Standing Committee on Indigenous and Northern Affairs

INAN • NUMBER 072 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Friday, September 29, 2017

Chair

The Honourable MaryAnn Mihychuk

Standing Committee on Indigenous and Northern Affairs

Friday, September 29, 2017

● (0800)

[*English*]

The Chair (Hon. MaryAnn Mihychuk (Kildonan—St. Paul, Lib.)): Our official start time is 8:00 a.m.

I like to be on time because it's important that everyone gets their allocated time so that we are fair, that everyone has an opportunity to be heard, and that members of Parliament are able to ask questions to ensure that our report is comprehensive. This will form the basis of what we will provide to the Government of Canada.

First of all, I'd like to recognize that we're on the traditional land of the Mohawk people.

This is our fourth visit. We started in Vancouver, went to Winnipeg, went to Quebec City yesterday, and are now in Belleville. In three weeks, we are heading up to Yellowknife. The committee is studying land claims, both comprehensive and specific.

It's important that we reflect on this at this time, as our Prime Minister has indicated that the relationship between Canada and our first nations, our first peoples, our indigenous peoples, is the most important. We are on a process of truth and finally reconciliation.

What will happen is that, although we cannot cut you a cheque, we can make recommendations to government.

Voices: Oh, oh!

The Chair: That might have been a recommendation from some other delegations.

What we can do is provide a new summary of the situation, how things are now. I know that you've probably participated in similar committees and reviews, and what makes this different is that we have a government and a Prime Minister who sincerely wants to make a change.

We will prepare a report, and you can submit information in briefs until October 20, and that will be included in the report. Of course, the documents will be part of that more comprehensive storage of Library materials. The report will have a number of recommendations put forward by members of the committee, and we will submit it to the Government of Canada, who will then officially respond to our recommendations. It is part of a process of truth and reconciliation and strengthening our relationship with our first peoples.

We're thrilled to be here in Belleville and to hear from you. I hope that you had a safe journey and everything was good. We appreciate that you took the time to come out.

Pursuant to Standing Order 108(2), we are studying specific claims and comprehensive land claim agreements, and I wish to welcome you.

The process is that you have 10 minutes to present. We have two presenters, so after both groups have presented, we'll open the floor to questions. There's a first round of seven minutes, and then it moves into five-minute rounds. I'd ask members to indicate who they're directing their questions to.

Good morning. Either group can begin. You can decide between the two of you who wants to start.

Go ahead.

Chief Isadore Day (Ontario Regional Chief, Chiefs of Ontario): *Boozhoo*, *wachiyeh*, *sekoh*, *shekoli*, and good morning.

First of all, I'd like to acknowledge the traditional territory of the Mohawk people, Tyendinaga.

I am presenting here as the Ontario regional chief. I'd like to acknowledge the leadership that is with us here today, as well as the standing committee and the various parties that make up your committee.

Today's presentation to the parliamentary standing committee comes at a critical time in our relationship with the crown at both the federal and provincial levels. In some respects, the current work being done with both Ontario and Canada has been 167 years in the making. The lands and waters in what is now known as the province of Ontario are comprised of lands from pre- and post-Confederation treaties. These lands provided resources for European settlers to farm, fish, mine, and trade with our people.

The rich resources of our lands allowed for the future economic growth of what would later become the province of Ontario and the country of Canada. However, our peoples have never shared in that wealth. Far too many generations of our peoples have suffered in poverty and despair. Today that despair and dysfunction, created by such unilateral acts of Parliament as the Indian Act and by unilateral federal policies, continues to undermine our land base under treaty, inherent, and aboriginal rights.

In 1973 federal policy divided indigenous legal claims into two broad categories—comprehensive, known as modern treaties, and specific, which make claims based on pre-existing treaties or agreements. Comprehensive claims deal with aboriginal rights. These claims are based on traditional use and occupancy of lands by first nations, Métis, and Inuit who did not sign treaties. Historically the crown dominion, what is now known as the nation-state of Canada, entered into a number of treaties with indigenous peoples. These historical treaties cover much of Ontario.

Canada misunderstands both pre- and post-Confederation treaties as achieving consent regarding the first nations lands. RCAP states that Canada should in no way rely on any indigenous "surrender" of land if there was no clear evidence that indigenous peoples consented to that surrender. Treaties were made in the context of what is now seen as the fiduciary relationship between Canada and first nations. Where there is cession of aboriginal title, the crown must account for any unfair or improper benefit derived from appropriating aboriginal title without free, prior, and informed consent, or without making sure that the treaty nations were fully informed.

Clear evidence of surrender on informed consent should become the legal and political principle going forward. This is a mutual fact-finding exercise. Similarly, clear evidence of consent should be the go-forward principle for any alienation of indigenous peoples from their lands and territories. In fact, one could argue that it may already be established in the rule of law in Canada if section 35 is indeed a full box that includes the commitments made in the Treaty of Niagara of 1764.

If a regime will impact aboriginal titles, then such a regime must be consented to. Canada and the courts' implementation of section 35 has neglected the important crown and indigenous nation principles of fairness and equality within the relationship. First nations reject the justification test, as it allows for further denial of the premise that our rights deserve proper protection and respect in Canadian law. Canada must reject the justification test and hold our relationship to a higher standard.

The United Nations Declaration on the Rights of Indigenous Peoples commits nation-states to "take the appropriate measures, including legislative measures, to achieve the ends of this Declaration" in article 38. There are many ways that first nations would accept a new relationship with Canada in working together on creating the path forward towards a self-determined future. The political confederacy of Ontario submitted a presentation to the federal cabinet working group that is reviewing all laws, legislation, and policies that impact first nations. This document, entitled "Observing and Implementing the Sacred Obligations", focuses on the fact that the treaty relationship between Canada and first nations strengthens our inherent rights as first peoples of this land.

● (0805)

The recipe for a new relationship with Canada includes the importance and significance that ceremony confirm the sovereign relationships; significant land base and resources to flourish; indigenous laws to regulate lands, resources, and relationships; adjusting Canadian federalism and constitutional-level discussions; observance of enforcement of treaties; and law and policy changes in adherence to UNDRIP, including all points above.

No amount of mandate letters or rhetoric about reconciliation or feel-good speeches at the UN will change the existing relationship. Restructuring of unilateral federal policies and the renewal of the nation-to-nation crown and first nation relationship, based on emerging realities around the nationhood goals of our member first nations and their respective territories and treaty affiliations, is the next step forward to true reconciliation.

After the Royal Proclamation of 1763, it was important to convene a treaty gathering of 120 or more tribes surrounding the Great Lakes in what was now considered to be British territory by the Europeans of the day. The 1764 Treaty of Niagara was an important historic gathering to comply with previous arranged indigenous protocols of peace and friendship.

We were informed of the royal proclamation in terms more generous than the common law rights that have been interpreted by the courts in the last 150 years. Your lawyers at the Department of Justice lead us to disbelieve that reconciliation is a true goal of your government by the manner that they interpret, observe, and negotiate treaty rights in Canada today. For example, the two row wampum informs us of the original understanding of "nation to nation". The United Nations Declaration on the Rights of Indigenous Peoples and the Truth and Reconciliation Commission's recommendations to implement UNDRIP bring us back to the place in time when the Treaty of Niagara guaranteed a better relationship.

UNDRIP guarantees our right to use our traditional territories to build our own economies, in article 26, for example. In article 37, it promises that our treaty rights would be respected. Of course, a very important right is for our exclusive-use land base, now called Indian reserves.

Since there's been the now 140-year-old Indian Act, we have been treated as wards of the state. We are first nations. We are considered a second afterthought on government policy and priorities, and are treated as third-class citizens, some of whom live in fourth world conditions.

This is the state of the nation-to-nation relationship in 2017. We have children committing suicide due to poverty, despair, dysfunction, and abuse. We have a welfare-state system that renders far too many of our communities dependent upon funding that is inadequate and never shows up in time. The Specific Claims Tribunal leaves several gaps in the UNDRIP framework of rights recognition and mutual reconciliation of your laws, rights and title with our laws, and rights and title.

Continuing to have a cap on the compensation award in a specific claims process is not in the spirit of reconciliation. Returning of land is our ultimate goal, and the specific claims process should, as a priority, have the authority to return those lands to first nation communities. Within the process, itself, the amount of money for claims research is only a fraction of what should be made available to first nations. Overall, the SCP system does not provide the right of effective redress when our lands have been unlawfully taken from us, as per UNDRIP article 28. Canada should be facilitating changes in the very near future, or this government will fail to meet the expectations of first nations, given the nice words and commitments of the Trudeau government.

How do we restart the relationship? The solutions are there. The 1996 Report of the Royal Commission on Aboriginal Peoples is still the benchmark that has all the solutions, which boil down to self-government and a sufficient land base for economic self-sufficiency.

The Ontario 2007 Ipperwash report practically repeats many of the same RCAP recommendations on settling land claims. Let me quote from the final report:

● (0810)

> ...the single biggest source of frustration, distrust, and ill-feeling among Aboriginal people in Ontario is our failure to deal in a just and expeditious way with breaches of treaty and other legal obligations to First Nations. If the governments of Ontario and Canada want to avoid future confrontations like Ipperwash or Caledonia, they will have to deal with land and treaty claims effectively and fairly....
>
> Unfortunately, the land and treaty claims processes developed and applied by the federal and provincial governments since the mid-1970s have been largely ineffective, painfully slow, and unfair. They also lack accountability and transparency.

While Canada claims progress on the resolution of specific claims, there's been a simultaneous and sustained effort to curtail research capacity at the first nation level. At one time, in the 1980s and 1990s, first nation PTOs administered research funding to support local capacity to carry out research to resolve specific claims.

Successive governments, beginning with the program review process in the 1990s, have significantly reduced the amount of available funding to PTOs. By some estimates, available funding has diminished by up to 75% of the levels they were funded at during the 1990s. Restoring community-based funding, administered through PTOs to assist those communities without the capacity to administer themselves, is a fundamental requirement in seeking justice for past grievances.

In renewing the fiscal relationship, it will also enable indigenous people to have fair and ongoing access to their lands, territories, and resources to support their traditional economies, and to share in the wealth generated from those lands and resources as part of the broader Canadian economy.

A fair fiscal relationship with indigenous nations can be achieved through a number of mechanisms, such as new tax arrangements, new approaches to calculating fiscal transfers, and negotiating resource revenue sharing agreements.

Once we gain a sufficient land base, and once we gain back control of our communities through self-governance and self-sustaining economies, then we will finally become equals. Only then will we secure our rightful place in Canada.

I am open to questions. Thank you.

● (0815)

The Chair: Thank you very much.

Mr. Hunter.

Mr. Luke Hunter (Research Director, Land Rights and Treaty Research, Nishnawbe Aski Nation): Good morning. I'd like to acknowledge the Tyendinaga territory, and the surrounding first nations.

My name is Luke Hunter. I am the research director of land, rights, and treaty research of the Nishnawbe Aski Nation. I am going to be specifically talking about specific claims and the process.

The Nishnawbe Aski Nation represents 49 first nations in Treaty No. 9 and Treaty No. 5 in northern Ontario. The combined treaty territory covers two-thirds of the province of Ontario, more than 700,000 square kilometres. It's one of the largest treaty areas in Ontario.

Working with the treaty first nations for more than 30 years, the land claims research unit has been very active in research and filing the specific claims, including several significant and successful treaty land entitlement, TLE, claims. None of these claims have been taken to a specific claims tribunal, though some matters have been taken to court. The work of the claims unit has clarified a codified history of our treaty territories, the Treaty No. 9 and Treaty No. 5 first nations in Ontario, enriching and empowering the resources for our communities.

The fact the standing committee is reviewing the specific claims policy and the legislation is very positive. NAN welcomes the opportunity to share some initial points and considerations with the committee.

As a matter of context, there is a high-level dialogue on specific claims policy going on between the federal government and the Assembly of First Nations, AFN. The eventual report of the standing committee helped shape this process in a substantive way. We are cautiously optimistic the bilateral discussions will address many of the significant problems with the specific claims policy, in particular, those problems that were aggravated in the last few years.

Unlike the record after the claims tribunal legislation, specific claims policy must be developed jointly through the discussions between first nations and Canada. That is the only way to succeed.

Considering the specific claims policy should be guided by some shared principles and values. In particular, article 27 of the United Nations Declaration on the Rights of Indigenous Peoples, also known as UNDRIP, provides in part that states like Canada shall establish, in conjunction with indigenous peoples, a fair, independent, impartial, open, and transparent process to recognize and adjudicate the rights of indigenous people pertaining to their lands, territories, and resources.

Article 28 provides that indigenous peoples have the right to redress, including just, fair, and equitable compensation for confiscated or damaged lands and resources.

We can also jointly rely on the principles respecting the Government of Canada's relationship with indigenous people recently released by the Department of Justice. Principle 3 states that the honour of the crown guides the conduct of the crown in all of its dealings with indigenous people.

There have been numerous studies on specific claims policies over the decades. In general, we endorse the conclusions of the two more recent reviews. One is the AFN expert panel report that was done in 2015, and second is the Auditor General's report six of last year. We trust the committee will rely on the past studies to form its conclusions and expedite the final report.

Without repeating the detailed reviews of the past, we would like to take this opportunity to raise some issues and concerns of particular interest to NAN without being comprehensive, given the time we have today.

The first issue is funding. Even though “Justice At Last”, the specific claims action plan of the previous government was supposed to address the backlog of claims, the government drastically reduced funding for first nation claims and research units.

● (0820)

Funding for the NAN unit was reduced without notice by as much as 60%. There was absolutely no justification for the radical attack on the claims process. The inevitable result has been more delay in the preparation and filing of claims to the greater prejudice to first nations.

At minimum, funding should be reinstated to the previous levels. Going forward, funding should be secured, taking into account considerations such as the number of potential claims identified as well as inflation. First nations costs for the tribunal process should be covered, including any judicial review applications to the Federal Court. Funding should also take into account the special costs of doing business in the far north, in our area. Most of our work is done with our remote communities.

One possibility is to flow funding through the specific claims tribunal in order to address the perceived conflict of interest position of the federal government. A related issue is the arbitrary cap placed on the loan funding for negotiations once a claim is validated. Funding levels are not sufficient for communities to exercise due diligence in terms of legal advice, experts, and community meetings. Negotiation funding should be based on actual costs, and should be determined jointly by the federal government and the affected first nations. Also, at least some of the funding should be on a grant basis, to avoid the problem of final settlements being undermined by the process of debt.

A long-standing problem with the specific claim policy and legislation is the relatively narrow scope of eligible claims. For example, even though the policy is supposed to deal with treaty infractions or violations, it excludes any program issues such as education. This is nonsensical, as both Treaty No. 5 and Treaty No. 9 contain clear and strong education provisions. Another example is the narrow scope of the exclusion of claims based on treaty rights related to activities of an ongoing variable nature, such as harvesting rights. This is noted in page 5 of the specific claims policy process guide. This exclusion is arbitrary and unfair. The harvesting provisions of both NAN treaties are critical and important.

The harvesting rights were often affected negatively by developments and resource use authorized by the federal government in the past. Also, the federal policy does not deal adequately or at all with emerging doctrine and the honour of the crown. As noted above, 10 relationship principles have been published by the Department of Justice, including overriding recognition of the honour of the crown.

In general terms, we understand, in the focus of the specific claims, the process regarding lawful obligations and their breach. However, the focus should be broadened to include relationship and equity issues, even where there is no clear technical breach of law. This is what I referred to as moving beyond the lawful obligation.

The equity-based approach is consistent with the honour of the crown and the overarching objective of moving forward with reconciliation. NAN has also put emphasis on the federal government's finality in relation to claims settlement. Complete and final releases are no doubt appropriate in certain situations; however, there should be some flexibility built into the policy. For example, we believe in the absolute finality in some of the cases, such as treaty entitlement claims, but we believe the formula in the treaty should be open-ended.

The other note I want to make a point on with regard to the current policy is that Canada tends to use technical defences, even though it is not supposed to. Under the policy, it's supposed to refrain from using the statute of limitations, but to reduce its liability, when it approves, or for negotiations, the letter will say that it's using the 1951 Indian Act amendments to undermine its liability.

● (0825)

Unfortunately, I think that's all I'm going to say. I have more points, but I will provide the summary of my notes to the committee.

Thank you.

The Chair: Thank you.

We'll have an opportunity to explore more through the questions the MPs have.

MP Will Amos is next.

Mr. William Amos (Pontiac, Lib.): Thanks to both of you for strong presentations with lots of details. Speaking for myself, I really appreciate the passion and knowledge you're bringing to us. A number of us are not as familiar as you are with the specific claims process, but we are rapidly becoming so.

I'd like to first address a question to Mr. Hunter in regard to the submission that you made in relation to the AFN specific claims process in 2015. I found that to be edifying as well.

In order to ensure we have the maximum evidence before our committee, are there any distinctions between what you're saying now and what was previously articulated through that AFN process? Would that document be useful to our committee in our own deliberations?

Mr. Luke Hunter: Yes, all the submissions we made would be helpful. A lot of the issues I'm raising here are consistent.

Mr. William Amos: If you would be so kind, please send a link to that to the clerk. I think that, procedurally, it has to come from your side, but that kind of extra evidence could only be helpful.

Mr. Luke Hunter: Sure.

Mr. William Amos: I want to continue on in relation to a comment that I found really illustrative, and I want to invite you to go further in that area. In that 2015 submission, you comment on “scorched earth” procedural tactics. You went into this theme just a moment ago, how the federal government in the past has, in your opinion, taken advantage of technical defences and used dilatory approaches to the specific claims, and how oftentimes they have just skipped going to a tribunal and gone to court instead.

I wonder if you could go into specific detail around what kinds of tough legal practices you have seen and maybe paint the picture for us.

Mr. Luke Hunter: Generally, when a first nation files a court proceeding, the defendant will usually use all the defences available. For example, the affidavits will aggressively attack your evidence. Certainly that's their prerogative. Also, in some cases, the crown will appeal the decisions even though there's clear evidence that the court has found that the facts of law are true. The classic example is the sixties scoop litigation that lasted for eight to 10 years. There have been five or eight appeals by the federal government. At the end, they said that they were no longer going to fight, and they're into a settlement now. Again, you see that a lot.

First nations don't have the funding to fight them. We don't have unlimited resources to keep going to court because of those tactics available to the defendant. Certainly we want a negotiated process where it's fair and there's a level playing field.

● (0830)

Mr. William Amos: I'd like to direct my next question to Chief Day, particularly in relation to quantum, the amount that can be received through a specific claims process. You said that a limitation wasn't in the spirit of reconciliation. Focusing on solutions—and I'm not in any way critical of that point—what would be an appropriate approach to dealing with quantum? I also appreciate that there were also comments around it not being just about the money. It's about a broader relationship and using a process to achieve better relationships.

On the money side, what specifically could be done to improve it?

Chief Isadore Day: I'm going to couch my answer based on the situation we had in the early 2000s. For about 90 years, our community, the Serpent River First Nation, where I was the chief for 10 years, was faced with an encroachment of development. First it was forestry, then it was a sulphuric acid plant on 99 acres of land. It was in a very strategic location where there was a port, Aird Bay, where ships came in for timber in the early 1900s. In the 1940s, to facilitate the uranium mining industry, they built a sulphuric acid plant.

The issue for us was the value that was lost in the land. It became part of the claim process. Earlier on in the submission of our claim the federal government said this claim is worth under $3 million, so there's only so much we're going to be able to do with your claim. To us, the loss of use, the impact on the environment, the emotional health impacts that resulted from the sulphuric acid, we deemed a much greater cost that should have been awarded. We're still going through that process right now in our community. Clearly, it's an unjust situation, but we view the land as where we would co-exist, live, and hunt and fish, but there's nothing but a clear, open space there now.

For us, I think it would be important to suggest to the committee that for the people living there, more consideration needs to be given to the true value of that land, not just based on the budget that the specific claims process has with regard to awarding those claims. Much greater fairness needs to be weighed in on valuation.

The Chair: Thank you.

The questioning now goes to MP Cathy McLeod.

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

Thank you to the witnesses for joining us here.

I have to follow up on a brief comment by Mr. Amos, though I did have another line of questioning. He talked about the legal fight that often ensues and what the crown does. Of course, it brings to mind that this morning we heard about the current government spending $110,000 to fight a $6,000 orthodontic case for a child they didn't want to provide dental care for. In the last year or so, have you seen any changes in that legal approach to what's happening with the specific claims tribunal, because certainly in other areas of government we continue to see that very adversarial approach.

Chief Day, would you have anything to say?

● (0835)

Chief Isadore Day: I think we're seeing a lot of commitments coming out of the federal government. I believe that the deployment of the 10 principles that would guide the bureaucracy and other agencies and departments as to how to deal with our issues is helpful, but it remains to be seen. We're still early in the process, and we would encourage the federal government to be more transparent with the process itself.

On the flip side, it doesn't look so good for the federal government that the Canadian Human Rights Tribunal, on the child welfare decision, is indicative of the actions of the federal government right now. I think that's a glaring piece of evidence that suggests that the federal government has a long way to go.

Mrs. Cathy McLeod: Thank you.

My next area is that everyone is aware of the planned split of indigenous affairs into two focuses, which I think potentially has some opportunities and perhaps it could also get bogged down in bureaucracy.

There are three questions there. First, were you consulted before that decision was made? Second, are you part of the discussion now in what it should look like? Third, were you going to provide advice to Minister Bennett in particular, because that's going to be very important moving forward with specific and comprehensive claims?

What advice would you provide to her in how that department should be set up in a way that will be effective and that we're not just bogging down into more bureaucracy?

Chief Isadore Day: I will answer that quickly, and I'll offer the rest of the time to my friend and colleague next to me. We just sat with Minister Bennett in Ottawa in the last couple of days and we had this discussion.

It's very important to recognize that the years of colonialism and institutional oppression that the Indian Act has created has built a bureaucratic empire that has pretty much overpowered our people. In the nation-to-nation relationship going forward, it will be important for this current government to recognize that it is not going to be able to do everything quickly and that there are processes we need to follow.

We are suggesting strongly that enabling legislation be put in place to give statutory certainty that this change will occur and that any successive governments will be held to account under a law designed to dismantle the Indian Act as it pertains to the split in politics and administration of the current department.

Mrs. Cathy McLeod: Were you consulted before that decision was made?

Chief Isadore Day: We were not. It's frustrating that the minister said with a bit of a discrete smile that when we met before we weren't advised. She didn't indicate to us if she knew or not. It's really a dark curtain approach to some of these fundamental changes. The federal government must do much better in working with us on a transparent, nation-to-nation level.

Mrs. Cathy McLeod: Thank you.

Mr. Hunter.

Mr. Luke Hunter: If there is consultation, I will agree with the regional chief. We were never consulted. As for the split, there are two thoughts on that. One thought is that, yes, it would help in dealing with grievances. When you split the programming, it may provide some leeway in how you perceive it. I talked about the conflict of interest. You can't have the crown adjudicate your grievances. I think that's the critical point in the claims process. The process acts as a judge and jury and predetermines the consultation and the liability. I think from that perspective it is probably a good thing.

When you look at the other side, the treaty partnership side, some will say you can't split some of the relationships. For example, health and education are treaty rights. If you have two ministries and you want to address the treaty relationship on health and education, you can't approach two ministers. Who do you see? I think that's the critical point for some first nations. Even the leadership, if you go to deal with a treaty issue, you're going to have to deal with two ministers, and I think that's where you're going to have a conflict.

• (0840)

Mrs. Cathy McLeod: Thank you.

The Chair: The question goes to MP Romeo Saganash.

Mr. Romeo Saganash (Abitibi—Baie-James—Nunavik—Eeyou, NDP): [*Member speaks in Cree*]

Thank you, all three of you, for being here. I want to start with a general question because we are doing a study on this comprehensive and specific claims policy of Canada.

One of the things that has always intrigued me from a legal and constitutional perspective is the fact that in this country the rule of law, the honour of the crown, section 35, which you say is a full box and I agree with that, Canadian federalism.... In the Quebec secession case, the Supreme Court refers to the indigenous peoples of this country as political actors on the same footing as the federal government, the provinces, and the territories. I agree with that as well.

Both of you referred to the UN Declaration on the Rights of Indigenous Peoples and the need to apply those minimum standards in our relations with Canada, yet we hear all of these difficulties in implementing our treaties. What do you think seems to be the problem here?

Mr. Luke Hunter: As a general comment, I guess with UNDRIP, in order to be effective it has to have teeth, either through some form of legislation or by being recognized in the Constitution. That's the only way it can be very effective. You can't have an UNDRIP, an international law, or a convention that you just adopt as a policy, because that policy will not work. That's a critical point when you talk about historical grievances.

I know it's been brought up in some first nations and at a recent AFN assembly. Canada's first nations were not part of the whole nation-building process when Canada was founded, so when you look at what the shortfalls are, obviously Canada and first nations need to be full partners in Confederation. There are some who say we haven't seen that. Certainly the announcement of the 10 principles tries to do that, but it falls short of the first nations' expectations.

The issue is there seems to be a lack of confidence—I guess from the general public—in first nations' ability to manage their own natural resources. Why can't first nations manage their own treaty territories? That is the critical issue.

• (0845)

Chief Isadore Day: I'll summarize by paraphrasing that question. If we have all these instruments of recognition and principles to implement treaties, why are they not being implemented? What is the problem? What's wrong?

There are a number of contradictions and inconsistencies in what the government says and what it is doing. Currently we're involved in a law and policy review of four pieces of legislation. At the AFN I have the lead on those files. Yesterday we indicated to the federal government that we have to pause that process because what the federal government is saying is not what it's doing. There is no co-development, yet they say it. They put that out there as an overture and a commitment, but it's not happening. The federal government has to start acting on what it says.

The other thing is that the systems that are currently in place, for example, the Council of the Federation and the first ministers' meeting process, involve us as well, but we're only involved insofar as, “You come to the table but you're not part of the federal family. Therefore, we will feed you a good meal, we'll talk nice words, we'll listen to you, but you have to leave. You even have to leave when we have the real photo op with the federal family.” There is something wrong with the fact that we're basing this relationship on words and a lack of follow-through. That's the problem.

We will meet with the first ministers on Tuesday of next week, and at that time we'll still be working within the same process where we're being brought in as people who are not even part of the formal process. We're given some airtime but we're not any part of the substantive decision-making. The division of power is still alive and well in those processes, and we are certainly not provided that opportunity to say, “This is how our treaty is impacted. This is what resource revenue sharing should mean on a totally shared approach.”

That's the problem. There are a lot of inconsistencies in many of the current systems.

Mr. Romeo Saganash: One of the things that has been said over and over again throughout these hearings—and we started a couple of days ago in Vancouver—is with respect to the process. Many have argued it's not independent enough and is too adversarial, but however we tweak these policies that are in front of us, they still remain policies, hence the importance of your reference to having a legislative framework.

I'm happy to inform you that Bill C-262 will be debated next September and will provide exactly that legal framework, UNDRIP as the legal framework, for everything we do from here forward. Whether it's policy, legislation, or what have you, these standards will be the minimum standards for this country, so I'd like you to comment on that because—

The Chair: I'm sorry, your time has run out.

Mr. Romeo Saganash: Can I just finish my thought?

The policy will remain policy while we're dealing with the constitutional nature of our relations.

Thank you.

The Chair: We now move to MP Anandasangaree.

Mr. Gary Anandasangaree (Scarborough—Rouge Park, Lib.): Chief, I invite you to answer Mr. Saganash's question, although maybe very briefly because I—

Chief Isadore Day: Okay, thank you.

It's a very important question because colonial governments have the ability to set out legislation and regulate that legislation with policies. These policies are really at the whim of the government of the day. We see so much opportunity lost because governments bend, twist, and amend, and they clearly diminish preceding policy.

In that respect, I would say that legislating the minimum standards of UNDRIP is critical. That's how you create a neutral, fair platform for the nation-to-nation relationship. Without legislating minimum standards within UNDRIP, it's not going to happen. Clearly, that has to occur. We need the statutory certainty to ensure that there is a level playing field.

Mr. Gary Anandasangaree: Thank you.

Thank you both. Good to see you back.

Mr. Hunter, I have a very specific question. You indicated that none of the specific claims have been taken to the tribunal. What's the reason for that? Is it structural? Is it financial? Is it because it was resolved outside of the formal process?

● (0850)

Mr. Luke Hunter: I guess when it was established in 2008, there were still a lot of them. The tribunal still hasn't fine-tuned some of its practices and rules. Also there's what's been happening since it was established, even though there have been favourable judgments. There's been abuse, so I think the first nations are not comfortable taking it to a tribunal with uncertainty.

In terms of the last case regarding the competition case in B.C., Canada initially filed its review on the competition issue, but it withdrew last month, which is good news. Certainly, the tribunal did rule on a lot of the liability issues, but compensation is just starting to be finalized, so I guess it's more of a wait-and-see approach. There is also the fact that when you file with the tribunal, there are costs. Even though the claims branch will fund your file, they don't fund all of it, so the first nation would still have to fund some of the cost.

Mr. Gary Anandasangaree: With respect to NAN, how many outstanding specific claims are there in Ontario?

Mr. Luke Hunter: For Treaty No. 9...? I'm going to say roughly 70 to 100, so we still have quite a few claims.

Mr. Gary Anandasangaree: Chief, you indicated earlier that the funding for these claims has not been consistent with the quantum that's actually the outcome. Can you give us an example of where this has been the issue? Do you have any suggestions as to how we can address this going forward? One of the things that came up—and I think Mr. Saganash touched on it—is that there's been some question as to the independence of the process. Funding appears to be a lever that is indirectly resulting in outcomes that may not be as desired from the outset.

Chief Isadore Day: As the regional chief, I'm not a specific claims technical person. However, I do know enough from what are brought forward as political assertions in our assemblies, as well as from my own first nation. I'll speak for my own first nation, and we will provide supplemental information on your question because it's a very important one.

In terms of the true value and the quantum of the value at the time of the infraction of the claim to now, I can only say that in Serpent River First Nation, we lost probably about 80 years of use of that land. You have to think that these are often prime locations where there was forestry, mining, or access to water—strategic locations, if you will. The value of that needs to be established based on an independent review. If the current process does not allow that independent review, something needs to change to ensure that there is a fair and objective outcome in terms of the assessment of value and what the full loss in value is that should be awarded in those claims. It's currently not there, and something needs to be built into the current process.

● (0855)

Mr. Gary Anandasangaree: One of the things we've heard a number of times is that during the time that the claim takes to settle, oftentimes there is extraction taking place.

Do you have any suggestions as to what should be done to freeze, for lack of a better term, the movement of things from the contested area? One of the things is that you can succeed in the claim but still lose out in the long term because the resources are gone.

Chief Isadore Day: I know one of the things they've removed from part of the process, and it may be incorrect, are land cautions. At one point in time, they would put out a land caution to any developers. There was formal notification of contested lands. I think that those instruments need to be put back into the process. Even more than that, I think there should be a full moratorium on any development or any use once a claim is established.

Thank you.

The Chair: Thank you.

You have about six seconds. We feel like we need about six hours.

We're now moving into the five-minute round, and MP Kevin Waugh is going to wrap up. We only have about three minutes of that five minutes left.

Over to you.

Mr. Kevin Waugh (Saskatoon—Grasswood, CPC): Let's start.

You signed a provincial agreement two years ago on collaboration, on the natural resources. How is that going?

Chief Isadore Day: We signed an agreement on the political accord with the Ontario government. That's what you're referring to, I understand.

Mr. Kevin Waugh: Yes.

Chief Isadore Day: That, I can tell you, has seen some gain and benefit, and I would have to give credit to the current Wynne government. There are a number of open doors now. For example, the first TLE claim was awarded under the Ontario government, and that says a lot about the political relationship.

I think there will now be a need to recognize that we can't be politically domesticated under those types of agreements, and I think the Wynne government is moving toward more innovative bilateral arrangements. AIAI just entered into an agreement in the last couple of days with the Ontario government.

However, let me qualify that by saying, if we're still not recognized within Canadian federalism, and if we're still being domesticated in a sense, clearly that process will eventually run out of our good graces. When the Ontario government goes off and negotiates power purchase agreements in other jurisdictions and it affects our worth and value in terms of our territories, our treaty lands in Ontario, then there's a problem there.

NAFTA is another..... Listen, provinces and territories are substates at the international level, which tells you a lot. We need to be recognized as nations. To our friend and colleague, Romeo Saganash, and his efforts, we need to elevate and we need to make legal those minimum standards in UNDRIP, even at the provincial level.

Meegwetch.

Mr. Kevin Waugh: Mr. Hunter, you made a good point. You represent two-thirds of the province. Northern is way more expensive—we know that—yet the funding doesn't match up.

You made a good point about the funding. We've heard that since Monday, starting in Vancouver, but you have raised different views. I mean, look at the area you represent, and northern, where probably twice as much money is needed to facilitate your issues.

Do you want to comment on that?

Mr. Luke Hunter: Yes. You're right.

Certainly the cost of doing business in the north is astronomical, not only just doing government business but to feed your family and put a roof over your head. Certainly we're not prone to crisis. I guess every day you see headlines. I think funding is a critical point in everything that we do in our communities and territories.

That's the big issue for us, funding, and then research and negotiations. That's a critical point as well in coming to an agreement with the historical grievance.

● (0900)

Mr. Kevin Waugh: Thank you.

The Chair: Thank you. That was a big question to wrap up on.

Voices: Oh, oh!

The Chair: These MPs are getting quite tricky, aren't they?

I want to thank you sincerely for coming out early. It's technical in nature. It's important as we look forward to moving forward on reconciliation.

Thank you for participating. *Meegwetch*.

We'll take a short break and reconvene at 9:15 a.m.

● (0900)

(Pause)

● (0920)

The Chair: Let's officially get started with this panel. Since there are three submissions, we'll try to be as efficient as possible. I remind you to look at me because I'm using hand signals to indicate when we have to wrap up. I'll indicate how many minutes you have left to present, so you have an idea of when I have to intervene. We'll go into a question-and-answer period after that.

Welcome. We are studying comprehensive and specific land claims. Each presenter will be given 10 minutes. I ask the delegations to decide who will go first. Please proceed.

Chief R. Donald Maracle (Chief, Band No. 38, Mohawks of the Bay of Quinte): [*Witness speaks in Mohawk*]

I'm Chief Donald Maracle of the Mohawks of the Bay of Quinte. I've been the elected chief for 24 years in our community.

The Mohawks of the Bay of Quinte are part of the Mohawk nation within the Six Nations Iroquois Confederacy. We are one of the Six Nations communities politically associated with the Iroquois Caucus and a member first nation of the Association of Iroquois and Allied Indians.

The Tyendinaga Mohawk Territory is located along the shores of the beautiful Bay of Quinte. We are approximately 20 kilometres east of this venue today. Our current membership as of August 31 is 9,775 members. We have an on-reserve population of 2,175. This does not take into account the number of non-registered people living in our community who are part of our members' families.

Our community has the third-largest membership in indigenous communities in Ontario and the 10th largest in Canada. We are currently in negotiations with Canada on the Culbertson Tract claim of 923.4 acres. This claim has attempted to be negotiated in the past. We've taken Canada to court for a judicial review in regard to not negotiating in good faith and being open to negotiating under all aspects of the specific claims policy.

We are recently back at the table with hopes of settling a portion of this claim, 300 acres. We are now seeing some creative activity in the thinking at the table, but there are still constraints.

In the past we've had to request a judicial review in order to have Canada not only negotiate in good faith, but also follow all aspects of their policy. The position of only monetary compensation and not land is an infringement on our rights. Under the Simcoe Deed, Treaty No. 3½, our treaty states:

> And that in case any Person or Persons other than the said Chiefs Warriors Women and People of the said Six Nations shall under pretence of any such Title as aforesaid presume to possess or occupy the said District or Territory or any part or parcel thereof that it shall and may be lawful for Us our Heirs and Successors at any time hereafter to enter upon [those] Lands so occupied and possessed by any other Person or Persons other than the said Chiefs Warriors Women and People of the said Six Nations and them the said Intruders thereof and therefrom wholly to dispossess and evict and to resume the same to Ourselves Our Heirs and Successors.

This means that the crown or its heirs has the fiduciary duty to dispossess trespassers from our land. These treaty provisions embody the special relationship between the Mohawks and the British crown as military allies that cannot be forgotten by subsequent layers of legislation and policy. Today I brought the photograph of one of those historic allies, Mohawk military captain Joseph Brant and the Mohawk captain Deseronto.

The Mohawks of the Bay of Quinte's experience with this specific claims policy is that Canada's negotiators tend to turn a blind eye to the land compensation component of the policy. Canada's negotiators instead follow an unwritten policy of monetary compensation only, and then advise the first nations that they can use the settlement monies to purchase the lands on a "willing seller, willing buyer" basis. Rather than recognize the fiduciary role to the treaty provisions of protecting the land, the crown has instead followed a course toward extinguishment of aboriginal title. The establishment of a tribunal to address monetary compensation only further ignores the treaty relationship that exists between our community and Canada. The only mandate we have from our community in negotiating one is to have the land returned to our growing community and to seek compensation for loss of use.

On the monetary compensation, the $150-million limit, if negotiations fail, we end up at the tribunal. We would have no choice but to accept monetary compensation. Monetary compensation is set at a maximum of $150 million at the tribunal level. This is a combination of the current market value compensation and loss-of-use compensation. No amount of money can entice us to surrender our land. Money does not address the crown's responsibilities to our treaty, nor will it address the growing need for restoration of land for the generations to come.

Given the fact that our community has less than 20% of its treaty land left, with approximately 75 acres under potential claim, it is doubtful that our claims will fit into the process, especially when taking into account third party developments on the claim areas.

The requirement that first nations surrender all interests in or rights to the land resources upon the settlement of a claim is preposterous. This clause is also an infringement on our treaty rights under the specific Simcoe Deed, Treaty No 3½, which outlines how the lands are to be disposed of. It reads:

● (0925)

> Provided always nevertheless that if at any time the said Chiefs Warriors Women and People of the said Six Nations should be inclined to dispose of and Surrender their Use and Interest in the said District or Territory, the same shall be purchased only for Us in Our Name at some Public Meeting or Assembly of the Chiefs Warriors and People of the said Six Nations to be held for that purpose by the Governor Lieutenant Governor or Person Administering Our Government in Our Province of Upper Canada.

This is very similar to the provisions of the Royal Proclamation of 1763, which set the foundation for recognizing and addressing aboriginal title and interest in lands. This is part of Canada's Constitution.

Why should our people be expected to extinguish our title interests in lands so third parties can remain on the land? We did not surrender it in the first place. Perhaps Canada deems it easier to dispossess our people rather than third parties that have been given flawed title to our lands by the crown. An original injustice cannot be corrected by creating another injustice. Why does Canada fail to recognize first nation title interests in the land?

Through government-fuelled propaganda, the media often portrays first nation claims as flimsy alleged claims rather than legitimate outstanding legal grievances based on aboriginal treaty breaches by the crown. It would go a long way if Canada were to stand up and say, "We are negotiating because this particular first nation has outstanding title interests that can no longer be ignored."

In order to have reconciliation, the crown must admit the mistakes of its predecessors and take responsibility for past mistakes. Extinguishing aboriginal title and treaty rights through federal policies does not set a proper tone for reconciliation.

Canada's position has been that it has no land to offer for the settlement of claims, yet Canada is able to purchase land when needed under other circumstances. Canada has powers of expropriation, as well as the ability to purchase land; however, Canada, through the Department of Justice and the Department of Indigenous and Northern Affairs, chooses not to utilize these powers and abilities to settle first nation claims.

Canada's position is that first nations can use the compensation money to purchase the lands on a willing seller, willing buyer basis. The purchased land can then be applied for as an addition to reserve. It is unreasonable to expect our community to buy its own treaty lands back when the treaty outlines that it's Canada's responsibility to correct the breach by removing the third parties from our land.

Under the addition-to-reserve policy, Indian and Northern Affairs bureaucrats decide whether the land purchased by a first nation can be added to the reserve or not. This policy deals with Indian land as a mere policy issue, rather than recognizing the constitutionally protected aboriginal and treaty rights of aboriginal peoples.

Our community has many claims that will be submitted to the federal government and Ontario for resolution in the near future; however, we cannot submit any of our claims into a process that continues to ignore aboriginal and treaty rights or requires our extinguishment of title.

I must reiterate that our mandate is to negotiate for the return and control of the lands and to discuss loss-of-use compensation for the time that we have been without the use of the land and the benefit of the land. We do not have a mandate to discuss extinguishment of our rights to lands that are needed now and will be needed in generations to come.

Thank you.

● (0930)

The Chair: Thank you. We appreciate that.

We will go to our next presenter. We are hearing from the Missanabie Cree Nation, with Ryan Lake.

Ryan, go ahead for 10 minutes.

Mr. Ryan Lake (Legal Counsel, Missanabie Cree First Nation): I guess I should give a little background first. Obviously, Chief Gauthier sends his regrets. Being the leader of a first nations government, he has many demands placed upon him every day, in the same way that I'm sure you do, honourable members.

The Missanabie Cree First Nation is party to Treaty No. 9, but it never received any reserve land despite repeated requests following the treaty commission's visit to what is today known as Missanabie station, sort of in the hinterland of northern Ontario, north of Wawa. As a landless band, Canada has admitted in litigation at the Superior Court that it has an outstanding obligation to perform the sacred Treaty No. 9 promise to provide the Missanabie Cree First Nation with a reserve. This failure to fulfill its constitutional and treaty obligations in a reasonable and timely manner constitutes a breach of treaty fiduciary duty and the honour of the crown, which of course is always at stake when dealing with first nations.

In addition to its entitlement to reserve land, the Missanabie Cree also seek equitable compensation for the extensive damage and irreparable harm caused by the mass displacement of the Missanabie Cree from their traditional territory, and countless social impacts suffered by generations of Missanabie Cree for more than 110 years. Of course, having said that Canada acknowledges this lawful obligation, it probably perplexes many people why this is still a claim caught up in the system, but I will get to that in a moment. I'm just going to continue with another little summary here about Treaty No. 9 and Missanabie.

Prior to Treaty No. 9, treaties were negotiated and entered into solely between the federal government and the Indians. However, in 1894, Ontario and Canada signed a formal agreement, ratified by imperial statute, which stated:

> that any future treaties with the Indians in respect of territory in Ontario to which they have not before the passing of the said statutes surrendered their claim aforesaid, shall be deemed to require the concurrence of the government of Ontario

In effect, when the treaty commissioners were out making Treaty No. 9, Ontario was a party to that treaty and effectively, through the terms of that treaty, carried significant veto power over the allocation of reserve lands to first nations. Of course, that factors substantially into the Missanabie Cree's claim, because much of the reason, as far as we can tell, why they never received their reserve was due to the economic interests of the Province of Ontario for its benefit alone and to the exclusion of the Missanabie Cree.

A final point on that is that Treaty No. 9 was radically different in that it was drafted by lawyers for the Government of Canada and the Province of Ontario without the involvement, input, or consent of the Indian bands whose aboriginal title was to be extinguished by its terms. The treaty was engrossed on parchment paper by the crown—not different than many of the cellphone agreements you and I enter into on a regular basis—and the treaty commissioner set out in 1905 and 1906 and signed adhesions with some, obviously not all, of the bands of Indians occupying the vast territory covered by Treaty No. 9, an area comprising 90,000 square miles of land rich in gold, minerals, timber, and other natural resources.

It's often said that with the first signature to that treaty, to that parchment paper, first nations had fulfilled their aspect of the treaty obligation, which was in effect the cession of aboriginal title to all of that land. Of course, in exchange for that are the solemn and sacred promises that are obviously enshrined in Treaty No. 9, many, if not all of which, have either been only partially fulfilled or not fulfilled at all.

Now popping over in my presentation, more substantively, I have some observations I will briefly discuss with this committee in relation to the specific claims process. My commentary and recommendations would have substantial influence over the resolution of the Missanabie Cree's treaty land entitlement claim. That said, I must add that because this claim, which I am counsel to, is in advanced stages of a negotiated resolution, I'll not be directly commenting on that claim. I would also like to take a moment and provide the committee with two documents, which I have provided to my friend over there already, which underpin much of what I will briefly discuss this morning. I've been told I should also pass on my notes. My notes are somewhat useful and, hopefully, I'll clean them up before I send them to you.

● (0935)

The first document was prepared by my principal, Ron Maurice, and it's titled “Recent Developments in the Law of Equitable Compensation”. This material describes the recent decision of the Specific Claims Tribunal respecting 13 first nations specific claims arising from the crown's non-payment of treaty annuities in the aftermath of the Riel Rebellion.

This decision has dramatic ramifications for the crown's risk assessment, and the global value of specific claims making their way through the specific claims process.

That's basically a case summary, a very important one, detailing what the tribunal has found in terms of equitable compensation and what it means. For all practical purposes, basically it's a specialized tribunal that has recognized that the basic principles of equitable compensation that apply in the context of common law writ large outside of the specific claims process do apply to first nations, and that indeed the result of that is a significant impact to the global value of these historical losses when they're compounded through time.

The second document was prepared by me, and it's titled “Exploring Access to Justice through Canada's Specific Claims Process”. This paper reviews features of the specific claims process that have emerged over the last 40-plus years; features of dispute resolution that have been employed to reconcile the relationships between first nations and Canada arising from centuries-old specific claims; a detailed analysis and commentary on the dispute resolution process as it is today; and a commentary on whether the current iteration is capable of addressing the desired outcome.

Then there's some analysis of the stats and the outcomes that are present in the process. Most of that is drive-by audits from your government in the last year, and submissions to the five-year review of the Specific Claims Tribunal Act, which was conducted by the chair of that tribunal, Justice Slade.

I will start there, the desired outcome. Central to the resolution of specific claims is the promotion of reconciliation between first nations, the crown, and non-indigenous populations in Canada. Chief Justice Dickson observed that the relationship between the crown and first nations is trust-like rather than adversarial. This unique relationship informs the challenges and distinctive nature of the specific claims process.

The first important but simple observation that I'll touch on briefly today—and I heard some people talking about it over breakfast—pertains to the cap, the cap placed upon specific claims and more broadly the general accessibility of justice in the context of specific claims under the policy and at the tribunal.

I have two minutes left. I better pick this up.

I'm just going to read this straight through. I'll ask for an indulgence as I complete what is maybe another five minutes. I see he's refusing the indulgence.

The Chair: He's saying if you talk too fast, the interpreters won't be able to keep up.

Mr. Ryan Lake: It's a catch-22. I can talk much faster.

The Chair: You could also submit. Go ahead. I'll be generous, a little.

Mr. Ryan Lake: Then I'll just say it really simply that the $150-million cap is too low, in light of developments in the case law. It means that a lot of straightforward claims involving credible acreage, surrender claims, and treaty land entitlement claims now fall outside of the benefits of the tribunal process, and $150 million isn't enough. By restricting claimants under the policy and before the tribunal to $150 million, you are in effect obstructing access to justice for countless first nations whose claims are now forced to enter the judicial process, which is filled with all sorts of challenges.

This brings me to point number two, technical defences. Until 1951, first nations weren't able to retain legal counsel. Many other restrictions have been placed on their ability to realize justice arising from historical specific claims. Today, in every single piece of litigation before the superior courts, you will find the crown defending on the basis of limitation periods, for example, which of course, in effect, extinguish aboriginal and treaty rights by virtue of their operation in statute barred claims.

My simple recommendation in this regard is to amend the legislation—either to recognize, the way you have in the tribunal process, that those limitation defences have no effect, or perhaps to create a grace period effective the date of that legislation, allowing for 10 to 15 years for all outstanding historical specific claims to be filed into the process, which would be immune to those types of defences. If you don't do that, the result would be decades-long litigation of going in and out of abeyance and negotiation, and in and out of various interlocutory or dispositive motions, which cost a lot of money.

The final comment I have is that, from our perspective, the tribunal is working. We believe that the tribunal is substantially achieving the objectives that it sought to effect. I will start briefly by looking at the case of Beardy's and Okemasis. That was the test case for the treaty annuities claims. It was submitted to the ministry in 2001, and it was rejected in 2008. Ordinarily, the only recourse would have been to the courts, where technical obstacles abound and often Eurocentric trial judges preside.

The tribunal went into operation in 2011, and this was the second claim filed with it. In 2016, we obtained a decision on damages. Since that time, we have seen a sort of centrifugal force, if you will. More and more claims are now being accepted for negotiation, as the risk assessment becomes more realistic at the Department of Justice, which we feel stems from the realization and resolution of these claims before a neutral, independent third party adjudicator.

● (0940)

The Chair: Thank you.

Mr. Ryan Lake: The last comment I will make pertains to the available tools in the tribunal process that relate to alternative dispute resolution, or ADR. The Government of Canada consistently refuses to participate in mediated resolution on the basis that they will do so only within their own process and not in a process before a neutral arbiter.

Thank you very much for your time.

The Chair: You can talk fast.

Mr. Ryan Lake: My conclusion is available to you in those papers that I provided to you.

The Chair: Thank you, Mr. Lake.

Mr. Ryan Lake: Of course, 15 minutes isn't very long, but hopefully it was long enough to impress a point.

The Chair: You had only 10 minutes, and I gave you 15.

Mr. Ryan Lake: Okay, there you go. Thank you.

The Chair: Chief Ava Hill, it's a pleasure to see you in person. We've talked over the phone, but I never had the opportunity to meet you in person.

Now it's your turn to present.

Chief Ava Hill (Chief, Six Nations of the Grand River): Thank you. I look forward to the same generosity.

The Chair: We have a precedent.

Chief Ava Hill: I'll go right to it. On December 15, 2015, Prime Minister Justin Trudeau stated the following:

> This is a time of real and positive change. We know what is needed is a total renewal of the relationship between Canada and Indigenous peoples. We have a plan to move towards a nation-to-nation relationship based on recognition, rights, respect, cooperation and partnership....
>
> And we will, in partnership with Indigenous communities, the provinces, territories, and other vital partners, fully implement the Calls to Action of the Truth and Reconciliation Commission, starting with the implementation of the United Nations Declaration on the Rights of Indigenous Peoples.

Six Nations of the Grand River could not agree more.

[*Witness speaks in Mohawk*]

I am the elected chief of Six Nations. My name is Ava Hill. I am a Mohawk from the Six Nations of the Grand River territory, and I'm here today representing the most largely populated first nation in Canada with some of the largest validated and unresolved land rights issues facing Canada.

I have with me Philip Monture, who is our land rights expert and has been working on this for the last 40 years or more.

We also have a package of information that we've left with the clerk, which includes our presentation along with a number of attachments that I'll be referring to.

In making this presentation I want to acknowledge that we are on the traditional territory of our Mohawk brothers and sisters of the Mohawks of the Bay of Quinte.

The Truth and Reconciliation Commission report, as referenced by the Prime Minister, set out the principles of reconciliation with the first principle being the United Nations Declaration on the Rights of Indigenous Peoples as the framework for reconciliation at all levels and across all sectors of Canadian society.

On May 10, 2016, at the United Nations in New York City, Canada formally adopted the declaration and said we are now a full supporter of the declaration without qualification and stated that by adopting and implementing the declaration we are excited that we are breathing life into section 35 and recognizing it as the full box of rights for indigenous peoples in Canada.

I was at the UN permanent forum when Minister Carolyn Bennett made this announcement to the assembly, and I witnessed the indigenous groups from around the world giving Canada a standing ovation—such a standing ovation and vocal acknowledgement of the important announcement that the minister had to come back to finish her presentation.

Although it has taken Canada a long while to commit, it was the right thing for Canada to do.

As for some of the problems with Canada's land claims policies, I'm certain, with the mandate of this committee to study aspects of outstanding indigenous land issues and to review the federal policies regarding comprehensive and specific claims, you've heard evidence from many first nations from across Canada about what is wrong with the system. We won't reiterate much of the same, but we do feel that the report by the national claims research directors on March 9, 2015, which was entitled “In Bad Faith: Justice at Last and Canada's Failure to Resolve Specific Claims” and the Office of the Auditor General of Canada's 2016 fall report on “First Nations Specific Claims—Indigenous and Northern Affairs”, both identify most of the shortcomings and failures.

A nation-to-nation relationship based on indigenous rights, respect, co-operation, and partnership cannot and must not pretend to happen on the extinguishment of indigenous peoples' rights to their lands and resources. Canada's specific and comprehensive claims are contrary to this principle and must be replaced—period. Anything less places Canada contradicting any nation-to-nation relationship that the Prime Minister promised indigenous peoples in Canada and Canadians generally. These two claims policies undermine the unqualified support for the UN declaration that Canada has internationally committed to embrace.

In addition, the cap of $150 million for the settlement of claims makes the process useless for the Six Nations large claim. With the many failures of Canada's claims policies, the Six Nations of the Grand River foresaw no justice utilizing these policies as the remedy to the crown's mismanagement of our lands, resources, and monies. Instead, we chose litigation in 1995 over Canada's failed land claims policies.

We want to affirm our nation-to-nation relationship and find resolutions to Canada's liabilities through good faith discussion and through revenue and resource sharing agreements. Guided by the United Nations declaration principles, we can re-establish the relationship and properly fulfill the legal duty of the crown to consult and accommodate Six Nations as we continue to share our Haldimand treaty lands with our neighbours, municipalities, Ontario, Canada, and the corporate sector.

● (0945)

What Six Nations is going to present today is not new. We have been consistent with what the Six Nations of the Grand River presented to the Parliamentary Task Force on Indian Self-government on June 29, 1983, wherein we outlined how self-government for Six Nations can be financed using our unresolved land rights issues with the crown; with numerous presentations to the United Nations Permanent Forum on Indigenous Issues; and with many of Canada's parliamentarians since May 2011.

Six Nations Haldimand treaty lands cover an area of 950,000 acres, of which 275,000 acres are subject to treaty fulfillment, 402,000 are subject to 999-year payments intended to finance Six Nations peoples' well-being and government, and 19,000 acres were sanctioned for short-term leasing arrangements to sustain a Six Nations revenue stream.

These three examples alone would go a long way towards addressing the critical needs of the Six Nations people. However, the wisdom of the government officials of the day put a prohibition on our leasing arrangements on March 3, 1821. This is a mere snapshot of the thousands of land and financial issues between our nations requiring resolve. More details on other land issues and crown mismanagement of Six Nations funds and natural resources can be read in our “Land Rights, a Global Solution for the Six Nations of the Grand River”.

With respect to Ontario, on May 30, 2016, Premier Kathleen Wynne confirmed Ontario's commitment to implement the Truth and Reconciliation Commission recommendations, the TRC recommendations. She said, "I hope to demonstrate our government's commitment to changing the future by building relationships based on trust, respect and Indigenous Peoples' inherent right to self-government." She promised to engage with indigenous partners on approaches to enhance participation in the resource sector by improving the way resource benefits are shared and to work with the federal government to address the UN Declaration on the Rights of Indigenous Peoples.

Recently, the Province of Ontario introduced the aboriginal price adder to its feed-in tariff program of Ontario's Green Energy and Green Economy Act, allowing indigenous first nations an opportunity to participate. With green energy initiatives being developed within the Six Nations treaty lands and guided by the UN declaration principles and the legal duty to consult and accommodate, Six Nations aggressively partnered and invested in these developments. Today, we have secured more than $1.4 million in post-secondary contributions to supplement our educational shortfalls. We will generate more than $100 million over the next 20 years for our community needs, and to date we have supported 892 megawatts of green energy in our battle against climate change and have created countless employment opportunities for Six Nations and surrounding people.

I applaud Ontario's green energy initiatives and the inclusion of indigenous governments in these developments. They have proven that revenue sharing is nothing to be afraid of but is instead a principle to be supported. For more than 40 years the Six Nations of the Grand River have not stood dormant in spite of our unresolved land issues with Canada. We have worked on consultation and accommodation agreements with our surrounding neighbours and the corporate world to help strengthen our nation and to protect our rights throughout our treaty lands, from bridges crossing the Grand River, to flood control dikes to protect the general population, to many infrastructure projects required by the surrounding municipalities.

We require environmental enhancements and mitigation of developments. We have created educational opportunities for our students of all ages and we have secured long-term revenue streams to support these unique educational opportunities. We have established partnerships with international proponents to enhance our economic opportunities and to help build infrastructure at Six Nations. This has also allowed us to secure land holdings to expand our much-needed land base, but we have had these efforts thwarted by Canada's additions to reserve policy.

Six Nations of the Grand River are including themselves in acceptable developments within our treaty lands, subject to Six Nations own consultation and accommodation policy. We are producing revenues and other creative accommodations to address our people's needs. These are needs that the crown in right of Canada fails to address on an almost daily basis. All the while, Six Nations are not required to extinguish a thing. We do, however, entertain these agreements, specifically without prejudice to Six Nations aboriginal and treaty rights and without prejudice to Six Nations' litigation against Canada and Ontario. Yet the sun still shines and the grass still grows and the rivers are still flowing.

● (0950)

To the members of the committee, I have outlined before you how Six Nations of the Grand River implements partnerships with indigenous communities, the provinces, territories, and other vital partners, and intends to fully implement the calls to action of the Truth and Reconciliation Commission, starting with the implementation of the United Nations declaration. This is how nation-to-nation building with the indigenous peoples needs to begin.

For Six Nations, indigenous governance is tied to the land. As part of our June 1983 report to the parliamentary task force on Indian self-government, we stated that entrenchment of our right to self-government will also mean entrenching our relationship as a government with the federal government in specific ways. This relationship will be in the future, as in the past, between the people of Six Nations and the crown. Self-determination, Indian government, and a special relationship are empty words unless there are the resources to make them real.

Six Nations has been in court with Canada and Ontario since 1995, seeking resolve for our land rights and the financial mismanagement of our resources. We would prefer negotiating rooms instead of courtrooms. Under the present governments, both Canada and Ontario have indicated their willingness to negotiate, but new mandates are required for both.

Lastly, Six Nations calls on Canada and the province to return to the negotiating table with a proper mandate to rebuild this nation-to-nation relationship. Long-term, sustainable, and manageable revenue streams to offset the legal liabilities facing Canada today must go directly to the Six Nations government to supplement the educational and social shortfalls our community faces daily. This will take time, and we are willing to invest this time, and do it right for the Six Nations people's future, and for the future of our neighbours.

As we, the Six Nations, agreed to share our lands, we expect nothing less than Canada and Ontario agreeing to partnership building and revenue sharing from all uses of our lands and resources throughout our Haldimand Treaty. Six Nations wants to talk revenue sharing for all natural resources, including aggregate and gypsum, extraction and water consumption within our Haldimand Treaty lands. We want to discuss sharing in a percentage of all land transfers, taxes, and development fees.

We have always been key players in protecting Mother Earth, and as such, we want to continue to proceed down this path in our battle against climate change.

This is the process Six Nations has proven works. It is a process we feel the Prime Minister and the premier need to implement to resolve past wrongs, and without extinguishment of our children's treaty rights. Canada and Ontario can implement such a process to positively fulfill their political commitments to the indigenous people in Canada and to all Canadians.

Thank you. We look forward to this new beginning.

● (0955)

The Chair: Mr. Mike Bossio, to open the question period.

Mr. Mike Bossio (Hastings—Lennox and Addington, Lib.): I would also like to acknowledge that we're on the traditional lands of the Tyendinaga Mohawk people. Thank you so much, Chief, for allowing us to use these lands today during these proceedings.

I also want to let everyone know about Orange Shirt Day today, which is in recognition of residential school survivors. The local college, Loyalist College, is hosting an official event today around Orange Shirt Day. I see that one of the members in the crowd is wearing an orange shirt. I commend you.

I also want to express the profound gratitude I have to Chief Maracle for his guidance and his education over the past 20 years of our friendship in helping me to better understand the injustices that have occurred to indigenous peoples. He has informed my position on many issues since I've been here on this committee. Thank you very much, Chief.

Because we don't have a lot of time, I want to try to encapsulate some of what we have heard here today and throughout the issues around land claims that need to be solved. I'd like to just go through the list and then see if there are others you would like to add to it and comment on.

First, right off the bat, is the issue of land title and the determination of trying to extinguish that title. People have made very, very clear that it is just a non-starter right out of the gate and that indigenous peoples will never give up title to their land.

Second on the list is funding, and it starts right from the very beginning of the process around funding for research, funding for negotiations, and then funding for settlement. As you mentioned, the cap of $150 million is far too low, and as Chief Maracle mentioned, it isn't just about compensation, it's about land and the return of that land. We need to find settlements in funding for the government to purchase land and not just give money to indigenous communities to then purchase the land for themselves to bring back into reserves.

On negotiations, timelines, and inefficiencies, when negotiations take 15 to 30 years to achieve a settlement, that's a generation, a lost generation of development, a lost generation of economic opportunity, and a lost generation of once again making our indigenous peoples whole in respect to their connection to the land.

The next issue is negotiations from the standpoint of clear mandates and of the authority of the negotiators to negotiate and not just come to the table and then go back and report to their masters back at INAC or back in Ottawa. They need authority to ensure that the right people are at the table and that it's not just INAC. Justice, Natural Resources, Fisheries, or whatever entity has part of that claim needs to be at the table and needs to have authority to negotiate.

Concerning the independence of tribunals, we have tribunals for specific claims, but we don't have a tribunal for comprehensive claims. When the negotiations break down, and then everybody walks away from the table, there is no recourse to take it further. There is no independence as far as determining whether a claim is legitimate or not. There is no independence around working together towards policies or, in fact, a legislative framework that could better enforce, not just for today, but for future governments, so that we fulfill the mandate of being fair and equitable in developing a trusting relationship that finds resolution in this process.

The list includes independence, not just on ruling that there is a right, but being able to assign either compensation or land as part of that ruling so that, once again, it's not just kicked back over to government, or appealed, and we start the process all over again.

Finally on the list is education, educating the public on the importance of finding solutions, the importance of the historical injustices that occurred in the first place, and the importance of partnership in that solution, moving forward, so that all concerned parties benefit from the final outcome of negotiations in this overall process.

● (1000)

Would all of you agree that all of these issues are at the heart of what we're discussing?

Finally, as part of that legislation, we've heard loud and clear that a minimum standard of UNDRIP should be the basis of legislation moving forward.

Have I been able to encapsulate the overall framework that a lot of indigenous communities have brought forward in relation to the land claims issues in general? Could Chief Maracle respond, please?

The Chair: You have one minute to respond.

Chief R. Donald Maracle: On the issue of equitable compensation, Canada uses the 80-20 split. They deduct 80% of the loss-of-use funding from your settlement. You're only getting 20% of the value of the settlement.

The Specific Claims Tribunal ruled in the Huu-Ay-Aht First Nations case and rejected that 80-20 split. We understand that Canada is not appealing that ruling of the Specific Claims Tribunal, but there's another case before the court, the Lac Seul case, and Canada needs to enunciate its policy on the 80-20 issue very soon so that we know what we can expect in our relationship with the federal government.

Mr. Mike Bossio: Chief Hill, could you briefly comment?

Chief Ava Hill: Yes. I think you have touched on most of the points, but another important point is accommodation back to our community. You've talked about all of the stuff, and we do want land back, but in addition, we want financial resources. We want to be accommodated for the land we've lost, because as the largest community in this country we still have services.... There are a lot of people still knocking on the door and wanting services that we have to provide, and even though the federal government has the fiduciary responsibility to provide funding for those services, it's never enough, and it continues to be cut back.

That's why, in my presentation.... I think you know that we've gone off to start generating our own revenue, but we also want to get into agreements on resource revenue sharing, because we still have to provide services to our people. I think accommodation is a big and important part of this too.

The Chair: Thank you.

I'd ask our MPs to ensure that we have time for responses, because we're cutting into time for others.

Mr. Mike Bossio: I just wanted to get all of that on the record, all of which I agree with.

The Chair: MP Waugh, please.

Mr. Kevin Waugh: Well, we're here to listen to you, if you don't mind me saying that.

Chief Maracle, you've made a statement about eviction of third parties. I've not heard that this week. That's a stunning statement that you've made here today. I want you to go into that. We have not heard that since we started on Monday in Vancouver. We've talked about partnerships, but that was a big statement you've just made.

● (1005)

Chief R. Donald Maracle: It's not just a statement. It's a treaty provision. I would strongly recommend that the standing committee have a presentation and be better informed on what the wording of the treaties is. That would help the crown better understand its obligations.

That treaty was made at a time after the American Revolution when Captain Joseph Brant, whose portrait is here in this room, committed our loyalty to the crown. We lost our homeland.

We were compensated with the Haldimand deed, the treaty there, and the Simcoe deed, Treaty No. 3½, which put 97,000 acres of our land under the protection of the crown. One of the things that the crown agreed to in that relationship was that they would protect the land from trespass. Instead, all the crown did was accommodate illegal alienation, with fee simple deeds being given to third parties without a surrender of the land required by the treaty and also by the royal proclamation.

Canada has not followed its own legislation and treaty obligations in its dealings, so we have these outstanding issues.

Mr. Kevin Waugh: What are the third party developments on your land currently?

Chief R. Donald Maracle: For third party development, we've had quarries on land that's never been surrendered by the crown. Non-Indians have made hundreds of thousands of dollars by extinguishing our mineral rights, which have never been surrendered by the crown. The crown has been aware of it. We've objected to it, and the crown has failed to act. There's also a lot of residential property. The current Indian Act has many instruments through which non-Indians use Indian land. There are leases, cottage leases, and permits. There are plenty of instruments that accommodate third parties under the existing legislation, but they prefer to use the land for nothing and keep us waiting for justice and a resolution.

We've always worked very well with our neighbouring municipalities. As Chief Hill has mentioned, it's very important to first nations to generate revenue streams to meet the needs of a growing community. Canada continues to pass legislation to correct injustice toward native women by adding members to our base without adding extra financial resources to accommodate their needs or an adequate land base.

Mr. Kevin Waugh: What you're saying, then, is that there are homes and businesses that would be affected.

Chief R. Donald Maracle: There are homes and businesses. On the Culbertson Tract, half of the town of Deseronto is on that land. If they want to use our land, they can work out an agreement to lease our land. The crown was responsible for what went on when our chiefs back in 1837 objected and the government's own lawyers said, “What you're doing is illegal”, and it chose to commit illegal acts. Our people have been harmed and prejudiced by that, and that needs to be corrected. The extinguishment of our title to that land is not acceptable. Maybe there's some other instrument that it could use, but Canada says, “We don't lease land to settle claims.” I guess it prefers to use the land for nothing.

Mr. Kevin Waugh: We've heard from panels coast to coast here saying how important it is that Canada have a better understanding. Do you have any thoughts on that?

Chief Hill.

Chief Ava Hill: It is. As a chief, I think we're always invited to do a lot of speaking engagements. I just want to go back to the education piece. Canada does need an understanding, and not only the federal government. We, as Six Nations, have made efforts to educate as many of the MPs as we can, and we will continue to do that. We've spent some time on Parliament Hill doing advocacy work, and when we come back we encourage all of you to take the time to sit down with us one on one and have that meeting. But my colleague and I do a number of speaking engagements. We call them our dog-and-pony show. We give people our global solution. We explain what our land rights are and we explain the injustice that happened to our people, because we want people to understand the history and the culture. Too many times—

Mr. Kevin Waugh: Okay, we're listening to you. You're doing your advocacy, but what is Canada doing to educate the people?

Chief Ava Hill: Well, Canada is making a number of commitments, and so we're going to hold its feet to the fire to make sure it fulfills those commitments. I think it's come forward and said it's—

Mr. Kevin Waugh: But is Canada educating people?

Chief Ava Hill: I don't know if it's educating people. I would hope that it would take the steps to educate people.

Mr. Kevin Waugh: But isn't that the most important thing here? Is Canada itself educating the people? I do see a disconnect here. You're doing your advocacy, but I'm not too sure Canada is doing its part in moving this forward. Would you agree on that?

Chief Ava Hill: Well, I think it could do more. Maybe it's not fulfilling all of its part. As the regional chief said, we hear a lot of good words, but I think it probably could do more. I think part of problem is the bureaucracy that's in place and within all these federal departments that has been there for the last 10 years. I think this new government is having a problem getting the bureaucracy to change the way of its thinking and its attitude, so maybe it needs to start educating its own bureaucrats.

● (1010)

Mr. Kevin Waugh: So what about the change? We have the two ministers now. Were you consulted before?

Chief Ava Hill: No, I wasn't consulted on whether there should be a change in the division, but I do know that it was a recommendation made by the Royal Commission on Aboriginal Peoples 20 years ago. Why it wasn't implemented over the last decade, I don't know. Your government was in place. I don't know why you didn't implement it. But we're talking about nation to nation. Why should I go to another nation and say, “This is how you need to structure your government”? I wouldn't want them telling me how to structure my government.

Mr. Kevin Waugh: Well said.

Do I have any more time?

The Chair: You have one minute.

Mr. Kevin Waugh: Mr. Lake, can we have your thoughts on your situation? You've never received treaty land. That's been unique this week, your situation.

Mr. Ryan Lake: I think it is unique, at least in the context of Treaty No. 9. I think as we look more closely, we learn more about the post-Dominion Lands Act treaties that went into place across the Prairies, and we find all kinds of instances in which bands of Indians —which is a very loose definition, involving an artificial construct nine times out of 10—had forced amalgamations. The loss of identity and the loss of the independence to govern one's own band happened all over the place. So it is prospectively not that unique.

The Chair: We've run out of time.

We are now going to MP Saganash.

Mr. Romeo Saganash: *Meegwetch*.

[*Member speaks in Cree*]

Those were words of thanks to all three of you.

In the third compliance order that was delivered by the Canadian Human Rights Tribunal, I think it's paragraph 74 where the tribunal says that the minister, in this case the ministers, those of Health and Indigenous Affairs, say one thing and the departments continue to do exactly the opposite. We're continuing to live under that, and that point was raised by Chief Day and Chief Hill. It's continuing as we speak today.

One thing you said, Chief Hill, struck me and it reminded me of what Senator Sinclair said a couple of months ago. He said that it took us 150 years to get into this mess and it's going to take 150 years to fix it. The present government jumped on that statement to say that he's right it is going to take time, and that's perhaps why there's a lot more talk than action on these issues. You also said this will take time.

We're all aware that it's going to take time, but does that prevent us from taking those initial fundamental steps that will take us on that path of reconciliation and nation to nation? Case in point, I'm proposing for instance that in this country we adopt a legislative framework using the United Nations Declaration on the Rights of Indigenous Peoples.

Can that be our first fundamental step in the right direction in this country? That question is also for Chief Maracle.

Chief Ava Hill: I think it can. I know of and appreciate the efforts you've been doing personally in your own private member's bill on the declaration. I think that Six Nations has already come out and supported you when you first started this so it can be one step. On this whole path of reconciliation, and referencing the fact that it is Orange Shirt Day and we're having our own orange shirt session tomorrow with our residential school survivors, I need to thank those residential school survivors for having the courage to step forward and tell the truth to the commissioners. Now that that's there, we're on the reconciliation. It's up to each and everyone of us, all of you as MPs, up to you as individuals, to ask what reconciliation means to you and what am I going to do to ensure there is reconciliation for the people.

It is because of those residential school survivors that the political agenda in this country now has our issues at the forefront. I listen to *Your Morning* every morning on CTV News. They're talking about the missing and murdered indigenous women's inquiry and they're talking about bad water in New Brunswick. Our issues are now front and centre, and we have to thank those survivors for doing that. As I said in my presentation, we also have to work together in partnership to move forward in reconciliation. We have to quit sitting here pointing fingers and blaming each other saying: you didn't do this, you didn't do that. Now is the time to move forward. We can't let those residential school survivors down, and we have to move forward for the future generations who are looking to us to do that.

Phil and I have have been working on this for a long time, and we're ready to move on to other things. We have to give hope and inspiration to our young people, and we have to do that by being responsible adults, parliamentarians, and leaders. We have to do what's right. We have to do what's right for our people. We've suffered an injustice over here for so many years, hundreds of years, and now we are on the path. We should support anything that is going to lead us on to that path of reconciliation, including implementing the UN Declaration on the Rights of Indigenous Peoples.

● (1015)

Chief R. Donald Maracle: You mentioned passing specific legislation. I think that's only going to delay justice. I think what is required is simply for the cabinet to give direction to the minister of Indian affairs to clarify this policy. I reference Canada's specific claims policy and I think there was a document called “Outstanding Business” in 1992, a specific claims policy. That's 25 years ago. It was reiterated again in 2007. We shouldn't have 25 years pass with a lack of clarity or instruction on what this policy means.

There is nowhere, when I read it...:

> Where a claimant band can establish that certain...lands were never lawfully surrendered, or otherwise taken under the legal authority...the bands shall be compensated either by the return of the lands or...the current, unimproved value of the lands.

It doesn't say in there that Canada can't buy land. Therefore, all the cabinet has to say is that there is one mechanism of settlement, so that Canada can purchase land and give those instructions to your negotiator. What's happened is that the negotiator is mired in these age-old policies. There's no senior direction from government, so we just spin our wheels in the same rut. It requires some leadership and it requires the cabinet to give instructions to the minister to tell her staff that Canada can buy lands. If it's cabinet direction, I'm sure the other central agencies of government can figure out what they need to do, but there needs to be strong central direction on how this is going to be administered and right now it's not there. I think it's simple clarity on the policies and some instructions, so your negotiator who comes to me knows that he has the authority for that.

The other thing is that normally what's done in the department is that it is operated on the basis of delegated authority. Give full authority to the minister of Indian affairs. If the government expects her to report on settlement claims, give the minister the authority to do that and give her a budget to do it.

Mr. Romeo Saganash: Very quickly, Mr. Lake, you mentioned that the capped $150 million was too low and inconsistent with case law. Can you provide this committee with which cases you were referring to?

Mr. Ryan Lake: Sure. Actually, this has much to do with Chief Maracle's observations at the Specific Claims Tribunal. Now that the 80-20 method, which was an internal method used by Canada to justify its settlement numbers, has been discredited and equitable compensation principles, which are generally available to every other facet of the law, are moving into the specific claims realm, many of these claims, which were previously valued at $100 million, are now worth $200 million, or $150 million claims are now worth $250 million. By that abstraction alone, I think that's a good rationale.

The Chair: That's quite short and concise. That's good. Thank you.

We're now moving to MP Amos.

Mr. William Amos: *Meegwetch*, Chief Maracle, to you and to your Tyendinaga Mohawk people, for having us. It's appreciated.

I just want to say, on the record, that I find that all talk and no action is disingenuous and not conducive to reconciliation. I'm hearing a lot of great, very critical, but still constructive, commentary. The idea that there is no action being undertaken by the present government does not hold water and I just don't think that it's helpful, so I just want to put that on the record. It's too partisan.

To bring us to the case that Chief Maracle mentioned, I want to mention the decision by Justice Rennie. Thanks to my colleague, Mr. Bossio, I had the opportunity yesterday to read that decision and it was edifying. It really does go to the heart of what our specific claims discussion should be about. Is this the right process at all? Is this going to achieve reconciliation?

We're in a different place than we were in 2007. We've had some interesting points made around the 80-20 rule, which is now being reviewed by the government, and the openness to a more equitable compensation and equitable remedy approach. We've heard quite clearly the idea that Chief Hill presented that you want to be accommodated and that accommodation is much larger than just the lump sum of money. You've also made that point that it's not about the money, but it's about land.

If not 80-20, what is it? What does more equitable compensation actually look like? How should that be framed? Stepping back further, do you think that a Specific Claims Tribunal approach, which does involve negotiation, but also a degree of conflict inherent in it, is the right approach, as we move toward reconciliation?

● (1020)

Chief R. Donald Maracle: As I've stated, in regard to the termination of title, the crown is in breach of its own treaty obligations under Treaty No. 3 1/2 when they expect that the only way to resolve it is the termination of rights under title. The crown has an ongoing and continued obligation to respect that as a title to that land, and that's what the crown wants to avoid—the recognition of what the treaty means.

If you ask their negotiator or anybody sitting on the federal table, “How does Canada interpret its obligations under this treaty?”, they avoid the question. We're telling the crown today that there is an ongoing legal obligation to respect the title rights that are conveyed under that treaty. It cannot be overridden by policy or other legislation. The treaty is supposed to be the superior law of the land, to uphold and respect those treaty rights. The government has politically said they're going to do it. UNDRIP said they should be doing it. So why do we have these policies that are in total contravention to those obligations?

We are reasonable people. We will accommodate non-native people on our land under some other arrangement, but not under extinguishment of our title or our rights. There is plenty of room for other models to emerge, but Canada is not open-minded enough to look at something new. They have surrender on the brain, and that's what has to stop.

Mr. William Amos: I won't say any more. I'll just invite the other two witnesses to speak to this.

Chief Ava Hill: I'll take one minute.

In my presentation I mentioned that Six Nations have made a number of interventions at the UN Permanent Forum on Indigenous Issues. At one of those interventions we did come up with a proposed solution. We've already said we don't agree with the specific claims process. It's useless to us basically. What we recommended, and I'll just read from the report, is the following:

> There need to be the options to go to neutral dispute resolution tribunals to resolve legal disagreements....The neutral tribunal will have the authority to make binding decisions on the validity of issues, compensation criteria and innovative means for resolving issues. We call upon UNPFII to establish an international tribunal to oversee resolutions to these issues.
>
> Progress on these negotiations shall be reported directly to the UN Permanent Forum on Indigenous Issues and the Parliament of Canada through a special joint Six Nations / Parliamentary Committee.

That's how we would see it.

With respect as well to the accommodation, in our global solution you'll see that we're not looking at any kind of.... Our global solution is that we get into a unique process with Six Nations, because our claims are so huge. When you read the booklet, you'll find out it's in the trillions. If we said we want all this money, it would bankrupt the country. What we're looking at is a global solution whereby we can talk about fiscal relationship directly between Six Nations and the Government of Canada on an annual basis, with escalators every year, so that we can look after our own people; we can look after the health, the education, the housing, and all of that.

There are other options, and this is one of them. There are others, and we're willing to sit down.... That's why we said we want to go into the negotiation rooms, not the courtrooms, to discuss those options.

● (1025)

Mr. Ryan Lake: I'll add my two cents to that.

I think absolutely negotiation is better in terms of having an opportunity to work with the community on a nation-to-nation basis as opposed to being caught up in an adversarial system.

That said, we've seen that in a negotiation process, when it's controlled by one of the parties who is the defendant and the judge, the results have been skewed to the effect that the vast majority of claims don't find resolution. So I think it is important that there is a tribunal there that we have recourse to, and where we're not bogged down by technical defences and things like that. We can have a referee step in who understands first nations issues, constitutional issues, issues of significance.

In terms of the 80-20 method and how you go about resolving these claims, from a quantum perspective, from a monetary perspective, that memorandum I provided to you on the Beardy's decision details the way that the court is viewing the applications for equitable compensation. In that instance, it was 100% compound interest using the band trust fund rates through time. So that works.

Chief R. Donald Maracle: [*Inaudible—Editor*]

Mr. Ryan Lake: Well, it's actually 100% compounded interest on the band trust fund rate.

The Chair: I hate to break it at that point, talking about compound interest, but I must.

We have another panel coming up, and we will not adjourn. We have no time; it is to start in one minute.

I sincerely thank all of you for coming out to your own territory and allowing us here.

Yes, Chief?

Chief R. Donald Maracle: I have one very important point that I'd like the committee members to hear.

The Chair: To all members?

Chief R. Donald Maracle: Yes, to all members, if they could just hear this one point.

When the utility companies went to Indian affairs, and asked for permission to put the utilities on our claim area or through the reserve, oftentimes Indian affairs gave it to them for $1, or $10, or something like that, in perpetuity. That obstructs our community from getting fair compensation for the use of our traditional land that is now going to be under claim. Canada is going to have to come good for that, because it was done without the consultation of our chief and council.

The Chair: Research revenue sharing.

Chief R. Donald Maracle: Look at all these instruments and how cheaply those companies were allowed to use our land, and to make millions of dollars while our people didn't even get a penny.

The Chair: Thank you.

Please remember to submit further documents by October 20.

We will suspend for a few minutes.

● (1025)

(Pause)

● (1030)

The Chair: Welcome back. I understand we have a panellist who has another commitment. There is some urgency to getting things going. Hopefully, we can resume and members will be back very quickly.

I want to welcome you to the traditional territory of the Mohawk people.

This is our fourth stop in a cross-country tour. We have Yellowknife after this. We could find no hotel room available in Yellowknife, because it's that season when the northern lights are most active.

I've been fairly lenient in deciding how you want to present. I don't know if you've decided between yourselves who is going first, but you each have 10 minutes to present. I understand we have two groups.

Grand Chief Abram Benedict (Grand Chief, Mohawk Government, Mohawk Council of Akwesasne): Good morning. Greetings. I am Abram Benedict, Grand Chief of the Mohawk Council of Akwesasne.

I want to acknowledge the territory that we are on here today, a territory in which the Algonquins and the Haudenosaunee have historically met.

The Akwesasne territory I come from is a geographically unique place that is about three hours east of here. The territory straddles the international boundary between United States, upstate New York and Canada while straddling the Ontario and Quebec provincial line, the political borders which were all well after the community had been contemporarily occupied and the borders were drawn without community consent or consultation.

The Mohawk Council of Akwesasne is recognized under the Canadian portion of Akwesasne as the elected system, and it is comprised of 12 district chiefs and a grand chief, which position I hold now.

The Mohawk community of Akwesasne is a community of over 20,000 community members with ancestors who have inhabited the St. Lawrence Valley for centuries. The Mohawk Council of Akwesasne currently has 12,500 registered members. The community consists of 3,200 hectares of land as well as 60 kilometres of waterways that connect many water tributaries to what is known at the St. Lawrence River, which we are also on today.

There are a few claims we have active within Akwesasne, one of which is Canada's second largest thus far claim amount being offered, which is the Tsikaristisere-Dundee land claim. Currently the Government of Canada has offered $239 million for its breach of fiduciary responsibility for the misuse of 18,200 acres of land in the Dundee, Quebec, portion of Akwesasne.

We have a Seaway land claim, which is from the construction of a hydro dam in the international shipping channel known as the Seaway shipping channel, which was constructed in the 1950s. At that time, when the two governments of Canada and the United States viewed this project as a great success and an economic engine to join two countries, the reality was that in our community hundreds of metric tons of our land were being taken away and the lands were being expropriated and small amounts of compensation were offered to each individual member of the community. We have a claim against Canada for this.

The North Shore land claim, which is another claim that we are continuing to research, was recently submitted but unfortunately rejected under the current policies that exist. The Baxter and Barnhart claim is a very unique claim because it is a claim for an island that was in our traditional territory but then was later on traded with the United States. Now the Government of Canada maintains it is outside of their jurisdiction. And there's the New York state claim in which we are partners, we are applicants on it on as well as the Saint Regis Mohawk tribe and the Mohawk Nation Council of Chiefs. There are numerous other claims that our community has still in the research phase.

To assist the work of the Mohawk Council we have created an office called the Aboriginal Rights and Research Office, ARRO. The ARRO staff had been working on land claims during the 1980s with other departments and it was more formally established as a dedicated research office in 1989. Our community has been funding it, as has in part the government, based on submissions and approvals of resources, but for the most part we have funded it entirely on our own. The current staff includes a manager, four researchers and one records administrator.

With the dedicated assistance of our Aboriginal Rights and Research Office, the Mohawk Council and the community of Akwesasne have settled an Ontario Power Generation claim in 2008. As well, we have settled the Easterbrook claim in 2012.

Our core approach is a nation-to-nation approach where indigenous first nations communities have a level playing field when dealing with the Government of Canada in regard to being able to equitably resolve outstanding historical land claims. The tools required would increase the funding resources to create a joint process in policy implementation as well as development, independent services, and equal access to resolution services. This is something that was available in the past, where you were able to acquire the services of an outside facilitator during discussions. Now that has been brought back in and the dispute mechanism that's available is actually another department.

● (1035)

On reframing the approach to restoring lands, the return of lands, I know that a number of you have remarked that as you've travelled across the country this week other communities have said that it's not always about the money, it's about the return of land.

I'm joined here today by Mr. Phillipp White-Cree, who will provide more information about the unique aspects of Akwesasne, as well as our land claim issues. He is the acting manager from our department of aboriginal rights and research.

Mr. Phillip White-Cree (Acting Manager, Aboriginal Rights and Research Office, Mohawk Council of Akwesasne): [*Witness speaks in Mohawk*]

Greetings and peace to everybody here.

I'm Phillipp White-Cree. Within the last few weeks I've been assigned to become the acting manager for the Aboriginal Rights and Research Office. It's a task I don't take lightly, because there's already been three generations' worth of work within this office, and now I'm number four at bat. It's my commitment to work with the elders and mentors of our past as I continue to move our office forward.

The ultimate goal of our office was always to reassert that the lands were unjustly and unilaterally removed from Akwesasne's jurisdiction, and the ultimate goal of the community is to have the piece that is missing from our territories returned and made whole. The moneys benefit us, but it's really the land that has always been the primary and ultimate goal. These goals really go with Akwesasne's history, in which we had vast amounts of land that we were able to lease out in different areas, but because of the mismanagement of these leases...which the government and also the settlers have taken on and are saying that we no longer have jurisdiction over those lands.

As Abram has mentioned, we're really looking for the funding resources to be increased prior to the 2009 steady decrease of those funding resources. That has been an ongoing issue with my office. We have constraints of office space. We have constraints of office materials. Our archive room needs to be relocated because of the way our claims are having to grow, yet the financial resources are not available for us to be able to do that due diligence with our research.

We are asking for the joint processes and policy implementation and development to be done. The specific land claims process, from submission to evaluation to negotiations, to even settlement, needs to be re-evaluated jointly between Canada and first nations, because there are issues, bare minimums, criteria of judgment we do not understand, and we get frustrated when we simply get told, “We're only accepting x, y, and z. Here's the amount, take it or leave it.” These processes and these mandates are infuriating to our office, as well as infuriating to our community members when we try to explain that these are Canada's rules and they are not changing them. This is where we would like to stress that, as first nations, we would love to have a joint dialogue and joint discussion about the processes involved with this criteria of bare minimums.

On independent services and equal access to resolution services, the tribunal is considered an independent legal body, but for many it's considered a last resort because of the funding cap. There's no remediation of lands, there's no options for those remedies. The tribunal's rulings are under jurisdictional review. Again, it's Canada trying to say, “Oh well, that's not the final say”, even though first nations were always told that the tribunal's would be the final say on certain claims.

What we're asking is that there be alternative approaches, such as understanding the injury of culture, the loss of resources, the loss of connection that the community had with these lands. The lands never went anywhere, it's just that another body is claiming to have sole jurisdiction. For our community members this has been an ongoing battle in which we had court cases, including our fishing rights, tied to it because they said, “Oh, you don't have jurisdiction over those lands”. We've proven at the Supreme Court that our fishing rights, as long as we continue to use them, are there.

It's really to reframe the approach to the resolution of land claims, with the returning of land seen as the ultimate goal, and working with our neighbours and current occupiers of these lands and waterways.

The additions to reserve process again continues to be cumbersome. There are third party interests, stalled processes, and delays in the entire process.

Cultural restoration. Injury to culture should be taken into account.

From our perspective, Canada's mindset is the fear of liability, avoiding acknowledging mistakes. It almost seems as if they're wanting to eliminate or disrupt the land claims by limiting resources to first nations, avoiding moving files in the hope first nations grow tired of it and leaving it for the next political government to take up, avoiding paying damages and settlements as final negotiations end up becoming “take it or leave it”, and leaving first nations with no other option than to have that actual dialogue and those discussions in good faith.

● (1040)

So in reality, we're asking for these joint mandates and implementations, and we're seeking a human solution to this human-created inequality when it comes to the land claims process.

[*Witness speaks in Mohawk*]

● (1045)

The Chair: Thank you.

All right, our third presenter is Chief Stacey Laforme.

Chief Stacey Laforme (Chief, Mississaugas of the New Credit First Nation): [*Witness speaks in Ojibwe*]

It's a pleasure to be here. Thanks for the invitation. You're going to see me misplace my glasses a few times, so just be kind and point them out for me.

The Chair: I can definitely relate.

Chief Stacey Laforme: I'm going to keep things as brief as I can, and not try to go over everything that has been gone over. They're all good points, but you don't need to hear me say them again.

The Mississaugas of Credit are about 2,600 people. We have treaty lands of basically from out near the Rouge, down near London, out past Guelph, and to Niagara Falls. As a matter of fact, the only assertion of title that Canada can make is through a treaty with the Mississaugas, within our treaty territories. One of the things we've done recently is we've realigned with the other Mississauga communities. There are six of us, and within that there are about 10,000 people. Historically, there were many more thousands of Mississauga people than that.

I must say that this process has been very telling for me, because I came into this thinking that when we talk about the specific claims and negotiations, it must stop being adversarial and it must become reconciliatory.

One of the things I want to touch on is how the claims are funded. There must be a better way to do it than simply having a cap and an upper limit on certain processes that we need to engage in. I've heard that other governments have used grant funding in the process, so maybe that's a model.

The separation of indigenous communities from the claims assessment process means it is obviously not a partnership. Basically, there's no dialogue during Canada's assessment stage. I know people have touched on this already, but for two to five years, or however long it takes—I know it's set now at three—it simply disappears and we don't hear anymore about it until, “Hello, here's our decision.” That's problematic, and it creates an adversarial relationship as opposed to a relationship where we could work together.

I must touch on this one. The Mississaugas have successfully settled three land claims, although I don't know how successful the Toronto Purchase one was in my eyes. We have many more outstanding. We have title claim to areas in the Rouge. We have made a title claim to all the waters of our traditional treaty lands. That's a very good read, by the way. If you get an opportunity to read that, it's very interesting, and a nice way to pass an evening.

The water claims were going along; we were working with a proponent who was hoping to put electrical lines underneath the lake-bed, which is our claim territory, where we say we have ownership. Things were going along okay, and then NRCan made a ruling without consulting us and discussing the impacts on our treaty assertions—our title assertions, actually, not our treaty assertions. Once that happened, we had no choice but to file for a judicial review, and that's where we are right now with the federal government.

That's one of the issues I believe was mentioned earlier. I know your government has many hands, but it doesn't seem like some of your hands know what the other ones are doing, so sometimes decisions are made at a certain level when in fact they're still working on a process.

Right now we've engaged the government in a round table, if you will, talking about how to ensure that this doesn't happen in the future, among other things, and how we can protect the assertions of title claims—maybe even treaty claims—from a perspective of what the federal government can do, such as put processes in place. I'm hoping that if it's a successful project, other first nations can build on it if they so choose.

The table was also to talk about governance, getting out of the Indian Act and that type of thing. It's very interesting, and we have some hope that it may lead to good work in the future.

I talked about the judicial review. Now we've contacted Ontario, because Ontario would have to do an easement, and we told Ontario that given there's a judicial review on this, we don't expect you to proceed with an easement.

● (1050)

Then we scrambled around and made sure that we had our workers on the ground contact their workers on the ground to say, here's where we're at, don't do this. It was just to make sure that something didn't happen without everybody knowing what's going on.

I'm not going to touch too much on this, because it's been touched on over and over, about the extinguishing of rights. It cannot be the way that we proceed under this type of process.

With regard to our water beds, our lake-beds, Canada will require that our title be extinguished as part of reaching a settlement of some type. This fosters the very same thinking of 200 years ago, when my people said, “This is about sharing the land. This is about using it. This is about safeguarding.” Your people said, “No, this is about owning. It is about ours and acquiring.” I think that kind of philosophy needs to be looked at again.

I'm not going to go into all the points that I have here, but I am going to talk a little more about some processes.

Within the specific claims process, it's so adversarial that there is no way to resolve claims. I mean, I've sat at the table with people who genuinely had affection for each other, but it is still an adversarial process. Meetings take place in the cities and not very often in the communities. There is strict adherence: you cannot inform your membership, you can't keep them updated. That really causes problems with building relations internally, as well as externally.

One of the things the government should be doing is that it should be mandatory that people involved in the negotiation process understand the indigenous perspective, understand our world views. I think there should be mandatory training for these types of processes.

I also think there needs to be some type of involvement in ceremony. I'd love to see some smudging in some protocols. Maybe you don't use them, but you wouldn't believe the effect they have on people in a room when there are adversarial relationships. It's very soothing and works to calm things down.

We also talked about open dialogue, what is on the table, how broadly we are speaking, when do issues get dealt with. This is more I guess on my side of the table. If we're in negotiations and we're having issues that come between us right at the get-go, they get pushed aside and we deal with everything around them until at the end of the day, 10 years later.... What happened in our claim was that the Toronto Islands were included in the claim. From the beginning we said that there was no way that the Toronto Islands were ever going to be a part of this claim. At the end of the day, because we didn't do the work on it immediately, the government said take it or leave it, take another 10 years and go to court. We really didn't have any options, so it must be very plain as to what's on the table.

Also, now I'm going to ask something that might be a little strange, but it's my last point. Do we always need a lawyer in the room? They're vital to the process, don't get me wrong, but any one of us can say “without prejudice”. At some point in time, you're actually going to have a table that talks about reconciliation. If you're going to talk about reconciliation—

The Chair: There are a lot of lawyers pointing to each other.

Chief Stacey Laforme: Oh, I know that.

Mr. Mike Bossio: I'm with you.

Chief Stacey Laforme: If you're having a discussion that's open and fluid, you don't need the lawyers to be there to protect your rights. They can come in later.

The Chair: Thank you so much.

The questioning starts off with seven-minute rounds for all representatives of each political party.

We start off with MP Gary Anandasangaree.

● (1055)

Mr. Gary Anandasangaree: Thank you very much, Madam Chair.

Thank you for those wise words. I agree that you don't need lawyers in the room all the time. For the record, I'm here as a parliamentarian and not as a lawyer.

Chief Laforme, I want to acknowledge the work you've been doing—I know you mentioned it in passing—especially with respect to bringing the six Mississaugas together. I know you had a ceremony earlier this year where we were able to witness a historic moment where everyone came together as a nation.

I want to get a bit more sense from you as to how that process is evolving and what the next steps are. I know you can't speak for everyone, but I'd like at least your perspective in terms of how this nation is developing and what kind of support you're getting from the federal government in that process—briefly.

Chief Stacey Laforme: The Mississauga Nations obviously signed an accord, and you were there. We have raised our flag in the communities. We are having interactions at the government relationship table with our chiefs. We're hoping to have community functions and get back together.

The reason we're doing the Mississauga Nation and beyond that is that if the Mississauga Nation succeeds—and it will—the other nations, like the Chippewa, Odawa, Ojibwa, and Potawatomi, can come together as nations under the Anishinabe people because that's who they are. They are separate nations under the Anishinabe people. As long as we see ourselves separate and divided in the north and the south—this PTO, that PTO—we'll never be able to help each other. We can't see ourselves helping somebody when they're our competition because we all scramble and fight for the same thing. So, the nation-to-nation for all of us is the best path forward.

I don't exclude my other indigenous brothers and sisters who are in that evolvement, but that's their role to find. I can only only deal with the Anishinabe, who we are.

The Government of Canada has provided some funding and is interested in having discussions around governance with the Mississaugas of the New Credit First Nation, discussions about what that all means and how that could get to the ideology of nation-to-nation and the movement out of the Indian Act. There has been some funding in round tables with regard to that.

Mr. Gary Anandasangaree: Chief Benedict, I know you outlined a number of claims that are still pending and ongoing. It seems to me that these issues.... You indicated that more research is being undertaken with respect to new claims.

Have you explored undertaking a comprehensive claim? If so, what kind of rationale did you have for why you didn't go that route and are continuing on towards specific claims?

Grand Chief Abram Benedict: I would say that as we continued to research them, we were obviously looking at some of the options and in which avenue we should best take them. I think that as the government evolves its policy development and positioning, in which it'll address whether it'll be a comprehensive or specific, we will see perhaps which may be the best option at this point.

We've negotiated the Dundee land claim, the Tsikaristisere land claim over about the last eight or nine years. There have been ongoing negotiations, and we've seen this shift in where claims are going. I think that if it continues to go down that route, it's going to be a bit more friendly, and it's going to be easier to get some of these claims resolved.

At the end of the day, we want to bring them to resolution because it's part of reconciliation as well. There is a lot of anxiety in our communities—and I think I speak for all of the presenters—regarding these ongoing claims that are never resolved. We can't really put these matters to closure until we've come to something that both the Government of Canada and our communities can agree upon.

● (1100)

Mr. Gary Anandasangaree: Chief Laforme, your territory is effectively a large part of the Toronto area, so 416 and a large chunk of 905. It's probably, from strictly a dollar perspective, one of the most valuable areas in the country, if not around the world.

What kind of support and what kind of engagement do you have with the different levels of government at the table in order to ensure as a people that recognition is there within the about seven million people who live in that territory?

Chief Stacey Laforme: I will just start by saying that I believe that with treaties come responsibility on both sides of the table, and if people are not actively aware of what those treaties are about, then nobody can fulfill those roles.

I believe that, certainly, on my side of the table we have responsibilities to the lands and waters, but I also believe that we have a responsibility to everybody who lives on our treaty territory. We've been working very hard to provide a wide education and awareness, to build relations with all levels of government and with all the different nations within our treaty lands. Also, we have signed various MOUs with unions and with universities, quite frankly, because I believe in the opportunity to work together to make a progressive future.

When we do things, it's not just about what we can do for the Mississaugas of the New Credit First Nation. It's also about how we can bring recognition and value to the city of Toronto or one of the other cities, and how we can employ some of the indigenous people through those processes because of the relationships we have with the city, with the waterfront, with other things. It's not just about us; it's about meeting the responsibility that is outlined under the treaty relationship.

The Chair: Thank you. That concludes your seven minutes.

We'll go to MP Cathy McLeod.

Mrs. Cathy McLeod: Thank you to all the witnesses. As we're into career confessions, maybe we need more former nurses around the table.

There are a few things I picked up on, and maybe I had made assumptions that might not be accurate. Number one of my assumptions was that there would have certainly been some orientation, training, and the appropriate use of ceremony with the negotiators. Maybe you could speak to that. I was surprised to think that you would have a negotiator who would be having some very important discussions without having that kind of basic background.

Was my assumption wrong?

Chief Stacey Laforme: If you're asking me, in the 10 years that I sat at the negotiating table, it never happened once. There was no ceremony, no process. It was very much, you sit on that side of the table, we sit on this side of the table. We get mad, we get up and we leave. You get mad, you go to the caucus. It's very much that type of relationship, with no process brought into it at all.

Mrs. Cathy McLeod: To your knowledge, was there no opportunity for the negotiators to become very familiar with culture and training?

Chief Stacey Laforme: Quite frankly, I didn't sense there was any real interest at that time in knowing anything about it. Really, the negotiations with us are about how strong our assertion is, what the risk to the crown is, what it would cost if we lost, how much we can afford to pay. That's the type of mentality that we sat across from.

Mrs. Cathy McLeod: Grand Chief Benedict, any comments there?

Grand Chief Abram Benedict: I'm not sure there was a negotiation school that existed. Many of these claims have been going on for a really long time. I will tell you that in our community, regardless of the attitude on the other side of the table, we take the initiative upon ourselves to ensure that each individual is aware of the customs and traditions of our people, as well as respectful of the ceremonies.

One extremely unique thing about our community is that our community as a whole is in two countries, two provinces, and one state. When you bring them, you have to make sure they have a passport first to get to, probably, two-thirds of our community. Then, you also have to understand why our community is where it is and the impacts there, understand the people who are sitting across the table from you.

In our experience with some of the claims that are ongoing or being ratified, everybody comes to the table at first with their chests puffed up and everything, and everyone thinks they're going to win their side. I think it's all in the approach. We've had relative success in it, but to expect the individual to come forward with a real understanding, probably not. The government's not there yet. I think that with the TRC and equipping civil servants to have a better understanding, it's there but it's going to take some time.

● (1105)

Mrs. Cathy McLeod: Certainly your issues are very unique, as you indicated with the cross-border.... We haven't had anyone talk in terms of the specific issues around water. Can you talk a little more? What we have heard is a process that's generic across the country, and sometimes it doesn't meet the unique circumstances of different types of cases.

Grand Chief Abram Benedict: I don't think the policies incorporate bringing the Government of the United States to the table to also negotiate claims. Unfortunately, we're not there yet as a country. I know you're probably well aware of the attitude of our southern states, our partners. I think it's a bit off.

We as a community work collaboratively with the Saint Regis Mohawk Tribe and the Mohawk Nation Council of Chiefs to ensure that the rights that we have for lands, whether in Canada or the United States, are protected. As well, if there are claims, we sit down collectively, similar to what the chief has described with some of the other communities there, and determine what the best courses of action are.

As far as the jurisdictional on provincial...all of our claims right now are with the federal government. There is the responsibility of the federal government to inform the provinces in which they're going on, but we as a community also undertake to ensure that they're well aware. At the end of the day, we believe that the provinces need to be supportive, to a certain degree, as to where we're going with claims, because they can also slow it down. We have seen that in other instances across the country.

Mrs. Cathy McLeod: The other thing of course is that the relationships with the provinces vary from province to province and territory. For example, with mining extraction in British Columbia, specific royalty sharing agreements come to the communities. I think it was 37% of the royalty.

Is anything like that happening in Ontario when there is use of resources for forestry or mining? That specific revenue stream from the province is not related to any benefit agreements that you might have negotiated with the companies?

Grand Chief Abram Benedict: For our community specifically, no, none of that discussion is going on with respect to forestry and mining. Being part of some of the regional work, yes, I'm aware that those discussions are happening. The resource we have in our community is predominantly the river, a lot which is a federal responsibility.

Mrs. Cathy McLeod: The other comment that was made that I would like to explore is the submission that it goes into a black hole for a couple of years so there is no dialogue. Can you tell us a little more? Is that accurate? Is there no testing of assumptions within that process?

Chief Stacey Laforme: I can't speak for everybody, but for us we submit it and wait and wait; we do a follow-up letter, we get a “Yes, we've received your letter”, and we wait some more. That's the process.

The Chair: That concludes your time.

We're moving on to MP Saganash.

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

Madam Chair, I want to take this opportunity to respond to the accusations coming from the other side since I didn't get a chance to respond. I take reconciliation very seriously. After 35 years of honest effort at reconciliation, I took offence at the member for Pontiac's accusations of partisanship.

I listened to our witnesses this morning, and one of them said that although the commitments are very nice, it's not happening on the ground. Another witness concurred with that observation. I quoted the Canadian Human Rights Tribunal. I don't think we can say that the Canadian Human Rights Tribunal is a partisan body. What I'm trying to achieve here, Madam Chair, is what is just for this country. I've been doing that for the last 35 years. Being accused of partisanship was unwarranted on the part of the member for Pontiac. He may disagree with me, and I don't mind, but I certainly won't take any form of paternalism from anyone. We've had enough of that for 150 years. I don't think it's warranted anymore.

Thank you, Madam Chair. My apologies for that. I had to respond, I think I had the right to respond.

One of the things we've heard over and over again since we started in Vancouver on Monday is that the process failed a lot of first nations that had either comprehensive or specific claims. There needs to be a major change to that policy, or even to the approach to specific and comprehensive claims.

You talked about that. At the core of this problem is the need for a level playing field and equal access to resolution. We've heard that throughout. It's unjust that only monetary compensation is contemplated for specific claims and not for land. That seems to be your ultimate goal. I think a lot of groups across this country agree with that.

Injury to culture was also mentioned, and that is also contemplated by others. We're here to propose perhaps new policies or maybe a major change to a fair, transparent process that may be required in the future to deal with these challenging claims.

I'd like to hear more about what you would recommend to this committee for us to do our job and deliver to the present government. It's a very general question to all three of you.

● (1110)

Grand Chief Abram Benedict: One of the things we have contemplated, especially considering our unique geographical location in this country, is that perhaps we should look at treaty claims and the creation of a third, different claim category, instead of the existing ones, which would give due consideration to super-unique locations.

To one of the other points you made, I will tell you that currently we do have a settlement on offer, and we support all of the other positions made by members, the extinguishment of the right, which ends up in the language of the agreement itself. We are heading into the process where we have to go to the members for ratification. Being the second-largest community in Canada, behind Chief Hill's, we have a lot of members in our community. When Canada comes forward and tells us that we need to ratify in accordance with the referendum requirements, this means we have to have a double majority to accept it, because it's a surrender-type thing. In Akwesasne, there are 8,000 registered people who are 18 years and over, so a double majority is 4,000 people.

First, for us to achieve that number is almost impossible. We have been working on a specific one and saying that we have to find a way around this. The other thing is that, when we talk about the return of lands and the compensation aspect, I can tell you that, for us, to take it to the community and say that we are not getting any land back and we are getting this kind of money makes it an uphill battle also.

As we move forward, if we look at revamping some of the existing categories or creating a new one, this all needs to be taken into consideration. In a community of 1,000 people, it's easy to reach 200 people, no problem. But I can tell you that I don't know where all those 4,000 Mohawks are. I know a lot of people—I have a large community—but they are moving all over the place in Canada. That's something that needs to be given serious consideration.

I know that's a bit off topic there, but I think that, as we move forward, these are things that need to be considered.

● (1115)

Chief Stacey Laforme: I want to comment on that, if I could.

My first nation has a claim of title to water, yet we are one of the few first nations that are actually landlocked. We don't have any water, and our people desperately want to get back on the water. Going forward, we need to have some kind of opportunity to be on the waters again for ceremony and processes.

The other thing is—and I think it's been talked about before—that having specific claims that deal strictly with money does not work. Truthfully—and hopefully none of my members are watching this—I am not interested just in money anymore. That's not the way of the future for us. I am interested in negotiating and working to find ways to make a living off my land in the modern day. I don't hunt anymore. I can't hunt in Toronto or Guelph, so I need to find other ways. The treaties are all about sustaining ourselves on the land, and we have to take that into today.

The Chair: The questioning now goes to MP Bossio.

Mr. Mike Bossio: Actually, I am going to pass the first part of my question over to Will Amos and then pick up afterwards.

Mr. William Amos: I'll be very brief.

I just want to congratulate Grand Chief Benedict and his community on the development of the first entirely indigenous legal system, which was fully done outside the sphere of federal and provincial governments. I think it demonstrates really interesting leadership that reflects well on the country as a whole, but also particularly your nation, so *meegwetch* to Joyce King. Please bring that message back.

I know that Ontario, Quebec, and the feds are looking at a framework to figure out how to deal with that, but I think it puts your community in an interesting position vis-à-vis commenting on what we should do with the specific claims process. You are quite competent to develop legal regimes on your own, so thank you for delivering those views.

That was my only comment.

Grand Chief Abram Benedict: Thank you. I appreciate that.

Mr. Mike Bossio: I want to spin off from that to Phillipp White-Cree on the research front, not just the legal framework you've been able to develop. I assume part of that was developed as a result of the research that you've been able to conduct as a group. In my travels across the country, I have not come across any other reserve that has its own full-time research team that is constantly looking into this and probably other issues. Am I correct on that?

Mr. Phillip White-Cree: There are a few. They're very small. We have an annual gathering all the time.

Unfortunately, a lot of it is due to the funding aspects. As I said, my office about three generations prior wanted to have this happen, but it wasn't until 1989 that the Mohawk Council of Akwesasne was able to permanently house us as an office. Ever since then, we've continually built up our research mechanisms.

Being so close to Ottawa really helps, but again, for other first nations, that is not an opportunity they necessarily have.

Mr. Mike Bossio: You've probably come up with some ideas around how you think that funding mechanism needs to change.

Mr. Phillip White-Cree: Yes. There are a few aspects with the funding. Sometimes when the funds are requested, they're not actually released until the third or fourth fiscal quarter. That means the first nation does have to bear the brunt of those expenses, and then it's not always the full amount that was requested. We're always running in a kind of deficit situation.

That's an aspect of the funding abilities. That's where, with other first nations, it would be a boon if they were able to hit the ground running with the finances and the resources to be able to have a staff to push forward these research initiatives.

Mr. Mike Bossio: In the funding for the research initiatives under the present framework, is it only for the initial research for the claim itself, or does the research capability continue all the way through the whole process to resolution?

● (1120)

Mr. Phillip White-Cree: It's piecemeal.

Mr. Mike Bossio: It is piecemeal: so each time you enter a different stage of negotiation, you start with the initial research to put forward the claim, then you go through research funding for negotiation, research funding post-settlement, etc.

Mr. Phillip White-Cree: Correct.

Mr. Mike Bossio: With regard to the research you're doing, is it only for Akwesasne or is it for all the Mohawk communities?

Mr. Phillip White-Cree: Primarily we focus within the sphere of Akwesasne specifically, but we do have talks with our neighbouring communities and we do share resources if we have an overlap.

Mr. Mike Bossio: As part of that research, are you looking into the educational components that could be provided in your interactions with neighbouring communities to try to educate them on the process, the importance of it, the historical injustice, etc.?

Mr. Phillip White-Cree: Yes. Within the Mohawk government there's a government liaison officer, and one of her roles is to communicate with Quebec specifically. That is an aspect that is not funded but is something that the Mohawk government does push forward as a necessity.

Mr. Mike Bossio: We've heard on numerous occasions that policy doesn't go far enough—Grand Chief Benedict may want to jump in on this as well—and that we need to put in place legislative mechanisms and tools or instruments to ensure that negotiations occur in good faith or to better lay out how the tribunal process, etc., works. Have you been able to do much research on that side?

Between you, Phillipp and Grand Chief, are there some legislative changes or some guidance that you think could be delivered to the government? What do they look like? Or could you perhaps provide that in a separate submission?

Mr. Phillip White-Cree: That would have to be in relation to recommendations. One area that does have a lot of recommendations is national claims research directors. They do have multiple suggestions to have a joint implementation process for policies that would guide that relationship.

The Chair: Mr. Bossio, you have about a minute left.

Mr. Mike Bossio: Okay.

Chief Laforme, perhaps you could comment in terms of what they have going on there. How is that reflected within your own community?

Chief Stacey Laforme: I can't go into the big spiel I'd normally give you about this, because she'd cut me off again.

First off, our department of consultation started off with one person three years ago. Now it's at nine people in the office and 40 people in the field. It sustains itself and brings revenue back in. We're looking to form partnerships with other cities and people now to do some of the work that's required. We are creating our own environmental regulations and our own standards. We began that work about a year ago. We have created our water committee. They are looking at evaluation tools of our own for the waters, and monitoring systems, so that we will not be reliant on anybody else for those. We will be using our own systems to determine impacts and that type of thing.

That's been our undertaking, although it may not be on the scale that they have. We have also started an outreach, or what we call an ambassadorship program, where a member or somebody, a friend of ours, will be the ambassador to a city or to different areas within our lands. They'll go out and educate and promote.

Mr. Mike Bossio: How much debt have you had to accumulate in the negotiation process?

Grand Chief Abram Benedict: Over the course of the Dundee land claim, probably about $150,000 per year. That's over and above what was already provided.

Chief Stacey Laforme: I can't recall the amount off the top of my head, but it's enormous. We're in debt always because we use our own resources all the time. We tie that with what we get from Canada, and we use our own, so they're sort of meshed together. It's an exorbitant amount of money just to do what we talked about with the environmental stewardship, with the ambassadorship program. We're reaching out to the government now, but there's been no funding this year for anything.

Mr. Mike Bossio: Thank you.

The Chair: MP Waugh.

Mr. Kevin Waugh: You mentioned that you're not interested in money, but it is about the money, right? You've just talked about your debt. I know you're talking about land and water, but it's also about the money.

Grand Chief Benedict, you said you're not interested in money, but you do need the money. We just talked about your financial situation.

● (1125)

Grand Chief Abram Benedict: Well, who in here doesn't need the money? It places us in a difficult situation, because when we go to the community, the community wants to expand the territory in which we live. They know that traditionally we lived in the Dundee area, then at some point the Government of Canada did us wrong and gave the land to other people. They know that. As our communities continue to expand, continue to grow, we look for economic opportunities. What makes more sense than to have the land base to do that?

At the end of the day, only the government is in a position to offer money for what is going on. On the ground, when I go to my community, they tell me that it doesn't matter how much money the government is offering—they want the land back. So it puts community leadership in a difficult position.

Is there a money aspect? Absolutely. But it would make more sense if the money and the land aspects could coincide at some point.

Chief Stacey Laforme: Of course it's about money. One of the problems I had in the settlement of the last claim was that, according to the requirement of the day, when you take this to a vote you also have to vote on whether to accept the negotiation process. Also, there is the trust situation and how it's set up. In the trust situation, it's outlined if there's going to be a payment to the membership. So it becomes a question of whether you're really voting in favour of the settlement or whether you're voting for it just because you need the money. That's a terrible thing to have to take to the community in that way. There has to be a way to separate that out in the process.

The money aspect I think is important, but what is also important are the ties we once had with the land and the waters, and that connection still has to play a role in how we figure this out.

Mr. Kevin Waugh: Both of you talked about membership, and I think that's important. In fact, Chief Laforme, you mentioned that you couldn't inform your membership. That's an awful thing to have to say. They need to understand what's going on, right? So if you can't inform them, how are we going to get...? You know what I'm saying?

Chief Stacey Laforme: Absolutely. The conversation that needs to happen with the government, whether they come and present to the community or however it's done, is that there has to be a method for the members to be brought along with the process. In the past, we always thought we couldn't talk about anything that was ongoing. We thought we had to keep it quiet, not mention any numbers, not talk about what it could be, where we were at, whether or not we were including the Toronto Islands. We thought we couldn't talk about any of that until we reached a certain stage. That was my understanding of the negotiating process when we went through it. That simply does not work, and I would not be a party to that anymore regardless of what the outcome might be.

Mr. Kevin Waugh: I agree. What about you, Grand Chief?

Grand Chief Abram Benedict: Going back to some of the LLBs in the room, it's kind of like an attorney-client privilege that exists. We are the representatives of 12,000 people, so there aren't any state secrets going on. We've been able to massage this issue a bit. Again, it's relationship building that exists at the table, how far this can go.

Obviously, the concern today is that there are arguably stakeholders, and people interested in the areas of claims, who are non-indigenous people. We have seen, sometimes, those people, when they don't know, making up things, and sometimes it ends up being a negative situation. There's a balance in that, and that's the approach we have taken in the past.

When it comes down to the paper, there's privileged stuff. I don't view it as a hurdle, but again, it's the negotiators. Every person sitting across the table on behalf of the government is different in many of these files.

● (1130)

The Chair: I think we're all done.

I want to thank you very much for coming out, presenting to us, being patient, and very informative. Your passion for your people is very clear. We will take your words to heart, and to pen and paper, and our analysts will prepare a report for all of Canada to see.

Chief Laforme.

Chief Stacey Laforme: Just one really quick thing.

As you can see, there are massive movements by first nations across the land to improve their way of life and do things better. For our first nation, we're taking enormous strides, and doing so much within our treaty lands and territories, and you have to keep pace. Otherwise, we're going to find ourselves in situations that don't work, and have conflicts. It's very important that the government and the land claims processes keep pace with this initiative.

The Chair: *Meegwetch*. Safe travels.

That concludes this meeting.

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

SPEAKER'S PERMISSION

The proceedings of the House of Commons and its Committees are hereby made available to provide greater public access. The parliamentary privilege of the House of Commons to control the publication and broadcast of the proceedings of the House of Commons and its Committees is nonetheless reserved. All copyrights therein are also reserved.

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Also available on the House of Commons website at the following address: http://www.ourcommons.ca

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

PERMISSION DU PRÉSIDENT

Les délibérations de la Chambre des communes et de ses comités sont mises à la disposition du public pour mieux le renseigner. La Chambre conserve néanmoins son privilège parlementaire de contrôler la publication et la diffusion des délibérations et elle possède tous les droits d'auteur sur celles-ci.

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur.*

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

Aussi disponible sur le site Web de la Chambre des communes à l'adresse suivante : http://www.noscommunes.ca