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Chair

The Honourable MaryAnn Mihychuk

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• (1100)

[English]

The Chair (Hon. MaryAnn Mihychuk (Kildonan—St. Paul, Lib.)): I'm sorry about the delay. We had a vote.

We're only two minutes late. I'll have people convene.

I see we have a presenter by video conference. Good morning. Welcome.

Grand Chief Herb Norwegian (Grand Chief, Dehcho First Nations): Good morning.

The Chair: It must be very early for you. Where are you calling from?

Grand Chief Herb Norwegian: I'm calling from Yellowknife.

The Chair: We're going to begin our 79th meeting, and I'll begin by recognizing that we're on the unceded territory of the Algonquin people.

First nations welcomed settlers. They helped us survive in a beautiful country, and we built what is considered to be the best country in the world. But the very people who helped the settlers have some injustices. They have things that we must address. One of the vehicles is through the land claims and the processes we use to try to address past harms and mistakes. That's why the committee, the MPs, decided to study land claims, both specific and comprehensive, to look at self-governance, modern treaties, and what's working and what's not.

Pursuant to Standing Order 108(2), we are undertaking a study on specific claims and comprehensive land claims agreements.

We have panellists in front of us and at a distance. Welcome to our committee.

The process, quickly, is that you have 10 minutes, or less, to present. You're not obligated to take the full 10 minutes. It will give us a better chance to ask you more specific questions, because we go into rounds of questioning afterwards. I'll give you hints closer to the end of your time to give you an idea of whether you have to cut your presentation short.

We have in front of us Peter Di Gangi from the Algonquin Nation Secretariat. With him are Chief Wayne McKenzie from Timiskaming First Nation and Chief Harry St. Denis from Wolf Lake First Nation. By video conference, we have, from the Dehcho First Nations, Herb Norwegian, grand chief for the region. We were in

Yellowknife on Monday, so I'm glad you could join us by video conference.

If there are no objections, I'll go by the list on the sheet. Herb, you have a pressing matter. Do you want to go second? How many presenters do we have?

• (1105)

Grand Chief Herb Norwegian: Sure, I'll go second. That's fine.

The Chair: All right.

For the group here with the Algonquin, do you have one presentation?

Chief Harry St. Denis (Chief, Wolf Lake First Nation): We have one presentation. Chief McKenzie and I are going to split it.

The Chair: Very good. Go ahead, then. You have 10 minutes.

Chief Wayne McKenzie (Chief, Timiskaming First Nation): [Witness speaks in Algonquin]

I'll get right into our presentation.

Good morning, Chairperson and committee members. Welcome to Algonquin territory.

Yesterday we sent a long and detailed report to the clerk of the committee, which we ask you to review carefully. It contains much more important information than we are able to give today.

We are the Algonquin Nation Secretariat, which represents three Algonquin communities, Timiskaming, Wolf Lake, and Barriere Lake. Our territories are in Ontario and Quebec, from the headwater of the Ottawa River at Cabonga, across to the Dumoine, Kipawa, and Timiskaming watersheds. You have a map on which you can see all the Ottawa River basin and the location of the communities.

We assert unceded aboriginal title and rights to our traditional lands. We are within the Indian territory set out by the Royal Proclamation of 1763. We are parties to treaties with the British crown, made at Oswegatchie and Kahnawake in 1760 and Niagara in 1764, which recognized our title.

Our rights have never been extinguished by treaty or any other lawful means. It is important to add that we have never mandated any other group to negotiate our rights. There is much unfinished business between our people and Canada. Timiskaming received a reserve in 1854 but later lost more than 90% of its land because of boundary changes and shady surrenders. Barriere Lake did not receive a reserve until 1962, and even then it was only 59 acres, barely enough for housing. Wolf Lake, even though it has been recognized as a band by Canada since the 1800s, still has no reserve lands for community purposes. Our communities have specific and comprehensive claims. Despite years of trying, we have still not settled the land question.

Federal claim policies are a barrier to reconciliation. The main reason we have not been able to move toward reconciliation is the federal claims policies. The biggest problem is the conflict of interest. These claims are against the crown, but the crown is also the judge, jury, and banker. There have been efforts to make the specific claims policy more independent with the creation of the Specific Claims Tribunal, but in the comprehensive claims process, there is no independence at all. The only hope of escaping the government's conflict of interest is to go to court, which is risky and expensive.

The United Nations Declaration on the Rights of Indigenous Peoples, UNDRIP, gives a solution to resolve this conflict of interest. Article 27 says it shall establish "a fair, independent, impartial, open and transparent process...to recognize and adjudicate the rights of indigenous peoples". Article 28 says that we should get fair compensation for our lands. If the government is serious about implementing UNDRIP, it can start with articles 27 and 28.

• (1110)

We have raised these issues and recommended solutions many times in many forms, but nothing seems to change. Now here we are with another study. We have to wonder where it will end, but we have to come here today because resolution of these claims is essential to our legal, economic, and cultural survival.

Turning to specific claims, in September, the Minister of Justice and INAC announced the federal government's commitment to completely overhaul the policy in co-operation with the first nations. We welcomed this, but we wonder where it will lead. We hope it is an honest effort to create an independent process that will give us justice.

For the committee's benefit, we strongly recommend the following:

We need a truly independent claims process. The Government of Canada must be removed from the assessment of claims against itself. This allows for continued conflict of interest and works against reconciliation.

Alternative arrangements for funding claims research and negotiations are also needed.

In the interim, while discussions are taking place to reform the policy, Canada should provide proper resources for INAC and the first nations to develop and negotiate specific claims. Canada's funding policies need to change to facilitate access to the tribunal, not create barriers. If Canada appeals a tribunal decision, it should

provide funding for the first nations to ensure that they have a proper hearing.

Chief Harry St. Denis: In contrast, I'm going to speak a bit about the comprehensive claims. Since I don't have too much time, I want to refer you to a legal review that was done by Mark Stevenson and Albert Peeling in 2002. The report identified the following areas where the comprehensive claims fell short: the requirement for extinguishment of aboriginal title instead of reconciliation; the refusal to pay compensation for past infringements; the demand that section 91.24 reserve lands be removed and replaced with fee simple lands; and inadequate interim measures to protect aboriginal interests until an agreement is reached.

The huge gap between the comprehensive claims policy and the law has only increased since then, especially since the Supreme Court's decision in the Tsilhqot'in.

There are other problems with the policy. Loan funding makes first nations vulnerable once they are tens of millions of dollars in debt. There's the insistence that first nation citizens and businesses give up their tax exemptions as a price for reaching a final agreement. There are very loose rules for eligibility, which in the case of the Algonquins of Ontario claim, has allowed for thousands of non-Algonquins to negotiate away our title and rights.

The Chair: Harry.

• (1115)

Chief Harry St. Denis: Yes, Madam.

The Chair: I see there may be interest from the MPs to look at a special extension of time.

Mr. Gary Anandasangaree (Scarborough—Rouge Park, Lib.): Madam Chair, in the English version, we have both Chief St. Denis and Chief McKenzie as having separate slots according to the notice of meeting. My assumption is that they both get 10 minutes.

The Chair: There was clarification on that this morning, but with the committee's approval, we could look to extend it.

Are there any objections? No.

Chief St. Denis, if you'd like, why don't you take some time and go through your recommendations one by one? We don't mean to rush you. We understood that you had one presentation.

Please, take some time.

Chief Harry St. Denis: Thank you, Madam Chair and committee members.

This is a very important issue, especially for the Algonquin Nation. It's an issue that we have been dealing with for at least 20 or 25 years, trying to get changes to the comprehensive claims policy.

We have made different attempts over the years, different recommendations to different governments. Before the Liberal government, of course, there was the Conservative government. Never have any of our recommendations been taken seriously or at least included. We've also made presentations to Mr. Eyford, who was the last one to review the comprehensive claims policy, and again, none of our recommendations were included in his report.

It is a very serious issue, especially these days with all the talk of reconciliation with the governments. You can't reconcile anything without reconciling the land issue. It's a fundamental aspect of our culture, our language, everything. It's also a fundamental aspect of our future in terms of economic development opportunities. Like everyone else, we need to have a say in what happens on our traditional territory.

I want to quote the right honourable Prime Minister. Any time he opens a meeting with first nations people, he always says:

I'd like to recognize the Algonquin Nation, on whose traditional territory we are gathering. We acknowledge them as the past, present, and future caretakers of this land.

How can we be the present and future caretakers of this land when we don't have a say, when we are expected to give up our title to the land of the future generations?

That is a direct quote from the right honourable Prime Minister, so if there's going to be some true reconciliation between the first nations peoples and the rest of Canada, it has to start on the basis of respect, respect that it is our territory, that we did not give it away. We did not sign treaties.

We have not authorized anybody else to negotiate on our behalf. Even though the Algonquins of Ontario are negotiating currently with the federal government and the Government of Ontario for the Ontario portion of Algonquin territory, because we are located on the Quebec side today does not mean that we don't have interests on the Ontario side. We have aboriginal title to parts of Ontario currently being negotiated by the Algonquins of Ontario, which includes people who have not had any intermarriage with Algonquin people for 200 years, and sometimes up to 300 years. They're going to be signing away title on our behalf.

Even if you take the situation with Chaudière Falls, that's up for negotiations as well with the Algonquins of Ontario. Of all those people, about 7,000 of them altogether right now, only 2,000 are registered Algonquins. They're going to be signing away title.

I use as an example the Chaudière Falls, Akikodjiwan, which was, and still is, a sacred site for the Algonquin people—all Algonquin people, not just the Algonquins of Pikwàkanagàn. We all used that site at one point in the past, and we should all have a say before anything is signed away, especially title for the Algonquin people.

I will end it there. I want to save some room for questions.

Thank you, Madam Chair and members, for giving me a bit more time.

• (1120)

The Chair: Thank you.

We now go to Grand Chief Herb Norwegian from the Dehcho First Nations.

Welcome.

Grand Chief Herb Norwegian: Welcome to the great Dehcho. I heard that you people were here in the Yellowknife territory. I'm sorry I missed you. I was at a National Energy Board hearing in Fort Simpson on a pipeline crossing that is being disrupted because of leaks and things that are happening to it. That was rather important. My apologies.

I want to thank you for allowing me to speak to the committee. My name is Herb Norwegian. I am the grand chief of the Dehcho First Nations. The Dehcho territory is right smack in the middle of the Mackenzie River basin. We are situated west of Yellowknife and east of Whitehorse, right along the Yukon border. Our communities consist of 10 major communities in our territory. Our population is roughly 4,000.

We've been negotiating our claim with Canada since early 1990. The Dene and Métis from right down the valley got together back in the early 1980s. We were trying to get a claim agreement with the Mulroney government at that time. Things were moving right along, up until the whole question of extinguishment and certainty was put on the table. I think the claim was almost 90% complete. Then extinguishment came to the table and our people rejected it. They were not in a position to talk about extinguishment. As a result, the agreement in principle fell apart, and as a result of that, a number of regional groups broke off and, within a year or so, reached an agreement for themselves. The Tlicho, the Gwich'in, the Sahtu—various regions within the Dene Nation—reached agreement. There are still two or three other outstanding claims in the Dene Nation, and the Dehcho is one of them.

Our territory makes up roughly 220,000 square kilometres of land on both sides of the Mackenzie River. Over the last years since 1999, we have been able to bring together all our communities and again put a very serious position on the table. Our position is unique, because we bring together the Dene and the Métis. The Métis are related to the Dene—they are descendants of the Dene—and we stand together on all issues. We've been moving along quite well over the last few years. A number of things were created as a result of the work we've done and good, strong direction from our elders.

One thing we created was a framework agreement on how we are going to move forward and how we will work together and what the rules of engagement would be with Canada and of course the provincial kind of government at the table, which was the territorial agreement.

That agreement was signed. Following it, there were a couple of really good agreements that came out of it. One was the interim measures agreement.

The interim measures agreement was a creative piece of work. What we wanted to do was to make sure that the land was tied up. As we were negotiating, and we saw it in many different cases in which first nations were negotiating, and as the leaders were at the table, governments were literally giving land permits, licences. When the first nations were ready to sign final agreements, they found that most of the lands had been given out to third parties. We didn't want this to happen, so we created an interim measures agreement. In the interim measures agreement, what we also used was an order in council to withdraw lands throughout the Dehcho territory. Roughly 46% of our territory has been tied up in land withdrawals. We've been quite busy.

• (1125)

We also have a national park in our territory, adjacent to the Yukon border. Over the years we've been quite busy with that, because the park itself is controlled and managed by the Dehcho First Nations and Parks Canada. We have a joint arrangement. We also have other agreements that are in place, where we have some very sensitive areas that we have held onto through the protected area strategy. It's been very creative, but close to 50% of our traditional territory is tied up in some form of protection.

We had been motoring right along and negotiating with Canada up until, I believe, in 1996, when the Conservative government came on board. We weren't using the comprehensive claim policy at that time. We were using a very well thought-out approach. There was going to be no discussion of surrender. We were talking about there being a coal management and jurisdiction arrangement on land.

We were moving right along, and then the election came along, and not too long after that the federal negotiator came to the table from Ottawa with a new mandate and put the position to the table. He literally said that there was a new game in town. From here on in, all of the discussions that took place would be put behind us, and now we would use the comprehensive claim policy to negotiate. That was a shock for us, but we were able to then regroup and look at the policy itself. In the meantime, we were still moving along and wanting to get the whole claim issue done, because we had already had the framework agreement in place. Roughly 48% of our territory was tied up in land withdrawals or protected areas.

Along with that, what we had also done was create a Dehcho land use plan. Today it's still very much alive and we're waiting for an agreement. It was a plan that was probably one of the first ones in the country, because it's a public plan where we have Canada, the territorial government, and the first nations group sitting together and working on a very detailed plan for our territory. It's been very creative for the last little while. We had all of this work on the table, and along comes this new approach, and so then we were able to figure out a way to get around that. We took the position that we didn't want to discuss extinguishment, and that the whole certainty thing had to be put aside, and only then would we start moving, and it didn't take long for us to start moving again.

It was roughly 10 years ago that we had this disruption. Today, we continue to negotiate, and we left the whole thing of extinguishment behind. Today we are now about 95% complete with our negotiations.

The big issue right now is, with the federal election completed and the territorial government election also having happened, we were ready to move and complete that last piece of work until the territorial government came back to us. They sat at the table, also. For the longest time, our position has always been that this is a treaty matter, it's an aboriginal title issue, and the discussion, when it comes to land and rights, has to be bilateral between Canada and the Dehcho.

We were working on that premise, and then there was a series of agreements that took place here in the Northwest Territories, one of them being the devolution of agreement where authority was transferred from the Department of Indian Affairs to the Northwest Territories government. All of a sudden, now we had a government who was enjoying the little authority that was given to them, and so they created some problems and told us that they are now our government and they want to be heard. It's one of those things where we're standing off. They want to come to the table. There's no movement. There hasn't been any movement for the last four months.

• (1130)

That's where we are right now. We're standing.

I see your signal, but this just goes on forever. I could hyperventilate on this stuff.

Thank you very much.

The Chair: I can understand that it's hard to cover something in 10 minutes that has been negotiated for over 10, 20, or 30 years.

Grand Chief Herb Norwegian: Yes.

The Chair: We have had the question as to what the purpose is of doing this again, as we've done it over and over.

The purpose is to bring it to the forefront of the government's eye. We as parliamentarians will submit a report that Parliament receives, and then we'll have the department respond. It brings the process forward again. Let's hope we will see positive steps as we find the new path forward together.

Let's get on to questioning.

Mrs. Cathy McLeod (Kamloops—Thompson—Cariboo, CPC): Is there one more presenter?

The Chair: No, we're done.

For clarification, the Algonquin Nation Secretariat has three individuals here. They indicated one presentation, with two speakers.

The first round of questioning goes to MP Amos.

Mr. William Amos (Pontiac, Lib.): *Meegwetch* to all of our witnesses from the north and from the south. I would particularly like to thank our Algonquin hosts since it is their land, and I appreciate how they framed that.

As the member for Pontiac, of course I have had the opportunity to chat at length with Chief St. Denis, and I recall our last conversation, mostly on the issue of regulatory reform.

Chief McKenzie, it is really great to have you here as well, and to be able to discuss.

My colleague, Mr. Bossio, has been generous enough to afford me his time to ask questions today, so I hope we can have a bit more of a sustained conversation.

It is my hope and desire that in the years to come, starting in the near future and moving into the medium term, we will be able to bring about a process that reconciles all of the Algonquin Nation with all aspects of the crown—provincial and federal—so that we can move towards a brighter chapter in crown-Algonquin relations. There is so much work to be done. There is so much trust to be regained. The mountain is high. I don't make that statement lightly. It's going to take good faith on all sides.

Let us set aside the comprehensive claims policy as an approach. It clearly hasn't worked for the Algonquin. That has not been a success. You have outlined many criticisms you have, and I share a number of them.

I would like to ask both Chief McKenzie and Chief St. Denis to reflect on what an Algonquin-specific process looks like. If the federal government were to invent something brand new that was going to work specifically for the Algonquin, what would it look like from your perspective? Clearly there is not one unique Algonquin perspective, but if there were to be a better way of going about it, in the context of the Algonquin Nation, in the context of overlapping territorial claims, what would that look like, specifically?

I would love your opening comments on this. This is also an open invitation to a dialogue in written form because I would really like to get to the bottom of what could work.

Chief Harry St. Denis: As I stated, the requirement to extinguish title at the end is a non-starter for the Algonquins. Any claim should be based on facts, not just people drawing lines on a map with a crayon. We have been doing research for the past 20 years or so, through contributions, not loan funding, which is where, once you have your claim accepted by the federal government, automatically the loan funding kicks in. After that research, or if you're asked to clarify something by the federal government or anybody, you have to borrow money to do it. I don't think we should have to borrow money. It should all be based on contributions and on facts.

It's nice to have an overall Algonquin claim, but if that can't be done, then the ones who are ready to negotiate, if the conditions are there for both sides.... You mentioned that everybody has to show good faith. We have shown good faith for a few hundred years now. What more do we have to do? What more do we have to give up in order to accommodate the governments? It's time the governments accommodated our interests. The provincial governments have to be involved, of course, because now a lot of areas of jurisdiction have been transferred over to the province, including lands and resources, which we require. So the provinces have to be involved as well, and in some cases the municipalities. The federal government should do the duty that it owes to the Algonquin people to assist in bringing the governments to the table with the interests of the Algonquins in mind for a change. That's what it would look like.

To put a specific policy in place is not easy; there's no one-size-fits-all document because of our diverse communities. This is true even among the Algonquins, let alone across the country. It depends on different situations, different fact situations, different locations. If some people want to negotiate under the current policy, that's fine,

but we shouldn't be forced to. If we want a separate policy or a different approach, then we should be accommodated. As Mr. Norwegian mentioned, there should be interim measures. There should be interim protection of lands and resources while negotiations are going on. Some interim measures should be agreed to between the governments and the first nations. Otherwise there will be nothing left to negotiate. As you said, some of the negotiations take 30 or 40 years, and they're still no closer to being resolved than the day they started.

Thank you.

• (1135)

Mr. William Amos: I will come back to this line next time, so continue on and we'll go back to it.

Chief Wayne McKenzie: I wanted to add to that a point about membership and who really has Algonquin blood in them. I'll go back to the Algonquins of Ontario. From what I heard they were just giving away status cards at these...they call them band offices, but I don't know what they really are. They hear that we're going to get land and we're going to get prime location on the water and money, like the \$300-million claim. We have to be sure of who really is Anishinaabemowin, who really carries that spirit. This is why we're here. Many of us are thinking of our generations to come, for all these claims, and not just ourselves.

The Chair: MP Viersen.

• (1140)

Mr. Arnold Viersen (Peace River—Westlock, CPC): Thank you, Madam Chair, and thank you to our guests for being here today. It is much appreciated.

Within the Northwest Territories, the lines seem to be clearly defined between the specific land claims. Even with the claim you are pursuing, the boundaries seem to be fairly firm. Could you explain a bit, Herb, about how you came to those boundaries and if there was any overlap with another claim?

Grand Chief Herb Norwegian: The boundary itself is something that has been there for thousands of years. It's derived out of family units that have harvested their areas, watersheds, and mountainous areas. It's very clear where these families harvest. Those areas were carved up and we were able to connect them. As a result of that, we were able to design a boundary around the entire Dehcho territory.

Mind you, a good part of that boundary goes into other jurisdictions such as the Yukon, parts of B.C., and Alberta. Our area that we've traditionally harvested for thousands of years goes way beyond the existing borders that were created.

Over the last few years we've confined ourselves to looking at what we can protect at this point. We then arrived at what's called an interim measures agreement. For the purposes of the interim measures agreement, we used the existing boundaries, such as the Alberta boundary, the B.C. boundary, and the Yukon boundary. Those boundaries became our areas where we would be able to identify lands and talk about jurisdiction.

We also had some claims settled around us, one of them being the Sahtu. Around the Norman Wells area, they have a boundary as a result of their final agreement, a line that's north of us. Also, the Tlicho have a line to the east of us. We have existing boundaries that we were able to negotiate with our neighbouring first nations. There are another four or five first nations who we still need to negotiate with.

Boundaries are always issues that are left towards a final agreement. As you come close to the end, to your final agreement, the boundaries are the issue that you bring to the table and try to wrap up. Normally, these things are quite fast. The information is there; everyone is brought on side, and a good, healthy discussion takes place.

Mr. Arnold Viersen: Chief St. Denis, have you had any conversations with the Algonquins of Ontario? How would you come to an agreement on the boundaries? Wherever we go, that always seems to be a big part of this discussion.

Chief Harry St. Denis: I have had discussions with Chief Kirby. I don't deal with the other nine so-called "Algonquins". I don't recognize them as Algonquins, because they are not.

Mr. Arnold Viersen: We're working on another bill that has come through, Bill S-3, regarding who's entitled to status. One of the witnesses we had was advocating for genetic testing. What's your opinion on that?

Chief Harry St. Denis: It might be a good investment if you invest in 7,000 of those AncestryDNA kits for the Algonquins of Ontario. I don't know how many would be left, but I think that the communities have to have a say. The whole Algonquin Nation, I think, should be the ones to decide who's an Algonquin and who is not an Algonquin. It shouldn't be left to anybody else to decide that because it is our right to decide that.

We have had meetings with the federal and provincial governments concerning the Algonquins of Ontario. I think it was in January 2013, Pete, if I'm not mistaken. There's no resolution. Although they say that our rights are going to be protected in any modern agreement that's signed, it's just not true. Even today for some of our member communities, especially from Kebaowek First Nation, who have title interest in an area near North Bay, their people are being charged, being harassed, and they're registered natives. They've been told, "Oh, you have to carry this Algonquins of Ontario card, and then you can hunt and fish at a certain time of the year." These are people who have constitutionally protected rights, not rights that have been given to them by signing up to belong to a corporation, which is basically what the Algonquins of Ontario are. So we are far from having an agreement.

•(1145)

Mr. Arnold Viersen: We heard this in the Northwest Territories as well, about the lists of people who are involved with these. But

you will acknowledge when we say we're going to have it based on fact that this is a difficult list to come up with. If we're not prepared to go on strictly DNA evidence, and we're going to go on a community basis, well, that's highly disputed. In my own riding we have a lady who has DNA evidence that she's the daughter of a former chief, but she doesn't have status. How do we come to an agreement on who decides the list? What's the appeals process to say if you're not on the list, how do you get on the list? Also, if somebody's on the list who you think shouldn't be on the list, how do you get them off?

The Chair: You only have a couple of seconds.

I want to remind MPs, please, that the goal of this is to actually hear from our presenters. When you talk out your time, you leave me in the spot where we don't give people an opportunity to answer. You have a couple of seconds. It has to be very short.

Chief Harry St. Denis: It's a difficult question because there was always the court option for those people after. For the Algonquin people, we can have our criteria for establishing membership, but in the end it can be challenged by individuals and end up in court. It always seems that's where we end up when we're talking about constitutional issues all the time. It's a difficult question, I admit that.

Mr. Arnold Viersen: Thank you.

The Chair: Questioning now goes to MP Stetski, and welcome to the committee.

Mr. Wayne Stetski (Kootenay—Columbia, NDP): Thank you.

Thank you for taking the time to be here today.

From 2012 to 2015, I represented municipalities in southeastern British Columbia in treaty negotiations with the Ktunaxa First Nations. The discussions have been going on for about 12 years. The last meeting I was at they were reaching the agreement-in-principle stage. Through that very detailed process, the three years I was involved, I very much became a believer in treaties. Having said that, there are first nations who think there are ways to move forward other than treaties, and potentially other than court, these days the intermeasures that become permanent measures, for example. I'm really interested in hearing from all of the chiefs in terms of this given where things are.

I can tell you, Chief St. Denis, I absolutely agree. The reason that process moved forward is that all the negotiators, federal and provincial, had the best interests of the Ktunaxa in mind. It was a cash, the land, and a governance-structured discussion.

Given where you are, what do you think the best way to move forward is currently to achieve a better future? I believe treaties achieve a better future for everyone.

• (1150)

Chief Harry St. Denis: I think it has to start, as I said earlier, from respect and recognition of our title and our rights. It can be a joint recognition of federal title and Algonquin title. I think we can have agreements in areas that really affect first nations—the environment, for example. Have our people have a say in environmental issues. Have a say in maybe resource revenue sharing from our lands and resources, which again would involve the provinces these days, because somehow Canada gave away all of our resources to the provinces, without our consent, of course. Those are a couple of ways and means.

Maybe it doesn't have to be a formal treaty in the end, as long as there is recognition. We're all here to stay. We can all benefit from the lands and the resources. We all have a say in protecting the environment, which is a concern for everybody these days. I think that's where we can start.

Mr. Wayne Stetski: Chief McKenzie, do you have anything to add to that? Then I'd like to go to Chief Norwegian as well.

Chief Wayne McKenzie: Many modern-day treaties are extinguishing a lot of rights. I know that my community would not go for that, and neither probably would a lot of the Algonquin nation. As Harry was saying, there should be a lot of negotiating talks. Revenue sharing and resources are our big thing; they're always extracted without our say, if we have anything to do with developments, even.

I'll go back to examples. In the city of Ottawa, from what I was told, for a developer wanting to develop on the land, one of their first contacts is the Algonquins of Ontario. The Hydro dam in Chaudière Falls involved just them. We had no say. We had nothing to do with it. On Parliament Hill there's the billion-dollar renovation. We have nothing to do with it. There's not one Algonquin worker up there.

What's up with this reconciliation? This is right where that talk is coming from, and there are no Algonquins there, and you want to say we recognize you on our land? Let's stick to your word. Let's keep it.

The Chair: You have two minutes left.

Mr. Wayne Stetski: Chief Norwegian, you have a very interesting model, and I think it's looked at across Canada as being a very innovative model and perhaps one that can be expanded. Give us your view on treaties, interim measures, or other ways to move forward.

Grand Chief Herb Norwegian: Thanks again. The name of the people you work for, the Ktunaxa, sounds very Dene, but from northern or southeastern B.C. It's interesting work that you've done.

In the Dehcho, we took a totally different spin on the whole notion of “treaty”. We have Métis people who live amongst us, and they are direct descendants of the Dene. Right away we were able to put the treaty aside and say that as a collective, because of our ancestry, we are all related. As a result, the Métis and the Dene have joined together and are now, today, negotiating with Canada.

The whole thing about the treaty was that it was not a tool to extinguish, although the other side tells you that they have their version of the treaty, which makes very clear that our rights have been extinguished to Canada. We, however, have taken the view that the treaty itself is a peace treaty. It's an arrangement whereby we

would not declare war and we were not going to infringe upon the newcomers. We were able to arrive at that and there was that understanding, so we started negotiating.

The whole concept of the treaty recognizes our authority, our very own authority that we have as first nations people. Treaties actually are international documents that recognize the authority of the people you are doing business with. In our case, the Dehcho are signatories to the peace treaty of 1921. It became this whole issue of the land being clear, unsettled. This is where we are right now.

• (1155)

The Chair: Thank you.

Grand Chief Herb Norwegian: We're trying to clarify and put the position forward and trying to make it very clear that this is still our territory; we're together, and we're negotiating. That's where we are right now.

The Chair: All right.

For the final portion, the questioning moves to MP Anandasangaree for four minutes.

Mr. Gary Anandasangaree: I'm going to be asking very pointed questions, and I'm going to pass a couple of minutes to my friend, Will Amos.

With regard to extinguishment, I know it was brought up earlier. With respect to the discussions that are ongoing, particularly Chief Norwegian, is that something that's still being insisted on, or were you able to overcome the extinguishment demands that were requested earlier?

Grand Chief Herb Norwegian: That was the big problem back about 20 years ago when other groups were trying to negotiate, but today, with our claim, we've put the whole extinguishment aside and said that we don't recognize any extinguishment. Extinguishment is not something that happens in this day and age. As a result of that, we took a really bold approach and started looking at asserting our authority over our territory.

One of the ways we did that was by taking what's called land-use planning. We brought Canada and the GNWT on board and we started talking about designs in regard to how we can protect our land. The land-use plan became a tool on how to engage with developments. There are various tools out there that you can actually put in place to counter this whole thing of extinguishment. For us, we're moving forward. It's quite an exciting time.

Mr. Gary Anandasangaree: Thank you.

Grand Chief Herb Norwegian: We're able to take the extinguishment out of the issue right now.

Mr. Gary Anandasangaree: Thank you, Chief.

I'm going to pass the rest of my time to Will Amos.

Mr. William Amos: Thank you, member Anandasangaree. It's very appreciated.

Chief St. Denis, could you please help me understand better? When you filed an assertion of rights in 2013, what was the response then? From your perspective, where does the discussion now stand with the federal government? Is it moving anywhere? Are we in a period of stasis?

We've heard your point around extinction of rights and the need to move forward. Chief Norwegian has offered a different perspective on how to just move right on past that by going in a different direction. What point are you at right now, and what needs to be done to move this forward?

Chief Harry St. Denis: As you mentioned, we did submit what we call an assertion of rights. It was basically a summary of our evidence that we've gathered over the years. That was at the request of the federal and the provincial governments based on what was happening with the Pikwàkanagàn, or the so-called Algonquins of Ontario claim.

We submitted a document. We have not heard anything back concerning the document. We don't know if they have done any assessment of our assertion. They've never asked for any more information. Basically, it's sitting on a shelf somewhere, the same as a couple of hundred or thousands of other reports and interventions that we have been making over the past 25 years or so.

• (1200)

Mr. William Amos: Do you expect a response, and if so—

Chief Harry St. Denis: Well, it was in 2013 that we submitted that document. Should we expect a response?

This government has been in office now for a couple of years. They should have had time to look at the information and to engage us if there was an interest, a serious interest, in what's going on with the Algonquins of Ontario or the Algonquins of Pikwàkanagàn, especially from Ontario and the federal government. Quebec is not involved in those negotiations.

We haven't had any meaningful discussions about our concerns. The only thing they keep coming back with is, "Don't worry; your rights are going to be protected. If there's ever an agreement signed, your rights will be taken care of." As I mentioned earlier, we have evidence that this is simply not the case. That's basically where that assertion of rights is.

The Chair: Thank you.

Chief Harry St. Denis: The provinces wanted it, too, for consultation purposes on this suite of legislation. They asked for something; we gave it, and then we didn't hear anything anymore.

The Chair: That's a good point. It's very frustrating when you don't hear back from the other partner.

That concludes our time; we've run out.

It's a fascinating discussion, both from the north.... I'm sorry that we missed you. Thank everybody from us for the hospitality. We enjoyed being in Yellowknife.

To those who came here today, I want to thank you for travelling and being present, once again, to raise these issues. I appreciate your patience.

Meegwetch.

Chief Harry St. Denis: Thank you, Madam Chair and members. We do have a full document that has been translated and given to the committee.

The Chair: Thank you.

We'll suspend for a few minutes. We have three more panellists.

• (1200)

(Pause)

• (1205)

The Chair: We have the Treaty and Aboriginal Rights Research Centre of Manitoba here. Welcome. We do want to hear from you.

I am looking for two representatives: Douglas Eyford, from Eyford Macaulay LLP, and Glenn Archie, head negotiator, flood claims, Mishkosiminiziibiing First Nation.

The MPs are here. If the other presenters happen to come in, there may be time for us to incorporate them, but why not get started?

It's always nice to see somebody from Manitoba come in, and we see that significant statistics have been presented from StatsCan. On our tour, we stopped in Winnipeg and I saw you in the audience but we didn't have an opportunity to hear from your organization. Please go ahead with your presentation.

Mr. Cam Stewart (Director, Treaty and Aboriginal Rights Research Centre of Manitoba): Thank you, Madam Chair and committee members, for inviting us here today.

Before we continue, I would first like to acknowledge that we are on unceded Algonquin territory.

Over the last several weeks, TARR Manitoba has been given the opportunity to absorb a variety of issues that have been brought forward by other groups directly affected by INAC claims policy and funding mandates. In order to enhance the conversation related to INAC's management of the claims process, we would like to provide TARR Manitoba's perspective relative to the unstable financial support for claims research and the associated impacts of funding cuts.

The Treaty and Aboriginal Rights Research Centre of Manitoba is located in Winnipeg. The research centre provides claims and historical research services on behalf of 54 of the 63 first nations of Manitoba.

The first nations in Manitoba are signatories to Treaties 1, 2, 3, 4, 5, 6, and 10. There are also five Manitoba Dakota first nations who are not signatories to treaty in Canada.

Within INAC's status of specific claims website, Manitoba is listed as having 51 settled claims, nine claims in active negotiations, two claims under assessment at the Department of Justice, six claims at the tribunal, 14 claims listed as "concluded with no lawful obligation found", and 19 claims filed as "files closed".

In relation to the “concluded with no lawful obligation found” and “files closed”, the website's information is somewhat misleading, because some of these claims are still being actively researched or intended to be researched contingent upon human and financial resources. Over and above these, the TARR Centre has an additional 17 claims in its current work plan. An undetermined number of claims have yet to be added; however, at this time the TARR Centre does not have the capacity to deal with them.

Over the past several years, research directors were forewarned by INAC that funding cuts were imminent, based on the position that the number of claims submitted to the specific claims branch, or SCB, for its assessment was the reflection of a research organization's progress. This philosophy was not new. Cuts had been going on for some years prior to that, but at a more subtle level.

SCB's position did not take into account, however, the number of claims still being processed at the claims research unit level. Instead, SCB should have assessed each claim as unique, with the knowledge that claims progress at different rates. Claims research does not simply flow in a seamless direction and can often become complicated because of unforeseen circumstances, such as political change, lack of internal resources, etc.

As the TARR Centre receives 100% of its funding through the research funding unit, or RFU, attempts were made to work directly with the RFU to prevent any further cuts. Other attempts were made to point out the inappropriateness of judging progress based solely on the number of claims submitted in a given year. However, explanations were to no avail.

In fiscal year 2014-15 the TARR Centre received a 60% funding cut. As a result, the Winnipeg-based staff of four employees consisting of a director, an office administrator, and two full-time researchers, was reduced to one employee. The Thompson-based office, which employed one researcher, was immediately shut down and its researcher subsequently laid off.

The damage and resulting repercussions have been severe for TARR Manitoba. The 60% cut in funding in 2014-15 effectively stalled claims research within Manitoba for several years, but also and probably more importantly, legitimately interfered with the first nations' right to pursue the claims process.

For three years, TARR Manitoba's staff consisted of one director and one research assistant to service 54 first nations clients within Manitoba. Currently, funding has rebounded to the pre-2014 levels and our staffing levels have stabilized to five. However, and I underscore this, the instability of funding makes it difficult to guarantee sufficient financial and human resources to conduct the work in an efficient manner. This again affects the first nations' right to pursue the claims process.

The TARR Centre has been forced to relocate twice in the last three years to accommodate the fluctuations in funding. With each move, more contracted library management services are needed to organize the centre's main stacks and journals, and more time is spent away from the claims process.

Each fiscal year requires a new contribution agreement between the RFU and TARR Manitoba. A new contribution agreement is provided to TARR Manitoba after the previously funded fiscal year,

but there is little time for review or to discuss the agreement on account of the RFU's placing a hold on any further funding until the agreement is signed.

• (1210)

TARR Manitoba is typically spending from month to month as per the funding allotment stipulated within the contribution agreement. Any pause in the flow of monthly funds places TARR Manitoba in a vulnerable position. Bills and rent are typically late, and more administrative time is needed away from the claims process to mitigate the lack of funds. In the future, TARR Manitoba would like to have sufficient time to review and perhaps negotiate proposed contribution agreements.

Since 2008, supplementary funding has been made available during the last few months of the fiscal year. The research funding division of INAC has always maintained that this additional funding does not extend into the following fiscal year. Again, the funding agreement represents a one-time fiscal arrangement, and therefore, there is no guarantee of a stable level of funding from year to year.

The specific claims branch has been working collaboratively with the Assembly of First Nations to rectify the funding issue, but has so far been unable to formulate an adequate solution. Simply, there is no guarantee that there will be funding to operate adequately from year to year, and this does not allow for the proper momentum in claims research.

Recently, Canada has made changes to improve the claims process, such as the removal of the pre-Confederation bar on specific claims, the influx of additional financial resources to the process both within INAC and to first nations, and also the formation of the Canada-first nation body referred to as the joint technical working group, which was established to examine the claims issue.

We hope this trend continues. Canada, however, remains both the indicted and the chief justice throughout the claims process. Following the recommendations outlined by the JTWG, the AFN, and the United Nations Declaration on the Rights of Indigenous Peoples, TARR Manitoba fully supports the notion that Canada must be removed from the claims process to ensure impartiality. The TARR Centre of Manitoba also hopes that a stable funding structure will be created to guarantee proactive claims research for its first nation members.

Thanks.

• (1215)

The Chair: Thank you.

There is no sign of the other presenter, so you'll have our undivided attention.

We'll start the period for questions with MP Anandasangaree.

Mr. Gary Anandasangaree: Madam Chair, I'll be sharing my time with Ms. Zahid.

Thank you for being here. I have some very specific questions with respect to the specific claims process.

If you were to make some recommendations for changes to the process itself, what would they be? Maybe you could give us three specific recommendations.

Ms. Patricia Myran (Assistant Director, Treaty and Aboriginal Rights Research Centre of Manitoba): My name is Patricia. I'll answer the questions, if you don't mind.

What changes would I recommend in the specific claims process? Last year the joint technical working group was formed between AFN, INAC, and several research directors across Canada. They formed four subcommittees to deal with four issues only. These were funding, claims over \$150 million, negotiation and mediation, and offhand I forget the last one. On one of the subcommittees on funding, we didn't get very far. I sat on the subcommittee.

Mr. Gary Anandasangaree: Patricia, if I may, the difficulty we have is that we have a very limited time. Let me ask you to be very specific about what those recommendations are. I know that giving the background is important, but unfortunately the process doesn't really facilitate doing so. If you could, be quite specific about what the recommendations would be.

Ms. Patricia Myran: As Cam said, it has to be a body that can deal with the claims process and that is not judge and jury. That's basically it. Also, they should have control of the funding. That's one of the bases of the funding issue.

Mr. Cam Stewart: It essentially interferes with the process, as I pointed out. Funding is a major issue for us, in particular at the ground level.

Mr. Gary Anandasangaree: With respect to the timelines, are you comfortable with the timeline used by the Specific Claims Tribunal?

Ms. Patricia Myran: The timelines...?

Mr. Gary Anandasangaree: With respect to going to mandatory hearings... I know that right now there is no timeline on mediation.

Ms. Patricia Myran: You are talking about the tribunal now.

Mr. Gary Anandasangaree: Yes.

Ms. Patricia Myran: TARR Manitoba doesn't have a mandate to participate in the tribunal process. All we have is the information that we get from the tribunal on an annual basis, which gives an update on the status of it.

Mr. Gary Anandasangaree: Do you have any suggestions based on your stakeholders' experience?

Ms. Patricia Myran: We do have a few first nations in Manitoba that have claims at the tribunal level, and apparently it's a very long and costly process.

Mr. Gary Anandasangaree: When you say that the crown is currently judge and jury, what do you mean?

Ms. Patricia Myran: I am talking about the specific claims process. The specific claims branch of INAC is where we submit the claims, and they in turn will do their own internal research and act as judge and jury against themselves.

Mr. Gary Anandasangaree: Thank you.

I'd like to pass the rest of my time to Ms. Zahid.

Mrs. Salma Zahid (Scarborough Centre, Lib.): Thank you, Chair.

Thank you to both of you for joining us today.

I would like to ask you about community engagement and education within the indigenous communities. What level of knowledge and engagement are you seeing within the indigenous communities in Manitoba, as far as the land claims process is concerned?

• (1220)

Ms. Patricia Myran: What kind of community involvement...?

Mrs. Salma Zahid: Yes, what do you think about the community engagement and education they have?

Ms. Patricia Myran: I don't think there is enough engagement. We do have an organization in Manitoba called the Treaty Relations Commission, and one of their mandates is to inform not only the public but also the native population, the bands in Manitoba, on the treaty relationship within Canada.

Mrs. Salma Zahid: Do you have some recommendations on how we can engage the community, as far as the land claims process is concerned?

Ms. Patricia Myran: I think that when a specific band has a claim, whether it's at the specific claims level at the branch or at the tribunal level, those departments should come to the communities and engage with them directly so they have more focus on what they are dealing with.

Mr. Cam Stewart: Perhaps at the consultation level...

Ms. Patricia Myran: Does that answer your question?

Mrs. Salma Zahid: To some extent.

I'll go on to my next question. We have heard a lot about the specific and the comprehensive claims in the committee. Would you be able to elaborate on your personal experience? What are some of the delays or issues being faced with these claims? Are there any remedies you have to suggest to make it better?

Mr. Cam Stewart: It's funding.

Ms. Patricia Myran: Again, it's the funding issue.

As for other recommendations, I don't have much time, but we also have an issue with the Dakota bands in Manitoba. As we said, they are not party to treaty, and we are still trying to find a way for the government to recognize their having aboriginal rights to the territory.

In Manitoba, it's a little different than in other provinces, like B.C., that are not party to treaty. We are party to treaty, except for the Dakota, and the government has not yet been able to recognize that this is their traditional territory.

Mrs. Salma Zahid: Thank you. I think my time is up.

The Chair: All right. We have found one of our presenters.

Is it the will of the committee to proceed with questioning, or would you like to allocate 10 minutes to the presenter? I am looking for a recommendation. Either could happen. It depends on how the committee wishes to move.

MP McLeod, go ahead.

Mrs. Cathy McLeod: Madam Chair, I think we will have time to do a first round, so I would like to hear from the presenter. I think he brings some knowledge to the table, which will help in terms of our questioning.

The Chair: Is there any objection?

Some hon. members: No.

The Chair: All right.

Mr. Eyford, you have 10 minutes.

Mr. Douglas Eyford (Lawyer, Eyford Macaulay LLP, As an Individual): Thank you for your indulgence, and thank you for inviting me to speak about the comprehensive land claims process. It's an important issue, and I appreciate the opportunity to do so.

In 2014, I was asked by Bernard Valcourt, who was then the minister of aboriginal affairs, to lead Canada's engagement with aboriginal groups and key stakeholders about the renewal of Canada's comprehensive land claims policy. I delivered a report to the minister based on my findings in February 2015. I appreciate that three years can be an eternity in the development and implementation of public policy, but nevertheless, I believe that many of the findings and recommendations in my report remain relevant, and I will be pleased to answer any questions that committee members may have about the report.

I thought it would be useful to address three issues to get the discussion going. The first is the need, in my view, for Canada to maintain momentum at those treaty tables that have a realistic chance of a successful outcome. The reason I say that is when Minister Bennett was appointed two years ago, her mandate letter set out an ambitious agenda of 13 priorities. Modern treaty making, however, was not included among those priorities, leaving many in the process to wonder where comprehensive claims fit into the government's commitment to reconciliation. Of the approximately 75 land claims at various stages of negotiation, there are, in my view, probably only eight or 10 that have a realistic chance of coming to a successful conclusion. My point is that Canada should identify priority tables and focus resources on completing those negotiations. I do note that the most recent mandate letter from Minister Bennett now identifies accelerating the process in the comprehensive claims process as one of her priorities.

A consideration, at the same time, should be placed on sunseting the comprehensive claims process. Any of the indigenous communities that are interested in negotiating a modern treaty have been in the process for at least a decade. There isn't a lineup of indigenous groups waiting to get in. That's why it's important, in my opinion, for Canada to look at other options for reconciliation for those communities that either aren't interested in the modern treaty process or aren't capable of completing a modern treaty.

I do want to acknowledge that in May 2016 Canada endorsed a series of proposals for improving and expediting the treaty

negotiation process in British Columbia. That is a helpful and important initiative. As well, Canada in recent years has demonstrated that it is prepared to be flexible and creative in addressing the interests of indigenous groups outside of the treaty process. There's been a wide ambit to that initiative. I'll give two examples that members of the committee may not be aware of. The first is the establishment of the major projects management office in British Columbia, and the work that has ensued by that office. Second, the participation of NRCan, Environment Canada, and Transport Canada was a very successful initiative in terms of addressing aboriginal interests in the development of infrastructure on the north coast of British Columbia, and specifically with the development of natural gas pipelines and LNG plants.

I appreciate that the Government of Canada is a difficult ship to steer, and that's why all departments need to demonstrate an interest and an ability to participate meaningfully in reconciliation. That leads to my second point, which is this. In my experience, the most tangible and immediate contribution that governments can make to the process of reconciliation is to support and promote capacity development in indigenous communities. That observation comes from my work as a lawyer in private practice in British Columbia. Over the past decade, I've acted for first nations communities, governments, and industry in the negotiation of modern treaties, reconciliation protocols, and impact and benefit agreements.

• (1225)

While those negotiations provide tremendous opportunities for aboriginal participants, they are also overwhelmingly challenging. I think it goes without saying that change is difficult to manage, and that's the case even more so when community leaders lack experience in complex negotiations.

It's also important not to lose sight of the fact that these agreements often change the dynamics of long-standing adversarial relationships. In many remote parts of British Columbia and the Yukon, where I work, community members are simply not ready to take up the range of employment and contracting opportunities that are offered by resource development.

That leads to this point. There are areas where I believe the crown has a role to build and develop capacity. Those include, for one example, adult education, ensuring that community members have basic numeracy and literacy skills so that they're job ready. Second, the crown has a role in funding social supports to address issues such as substance abuse, addiction, child care, and housing. Somewhat remarkably, the lack of driver's licences is a significant impediment to first nations employment in many remote areas of the province. That's an area where I believe the crown has a role in developing capacity.

Then there's a more overarching concern about governance capacity for first nations community leaders. I believe this can be accomplished by the government supporting the exchange of experiences between first nations leaders in different regions. I have done a lot of work in the oil and gas industry. There's certainly a role, I think, for the leadership of Alberta first nations communities to provide British Columbia first nations leaders with examples of how they've been able to address oil and gas developments in their area.

Mentorships and other initiatives are also important in terms of governance capacity.

Comprehensive community planning and the development of training and employment strategies are, in my experience, essential tools but require government support and funding. By default, it's fallen in large part on industry to address these needs, and it's an area where I believe that governments need to step up.

I want to make the point that the emphasis that government's place on initiatives such as modern treaties and implementing the United Nations declaration don't mean much in communities that struggle with chronic unemployment, poor educational outcomes, and pervasive social issues.

My third point relates to the implementation of modern treaties, and this will be my last point, Madam Chair. Although I wasn't asked to consider treaty implementation, when I prepared my report in 2014, it quickly became apparent that Canada has fallen behind in implementing treaty commitments. To illustrate this, many of you will be aware of the implementation problems with the James Bay and Northern Quebec agreement, which led to civil litigation and ultimately a settlement in the amount of \$1.4 billion. Treaty implementation is a problem. The Supreme Court of Canada has made it clear that the honour of the crown must inform the interpretation and implementation of modern treaties.

I know that you heard from Marg Rosling, who is a Vancouver lawyer who acts for the Nisga'a government. She made submissions to you on treaty implementation, and I concur fully with the submissions you've heard on that point.

I'll conclude on the point that modern treaty making is a complex and challenging undertaking. For any of you who are interested in the history of modern treaty making, all you need to do is look at the initial policy that was released in 1973 by Jean Chrétien, who was the minister of Indian affairs at the time. It's a two-page document. Events have quickly demonstrated that the challenges for governments and for first nations communities are, in many ways, overwhelming.

Thank you, Madam Chair, and members of the committee. Those are my opening comments.

• (1230)

The Chair: Thank you.

If we continue with our series of questions, we will go to MP Cathy McLeod.

Mrs. Cathy McLeod: Madam Chair, I'll be sharing my time with Kevin Waugh.

Thank you to the witnesses who are here.

Your top recommendation is dramatically different from others we've heard, which is basically to throw out the processes, from what I gather. We've heard of many communities who believe that it's created significant benefit once they reach that point, and I understand the research indicates that. I know there are many other avenues. I'm from British Columbia also, and many in the area I represent have chosen other paths forward, royalty sharing and other ways to define their success. I don't think there would be an

acceptance that there wouldn't be some kind of process available to communities that had that aspiration of a comprehensive modern treaty.

Could I get you to respond to that?

Mr. Douglas Eyford: To be clear, I'm not advocating throwing the process out. What I'm saying is that after several decades of experience with the modern treaty process, there are only eight to 10 communities left that have a chance of getting over the finishing line. I appreciate the point that some communities have made, that spending two or three decades in the treaty process has been a way for them to build capacity, but it's come at significant expense to the Government of Canada. The amount of negotiation loans and capacity funding exceeds a billion dollars, and surely there are better ways for the government to promote capacity building in first nations communities.

You'll know Judy Wilson, who spoke to this committee, and I know is from your area. She is one of the executives of the Union of B.C. Indian Chiefs. That organization is vehemently opposed to the treaty process. They see reconciliation being accomplished through a different process. It's quite clear in British Columbia that more than half of the Indian Act bands in that province have elected not to participate in the treaty process, which I think provides the government with the challenge of finding different ways to address the reconciliation of their interests with the crown.

• (1235)

Mr. Kevin Waugh (Saskatoon—Grasswood, CPC): In your report, you talked about funding negotiations. I'm going to quote here. It's "led to high debt loads in Aboriginal communities" and has become "unsustainable", which we've heard in the last month or so. Now you've recommended that first nations not borrow money to negotiate treaties and that Canada should forgive the debt.

That was part of your report.

Mr. Douglas Eyford: I'm not sure that's a fair characterization of it.

What I said was that there has to be a better way to fund aboriginal participation in the process. You have a situation now where the BC Treaty Commission is saying that it's none of Canada's business how those monies have been spent by first nations. The debt in some communities is so overwhelming that they're afraid to pull out of the process because they have a requirement to repay the debt. Canada is going to have to do something to reconcile the fact that monies have been drawn down by many of these communities.

The recommendation I made was that Canada should identify a process to fund negotiations going forward. What I recommended was something that is similar to the tariff process in civil litigation. The government says it will provide them with up to x number of dollars to get through various stages of the process, instead of having an open chequebook saying that it will underwrite whatever costs they take. It's up to the first nations communities in those circumstances to reconcile what kinds of experts, or lawyers, or accountants, or other third party service providers they are going to retain, and how they're going to pay those persons if the cost exceeds the amount of the tariff.

The issue of loan funding is a very significant one, and it's one where I think that the way the Government of Canada has been doing things needs to be changed.

Mr. Kevin Waugh: I can't disagree.

Third parties are often at the trough on these agreements. We've seen that.

Mr. Douglas Eyford: There was a comment made by Murray Coolican, who was retained in 1985 to review the status of modern treaty negotiations. He made the point that the commitment to provide negotiation funding shouldn't lead to treaties becoming a cottage industry. In many ways, that's what's happened over the course of the past three decades.

Mr. Kevin Waugh: Thank you. I agree with you 100%. When you go across the country as we did, you see that certain areas are more educated on this than others. Some have been taken to the cleaners. They are left with \$70 million or \$80 million that they have no way of recapturing until this whole thing is written off 10 or 20 years down the road.

Mr. Douglas Eyford: This leads to the issue of why it takes decades to complete agreements.

Mr. Kevin Waugh: We've studied that. Keep going.

Mr. Douglas Eyford: One of the points I made in my report was that, although these are complex agreements, it really shouldn't take parties in the process 15, 20, 25, 30 years to complete a treaty.

Mr. Kevin Waugh: What should it take?

Mr. Douglas Eyford: It's hard to say. Some of the agreements I've negotiated with industry, where there is an imperative to get the deal done, have taken up to two or three years. I appreciate that treaties are immensely complex but, in my view, they shouldn't take any more than three to five years to complete.

The features of a treaty are pretty standard. You are not going to persuade the Government of Canada or the Government of British Columbia to do something different from what they've done in other treaty contexts. The challenge is for first nations that want a treaty to identify why they want a treaty. I think the experience of the Tsawwassen band and the Nisga'a demonstrates that there has to be an overarching interest in the community to want to address this interest through treaty. That's really where I think the emphasis should be.

• (1240)

Mr. Kevin Waugh: I probably have 30 seconds.

The Chair: You're running out of time fast.

Mr. Kevin Waugh: Okay.

Patricia, you are the first one who has brought up the AFN and their involvement.

What involvement do they have? You did mention it here. I wrote it down, the joint technical working group. What's their involvement in it?

Ms. Patricia Myran: The AFN represents all the first nations across Canada.

Mr. Kevin Waugh: We know that.

Ms. Patricia Myran: Their involvement in the—

Mr. Kevin Waugh: The joint technical working group.

Ms. Patricia Myran: They formed the joint technical working group with INAC and research organizations across Canada to come together at the table and try to rectify the specific claims process.

The Chair: I think that runs out your time.

Welcome to Big Grassy.

This meeting is very unusual in that we are not starting in a timely manner. It's not normal, but that's all right. It's just like the treaty process; it's unique.

This time, I understand there is agreement that we are going to hear from you, Glenn. We'll give you 10 minutes to present, and we are going to extend the length of the meeting by 15 minutes. Is there agreement to this?

Cathy, go ahead.

Mrs. Cathy McLeod: We certainly agreed to that, with the indication that if people had other commitments, there would be no ability to do motions or any of those sorts of issues.

The Chair: Agreed. I understand there is agreement.

Glenn Archie, welcome. We look forward to hearing from you.

Mr. Glenn Archie (Head Negotiator, Flood Claims Negotiations, Mishkosiminzibiing First Nation): Do you guys mind if I stand? I'm used to standing when I speak. I can't do it sitting down.

Good afternoon, standing committee members. My name is Glenn Archie. I am the head negotiator for Big Grassy River First Nation on the flood claim, which began in September 2009, so now we are eight or nine years into the process. You have my submission. Hopefully you had some time to read it. I hope you can ask me some questions.

I started negotiating back in 1999, when I first became a councillor for Big Grassy. I've been negotiating land claims that long, 22 years now. I've settled three land claims already, and I'm looking at a fourth one. We are doing three other claims, maybe two of which are going to the tribunal. One claim is being proposed to be pulled out of tribunal and into mediation now. That's where we are with five claims over the last 22 years that I've been involved.

When I arrived here, I heard some comments from my friend sitting here. I don't know who he is, but judging by how he speaks, he is my friend. Anyway, I just wanted to touch on that issue a bit as well.

You know the loan funding for first nations. Big Grassy is over \$1.1 million, up in eight or nine years. That has a severe effect on our borrowing power for infrastructure and housing. It really stops us from providing services to our community, because that money is tied up. The Province of Ontario specifically provides grant funding each year to help us offset negotiation costs. That's where I think things should happen a bit more on the federal side. I think there should be grants. As they say, the Government of Canada is the jury and the hangman and the funder. You have one person sitting with three hats and judging everything. We need those separated in order to be effectively heard.

We also need things such as this for us to speak openly from the heart. I'm not going to speak from this. These are the facts. I'm going to speak to you guys from the heart here.

Our people have suffered for a long time, ever since colonialism came in. We've had to change our lives, our way of life. Our way of life is being depleted in the traditional and cultural aspect, in forestry, and in resources. Everything is being affected. Our people can no longer live by fishing alone, because our water is now contaminated. In our forests, the moose have died off. I'm not a doctor or a scientist, but we believe it's a brain-wasting disease. There goes our food as well. All the animals are being affected. That's only one part of the problems that we suffer.

Economically, we suffer greatly. We try to submit proposals to get my community out of the situation we are in, the poverty level. The funding organizations here refuse us right at the top. I'll give you an example. Back in 2000, we tried to develop a fishery processing plant, buying fish from all the communities in Treaty No. 3 and utilizing the existing quotas. That's what we had planned, to effectively bring in a better way of marketing fish for our people. We were denied at the funding agency level.

• (1245)

We were told that we were going to fish out the lake. No, we're not. We are going to utilize the existing quotas that each first nation has. It isn't going to go up; it isn't going to go down.

I have a colleague in Thunder Bay who is non-native. He phoned me up about four months ago and said that he had a fishery processing plant started, which blew me out of the water. Why did he get it, and why didn't we get it? That's my big question.

With regard to economic development, our people are oppressed and suppressed. We cannot go anywhere. We're trying to make our own lives, but the Government of Canada keeps stepping on our toes and keeps us down. That's the biggest problem I have right now. Our people cannot move anywhere. We try and try.

Racism out there is so unbelievable. Ever since Trump got in, everybody has the right now to say anything to anybody, any minority, and that's the fact that we face each and every day. I can go to a store and pay for my things there, and somebody just throws my change back. It's stuff like that.

The biggest problem we had was our being denied that fishery processing plant. We did all our homework. We did all the pre-qualifications that the province wanted and the federal government wanted. We did all that, we jumped all the hoops, and then at the end of the day we were denied.

Also, my first nation was willing to develop a water bottling company. I was a chief back then, and I was willing to invest in our community. We were denied there again, so we couldn't go anywhere.

We had inroads into a \$4 million project to supply water at the B. C. winter games. That's how far ahead we were in planning.

We try hard in our community to bring our community above water, but at times we just keep getting pulled down.

Speaking of specific claims, I've been dealing with that mostly. I haven't dealt with any comprehensive claims, but mostly with specific claims.

Madam Chair, you're telling me I have three minutes. Gee, that went fast.

The funding situation is the one I want to bring up, as well as advance payments. When Canada accepts a claim for negotiation, then by definition Canada has accepted, for the purpose of the negotiation, that it breached its lawful obligation and that compensation is owing. Advance payments could be a way to provide something to the claimant at a time when it is needed, and it would be a way to mitigate the human impacts described above. It would also demonstrate good faith on the part of Canada, and it may provide momentum to the negotiations.

There is precedent in the insurance industry for advance payments, which are sometimes paid by the insurance companies once they are satisfied that they will be obligated to pay compensation. These payments are without prejudice and are recognized and protected by insurance policy terms, by contracts, and by court rules.

The advance payment procedure seems to be well suited to specific claims. At that point in time when a validation letter is sent out by Canada, a first nation claimant has already fully documented its claim, and Canada has already fully reviewed and assessed the claim and determined that it is partially or wholly liable. Why should this not be the point in time when Canada also advises the first nation that it will make an advance payment of a certain amount?

These are our elders. If we file a claim today, this elder is alive. Five years later, this elder is not here. These are the people who suffered the greatest impact of colonization, so why should these people continue to suffer? I think some answers should be given to these people. Help them try to live a comfortable life. It's our elders who are suffering.

We hear about the residential schools now, and that's been in the papers a lot and in the public eye. I was 28 years old when I became a chief, and the elders there told me that the residential schools broke our language. At that time, I did not see it because I spoke the Ojibwa language fluently, and all the people around me spoke the Ojibwa language. Now I see that break. I'm the last person of my age who can speak Ojibwa fluently. Everyone else can say a few words, but they cannot carry on a conversation as I can.

•(1250)

So we're losing our language as well, and that's a devastation that the residential schools had on our people. It was a very, very bad idea, I guess you could say, for aboriginal people. Yes, it taught us the western civilization. Yes, it taught us how to live here with today's society. Yes, we're able to live a little bit in that way, but we're not able to live in the way we would like to.

We're free people, just like any other nationality in this country. They are free to exercise their beliefs and how they want to live. How we live is culturally and traditionally. We used to live by the forest and the lakes, because God provided that food for us to live. He put us here for a reason, because there was food here and we could live here. That's why God put us here, and I strongly believe in God. We may call him the Creator, you guys call him God. He's the same person.

With that, I hope you understood and take into consideration what I had to present.

The Chair: Thank you.

Mr. Glenn Archie: I have just one more thing.

We need better communications with INAC regional offices, as well, to implement settlements. When we talk about certain models, Toronto and Ottawa support it, but when we get down to regional, they don't support it, like MPAC. That's what they use now for valuation in specific claims. We didn't agree with that. The federal government wants to use MPAC, and we didn't agree with that, and now regional offices don't want to use that either.

So where are we with the settlement? Currently we have a handshake to a settlement on a flood plain, but there's also the inter-crown dispute with Manitoba and Ontario. The federal government wants Manitoba to pay their portion before they pay out the total compensation. Our position is that the federal government should pay it 100%. Let the federal government fight with the provinces, or whoever they have to get money from. We're owed 100%, because the federal government has a fiduciary responsibility over first nations.

Darn, it's too bad I don't have 10 minutes.

The Chair: You had 12. I was being generous.

Mr. Glenn Archie: Okay.

The Chair: You come from an area that has been particularly hard hit. I have been in your traditional territory many times. Thank you for your wise words.

We're going to get back to our questioning, so you'll perhaps have an opportunity to express some more details.

We're moving to MP Stetski.

•(1255)

Mr. Wayne Stetski: Thank you.

Thank you for being with us today.

I come from southeastern British Columbia, the home of the Ktunaxa. As I mentioned to the previous group of witnesses, I had the pleasure of representing municipalities in the treaty negotiations that the Ktunaxa undertook. It has reached an agreement-in-principle

stage, but it hasn't been signed off yet. The treaty details are going back to the Ktunaxa people, in a very extensive review, to see whether they want to sign off on the AIP.

My question is for Mr. Eyford. You have British Columbia knowledge. I became a real believer in treaties, and I believe in treaties because in the end I can see it benefiting all the partners involved, including certainly the Ktunaxa. Why, then, have over half of the first nations in British Columbia decided that they're not interested in pursuing treaties? What are some of the barriers to a modern treaty from your perspective?

Mr. Douglas Eyford: To maybe put this in a historical context, when the B.C. treaty process was started in 1990, there was an expectation that all British Columbia first nations groups that weren't parties to Treaty 8 and the Douglas Treaties on Vancouver Island would become involved in the treaty process. That obviously didn't happen. One of the reasons is there are organizations, like the Union of B.C. Indian Chiefs, that represent the legitimate views of some of their members and have a more rights-based approach to dealing with the crown. They want recognition of their unextinguished aboriginal rights, including title, and they feel that the treaty process requires the extinguishment of those rights. They are not prepared to enter into that process. I think that's probably the main reason.

There are other communities that I act for in British Columbia that are on the path of economic development, and frankly, there are a wider range of financial benefits, procurement opportunities, and training and employment opportunities offered through economic development than there are through treaty. As well, those agreements that they enter into with industry don't take decades to complete. There are groups who see that as being a more pragmatic way to pursue their interests.

Mr. Wayne Stetski: They don't see them just as interim measures towards treaty eventually.

Mr. Douglas Eyford: Some of the groups in the Prince Rupert area, many of the Tsimshian groups, are involved in the treaty process, but they're not actively pursuing treaty the way they've been actively involved in the development of the port of Prince Rupert, the development of LNG terminals in that area, and natural gas pipelines.

Mr. Wayne Stetski: Mr. Archie, you started by talking about some successful negotiations that you have concluded over the last few years. Aside from being a great negotiator leading to a successful negotiation, what were some of the factors that led to those being agreed to in the end? What's key to getting a settlement or an agreement on these negotiations?

Mr. Glenn Archie: We pushed and pushed for our issues. I guess we finally won over.... The government finally bent back a little bit and decided to agree with our issues, sometimes agreeing 100% with it, or 50%—

Mr. Wayne Stetski: What were some of those key issues? I'm really interested in what the struggle was.

Mr. Glenn Archie: We had a resolution of the Assabaska land claim back in 1997. Land was a big issue, a big component to agreeing to settlement. We were able to buy two other parcels of land that were agreed upon to be put into the ATR process. That's been completed. Orders in council have been executed and signed. Basically, more land was the key issue on that.

Mr. Wayne Stetski: How did you resolve the funding issue at the end of those negotiations?

Mr. Glenn Archie: I have to remember how this one happened. It was 21 years ago. I think they forgave the loan in the end. I think that's what happened.

This is what they're proposing for the flood claim now. They're going to forgive the loans, but they're still in our books right now, and that's the big problem that we're facing. We're borrowing for housing infrastructure projects.

• (1300)

The Chair: Questioning goes to MP Bossio.

Mr. Mike Bossio (Hastings—Lennox and Addington, Lib.): Thank you all for going to great lengths to get here today. I know it was staggered, and we really appreciate your making the effort to become a part of this panel today and the testimony you've given.

I referred in our last meeting to member Saganash, who is not able to join us today. When we talked about the northern Cree and the fact that they negotiated a land claim, and then the negotiations went on, probably 20 negotiations, 20 agreements, occurred over a generation. On Tuesday, with Nunavut and ITK here, we were talking about the same sort of issue, that these claim agreements need to be living documents.

Mr. Eyford, can you comment on the need for these agreements to be living agreements as they transition into changes as a result of these agreements and unforeseen consequences that could occur?

Mr. Douglas Eyford: I agree, they are living documents. The complaint from some groups that have completed treaties is that, once the treaty is completed, Canada sees the relationship as having come to an end, when in fact it's a new relationship. It's a comprehensive, complicated relationship in many ways. Canada has ongoing obligations to each of the modern treaty communities. There are review mechanisms in those treaties for the parties, after a period of time, to review how the treaty is being implemented.

I mentioned implementation in my comments. One of the points I want to emphasize is the strong need, as more of these modern treaties are completed, for Canada to be able to better coordinate the way it is interpreting and implementing treaties. If Canada doesn't do that, there are significant liabilities that will follow.

Mr. Mike Bossio: It's vitally important for a true nation-to-nation relationship. It's a partnership. Thank you very much for that.

I wish I could delve more into that aspect of it, but there are some other issues I want to cover, in particular with Mr. Stewart.

Manitoba and, I think, B.C. also have an organization that conducts the research for provincial indigenous organizations. I assume Ontario doesn't have that relationship. Maybe you can take a step back on the historical aspect of the funding for research for land claims. Can you take us through once again the historical

perspective? What impact does that have on the ability of different indigenous communities to negotiate these land claims and the level of debt they end up incurring because you're no longer available to provide those services to them? Do they just forego that research?

Mr. Cam Stewart: I can expand on the effects, and I'll let Patricia handle the history of it.

The fact that we're going year to year means we have no traction. That means we can hire staff, but we're not sure if they're going to be around the next year, very simply, and that affects everything. That affects, again, the first nations' right to pursue claims. If we have a claim on our books, and we cannot pursue it the next year because our funding agreement is not adequate, that means their community is suffering because that claim is shelved.

Mr. Mike Bossio: That's part of the reason it ends up taking 25 years or 30 years to settle it.

Mr. Cam Stewart: It can. In our case, yes, absolutely. But there are other reasons, too. There are political reasons. There's a shift in community interests. There's, again, a lack of resources on our behalf because the funding is not there, so we can't pursue that claim enough.

• (1305)

Mr. Mike Bossio: When you were at a staff of six, would you say that was an optimum level of resource?

Mr. Cam Stewart: No.

Mr. Mike Bossio: Okay. Can you give us a sense of what would be an optimum resource to have to truly be able to carry out the work of doing the research on these claims, and what kind of savings would that have for the individual communities? We see in Mr. Archie's case that his community goes \$1.1 million into debt, and people think of just the debt. They don't look at the offside of it, where all of a sudden he can no longer do any other infrastructure projects because he can't fund them because of the debt load that's on top of that.

Mr. Cam Stewart: Exactly, and they're not benefiting from it, just debt, essentially.

We haven't had that third party influence yet in Manitoba, as far as I know, not to the level that other people have encountered. We are run by a first nation ward, and we are accountable to our first nation members. Sometimes it's almost shameful that we can't provide what we want to provide. That has to do primarily with our core funding. That trickles down, obviously, from the federal level.

Mr. Mike Bossio: What level of funding, though, would be optimum to be able to carry out the function that you do?

Ms. Patricia Myran: That's really hard to say because we have so many claims on our plate. We can't even handle the load. We have three researchers, I think, three full-time researchers. All one researcher can handle is maybe one or two claims a year. It takes anywhere from six months to two years to develop a claim. If we have 21 claims on our work plan right now, and they're at different stages—we have claims that are still out there that we can't even address.

Mr. Mike Bossio: Right now, it's year to year. What would a more optimum time frame be, once again, to establish funding levels? You may have 21 today, but, hopefully, if we do find ways to speed up the process, that's going to vary over time, right?

Mr. Cam Stewart: Anything past a year-to-year agreement would be fantastic. Honestly, it would be.

Mr. Mike Bossio: Would five years be—

Mr. Cam Stewart: Five years, yes, would be a good start, absolutely. We could gain traction. We could build our infrastructure, so to speak, our research infrastructure.

Mr. Mike Bossio: That would enable you to speed up the process at your end as well.

Mr. Cam Stewart: Absolutely, yes, 100% in Manitoba, for sure.

We're a little weary of this third party influence because I think the third party influence would have a negative affect overall. I think what we're doing at its core is probably the best way to do it because there are no incurred costs for first nations, and communities are suffering as it is.

The Chair: MP Viersen.

Mr. Arnold Viersen: Thank you, Madam Chair, and thank you to our guests for being here today.

Mr. Archie, I'm fascinated. You said you're working on five claims and you've settled three, and you've used the tribunal. Could you talk a bit about your experience with the tribunal? Was it a positive experience? Was the timeline what you were anticipating?

Mr. Glenn Archie: Right now, our highway claim is in the tribunal, and that experience is not very good. Every little document of evidence that we provide, the Government of Canada wants to spend \$10 million turning over that piece of evidence that in our view is fact, it's real, it lives. That's the problem we face: the Government of Canada challenging every little piece of evidence that we submit. That's the biggest problem with the tribunal.

The other biggest problem is that the Government of Canada can appeal any decision that the tribunal makes, which they're not supposed to do unless there was a legal mistake somewhere in how they arrived at the decision. There seems to be one found each time.

There was an appeal done in B.C., and I should know more about that. I'm only hearing about it through our lawyers. The tribunal can improve as well the way it is.

Funding has to be provided as well, and hopefully not loan funding, as we spoke about that. That doesn't sit very well with the first nations. That doesn't serve us very well. Grant funding should be provided in that area for us to further our case.

• (1310)

Mr. Arnold Viersen: Did you find the timeline adequate?

Mr. Glenn Archie: Sometimes you get three weeks' notice to have a document in place, ordered by the judge. Sometimes we have only three weeks and we have to scramble to get that information together at certain times, especially when we're talking about elders' evidence. It takes time to get all the elders together and it takes time to talk to them. It takes time to get proper questions in place, the right questions, and it has to be at the right place.

Mr. Arnold Viersen: You said you've settled two claims you've had. When we talk about how it takes a long time to gather the evidence and things such as that, with the two that you did settle, do you feel that the pace at which the decision was arrived at was adequate? I know typically on both sides they're trying to gather documents, trying to gather testimony.

We heard testimony that there's nothing that spurs that on like a date, a particular date. There's frustration on both sides sometimes in trying to gather the stuff, and the date often propels that a bit. Would you say that was your experience?

Mr. Glenn Archie: In 1997, when the Assabaska land claim was settled, that was done through negotiation.

I forgot the last part of your question, as I was thinking while you were talking.

Mr. Arnold Viersen: Was the pace good?

Mr. Glenn Archie: No, the pace was not good. It took over 25 years to finally settle that claim, because both levels of government would not come to the table. It took a blockade of a highway for both governments to come to the table, especially on the highway claim. I was a councillor back then and I was a negotiator. I was instructed by the membership to put a blockade because the government wouldn't listen to us, so maybe they'd listen to us if we did this, an extreme situation.

Mr. Arnold Viersen: I have one more question, which is for Mr. Stewart, in my last 30 seconds.

What's the organizational structure of the TARR Centre of Manitoba? Is it a not-for-profit organization?

Mr. Cam Stewart: It's not for profit.

Mr. Arnold Viersen: Does it mostly contract out its work?

Mr. Cam Stewart: No, it's largely internal, because that's all we can afford.

Mr. Arnold Viersen: Okay. Thank you.

The Chair: That concludes our available time.

Thank you very much for travelling, for coming out, for being patient and working with us in the sometimes difficult structure of a parliamentary committee.

We will take your words and your evidence. You can submit evidence. Be sure your briefs are submitted. Our report will go to the Parliament of Canada, and then we will likely ask the department to respond in terms of our recommendations.

Please keep in touch. Watch the website for hopefully some positive developments on this front.

Meegwetch. Thank you very much.

The meeting is adjourned.

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