going to be how we actually reimagine or not get stuck in the current very narrow boxes we have vis-à-vis self-government, about what we think self-government is. I think the bigger challenge for the Métis is understanding that they want to build. They have a citizenship-based government that isn't necessarily tied to specific pieces of land, but that jurisdiction exists for its citizens throughout the province of Manitoba. I think it's a different jurisdiction issue.

I do want to raise just this, though. The crown is obligated to advance reconciliation, and all governments are actually a part of the crown. I just find it so shocking, for example, for pipelines. People are able to make difficult decisions. Trans Mountain is not popular. The NDP government is a little ticked off about that.

These decisions, though, have constitutional imperatives underlying them. It's not just about a pipeline. We're able to make those tough decisions—when governments, even 92 governments, don't like it—on issues that don't affect people's lives, lands, and existence, but we somehow hit inertia when it comes to aboriginal people.

I think that is deeply offensive. I think we have to start thinking about it in that way, shape, or form. That's why the courts smack you all the time on these issues, because this isn't honourable. The idea that we get to play hide and seek behind jurisdictions when reconciliation gets lost for another jurisdiction is just a non-issue.

For the Métis, it's the same. We're finally getting to the table. I think in the framework agreement that we build out we, attempt to say, “Look, if we can't do these one-shot deals where it takes 20 years, we need some off ramps where we're making progress”, because we can't hold people together, and also we lose political momentum if we're not constantly moving the yardstick, as opposed to the big bang theory, which you can hear in such comments as, “Well, by the time we get to the deal, it's stale, because the courts have moved further than governments were when the initial cabinet mandate was developed.”

● (1120)

Mrs. Cathy McLeod: I think it would be fair to say from your two presentations that the ask is very simple in terms of our recommendation as you outlined. Is that accurate?

Mr. Wayne Wysocki: Tell the Government of Canada to do the right thing. We have a deal. It's fully within their legal authority to implement the deal. Not only that, they're obligated. The honour of the crown demands that this government move forward with this agreement.

We've spent 18 years. This government had no problem telling the provinces and the territories that there was a deadline to legalize marijuana—no problem at all. It had no problem telling the Government of British Columbia that they're going to build a pipeline across British Columbia. As Mr. Madden says, why is it when it's an indigenous issue it is so difficult when you have to ponder what type of framework we need to figure out how to do it?

There's a deep bias to making these decisions; it needs to be acknowledged and it has to be changed. This government said they were going to do it. I urge you as committee members and parliamentarians to do everything you can to get them to do it.

Mrs. Cathy McLeod: Both of you are at the same stage of being ready and just needing the dotted line signed. Is that accurate?

Mr. Wayne Wysocki: That's right.

The Chair: You have a minute and a half remaining.

Mrs. Cathy McLeod: I'll go to the Manitoba Métis.

Where do things stand with the Daniels decision, from your perspective, looking at how you are going to act and what action will come out of this?

Mr. Jason Madden: It has not advanced far. What we're hoping to have in the next period of time for the Manitoba Métis is a co-developed cabinet mandate to go forward to make progress on these things.

From the Métis perspective, you have the inverse of what you've probably been hearing from first nations. Many first nations are trying to get out of the Indian Act, and there are challenges associated with that, whereas the Métis have never been in it and don't want parts of it either.

The problem, though, given the way the system is set up and that INAC is self-perpetuating, is that unless you provide a framework that allows the Métis to skip over or not get into what I call the dumpster fire of INAC programming, they're going to use that as the proxy.

What you really need to recognize, and what we hope the department split is indicative of, is a desire to make the investments in the Métis government. Let's not create new entitlement programs. Let's not create programs that don't necessarily meet the needs of the Métis. Instead, allow them to design programming that meets the unique needs they have, rather than replicating a failed system.

What's needed there is innovation and vision and, to be quite frank, taking a risk by saying that we're not going to wait 18 years to get a deal. That's what we're optimistic about seeing: that there will be progress.

Mrs. Cathy McLeod: Thank you.

The Chair: To conclude our questioning, we go to MP Romeo Saganash.

Mr. Romeo Saganash: Thanks for the presentations. I think all three of the presentations touched upon one of the most complicated and complex issues in land claims, and that's the overlapping interests over the lands we're talking about in these negotiations.

I hope I can get to Wayne. I want to start with the first presentation.

The land issue will probably be one of the most difficult ones in your discussions. It was rightly pointed out by Wayne that the Royal Proclamation did not talk about Métis. It talked about Indian nations and tribes and the territories that still belonged to them, saying that they should not be molested or disturbed in those territories. That's the language of the Royal Proclamation.

Then we have sections 92 and 93 in the Constitution Act of 1867, which still did not mention Métis, although I'm aware of the Eskimo reference case, in which the Supreme Court said that the term Indian includes the Inuit.

How do you propose to reconcile the reality that the land issue is going to be probably the most challenging in these discussions? I agree with what you claimed from the outset about the sovereignty of Canada over these lands. I think the Supreme Court has rightly pointed out, in talking about reconciliation, that the objective is to reconcile the pre-existing sovereignty of indigenous peoples with the assumed sovereignty of the crown, which are the terms of the Supreme Court of Canada. I take “assumed sovereignty of the crown” to mean that they just took over without permission from indigenous peoples.

How do you foresee that part of your discussions?

● (1125)

Mr. Jason Madden: Daniels does answer that question. It answers the question, similar to the Eskimos reference, that Métis are included in the term Indians in section 91.24 of the Constitution Act, 1867.

They say, “Look at the way the term Indian...” There's no such thing as an Indian in this country. We would have an even more absurd discussion if Columbus was looking for Turkey. This is a term ascribed to Haida, to Tlicho, to Gwich'in. It is nothing magical. It is about indigenous peoples, and the Métis were one of those indigenous peoples recognized in the Royal Proclamation of 1763, as well as in the Constitution Act of 1867. That has been asked and answered. I don't think it is an issue.

Another pet peeve of mine is that I hate the term overlap. I remember Tlicho elders always saying, “Well, you know what this meant historically?” That's colonial language of saying it's overlap. It just meant that the land was good, that we shared it well, and that it was good places to go. I like that concept, as opposed to this dichotomy of us and them.

I think Canada needs to also have a broader discussion. We need to understand land differently. It's not a colonial context with a binary of I own it and you don't. There is a way that we share and come with our own sovereignty and jurisdictions and we weave it together. That's how the MMF describe it. They say, “Look, we have our jurisdictions as the Métis nation. You have your jurisdiction of Canada. The provinces have their jurisdictions and what we're working through together with self-government is weaving those jurisdictions together, not overlapping or one trumping the other. That's how we approach it.” Those discussions also have to happen with first nations, because this idea that Métis don't need a land base, or aren't deserving of a land base, or that it wasn't a part of who they were either, is fundamentally flawed.

Mr. Romeo Saganash: Is there any reaching out to other first nations?

Mr. Jason Madden: I think that the discussion has begun.

Mr. Romeo Saganash: Where's that?

Mr. Jason Madden: I think through the consultations in and around treaty land entitlements within Manitoba, clearly the Métis need to be consulted the same way as other indigenous groups. There's not a hierarchy of rights in section 35, and those discussions have begun.

I also think that land in relation to the Métis and how that ultimately plays out.... We know that land has to be a part of the settlement, but also the issue is what that may look like in the Métis context may be different. No one envisions the current system as the be-all and end-all either.

I think that's happening and, as I said, in self-government terms, this has been moving at lightspeed. We signed an MOU in May 2016. We had a framework agreement in November 2016, and we now have a formal mandate to negotiate. We're beginning those issues, but I think what we also need is a policy framework.

One thing I'd just like to flag from the Royal Commission on Aboriginal Peoples is that there needs to be a legislative base for negotiations that incentivize progress, as opposed to policies that can flip on the governments of the day.

● (1130)

Mr. Romeo Saganash: This question is to both Ronald and Wayne. This committee is called upon to review the comprehensive and specific claims policy. I'd like to know from both of you in which way, if any, the present policy has helped you in your negotiations, or whether that was separate from the issues that you guys talked about.

Mr. Wayne Wysocki: We've always been told that this is not a comprehensive claim; it's a claim of a third kind.

Notwithstanding the fact that everything the Government of Canada is asking from us, in terms of certainty and releases, is what's in.... Let's say you get a comprehensive claim. We're not getting that same thing back in return.

From a policy perspective moving forward, the simple thing is that I think there are two words that need to be purged from any revision of policy with respect to the resolution of claims in Canada. The first word is overlap. It doesn't work. The second word is transboundary.

The boundaries that are in there are not the boundaries of indigenous people. That was the beginning of the problem with the Dene. The litigation was filed in the first place because they weren't recognized, as if somebody drew a line and said you're now on the wrong side of the line.

It's the same problem. After 18 years of negotiation, we're having the same problem. They're saying, "We won't recognize you on this side of the line the same way as we recognize people who have a P. O. box there."

Going forward, please purge the words overlap and transboundary.

Mr. Barry Hunter: If I might add a little piece on the transboundary thing, when we first started negotiations, you could always find information on both of these claims on the Indigenous and Northern Affairs website under "comprehensive claims". It was probably about five years ago that it switched, and you can sort of find this lumped under "transboundary". I would fully echo Wayne's notion that they are not transboundary. They are not Dene boundaries. They are outside boundaries, and those outside boundaries have created all of those problems.

The issue we're facing now is exactly that. It's one of boundaries. It's one of saying, as Canada did, "You Dene have no rights north of the 60th parallel," for no reason other than because they created the 60th parallel. It's an astounding argument, which is why we were relatively promptly out of court and into negotiations, because there was no way that was ever going to stand.

The time has come to move on. The time has come to say, "We've tried, and we've tried." Our issue is certainly around territorial governments at this moment in time. We've sorted out the differences as well as we can with the other indigenous folks. You have to think about it from a territorial perspective. What is actually in it for the territorial government to sign with either of the Dene groups? We don't vote for them. They don't view us as residents. They may face internal problems about settling a land claim for a group that may be perceived to be outside and not from there.

We appreciate all of those things. That's why Canada needs to stand up, take a strong stand, and say, "We're the treaty-making party. It's a nation-to-nation relationship." Territorial governments are not a nation.

Thank you.

The Chair: Thank you very much.

We've ended our allotted time. The issues are complicated and important. We are taking submissions. If you have time, please continue to provide specific recommendations and broader recommendations on how we should approach this. Those will be put together into a report which we will submit to the Government of Canada. One would think it will be fairly soon, maybe by the end of November but before Christmas anyway, before the new year.

I want to thank all of you for coming out, and for the very informative and passionate presentations.

Meegwetch.

Thank you.

● (1135)

Mr. Mike Bossio: Madam Chair.

The Chair: Yes.

Mr. Mike Bossio: I was going to add, on the submission front, that doesn't mean submissions before Christmas.

The Chair: No, I mean by mid-October.

Mr. Mike Bossio: That's mid to late October at the latest.

The Chair: Yes.

Thank you so much. On behalf of all of the committee members, we really appreciate your words and we take them to heart.

The meeting is adjourned.