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# **Standing Committee on Indigenous and Northern Affairs**

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**EVIDENCE**

**Tuesday, May 3, 2016**

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**Chair**

**Mr. Andy Fillmore**



## Standing Committee on Indigenous and Northern Affairs

Tuesday, May 3, 2016

• (1530)

[English]

**The Vice-Chair (Mr. David Yurdiga (Fort McMurray—Cold Lake, CPC)):** I call to order the Standing Committee on Indigenous and Northern Affairs. Pursuant to Standing Order 108(2), we are having a briefing from the National Centre for Truth and Reconciliation.

I'd like to thank the witnesses for being here today. I understand they have a very busy schedule, and I'm sure that the information we receive from them will be appreciated. In the first hour we'll be hearing from Ry Moran, the director of the National Centre for Truth and Reconciliation, and Cynthia Wesley-Esquimaux, the vice-provost of aboriginal initiatives at Lakehead University.

Welcome. You will have approximately 10 minutes to make a submission, and we will then take questions from the committee members. In the final minute, I'll notify you that you have one minute left to end your submission.

Okay, you may start.

**Mr. Ry Moran (Director, University of Manitoba, National Centre for Truth and Reconciliation):** Thank you very much, everyone, for having us.

Good afternoon. My name is Ry Moran. I'm the director of the National Centre for Truth and Reconciliation located at the University of Manitoba.

I'm joined here today by Dr. Cynthia Wesley-Esquimaux, vice-provost of aboriginal initiatives at Lakehead University. Cynthia is also a member of the centre's governing circle and is an intergenerational survivor. The governing circle ensures that we approach our work in a respectful and appropriate manner, and provides excellent guidance to the centre.

In the next 10 minutes I intend to discuss both the activities and mandate of the centre, in addition to concluding with some thoughts and observations on the efforts of reconciliation broadly under way across the country.

[Translation]

I will make my presentation in English, but you can put your questions to me in French.

[English]

Before we begin, however, for context I will give you a little more information about myself. I'm a Métis of the Red River Métis. I was

raised in Victoria, B.C., and relocated to Winnipeg in 2010 to work for the Truth and Reconciliation Commission.

I'll now turn to the mandate of the centre. The mandate of the NCTR is derived from the Indian residential schools settlement agreement. This was the broad agreement that established the common experience payment, the independent assessment process, the Truth and Reconciliation Commission, and now our organization.

The centre was awarded to the University of Manitoba and its partners by the TRC on National Aboriginal Day, in 2013, after a lengthy consultation and a call for proposals process. We carry all of the statements, all documents, and other materials collected by the TRC.

In addition to this, we also carry a number of significant responsibilities related to education, ensuring that the material and survivor statements find their way into the hands of educators and students across the country, in addition to ongoing public education activities; research, stimulating new insights into our history through use of the collection, while also continuing to advance understandings of reconciliation; and lastly, community and survivor engagement.

While the archives are the foundation of our work, our forward looking mandate places us at the centre of many conversations on reconciliation. We hold the TRC's eagle staff, the ceremonial rattle for missing children, and the vessel that carried the sacred ashes from fire to fire across the country.

The start-up of the centre, without a doubt, has been challenging, as, while we take on responsibility for the issues above, we have also gone through the wind down of the TRC, the transfer of documents and responsibility between the TRC and our organization, and finally, the start-up, staffing, and related activities necessary to build a new national institution. That said, I am pleased to draw your attention to a number of significant accomplishments of the centre.

In November 2014, we moved into a freshly renovated building on the University of Manitoba campus. This high profile heritage building, on the banks of the Red River, is intended to mark the deep commitment of the university to the centre. As a former home for a number of university presidents, it also reminds us that the creation of a sense of home is what is asked of all of us in this work of reconciliation. We must help rebuild those homes and families attacked and hurt through the residential school system, while making every effort to ensure Canada is a safe place for indigenous peoples.

In November 2015, we officially opened our doors and launched the public databases of the centre. The launch of these databases marks the first time that site specific information on every residential school is available in one place. Information on the schools is combined with close to 20,000 photographs, in addition to thousands of hours of survivor statements.

We launched this database as part of a two-day opening ceremony at the university and the Winnipeg convention centre. We were thrilled to launch this to close to 2,000 middle and high school students, with over 350 educators from across the province of Manitoba as part of a province-wide education day on residential schools.

We launched to students because this is what survivors asked us to do, to ensure their statements and histories got into the hands of young learners so that we, as a country, could never again repeat the terrible failings of the residential schools. Since that point, we held a subsequent education day in Regina, again with thousands of students attending.

I'm also pleased to say that we ran a very inspiring initiative recently entitled "Imagine a Canada". This national essay and art initiative saw indigenous and non-indigenous students from kindergarten to post-secondary levels share their vision on the future of the country through a lens of reconciliation. His Excellency Governor General David Johnson hosted the top 10 students at Rideau Hall in a ceremony involving many of the TRC honorary witnesses and other dignitaries from across the country.

We were also successful in bringing together representatives from ministries of education and teachers federations across the country for a focused workshop on implementing the call to action on education. This meeting was intended to lay a foundation for a national reconciliation education framework, and included individuals such as former Prime Minister Paul Martin and education partners such as the Canadian Teachers' Federation and the Council of Ministers of Education, Canada.

• (1535)

Working in close collaboration with a number of education partners across the country is critical because, as was so often stated by Senator Murray Sinclair, "education is what got us into this mess, and education is also what's going to get us out of it".

Partnership and collaboration are woven throughout the fabric at the centre. We now list over 20 national partners that include organizations such as the Canadian Museum for Human Rights and the National Association of Aboriginal Friendship Centres. We are directly partnered with a number of large universities in the country that include the University of British Columbia and Dalhousie University, giving the NCTR reach from coast to coast. We are actively building a network of reconciliation-focused researchers that will further enhance the collective understanding and path forward on reconciliation. New partner institutions continue to join the centre on a nearly daily basis.

Building and strengthening these relationships is the foundation for a national framework for reconciliation across the country. Through all of this exciting work, we can never forget where the centre derives its original mandate. That original mandate comes

from survivors who fought hard to have their voices heard and to make the country aware of what they experienced and suffered through in the residential schools. Connecting communities, survivors, and intergenerational survivors with their records is a critical part of the reconciliation process.

To ensure that we are able to deliver upon the complex mandate given to us to protect and to provide access to the information, we worked closely with the Province of Manitoba to develop a National Centre for Truth and Reconciliation Act. This act provides us with the tools we need to ensure that survivors and their families can gain access to the collection when they need to.

We also held a series of 18 community engagement sessions across the country, visiting survivors and intergenerational survivors in remote and urban locations to discuss their hopes and dreams for the centre. Central among these discussions was an in-depth conversation around privacy and access to the collection of materials amassed.

Emerging from these and other discussions is an ever-widening desire for communities, organizations, and individuals to share additional records with the centre. While ambitious, it is not out of the realm of possibility that the centre will grow into Canada's indigenous archive and the agency that will hold materials in a respectful manner by and for indigenous peoples, in accordance with indigenous principles and protocols.

Central to the work in front of us are a few fundamental questions. Where are we going? How are we doing? Will we know when we have arrived? These questions are at the heart of an important conference we are partnering on called Pathways to Reconciliation. This conference, taking place in Winnipeg this June, will bring together a diverse audience to discuss three core topics: understanding reconciliation, measuring reconciliation, and implementing reconciliation.

Without a doubt, this conference is intended to be a catalyst for a coordinated approach to future national action on reconciliation. This event will be framed by a soon to be released national public survey detailing perceptions of non-indigenous peoples towards indigenous peoples. While not yet released, the report highlights many positive developments, but also the significant amount of work that is yet to be done in this country.

It's in regard to this last point that I will use my remaining time to make concluding statements.

Friends, the path of reconciliation that lies ahead of us is not a straight line, and it will not be easy. It will take real care and attention to bring it about. The TRC issued 94 calls to action, in addition to giving us 10 principles of reconciliation. Some of these, such as call to action 78, call for core funding for the centre. I would hope that this call to action is implemented immediately. Calls to action 72 and 76 discuss the need for ongoing efforts to identify and name those children who never returned home from those schools and are buried in unknown locations across the country. This work squarely involves the centre. The centre has begun tracking uptake and activity around each call to action, in addition to laying the foundation for a national reconciliation report on the state of affairs in this country.

Without a doubt, there's much much more work to be done on this front. Through the TRC's work, we have seen the power of survivors' voices. They have moved this country to a new understanding of who it is and what it is, but even now we are actively discussing destroying the evidence of the abuse that occurred in the residential schools. A recent Court of Appeals decision ruled that all survivor statements given during the IAP process will be destroyed in 15 years following an enhanced notice program. There is an option to appeal this decision before June 3 to the Supreme Court. Canada supported preservation in the first two rounds, and I ask that you give serious consideration to an appeal to the Supreme Court.

● (1540)

Reconciliation is a national effort and bigger than anything we have undertaken before in this country. It demands that we think of our history and our future in new ways. We need to ask ourselves what information we need to create and track in the present to set us on a path for success. There are a number of specific calls to action that point us in this direction.

If we're serious about reconciliation, we need to take real action on establishing frameworks that will allow reconciliation to flourish and succeed. None of us can do this on our own, but it is my sincere hope that, through coordinated and committing action, we will look back on this time and be amazed at what we have accomplished.

I want to state that we are willing and able to assist in the realization of this national framework. We have the partners, we have the potential, we have the leadership of a fantastic governing circle, and we have the truth that our centre rests upon. We have much to contribute from the centre, but we'll need your help in bringing this to reality.

Thank you. *Meegwetch. Merci.*

**The Chair (Mr. Andy Fillmore (Halifax, Lib.)):** Thank you very much, Mr. Moran, for your comments. I know the committee appreciates them very much.

We're going to move to some questions by committee members. In the first round of questions, we will have five questioners with seven minutes each. I'll be interrupting to let people know when there's one minute left and again when it's time to wrap it right up.

The first questions are from Michael McLeod.

**Mr. Michael McLeod (Northwest Territories, Lib.):** Thank you for your presentation. This is a really important issue.

I represent the Northwest Territories and I come from a family of eight, all of whom attended residential school. This is not a new issue to us. Half of the Northwest Territories is aboriginal and almost all of the people there are connected somehow to the whole residential school issue that has been getting a lot of attention in the last while. In the Northwest Territories we probably have the most people who attended residential school per capita. This is an issue that is still very recent in our history and society. A lot of people who went to school, like me, are still alive and still around, but we also have children of people who went to school who are struggling with issues and the fallout and some of the dilemmas resulting from the residential schools.

We're looking with a lot of interest at the recommendations of the Truth and Reconciliation Commission. We're hoping that they will improve the quality of living in our communities and start moving us forward to allow us to build healthier communities, build healthy people, and deal with our many social ills that are challenging us. I'm glad that we are looking at a centre that would serve as a permanent resource for all Canadians.

I'm not clear how we decided where it's going to be located and how the governing circle is going to be made up of seven people. You mentioned that you're going to have partners. I'm not familiar with your partners and how it was decided that Winnipeg would host the national centre.

● (1545)

**Mr. Ry Moran:** Those are very important, very legitimate questions.

The TRC that was established as a result of the Indian residential school settlement agreement was instructed in its mandate to establish the then-called National Research Centre. In 2011, the TRC hosted a significant international conference bringing together scholars and practitioners from across the world to explore what the centre could be, what it should be, and best practices from across the world.

We distilled that conference into a series of questions that we then presented to the country. We circulated 10 questions in a fairly significant engagement process that asked bidders to tell us their vision of the centre; their partners; and how they were going to pay for it, because the funding was not yet totally certain or clear; their experience in managing very sensitive collections of materials; and where they were going to put it. That call for proposals resulted in a number of very strong applications, from which the University of Manitoba and its partner's bid emerged as the winning bid.

However, without a doubt, this is not the national centre of the University of Manitoba; this is the National Centre for Truth and Reconciliation for this country. We just happen to have a great partner that believes in this and has stepped up to the plate and has provided core funding, a home, staffing and resources, legal help, access and privacy help, which has enabled us to get going out of the gate.

The continued growth of the network of partners is critical, and the partnerships we have are developed through a series of conversations. We have a legal agreement that's signed between partners. While I list 20 or so that we have right now, we work with a number of other agencies on a regular basis, including the ITK, the AFN, the national churches, a whole host of organizations that we're actively collaborating with. Through this concept of partnership, of collaboration, the centre is going to be able to achieve its full mandate.

The governing circle is composed of seven members selected from across the country: three members representing first nations, Inuit, Métis, survivors or their families; two members representing partners of the centre; and two members from the University of Manitoba itself to assist in the administrative discussions and everything related to the operations of the centre.

We're also about to create a survivor circle, which is another advisory circle that we need to create.

Certainly, we see a whole series of other circles coming down the road, other tables, some of which were created through the TRC's processes and others we will need to create to bring communities of like-minded individuals together around matters of national importance.

• (1550)

**Mr. Michael McLeod:** In the event that we lose all funding for the national organization, you have all this information that you have gathered and will continue to gather, and we want to have a safe storage place where people can see it, I have two questions. I've seen this firsthand, which is why I raise it.

In the Northwest Territories two institutions were set up, the Dene Cultural Institute and the Métis Cultural Institute, which gathered all the archives of documents and clothing and all of these types of things that they set up for presentation. One institution lost all its funding and walked away, left everything in one room, and when the movers came they threw it all out the door.

I'm nervous that at some point, if we ever lose funding 10 or 20 years from now, about what the plan would be to protect that information and how we would ensure that we have plan B in the event that....

**Mr. Ry Moran:** That's a critical question.

Without a doubt, this is a concern I share. One of my efforts as the director of the centre is to create as much stability for the centre as humanly possible.

This concern was directly addressed in the trust agreement, the administrative agreement that was signed between the TRC and the University of Manitoba, which binds the university to host this for a time.

**The Chair:** We're out of time. If you want to, just hit one final sentence there.

**Mr. Ry Moran:** Call to action number 76, which I referred to, is also going to be a good help for that. Stability is king.

**The Chair:** Cathy McLeod, please.

**Mrs. Cathy McLeod (Kamloops—Thompson—Cariboo, CPC):** Thank you for your presentation and some very important information and updates.

I guess the first thing that rather startled me was that we've heard from the Prime Minister and this government that they have a solemn commitment to implement the 94 recommendations, but you said you don't know whether you have a budget. You said that this is a recommendation and you don't know whether you have any budget to do the important work you've been tasked to do, in spite of this promise by the Prime Minister.

Is that accurate?

**Mr. Ry Moran:** So far we've enjoyed a really strong working relationship with the Government of Canada, and the Government of Canada has flowed money to us in a number of different installments. There was an announcement made at the closing

ceremonies of the TRC last year of \$1 million, with additional funds flowed to us at the end of the year.

The one challenge is that, as we're starting this organization up, what would be really helpful for us is to get the money in advance so that we know what we're actually working with and spend it.

**Mrs. Cathy McLeod:** There was nothing in the budget, then, about your having the ability to make a five-year plan of what you're doing and where you're going. It's pretty well a big void, then.

**Mr. Ry Moran:** It remains uncertain, at this point. I believe there is general good will, but certainty around this is, truthfully, going to help me sleep better at night.

**Mrs. Cathy McLeod:** Thank you.

My next question relates to the whole issue you alluded to quickly of privacy. Some of this material is intensely private and sensitive. I have a health care background; there, the confidentiality of the people who confide in you is absolutely critical. I want you to flesh out for me in a little better way how you are ensuring protection of the privacy of the people who might not want their stories shared.

**Mr. Ry Moran:** We're taking a very risk-cautious approach to every step we take regarding release of any material out of the centre. The material that is found online right now on the centre's database is largely already available in other public sources. We've just made it more accessible, better presented, and easier to find. All of the statements that we find on the centre's website as well are in the public domain and are from the national events or other public hearings wherein they were webcast, and survivors were well informed that these were public events with cameras present everywhere.

We take the issue of privacy extraordinarily seriously, and this goes right into the actual fabric of how we breathe, eat, and sleep at the centre. We don't see this as a collection of material; we see that we've been given a sacred obligation to maintain what we believe is a sacred bundle. That can and must rest on principles of trust.

We have highly secure databases. We allow very limited access to the material. We are fully working with the Access and Privacy Office of the University of Manitoba on a daily basis, ensuring that all of our access protocols and guidelines are top-notch, and we're proceeding cautiously. This is very much a matter of "walk before you run".

One last thing I'll say is that we face an interesting tension, though. There's the collective right to know. There's the collective obligation we have to educate the public and expose the truth of the residential schools. Survivors have a real interest in seeing this. Also, certainly the community engagement sessions we had have told us that survivors do not want the truth covered. However, there is the individual right to privacy inside of this. Every single record that sits on the centre's website right now therefore sits there, but we have a button attached to it that allows a person to request that the record be removed from the public domain, and we can pull that record right off-line immediately.

We try, then, to have important checks and balances, and that's the area in which the governing circle and other members we have advising us really help give us....

•(1555)

**Dr. Cynthia Wesley-Esquimaux (Vice-Provost, Aboriginal Initiatives, Lakehead University):** We work very closely with the survivors themselves. We have elders on the council sitting with us who are very clear about what is there, what is released, what should not be released, and how we should approach it, which is why we're also setting up a survivors' circle, so that they have direct input into this. We've had conversations right across the country with people about how they want to see these documents handled.

We understand that from the perspective of the survivors there's a lot of information about the survivors but not a whole lot of information about the perpetrators here. That's also an issue that people have not really thought about: that much of the other side of this equation is walking away without any records actually being handed over whatsoever, or even being in existence.

In our and the elders' opinions, this is not just about the indigenous community; it's about Canada and what has happened over the course of time and how it needs to be better represented.

**Mrs. Cathy McLeod:** I do think you have a very challenging balancing act there. There are a lot of issues that I think need to be very carefully worked through. Just out of curiosity, how big is the centre? How many square feet is it? You said it was the home of the prior president.

**Mr. Ry Moran:** Our current centre is a beautiful space. It's about 8,600 square feet. It's an old home. We see ourselves growing out of it quite soon, and we have an active fundraising campaign that has already been launched, through the University of Manitoba's front and centre campaign, to build a new and dedicated space. We already have land secured for that building, and that's something we're going to be moving into as we move out of the startup phase, and as soon as possible.

Currently the staff is about 15 or 17 people, depending on how you count it, between full-time and part-time people, with additional growth coming in this future year. As we are able to create some stability around budget, we understand how much capital and revenue we're actually working with. That's been one of the challenges through startup, just understanding how much operating cash we have. It's something that I'm definitely trying to secure and stabilize immediately.

**The Chair:** The next question is from Charlie Angus.

**Mr. Charlie Angus (Timmins—James Bay, NDP):** Thank you for coming here and thank you for your excellent work.

I want to start off by talking about St. Anne's Residential School. Edmund Metatawabin, one of the spokespeople for the survivors, says in regard to the suicide crisis among the young that there's a direct highway to that from the trauma inflicted in that institution. Next week, St. Anne's survivors will go back to the Ontario Superior Court again over the fact that the federal Government of Canada suppressed thousands of pages of police testimony, kept the names of over 180 perpetrators hidden, lied in hearings, and denied people their right to justice.

Justice Perell ordered those documents to be turned over. Have they been turned over to your centre? Do you have all the documents that relate to the St. Anne's police investigation?

**Mr. Ry Moran:** We've constantly been in the challenging position that we only really know what we've received, and we only really know what we've been allowed to see. We have received a fairly significant production of materials related to the OPP investigations. Off the top of my head, and this is just in round numbers, I believe it's about 13,000 documents or so, in unredacted form, that came into the centre. Of course, these are highly sensitive documents that need to be treated with the utmost of care and concern. Whether there are more documents, to tell you the truth, I don't know.

•(1600)

**Mr. Charlie Angus:** Are they redacted?

**Mr. Ry Moran:** They are not redacted.

**Mr. Charlie Angus:** See, this is the interesting thing. The federal government's been blocking me for three years from finding internal government documents—nothing to do with St. Anne's—and yet they gave me a document dump that included documents they were refusing to turn over to claimants, and they were not redacted. They sent me names of witnesses, names of perpetrators, names of who was involved in the abuse, and yet the survivors are going into hearings against the federal government, and those names are being blocked out. I just don't understand why you would have access to the names, while those who are trying to get justice from the federal government are being told that they have no right to see the names of the perpetrators, as though the government is protecting the perpetrators in these hearings.

You have unredacted versions.

**Mr. Ry Moran:** That's correct. We do have unredacted versions. All of the document production that happened for the TRC was in unredacted form, which truthfully, places a lot of responsibility on us, again, to manage that highly sensitive personal information. We needed unredacted documents so we could understand the truth and so we could help survivors, and everything like that.

We are still challenged, though, as we go through our startup, and as we build capacity, and as we get staffed up. I would love to be helping those survivors from St. Anne's in their quest for justice. We are, at once, so concerned about privacy that we're worried about missteps, but at the same time there's a question about whether or not we're missing opportunities to really contribute to the overall justice and healing that really need to take place in the country.

**Mr. Charlie Angus:** Thank you for that.

I am concerned about the destruction of the documents, because I hear from people all the time now about their cases being thrown out on technicalities. I worry that if the evidence isn't there, they're not going to be able to appeal.

With regard to the destruction of IAP documents, would you classify under those the historical records and the school narratives? What about departmental briefings or notes to the minister? Are those classified as IAP documents? Where do we draw the line here?

**Mr. Ry Moran:** The issue that's in front of the courts right now has narrowed the question around IAP document preservation for the purposes of the historical record to three general categories of records: survivor statements/transcripts, applications, and then adjudicators' decisions. There are a whole series of records that aren't included in that, and there are a variety of reasons, which I won't go into full detail on here right now.

I don't have direct confirmation of this, but one would hope that the standard multi-institutional disposition authorities that apply to government agencies from Library and Archives Canada would ensure that all of those briefings and the corporate records of the IAP secretariat would be preserved, as any other government record.

That was the same with the TRC. We had to preserve our corporate records as well.

**Mr. Charlie Angus:** Okay. You're saying, for example, that ministerial briefing notes would not be something that they could claim has to be protected and then destroyed?

**Mr. Ry Moran:** It should not be...under this decision.... That should be a different sort of line of preservation, and should fall under standard government record-keeping process and procedure.

**Mr. Charlie Angus:** I want to ask about the administrative split, where we've had 1,000 cases thrown out. In the case of the Fort George Anglican school in Chisasibi, very much like St. Anne's, the government obtained new documents over what was termed...when it was an Indian residential school, but that information was not turned over to claimants, so their rights to proper hearings were denied.

I understand that Indigenous Affairs officials have recently told the IAP oversight committee that they've turned over those documents already, a long time ago. Have you received updated narratives of what happened at the Fort George Anglican school in Chisasibi?

**Mr. Ry Moran:** We have not received updated school narratives in recent production, no.

**Mr. Charlie Angus:** Okay. Thank you very much.

You have said that the federal government has been silent on this appeal to the Supreme Court about protecting the documents. Now, I recognize the importance of the privacy, and I think you've talked about it as a sacred trust. This is something that we all are deeply concerned with, but can you explain to me your concern about the destruction of these records and what it will mean for being able to maintain some kind of ability in the future to find out whether justice was actually served under the IAP hearings? There are some people who may have been railroaded.

**Mr. Ry Moran:** I think that is a fundamental question. One, we have to think about things just in the basic public interest. The IAP process has been a massive disbursement of public funds, and it has been a massive process of justice and alternate dispute resolution that's happened in this country. That, in and of itself, should warrant scrutiny in the future, period, both domestically and internationally. Because the cold hard reality is that we won't be the only country that faces these mass human rights violations, and there's much to be learned just in the administration of the process.

Beyond that, though, the IAP records, while incredibly sensitive—and while survivor concerns around that sensitivity can and must be respected with the highest levels of respect—provide a window into the residential schools that no other set of records can do. It is the record of abuse. Anything that I've heard from survivors in that record of abuse is absolutely harrowing. We don't actually fully understand, I believe, as a society, how bad it was in the schools.

Here's the scenario that happens right now. Under this particular decision, the records will be preserved for 15 years, while a notice program goes out and asks survivors whether or not they want to opt into preservation. That's a pretty high test, truthfully, because you have to track people, you have to get hold of them, you have to talk to them, and you have to convince them. As well, survivors are spread across the country. Many of them live in remote areas. There are language barriers. Also, survivors are aging rapidly.

What's going to happen is that these records are going to get held for the better part of 15 years, which takes us to around 2031-32. That's the date. They will have been held. Nothing will have gone wrong with the records. They will have sat silent on some computer server somewhere, perhaps at the centre, perhaps at the IAP secretariat, and somebody is going to have to walk up and hit "delete" on that entire set of records.

I've thought about what that day looks like, and I would challenge all of us to think about whether or not, as parliamentarians or advocates for indigenous people, you would want to be the one making the speech on that day. I know that I would be extraordinarily conflicted about what kind of speech I would make on that day. Would I say that it was justice served?

● (1605)

**The Chair:** We need to finish up. I'm sorry.

**Mr. Ry Moran:** Yes, sorry, but that's the scenario we're looking at.

**The Chair:** Don Rusnak, please.

**Mr. Don Rusnak (Thunder Bay—Rainy River, Lib.):** Being an alumnus of the University of Manitoba, I'm happy to see that the records are there at a great university. I know the building. It's just a great place to be. Especially with the Canadian Museum for Human Rights being in Winnipeg, I can see collaboration there.

That's my first question. Has there been any collaboration with the Canadian Museum for Human Rights? Have there been any discussions? If there have been, or if there haven't been, what do you see as the plan moving forward in working with organizations such as that museum?

**Mr. Ry Moran:** Thank you. That's a great question.

That is one of the truly great gifts that we have in being located in Winnipeg. We have some fantastic organizations there, such as the museum. We enjoy a very close and healthy working relationship with the museum. We've collaborated on a number of initiatives so far, including the display of the Bentwood box, which, although in our collection, sits at the museum. We've provided them a number of video files from the centre's collection, and we are partnering on the Pathways to Reconciliation conference and a whole series of education initiatives that focus on bringing students through the centre and through the museum.



That museum is very similar to the process we're working on with the Canadian Museum of History as well, in getting these survivor statements and materials into public spaces so that people can learn and understand. This history is what we have been asked to do and is what the country has been asked to do.

These types of partnerships are extraordinarily exciting for us. The more we can do them and the more we can work in close partnership and collaboration, the better and stronger we all are collectively.

**Mr. Don Rusnak:** I am a little unclear in terms of your funding right now. Is your funding coming partly from the Government of Canada and partly from the settlement?

**Mr. Ry Moran:** Up to this point, our funding has come from four primary revenue streams. We had some surplus funds from the TRC, but of course that has dried up, because the TRC has now disappeared.

We have some core funding from the University of Manitoba, and I really have to acknowledge the contributions by the University of Manitoba, because they have stepped up to the plate in the absence of any other funding. So real, sincere kudos to them. This has been a big project for them to take on.

Then, we have had some funding from the Government of Canada that came through an announcement last year by the then Minister of Aboriginal Affairs, Minister Valcourt, which was then topped up with some year-end money at the end of this year.

We have been successful now in starting to raise some other money as well. The Province of Manitoba has contributed some funds, and we have been successful in bringing some corporate money into the centre.

All of this means, though, that aside from the core funding from the university, right now we don't have a lot of cheques coming down the line that we can take to the bank. That remains a concern for us.

• (1610)

**Mr. Don Rusnak:** Have you essentially started up right now, or are there still capital expenses and other expenses? You said you are still staffing up, so I would imagine there is still work to do in terms of start-up and what needs to be done. How much do you need essentially to get to where you need to be?

**Mr. Ry Moran:** There are the core activities of the centre, and then there are the additional activities of the centre. By the middle of this year we are going to have in place the core staff that we need. It is essential that we have attracted quality staff, and we are just filling in the last number of positions.

That gets us going at the core operations level. Then there is all the other work that we need to do as well, and that is where we need to have some serious conversations with a variety of partners and a variety of agencies, the least of which is the Government of Canada, to really sit down and plan out what this framework for reconciliation looks like and how we, collectively, are going to deliver on these calls to action that have been given to all of us.

We are continuing to build. We are moving out of the start-up phase, and it is all heading in the right direction.

**Mr. Don Rusnak:** I imagine the governing circle has been involved in terms of the direction that the centre is going in right now. How has the governing circle been engaging with first nations communities, Métis communities, Inuit communities, and other indigenous communities across the country right now?

**Dr. Cynthia Wesley-Esquimaux:** We have different people on that circle who have different skill sets, obviously. We have been looking at the ethical standards and, certainly, we are looking at the documentation, how it might be released, and what we would be setting up over the course of time.

The people on the governing circle have responsibilities in their own home communities as well. The expectation is that we would do a lot of that community outreach, and that has been happening.

We have been bringing people into that circle ourselves and ensuring that it is moving forward. I am an honorary witness on the governing circle. There are at least a hundred honorary witnesses across the [*Inaudible—Editor*]. That is also our responsibility, to ensure that they are engaged in the work of reconciliation. Our job is not only to be there for Ry, to advise him, and to work along with him, but also to talk about where we need to go next, what kind of services we should put in place immediately, and how we can keep this alive on the street. How do we get people to continue to pay attention to the reconciliation process forward?

**Mr. Don Rusnak:** I am a little unclear as to the structure of the governing circle. I understand there is an individual member from the Métis community, from the first nations community, and from the Inuit community. Then you mentioned survivors. Do they have an involvement in that governing circle? How many people are in that group, and how are they chosen, if they do actually have input?

**Mr. Ry Moran:** We are very fortunate right now, in the sense that the majority of the circle are indigenous people. We have a mixed blend of survivors, intergenerational survivors, and day-school survivors, which is critical in this whole conversation.

This was again a national call for submissions, and a number of our partners—I think we had a 13-person selection committee that included representatives from our partners: the National Association of Friendship Centres, AFN, Métis National Council, all of those—participated in the selection of this initial governing council. As the initial governing circle, it has had to work quite hard, because as we build it, as we explore these questions and conversations, it also means we need a lot of good dialogue and advice from trusted people around us.

**The Chair:** We're going to move into a round of five-minute questions. These will move a little more quickly. The first question is from Arnold Viersen, please.

**Mr. Arnold Viersen (Peace River—Westlock, CPC):** Thank you to our witnesses for being here today. It's fascinating to listen to the great work that you're doing.

I was wondering about templates perhaps. Are you aware of anybody else in the world that's doing something similar to what you're doing?

**Mr. Ry Moran:** There are certainly some parallels down in Australia. They had a process that ran there. Of course, they're a colonial society, a member of the Commonwealth wrestling with a number of the same issues that we wrestle with here in this country.

They had a council for reconciliation that ran for a number of years and that was very analogous to our TRC, and then they created an agency called Reconciliation Australia, which works on monitoring reconciliation. They issue an annual state of reconciliation report in the country. They also issue a reconciliation barometer that tracks public perceptions and relationships between indigenous and non-indigenous peoples, in addition to working very heavily with the corporate sector on reconciliation action plans, which is actually quite an interesting model.

There are other agencies elsewhere in the world that do work on sites of memory and also on monitoring the status of reconciliation. In South Africa there's a dedicated research team that runs the South African Reconciliation Barometer. They've been running that for about 20 years, a consistent, baseline data on the relationship that is happening in South Africa. We've studied that heavily.

There were similar efforts under way in Rwanda on reconciliation. More broadly though, of course, as a site of memory, as a centre of memory, as a national commemorative institute as well, there are some really interesting organizations out there, like the Shoah Foundation, which is in partnership with UC Berkeley down in California, that holds a very large number of survivor statements from Holocaust survivors, actually.

We studied them and met with them very intensely when we were thinking about where the centre should be parked, and explored that relationship between a university and a centre in the development of our plan.

● (1615)

**Mr. Arnold Viersen:** This one from Berkeley, how does their funding work? Is it government funded or funded by private donations?

**Mr. Ry Moran:** They had an initial base that was funded by Steven Spielberg, so they tapped into some really big Hollywood money for this, which gave them a really significant head start.

It was one of the things that we talked about at the TRC. Where is our Hollywood north in all of this? I don't think we really have one in the same kind of way.

Now I think their funding is primarily foundation funding with a large endowment basically.

One of the things that we have explored in conversations with the federal government is the creation of an endowment for the centre. You'll see some of the calls to action, specifically the ones that talk about ongoing national frameworks for the measurement and monitoring of reconciliation, mention the establishment of an endowment fund that will give an agency the ability to protect itself from shifting political winds, perhaps, or up and down revenue streams, and all of that kind of stuff, because reconciliation has to be stable and something that's around for a very long time.

Creating these types of stable funding arrangements that will allow us to weather the storms that blow are very important.

**Mr. Arnold Viersen:** How much buy-in do you have from, say, first nation communities in terms of funding, or even survivors themselves? I know, just from my own life, there are things that I want remembered. I invest in them directly—local museums, and that kind of thing. I'm a member of them. Is there a membership? Can I purchase a membership in your organization? Are all survivors honorary members? How does that work?

**Mr. Ry Moran:** We are really operating in the public realm, so we have a direct and vested responsibility to provide this information back to survivors as part of a sincere gesture of reconciliation that really shouldn't or can't have a cost associated with it.

We have to remember that indigenous peoples generally remain fairly marginalized and disadvantaged in society, so it's not really a first stop that we would go for grassroots funding on this.

That said, there are potential cost recovery revenue streams that we certainly explore. For example, when we go to provide access to the Canadian Museum of History, one of the things that we're exploring is whether we need to put a researcher on specifically to dig records out of the centre, then there's a cost recovery model that we can explore there.

**The Chair:** Our next question is from Rémi Massé.

No, we're actually going to move to Gary Anandasangaree, please.

**Mr. Gary Anandasangaree (Scarborough—Rouge Park, Lib.):** Thank you both for the very hard work in getting this together and off the ground.

I know we've spoken extensively about the Truth and Reconciliation Commission and the call to action. What role do you play in ensuring that the 94 recommendations are monitored; the right parties are involved and engaged in implementing them; and reporting back to all of us on its progress?

● (1620)

**Mr. Ry Moran:** I did make some remarks in my opening statement about some preliminary work we're doing in this field to get some of the monitoring work off the ground. Of course, as we work through the start-up phase, we have a lot of responsibility on our plate. This is an area we want to grow into but perhaps are not able to fully realize quite yet.

Reconciliation is one of those things that needs to be a diverse and diffuse effort. It needs to happen organically. It needs to happen across all sectors. We have responsibilities as individuals, as organizations, and of course as a nation to engage in reconciliation. But careful conversations around where we are, where we need to go, and how we'll get there are absolutely essential. That means amassing important sets of information that we need to understand. You'll see some of that in the calls to action, and we're also laying the foundation for this through the centre.

Over-incarceration of indigenous peoples is a really important indicator of what is frankly right now still a broken relationship. Hopefully, as we see these gaps or overrepresentations start to decline, we can start to say something about reconciliation. But there remain a number of important indicators out there across the country that say we're not where we need to be yet. Graduation rates from high school, even entry into universities, and life expectancy, all remain serious issues.

We do feel we have a responsibility to keep an eye on this, but this is an area of growth that we need to grow into. Frankly, we're ready to do it. We have all of the irons in the fire. We just need a little more support to actually get there. Then we're off to the races.

**Dr. Cynthia Wesley-Esquimaux:** When we talk about the governing circle, that's part of what it is we do. We obviously have to monitor. There are a number of different areas.

I'm in education most of the time, and at that level I'm monitoring all the boards and the university presidents. I'm talking to them on a regular basis. I'm trying to make sure that the 17 principles they've tabled get put in place. I'm meeting with deans at different universities. I'm talking about indigenizing universities' curriculum.

A lot of the work on the ground that will be going on has to be done by us. Just getting those records in place and making sure they're safe is one job that the centre has. The centre cannot take on all the rest of these responsibilities without the assistance of other people and other dollars coming from other places. When we say that this reconciliation process is a Canadian process, we really mean that. It's not about aboriginal Canada doing this on its own.

We have a lot of responsibility that we take on to make sure this happens.

**Mr. Gary Anandasangaree:** In terms of the recommendations and the call to action, it occurs to me that there really isn't a body tasked with independently looking at how effective we've been and how much we're progressing. I know it's only been several months, but I think that this task should be undertaken by someone apart from government itself. I'm sure that government has its own process, but an independent body can be more objective.

I think you've probably answered the question, but is that something you are able to undertake? What is the extent of the resources you will need to do that?

**The Chair:** Just one minute, please.

**Mr. Ry Moran:** We feel we're fully able to undertake that. We're in the redesign of the NCTR's web presence right now. You will see in the near future an initial review of the calls to action and the monitoring effort of the calls to action.

In regard to what that will take, it certainly will take more staff than we have right now, and it will certainly take a lot of coordination as well. We need to get a number of tables set up that are actually feeding in the right information.

For this kind of thing, we need to get some of the people in the right room. We need to go through a full costing exercise on it. We need to get good people together to talk about it. But we feel fully prepped and ready to lead that conversation.

**The Chair:** The final question we have time for in this round is from David Yurdiga.

**Mr. David Yurdiga:** The TRC is not only focused on the survivors, but also on the missing children who did not survive the residential school system. Can you describe the Missing Children Project, and can you describe some of the challenges faced in collecting this information?

●(1625)

**Mr. Ry Moran:** I'm pleased to say that last week we assembled a group of the researchers from all of the stages of the TRC's Missing Children Project here in Ottawa for an intensive one-day session on what needs to happen next.

There are three significant parts of the project we see as necessary to develop. There's some work we need to do that's right in our wheelhouse, namely, the establishment of the missing children database and online register, and the ongoing discovery of children who did not return home from the schools. That discovery process involves research within the collection, as well as dialogue with the community. That's an iterative and cyclical process that involves engagement, feedback, tips, and information going out.

At the same time, a significant issue that is facing us as a nation is the lack of identification of burial locations across the country. The preliminary estimate we have—and this is just preliminary, so don't take it to the bank necessarily—shows that there are somewhere between 300 and 400 locations where indigenous children were buried as a result of the residential schools. Many of these are unmarked, and many of them are at risk from sewer lines or urban development or redevelopment. This is a real concern.

The community can and must be empowered to have the opportunity to commemorate and to engage in ceremony or healing as they feel appropriate around the burials. That can and must be led by the community.

Some kind of program needs to be established to support them in that healing. That might take a simple form in some communities, of perhaps erecting a monument, or in other cases we have to be fully prepped and fully ready to think through and explore issues of repatriation, where we may be bringing some of these children home. In the case of Charlie Hunter, or for many in the Inuit communities whose children were brought thousands of kilometres south, this is a significant and pressing issue.

**Mr. David Yurdiga:** To date, how many missing children has the TRC identified?

**Mr. Ry Moran:** I don't have the exact number at hand, but it's over 3,000 children.

To be honest, we have a lot of work to do still in uncovering and reviewing the records. By virtue of how the records came into the centre, and the massive onslaught and the timing around when these records showed up, the TRC was simply overwhelmed and wasn't able to review every single record it wanted to.

To frame things in a different way, we're still collecting records right now. We received a million records in December 2015 when the TRC was issuing its final report. There's a lot of information that we haven't reviewed, and we know there are going to be additional children whom we uncover in those records.

**Mr. David Yurdiga:** I know that most families want to know how the children died. Is there any record of them dying from disease, from accidents, or whatever it may be? As a family member, I would want to know that.

**Mr. Ry Moran:** That information exists in certain instances. The TRC, in its initial missing children report, did indicate the nature of death and the reasons for death, but it doesn't exist in all cases. We also find that we don't necessarily have the names of the students in all cases. We have a certain number of named students that we can identify, and then there's a large number of students whom we know passed away in the schools, but we don't have their names. They show up slightly, where it's three students, for example, who died in the school, and that's it. It's heartbreaking.

Just to frame things, this is the severity of the history we're dealing with. We had one of our members from the governing circle come in, Eugene Arcand, and he gave real remarks. I have to say that when we have this conversation around missing children, it is just such an enormously heavy topic we talk about.

The elders talk about giving the opportunity for these children to come home because their spirits literally continue to walk this land in a restless state when they don't have family around them. It's really terrible. We have to approach this not just from a clinical perspective, but really with our hearts wide open to the severity of this history and the ongoing need for healing that we have in this country.

• (1630)

**The Chair:** Thank you both on behalf of the committee for travelling to Ottawa and sharing with us these incredibly important and moving comments. What you shared with us will be folded directly into our work plan, and we look forward to solid action in the future.

We'll suspend for a minute or two while we have a switchover.

• (1630)

\_\_\_\_\_ (Pause) \_\_\_\_\_

• (1635)

**The Chair:** We'll resume now. Thank you very much.

It's my great pleasure to welcome to the committee today representatives from the Specific Claims Tribunal Canada. Specifically, we have Mr. Justice Harry Slade, chair of the tribunal; Madam Justice Johanne Mainville, tribunal member; and also Alisa Lombard, legal counsel with the tribunal.

We have 10 minutes for you to speak today. At about the nine minute mark, I'll raise my hand to indicate with one finger that there's one minute left, and at 10 minutes, I'll raise my hand as an indication for you to try to finish up. This is in the interest of maintaining fairness so that everyone has an opportunity to—

**Mr. Justice Harry Slade (Chairperson, Specific Claims Tribunal Canada):** As long as it's that finger, Mr. Fillmore.

**Voices:** Oh, oh!

**The Chair:** That's right.

Justice Slade, you have the floor.

**Mr. Justice Harry Slade:** Thank you for inviting us to attend.

I'll give you a little bit of my background. I practised in the field of so-called aboriginal law for about 27 years in British Columbia in something of a nation-wide practice. I was appointed to the B.C. Supreme Court in 2001 and to the tribunal initially in 2008.

The Specific Claims Tribunal Act represents something of a conversation between the Assembly of First Nations and the Government of Canada. The creation of an independent tribunal was a long time in coming—at least 30 years of that conversation. Members of the tribunal are drawn from the superior courts of the provinces and, in particular, British Columbia, Ontario, and Quebec. My colleague Justice Mainville is from the Quebec Court. The intent behind real judges becoming members was to ensure the independence of the tribunal. It was also important to the Assembly of First Nations and other indigenous stakeholders that we had a stand-alone department providing us with the full array of corporate services.

We got started in consultation with stakeholders to develop our process and rules of procedure. We had some early challenges, such as a lack of effective administrative support and concerns over institutional independence, but we managed to get the doors open in June, 2011. Thankfully, the concerns over direct administrative support were resolved in time, thanks to an extremely talented corporate head of our sole service provider, the registry of the tribunal, a government department under the ministry of aboriginal affairs as it was then known.

We have 76 claims in the inventory. Seventy are active. There have been decisions on the validity of 11 of those, and five more decisions are coming in the next week or two. I am not pleased with the pace of progress in the performance of our mandate. One can expect delays in building a foundation for the operation of a new adjudicative institution, but we've been hampered ever since mid-2014—actually earlier—by a chronic shortage of judicial members despite two annual reports in which I've indicated that the tribunal would fail if we didn't get an adequate complement of members.

Now 76 claims may not sound like much, when you consider the volume that goes through the courts, but we don't have back-to-back hearings in a single building. We take our hearings to the community of the claimant, and we all consider that to be extremely important given that part of our mandate is reconciliatory. It's important that the people who own the claim see who the decision-makers are and see the process that we go through, which, by the way, is informal relative to processes in court.

At present I'm the sole full-time member and we have a supernumerary judge, Justice Larry Whalen, Ontario Court, part-time. He's giving us more than he's required to as a supernumerary, and of course we have Justice Mainville who is on a six-month rotation in and out of the Quebec Court.

Today the Auditor General tabled a report relating to Governor in Council appointments, and we participated in the workup of that report. I've set out a number of the extracts from that report that tell the story of the frustrations we have encountered.

• (1640)

We have volunteers from the B.C., Ontario, and Quebec superior courts. A judge will volunteer, and if approved by the chief justice of that court, will be nominated by the chief justice. We have Justice Grist, B.C.; Justice MacDougall, Ontario; and Justice Mayer, Quebec, all waiting for appointments. They've been waiting for two years in some cases.

One major difficulty here is that chief justices are naturally reluctant to nominate members from their courts when their own judicial complements are well short of the required number. It took four years after the date I was first appointed for cabinet to give the B.C. court a judge to replace me. As I was a senior judge of that court, that was a serious matter. The B.C. court currently has nine vacancies. I don't know how many vacancies Quebec and Ontario have, but one can only be sympathetic with the concerns of the chief justices whose first responsibility is to ensure that the work of the court gets done. I think that needs to be addressed if we're to operate at a full complement, and it's independent of all these delays in the appointment of members to the tribunal.

I finally received a call from the chief of staff to the Honourable Carolyn Bennett last night, having written to her on April 15 to advise that I'd been invited here to speak about these very things. I'm now told that the three appointments will be made on an expedited basis. I was told this yesterday, May 2, on the eve of my appearance here.

The simple fact of the matter is that there are just a few judges are nominated for membership on the tribunal, for reasons that I generally canvass. All qualify, as they're sitting judges. At this time, they represent the pool from which judges are to be appointed to the tribunal.

There's no personal benefit to a judge who takes an appointment to the tribunal. We continue to receive our remuneration and benefits as if continuing full time as judges of the courts. So there's no difference, other than the burdens of travelling all over the country and spending time in Ottawa, which is a hard sell to judges who live in Vancouver, for a lot of obvious reasons.

I'm going to ask my colleague, Justice Mainville, to speak of the challenges in the Quebec court around appointments.

**The Chair:** We may have to hear some of that through the questions, as just a minute remains.

[Translation]

**Madam Justice Johanne Mainville (Tribunal Member, Specific Claims Tribunal Canada):** I will speak in French.

Good afternoon, everyone, and thank you for the invitation.

I left the courtroom I was presiding over today, and I have to go back there tomorrow because I continue to preside over it. It was urgent and important for me to come speak to you about this issue, which is not unique to Quebec.

I have been sitting on the Specific Claims Tribunal Canada with Judge Slade since the very beginning. We worked very hard to establish the tribunal. My term will expire at the end of November. I will no longer be able to sit on the tribunal, as the law provides that our term can only be renewed once. Unless the law is amended, I will not be able to continue being a member of the tribunal.

There is urgent need for action because, if no new members are appointed, Quebec will no longer have a representative on the tribunal as of the end of November. However, we have cases in French, and I am currently the only judge who speaks French and can handle those cases.

Quebec judges also handle cases from the west, but we need a judge for cases in French, including those from Quebec.

Is my time up?

● (1645)

**The Chair:** Yes.

[English]

I'm very sorry, but we'll hear more through the questioning, I assure you. Thank you very much for your remarks.

We're going to move right into rounds of seven-minute questions from the committee members, and as I did with the opening statements, I'll raise a single finger when there's a minute left and a hand when there's no time left.

Again, in the interest of fairness, the first question is coming from Michael McLeod, please.

**Mr. Michael McLeod:** Thank you, Mr. Chair, and thank you to the panel for your presentation. I appreciate the discussion that you bring forward.

I'm interested in getting a little more information on some of the challenges you're facing. You have flagged a few of them. I was going to say that I was surprised; but I'm not surprised, I guess, at the vacancies in the council positions. We're seeing this right across the country. We're hearing it from Alberta on traditional appointments. I'm from the Northwest Territories, and most of our regulatory boards have not seen appointments in...some of them as long as two years. We have a number of boards that have lost quorum and can't function, and it's a real challenge to move forward. We're really trying to get those vacancies filled in a short time period and in a hurry.

Your tribunal's 2015 annual report outlines a total caseload in a number of areas, in jurisdictions across the board, and it also indicates that most if not all claims allege a breach of the crown's fiduciary obligations.

I want you to talk a little about the distribution of your caseload and any considerations that might be taken into account to ensure that the hearings are accessible to the first nation peoples from Canada.

**Mr. Justice Harry Slade:** Ms. Lombard is better able to speak to the distribution of the caseload than I am, but generally 50% of the claims come from British Columbia and Alberta. Of that 50%, 75% come from British Columbia. That's due to the history around reserve creation, which is outside of treaty in B.C. Those are fiduciary duty claims.

What about the rest of them?

**Ms. Alisa Lombard (Legal Counsel, Administrative Tribunals Support Service of Canada, Specific Claims Tribunal Canada):** I'd say approximately 11 originate from Quebec, and most if not all are in the French language. Two-thirds originate from Ontario westward, with varying types of claims in those provinces ranging from alleged unlawful surrenders, unfulfilled treaty promises, agricultural implement claims, to legal disposition claims. Most of these, if not all, allege a breach of fiduciary duty conceptualized one way or another.

**Mr. Michael McLeod:** In your opinion, what are the main challenges faced by the first nations communities that may lead them to allege a breach of the crown's fiduciary obligation?

**Mr. Justice Harry Slade:** With respect to the tribunal I think the challenge that first nations face, first and foremost, is a lack of adequate resources to pursue claims before the tribunal. It's turned out to be more costly than I had hoped. That's not too surprising in the early days as the proceedings are testing many issues that have previously been untried.

Fiduciary law is a developing area of the law in Canada, particularly as it relates to indigenous groups and crown responsibilities derived from the precept of the honour of the crown. We're getting more efficient as we move along, but the length from filing to hearing is far too long. That is in large measure due to resource challenges that the first nations claimants have. In part it's due to our process, in that these claimants, though they have been through the process under the specific claims branch of the ministry, have not had any disclosure of relevant documents in relation to their claims. So the starting point for a quasi-judicial process—that's at the extreme end of judicial for a tribunal—is document disclosure. They have their claims rejected by the minister on the advice of the specific claims branch and the Department of Justice. They get a summary of why, but they don't get disclosure of the material that minister relied upon in arriving at his or her decision not to accept the claim.

Procedural fairness demands that the claimant, that both parties, have access to all relevant documents. When they come into our process they start by conducting historical research. Frankly, the specific claims branch and its lawyers take exception to the disclosure to the claimant of anything that was prepared in connection with the claim within their offices. It's a nonsense proposition, in my view, but it's the position they take, and so everybody has to start from scratch.

We're losing elders by the way. We've had to adjourn matters or not been able to set matters down for hearing in a prompt and timely way, with the result there's a loss of elders' evidence in the nature of oral history.

• (1650)

**The Chair:** You're out of time there, Michael, I'm afraid.

The next question comes from Cathy McLeod, please.

**Mrs. Cathy McLeod:** Thank you for an excellent overview. I do actually have to make a quick little comment.

I know there are challenges with the GIC appointment process, but it's not helpful when the new government sends letters to many recent appointments and asks them to step down from their

positions. I do think that we also need to acknowledge that sometimes there are processes that aren't helpful as we try to ensure good manpower. I just couldn't let that ride, sorry.

What would you deem a full complement? Is it mandated what your full complement is?

**Mr. Justice Harry Slade:** The act provides for the appointment of up to six full-time equivalents to be drawn from a roster of up to 18 judges. The idea is that there be a fairly large pool of judges who can be called upon to serve full- or part-time on the tribunal.

There was no consultation with the judiciary before the act came into force. The late Don Brenner, my chief justice, called me in my chambers and said, "Hey, Harry, what is a specific claim?" That began a judicial education in my court about specific claims and existing processes. In any case, he first learned of the act and the companion amendment, which was to give the B.C. court three more judges, Ontario two, and Quebec one, to offset judicial time dedicated to the tribunal, when he received a copy of the bill just before third reading.

So we don't have a roster, really.

• (1655)

**Mrs. Cathy McLeod:** I'm from British Columbia and I'm very familiar with the challenges there and the unresolved, long-standing land claim issue. I'm more familiar, of course, with comprehensive process because I've been involved with it, but I'm relatively new to this committee.

I see the Williams Lake case, and then I know that in my riding there is Douglas Lake. One is heading down the judicial path, and they might be looking at how they can resolve that, and I see that the Williams Lake case was something that headed down...and you issued a decision.

Can you flesh out for me a bit about the Williams decision and that case going down the path of your process? It's the Williams decision that you have on your website.

**Mr. Justice Harry Slade:** That is a decision that addressed several of the more complex issues around crown fiduciary duty, particularly with British Columbia.

I expect they were driven to take the matter to the tribunal because of an expired limitation period. We're dealing with historical claims, and for virtually all of them, if they were in the courts, they'd be statute barred, so they came to us.

We heard oral history, we had a large number of historical documents, we had full and capable submissions from counsel for the claimant and the crown. I, as the presiding member, released a decision that's overly long, but addressed all those complex issues. The matter went to judicial review in the Federal Court of Appeal. The Federal Court, with respect, thought they were dealing with an appeal, and not judicial review, and reversed my decision.

I can tell you that I don't think any more of their decision than they do of mine, and there is an application for leave to the Supreme Court of Canada.

It's probably important that at some point one of these decisions gets to the Supreme Court of Canada, but looking at it from the claimant's perspective, of course, where do they get the money to engage in a judicial review in the Federal Court of Appeal, much less the Supreme Court of Canada? They've filed their leave application and, of course, we're watching that. That's Williams Lake.

Of course, the indigenous peoples there did not get a reserve until 30 years, or whatever, after others were allotted. They were virtually homeless, having been dispossessed of their traditional village by settlers who were pre-empting the land they routinely used as village sites and resource-gathering places.

That's the kind of claim we get.

**Mrs. Cathy McLeod:** I only have a minute left, so there's probably not a lot of time.

You say you have received 76 claims. They're in process. Have a number not been submitted by virtue of your not having the capacity to deal with them, or is that the workload out there right now?

• (1700)

**Mr. Justice Harry Slade:** Claims entering our process are delayed due to the inability of the current complement to manage them. We're very heavy on case management, because we want everybody to be ready by the time we get to a hearing date. Some claims are simply unassigned because there's absolutely no point in assigning a claim to a judge who's already overloaded, so those languish. Claims that are active in the process get delayed due to our lack of resources.

**The Chair:** The next question comes from Charlie Angus, please.

**Mr. Charlie Angus:** I want to ask a couple of framing questions, and then we can get into specifics.

We have the claims branch and we have the tribunal. Does the claims branch decide what cases actually get to the tribunal, or are you able to make those decisions?

**Mr. Justice Harry Slade:** The claimants make that decision, honourable member. First, these claims have to go to the Minister of Indigenous and Northern Affairs for a decision whether or not to accept the claim for negotiation. The claims are reviewed by the specific claims branch, a department of that ministry. They do their own research and then take advice from the Department of Justice. A recommendation is made to the minister. If the minister rejects the claim—they prefer the language “does not accept”—then it qualifies to come to the tribunal. If the claim is accepted and there's no resolution in two years, the claimant can bring the matter to the tribunal.

**Mr. Charlie Angus:** That's interesting.

In another life, I worked for a community in Quebec on their specific claims history. People had been on those cases long before I came along, and they're still on them. There was a whole series of dubious and bogus land surrenders, expropriations, and deals with trust funds. This is very technical stuff. Back then, you had to trust the Indian agent to have your interests heard. In this community,

there was only one Indian agent ever fired, and he had advised the community not to support a surrender of land. Then he was found by the department to be unacceptable in his post, and was fired.

Yet today, not to cast aspersions, the department controls the purse strings. They have a lot of power in a sense, because they're both the defendant and the adjudicator of the process, an overseer. We've seen major cuts to the research teams which enabled us to bring forward cases. Are you concerned about our ability to maintain the merits of historic, well-researched, and credible cases, if we don't have the funds and the research support to follow through?

**Mr. Justice Harry Slade:** Mr. Angus, I am concerned. The average life of claims that come to us based on a rejection—that is, the life of that claim with the minister—is probably around 12 years. I've seen them go as long as 20. Rarely do we see one that has been in the process for less than five years. Naturally, the composition of the communities changes. The composition of the council of the first nation changes. The delay works against justice.

I think we would have a lot more claims if... In fact, by our calculation, there are at least 450 claims that would qualify to be brought before the tribunal, but the combination of a lack of funding, long delays with the specific claims branch, a loss of momentum, and the well-known problems facing the tribunal, are likely preventing claims from being brought forward.

**Mr. Charlie Angus:** For the people bringing forth claims, on the one hand, there's certainly been a lot of concern about the lack of research capacity, and about it being dragged out. As you pointed out, the research teams leave, and it's hard to maintain a case over 12 or 20 years.

However, in your case, the judges were not able to get out to do the work, as you have raised. Do you have within your tribunal the resources necessary, if you had the complement, to be able to fully respond to what potentially could come your way?

• (1705)

**Mr. Justice Harry Slade:** That's a good question.

We're operating a very bare-bones shop, and we've avoided adding staff when they would stay idle because of the lack of a full judicial complement. However, as the judicial complement grows, we will need more staff. Also, I am confident that our executive director, Stuart Campbell, who is here, is taking the steps that are required to serve a more fulsome complement of members. Of course that all takes time.

We're now under the Administrative Tribunals Support Service of Canada, which provides services to 11 tribunals. By the way, we've lost our stand-alone service provider and now are under—

**Mr. Charlie Angus:** I'm sorry to interrupt you there, but with regard to your being under the Administrative Tribunals Support Service of Canada, the Canadian Bar Association has raised concerns that these changes will have impacted judicial independence, in particular by having a chief administrator reporting directly to the Minister of Justice. Do you share any of those concerns?

**Mr. Justice Harry Slade:** Those concerns originated with me.

**Mr. Charlie Angus:** I wondered where I got all that smart information. Maybe you can elaborate.

**The Chair:** You have one minute remaining.

**Mr. Justice Harry Slade:** First, our three legal councils, including Ms. Lombard, are all technically employees of the ATSSC, which falls under the Department of Justice. It puts legal council into a very awkward position. Fortunately, our legal council know that their responsibilities are to the tribunal and not to the ATSSC, and they stand firm in their resolve not to be conflicted.

The difficulty, though, is that if we face a challenge based on institutional bias, we may very well be found by a court to not offer up the appearance of independence that is required of a court-like adjudicative tribunal. That's a risk.

**The Chair:** The next question is from Rémi Massé, please.

[*Translation*]

**Mr. Rémi Massé (Avignon—La Mitis—Matane—Matapédia, Lib.):** I want to begin by thanking you for participating in the committee's activities.

[*English*]

**Mr. Justice Harry Slade:** I require translation.

[*Translation*]

**Mr. Rémi Massé:** I want to begin by thanking you for participating in the committee's activities. It is much appreciated.

I must start by saying that I am not a legal professional. You raised a series of issues. I'm trying to understand what is at the source of those issues and, most importantly, how we could resolve them in order to support you in your process.

Please shed some light on the issues, as well as on potential solutions. You have raised a few of the issues, but I would like you to tell us more.

[*English*]

**Mr. Justice Harry Slade:** We provided a very thorough submission to Minister Valcourt's special representative in connection with a five-year review that's called for by section 40 of the Specific Claims Tribunal Act.

The special representative, Mr. Pelletier, was good enough to come back to the tribunal after interviewing stakeholders, and he told us of their concerns and their ideas as to how our process may be improved. We were invited to make submissions on them. I commend those submissions and Mr. Pelletier's report, which I have never seen, to the members of this body.

We talk about changes throughout the specific claims process that would establish a bigger role for the tribunal in the preliminary vetting of claims, but all the while leaving it to the minister's discretion whether or not to accept claims.

We discussed a summary procedure for bringing claims forward that would depend on full disclosure by the specific claims branch. We talked about the appointment of prothonotaries as they have in the Federal Court, who could make procedural decisions, such that the judicial members wouldn't have to carry the whole load.

There are many other ideas in there from both the tribunal's submission and the submission of the Assembly of First Nations to the special representative.

The five-year review is supposed to be concluded by October this year and, of course, it has fallen to the current government to see that through. The members of the tribunal stand ready to assist the minister in any way we can to flesh out ideas on how to make our process more efficient, less costly, and more user friendly.

● (1710)

[*Translation*]

**Mr. Rémi Massé:** In your speaking notes and your presentation, you said that you were "not pleased with the pace of progress in the performance of the tribunal's mandate." You also raised the fact that you are "hampered by a chronic shortage of judicial members."

Could you explain to us ordinary people how the process for appointing judges works? Of course, I am very happy that the minister responded to your request and that three judges should soon be appointed. I am very happy about that, but please tell me a bit about the appointment process and about what may be behind the delay and the slowness of that process.

[*English*]

**Mr. Justice Harry Slade:** Of course, the process starts with the appointment of judges to the superior courts, as members of the tribunal are drawn from the courts. Thus far it has been limited to three courts: British Columbia, Ontario, and Quebec.

To receive an appointment to the tribunal we need volunteers. Of course, judges like to know what they're getting themselves into. I'm not sure I would have decided to volunteer if I had known what I was getting myself into, but then again my spouse, who is Tsimshian, said I had to do it, so I guess I had to do it. At the time I was one of the few judges in the country with a long background in these matters.

In any case, a judge will volunteer and then it's up to his or her chief justice to nominate, and that, as I've mentioned, is a decision that will take account of the needs of the court.

● (1715)

**The Chair:** You have one minute.

**Mr. Justice Harry Slade:** If there's a nomination—and we don't have many volunteers, so we don't have many nominations, just three—then it's for the Minister of Justice and the Minister of Indigenous Affairs to make a recommendation to cabinet. If cabinet sees fit to approve a nominee as a member of the tribunal, then it will be made. It's a Governor in Council appointment, but thus far over a period longer than two years, we've had nominations from chief justices but no action to get those to cabinet. Without that it simply doesn't happen.

**The Chair:** We're moving now to a round of five-minute questions. These will move a little more quickly.



The first question is from David Yurdiga.

**Mr. David Yurdiga:** Obviously we have a problem, and the lack of resources is probably the reason we have a backlog in the system.

We understand that the tribunal currently has about 50 claims active. How many claims are scheduled for hearing this year?

**Ms. Alisa Lombard:** I wouldn't want to speculate. Are we talking about the fiscal year or the calendar year?

**Mr. David Yurdiga:** I meant the calendar year.

**Ms. Alisa Lombard:** Since January, I would say no fewer than 10, and some of these hearings can span a week, two weeks, three weeks. They include oral history, evidence hearings, expert witness hearings, as well as hearings on the merits of validity and compensation.

**Mr. David Yurdiga:** In the present circumstances, with the lack of funding, how much time would be required to clear the current inventory of claims before the tribunal? A guesstimate would be fine.

**Mr. Justice Harry Slade:** If the current claims stay with us and we have no more judges, I don't know—five years? Of course, we're getting new claims and we're moving claims that have been found to be valid into the compensation phase. Even with the three additional part-time members, it's going to take a long time to clear the existing backlog. We're going to need more judges.

The other difficulty is that it's impossible to have a succession plan, and we need another full-time member—at least one—so that a successor to my position as chairperson can develop. I only know of one judge who is prepared to commit for five years, Justice Todd Ducharme of the Ontario Superior Court, who I think would be an excellent successor. He, by the way, is Métis. I think the tribunal would be well served by having diversity among its members. I'd like nothing more than to hand it off to Justice Ducharme, but he has to be appointed. To be appointed, his chief justice has to release him, and thus far Chief Justice Heather Forster Smith of the Ontario Superior Court of Justice is not prepared to do that. Of course, it's up to the chief justice, who has to look after the demands of their court.

I would very much like to see Justice Ducharme on the tribunal. He is younger, very learned, very pragmatic, and I think it would serve the interests of diversity if he were to join us. He's the only judge I know who is prepared to come on board full-time.

**Mr. David Yurdiga:** It becomes a problem, when succession is not easy, to hand it off to the next chair.

Is there a time frame you'd like to work within before the torch is handed over?

**Mr. Justice Harry Slade:** I'm early in my second and final term. Under the act, you can only have two, and besides, by the time this term is over, so am I, as a judge, at least. I would like to see someone take over in the middle of my term, and then I could continue to serve for the remainder of the five years and perhaps take a little more time out west, where my home is, and hear claims primarily out there. That would be a really good outcome for me personally and, I think, for the tribunal.

• (1720)

**The Chair:** We're out of time.

The next question is from Gary Anandasangaree.

**Mr. Gary Anandasangaree:** I want to probe a bit more. You mentioned the importance of diversity in the judiciary. It's an area I know is important to our government. We want to make sure that the diversity of Canada is represented in the judiciary overall. It's an area that I worked in extensively.

With particular emphasis on our indigenous population, do you currently have any members serving in the circuit that are of indigenous background? You alluded to it, but could you speak a bit more on the importance of it and how we can ensure there's representation on a very important issue that will confront the community more than anyone else?

**Mr. Justice Harry Slade:** It would have to start, honourable member, with more diversity in the appointments to the courts, because that's where we get our members. We do not have a member of indigenous ancestry—rather, there are very few superior court judges who are of indigenous descent.

This is not a place for inexperienced judges. You want tribunal members who have some experience as a judge, because you quickly learn as a judge how not to get run around by the antics of the parties and counsels, and the sort of thing I used to engage in. You want somebody who can bring the matter along and be somewhat forceful in doing so. It's quite a challenge to get a person of indigenous descent onto the tribunal. First, you need to be a judge, then you need to volunteer, then you need to be nominated, and then you need to be appointed.

I think it would give the claimant community more confidence that they're going to be heard if there were diversity on the tribunal. I shouldn't pat myself on the back too much, but we've gained a good reputation for being open, accessible, and utterly transparent. That's largely a consequence of our taking the hearings to the communities.

[Translation]

**Madam Justice Johanne Mainville:** I completely agree with Judge Slade. We have also tried to figure out who could become a member of the tribunal. Unfortunately, the issue is that there are not many aboriginal judges in the Superior Court. It is already very difficult, in the first place, to find judges willing to sit on the tribunal.

Both Judge Slade and I have a practice, as lawyers, in aboriginal law. We are very familiar with that field. That's probably also the case for some judges from British Columbia, but it is not the case for most judges. They are not too keen to tackle such an issue.

If more aboriginal judges were appointed to superior courts, we would encourage the process.

• (1725)

[English]

**Mr. Gary Anandasangaree:** In terms of the procedural delays and delays in disclosure, do you have the power to award costs? If not, is that something that would be helpful in moving this along, especially with respect to dealing with the government?

**Mr. Justice Harry Slade:** We do have the power to award costs. There have been no awards of costs thus far. Generally, counsel, within the limits of their resources, have advanced matters as expeditiously as they're able.

**The Chair:** We're right out of time there, I'm afraid.

We have another committee coming in right on the heels of this committee. We do have time for one question from Arnold Viersen, who has agreed to take a four-minute question to allow us to turn over the room.

**Mr. Arnold Viersen:** Thank you for being here today. I really appreciate it. Your passion shows through, that's for sure.

I'm fairly new to this place and I'm trying to get a handle on a lot of things. Does the tribunal have an end date? If you had all the resources you need, if you could bring these claimants down to...or say you could get them done in eight months or something like that, would there be an end date to your mandate? Implicit to that question is how is the tribunal different from regular court, essentially?

**Mr. Justice Harry Slade:** I think it unrealistic to consider the tribunal as time-limited. There are claims coming to the minister still. The pace and numbers of those claims are undiminished. Some of them will be accepted. Others will not be accepted. Those qualify for the tribunal. Some will be accepted and there will be no settlements. Those can come before the tribunal. As long as the claims keep coming to the minister, there will be a role for the tribunal.

I think the whole system can be made far more efficient and less time-consuming. I've mentioned the 12-year average. Thanks to changes in government policy and our act, it's down to three years. However, with respect, I can't conceive why it would take three years for the minister to get advice and arrive at a decision on whether or not to accept a claim. We addressed that in our submission. Personally, I think it should be six months. Moreover, it shouldn't be left to anyone other than a person with a judicial perspective to

decide whether or not the claim is going to be recommended for acceptance. It certainly shouldn't be a situation where our resource needs are served by an organization, as capable as it has been—and Marie-France Pelletier is very good.... We shouldn't be under a branch of the Department of Justice where the defendant in the claims filed with us is always the crown and always represented by the Department of Justice.

**Mr. Arnold Viersen:** How do you differ, say, from just a regular court? If somebody has this claim, they're saying that the Government of Canada is in breach of a treaty, generally. Why wouldn't they just take us to court, essentially?

**Mr. Justice Harry Slade:** Sorry, why would they—

**Mr. Arnold Viersen:** —not sue us in court?

**Mr. Justice Harry Slade:** Largely because the limitation period will have expired.

**Mr. Arnold Viersen:** Okay.

**Mr. Justice Harry Slade:** Of course, the crown can decline to plead the limitation period. But I litigated these matters for 27 years and not once did I see the crown decline to plead limitations. I don't anticipate a breakthrough in that regard.

**The Chair:** Thank you so much, Justices Slade and Mainville, and, Ms. Lombard, for travelling to Ottawa, and sharing with us these important remarks. We're very grateful. What you've told us we will put to good work here.

● (1730)

**Mr. Justice Harry Slade:** Thank you.

**The Chair:** We are adjourned.







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