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• (1105)

[English]

The Chair (Terry Sheehan (Sault Ste. Marie—Algoma, Lib.)): I call this meeting to order.

Welcome to meeting number 22 of the House of Commons Standing Committee on Indigenous and Northern Affairs.

We recognize that we meet on the unceded territory of the Algonquin Anishinabe people.

Pursuant to the order of the House, the committee is commencing its study of Bill C-10, an act respecting the commissioner for modern treaty implementation.

I would like to welcome our witnesses. From the Nisga'a Lisims Government, we have Eva Clayton, president, and Brianne Paulin, legal counsel. From Sturgeon Lake Cree Nation, we have Chief Sheldon Sunshine. Online, from the Vuntut Gwitchin First Nation, we have Chief Pauline Frost.

We also have MP Billy Morin online this morning.

For those folks online, if you want my attention, use the “raise hand” function, please, and the clerk and I will make sure that we see you.

I want to remind people about our good interpreters and how to make their lives better and healthier. When you're not using your earpiece, there's a nice little place to put it. Don't grab your mic when you speak, because there will be feedback, and make sure your mic's light is off when you're not speaking. Thank you very much.

Without further ado, we're going to proceed to five-minute introductory comments from each one of our presenters.

Thank you so much for joining us here today.

Please take it away, President Eva Clayton.

Eva Clayton (President, Nisga'a Lisims Government): Thank you.

Good morning, honourable and respected members. I am pleased to be on the unceded territories of the Anishinabe and Algonquin to speak in full support of Bill C-10.

I am here both as president of the Nisga'a Nation as well as one of the co-chairs for the Land Claims Agreements Coalition. The coalition was formed in 2003 and currently includes 23 indigenous modern treaties.

The coalition came together because we were faced with common problems related to the implementation of our agreements. All of us have spent decades negotiating our treaties with the Crown and have made considerable compromises to conclude our agreements. In our case, it took many years, 27 years of negotiations, to conclude our agreement. The Nisga'a Nation gave up ownership of more than 90% of our traditional territory in exchange for ownership of 10% of the land and for the certainty that our treaty brings.

However, soon after we entered into our treaty, we realized that the federal government was not equipped to implement our agreements in a timely and effective manner. In other words, our treaties were not being honoured. This is why the coalition, since its formation in 2003, has spent more than two decades advocating for an independent oversight body to hold the federal government to account for the implementation of its modern treaty obligations.

In other words, Bill C-10 is not just a government bill. We asked for it, and it was co-drafted. We want this bill, and we do not think any amendments are required.

Importantly, after all of these years, the commissioner that Bill C-10 would establish is still needed. Out of the 25 years of our treaty, the Nisga'a Nation has assessed that we have spent two-thirds of that time in dispute resolution or litigation with the provincial or federal crowns.

With no oversight body to turn to that would address how the federal government is implementing treaties, we have had no choice but to commence dispute resolution or litigation. For example, we have been in dispute for years now with the Department of Fisheries and Oceans because they continue to enter into agreements that have the potential to seriously impact our constitutionally protected fishing rights as set out in our treaty.

Our pleas have continually been ignored despite support from other federal departments, and we had no choice but to request that our issues be arbitrated. Having an oversight body to turn to could have avoided all of this and saved the cost to both treaty partners.

Its benefit was also recognized in 2008 when the Standing Senate Committee on Aboriginal Peoples, chaired by a former Conservative cabinet member, recommended that such an entity be established through legislation in collaboration with the coalition.

The Liberal government recognized the need for and the benefit of this, and worked with us to co-develop Bill C-10 in 2023.

We appreciate that governments of all stripes have made efforts to fix the structural federal problems that led to poor implementation. However, these tools are aimed at improving internal coordination. They do not provide Parliament with any independent assessment of treaty implementation. They do not hold the highest level of government to account.

This is why the establishment of an independent commissioner outside of the federal public service and reporting directly to Parliament is so important. The complexity and unique nature of modern treaties also require continuous, comprehensive and specialized attention. There is no existing mechanism that does this.

• (1110)

While the Auditor General has provided important reviews of various indigenous issues, it has a broad mandate and cannot focus solely on treaty implementation. To date, that office has only conducted specific reviews on modern treaty implementation on three occasions.

Finally, I want to emphasize that, when modern treaties are fully implemented, they benefit all Canadians. For example, we are co-developing the Ksi Lisims liquefied natural gas project on land that our nation owns under our treaty. This project is expected to bring \$30 billion in investment, create thousands of skilled careers and strengthen Canada's leadership in low-emission LNG.

The Chair: President Clayton, could I get you to wrap up? We'll move to questions, and you'll get more out when we do that.

Eva Clayton: Okay. Thank you.

We owe much of this to the economic success that certainty brings. Our treaty brings certainty.

In closing, I want to express my hope that all parties will support Bill C-10. All parliamentarians have a role to play in holding government accountable for the promises made in modern treaties.

Thank you.

The Chair: Thank you, President Clayton.

Now we'll go to Chief Sunshine, please, for five minutes.

Chief Sheldon Sunshine (Sturgeon Lake Cree Nation): Thank you, Chairman.

[Witness spoke in Cree and provided the following translation:]

Hello, everyone.

I am thankful to the Creator for today.

[English]

My name is Sheldon Sunshine. I am the chief of Sturgeon Lake Cree Nation, Treaty No. 8 territory, and what is now known as northwestern Alberta. Today I speak for myself and my nation.

My *nehiyaw*, Cree, ancestors entered into Treaty No. 8 in 1899. It is not a modern treaty. It's one of the ones referred to collectively as the numbered treaties.

Amongst other things, this treaty is viewed as our consent for non-indigenous settlement in what is now Alberta. This was recently referred to in an Alberta court, on December 5, 2025, when the

Honourable Justice Colin C.J. Feasby, in his decision, said, "First Nations' consent to non-Indigenous settlement in what is now Alberta, memorialized in the Numbered Treaties, led to the creation of Alberta and continues to confer legitimacy on Alberta."

In 1930, the Crown believed it had the authority to transfer natural resources to the Province of Alberta through the Natural Resources Transfer Acts. First nations were not party to this and did not consent to that. First nations were not even consulted in any of that. In fact, it cannot be overlooked that, in the 1930s, first nations people were prohibited by law to hire lawyers or to leave the reserve lands without permission under the pass system.

Our people have suffered cumulative impacts on our way of life due to resource development in our territory without receiving any share of the revenue or adequate consultation, as legally required.

Today we are facing an existential crisis in our treaty relationship in regard to Alberta separatism. What is Canada, the Crown, doing to protect the treaties and our treaty relationship? So far, nothing. This brings me to Bill C-10. On this, there are three issues I'd like to emphasize.

First, Bill C-10 is for the modern treaties only. We do not object to this, so long as the first nations with modern treaties agree with the legislation. I'm here to make sure this particular piece of legislation will not be used as a blueprint to be imposed on the numbered treaties. The numbered treaties are forever.

Sturgeon Lake Cree Nation cautions this committee against extending any treaty implementation mechanism to historic treaties if it is confined to the Government of Canada laws, policies or unilateral interpretations. Treaty No. 8 is not derived from federal statute. It is a nation-to-nation agreement whose meaning must be grounded in what our ancestors understood and agreed to at the time of its signing, informed by *nehiyaw* legal orders and oral history. Any commissioner or oversight body that prioritizes current policy frameworks over treaty law and *nehiyaw* understandings risks narrowing, freezing or redefining our treaty rights rather than implementing them. Canada's failure with historic treaties is not administrative—it is constitutional—and it cannot be resolved by a process that asks first nations to accept Canada's interpretation of promises that were never Canada's alone to define.

Second, Canada has unfinished business with the numbered treaties. We remind the federal government of the lack of effort to honourably implement the numbered treaties. Canada's one-sided specific claims process is grossly inappropriate for treaty implementation. Outside of that, litigation is the only option to get Canada moving towards treaty implementation. This needs to change.

Third, the creation and development of any treaty implementation process for the numbered treaties must be done on a nation-to-nation basis. According to federal law, treaty implementation is a constitutional obligation. Despite this, there is nothing in place to ensure implementation and observance of the numbered treaties. Instead, we have seen efforts to erase or modernize numbered treaties through action plans, specific claims, so-called inherent rights policies, self-government agreements, federal legislation management plans or, worse, pan-indigenous meetings or initiatives.

Canada seems to be using modernization as a means to an end. We do not consent. We are not looking for a new agreement, nor do we need one. Sturgeon Lake Cree Nation wants Treaty No. 8 to be fulfilled and implemented the way my ancestors believed it would be, for as long as the sun shines, the grass grows and the waters flow.

Before I close, I want to direct the committee members to the 1999 UN report by special rapporteur Miguel Alfonso Martínez. His final report was titled "Study on treaties, agreements and other constructive arrangements between States and indigenous populations". I will share these small excerpts from that report.

• (1115)

Paragraph 299 says that "the main lesson to be drawn from history concerns the problems of treaty enforcement and implementation." Paragraph 300 says, "It is only too obvious that the problem in this area does not lie in the lack of provisions but...in the failure of the State party to comply with those provisions."

In closing, our message to the federal government is don't forget about the numbered treaties. Implementation of our treaties is of the utmost importance. Thank you for inviting me here today.

Aye hiy.

The Chair: Thank you very much, Chief Sunshine.

Online, we have Chief Pauline Frost.

You will have five minutes for a presentation.

Chief Pauline Frost (Vuntut Gwitchin First Nation): *Vahn gwiinzii.*

Thank you, Mr. Chair and honourable members of the standing committee.

I want to give the context of where I'm located. I'm located in north Yukon, in the small indigenous community of Old Crow, where 250 people reside. We're a strong, resilient tribe. We live on the land. We still are actively connected to our roots and our traditions.

I'm here today in strong support of Bill C-10. I would like to emphasize the importance of strong and effective accountability as en-

visioned under Bill C-10 to ensure our modern treaties are faithfully and fully implemented.

For more than 30 years, Canada has been actively involved with our self-government agreements in Yukon. We signed an agreement 30 years ago. A modern treaty is constitutionally protected under section 35 of the Constitution. Our agreements are not policy choices that can be shifted within government. They are binding commitments between the Crown and our nations.

Our modern treaties were intended over 35 years ago to replace uncertainty and conflict with clarity and partnership. They established defined rights, shared management structures, law-making authority and fiscal management. These landmark agreements lay out how we govern together, but even with these agreements in place significant challenges remain in achieving their full and effective implementation. Unfortunately, we see obligations and objectives unmet, despite clear commitments in our agreements.

Over time, implementation can stall, responsibilities become blurred and priorities shift. However, we continue to push for the full implementation, respect and honouring of our agreements. We do not want to revisit the past, but we want to ensure that we look towards the future together with Canada. Our agreements were clearly drafted over many years. They reflect decades of negotiations and compromise.

We are not seeking anything beyond good-faith implementation of what was already agreed to in the 28 chapters of our self-government agreement. This is why accountability mechanisms are so important. [*Technical difficulty—Editor*] kept and our agreements are upheld as they were originally envisioned by our ancestors. With accountability, we have predictability and [*Technical difficulty—Editor*]. It creates transparency and clarity.

Bill C-10 strengthens this accountability framework. [*Technical difficulty—Editor*] implementation challenges early. It safeguards mutually beneficial opportunities and reduces the risk of costly disputes like the legal disputes that were mentioned by my colleagues. [*Technical difficulty—Editor*] function as envisioned rather than being symbolic documents. For our nation, accountability ensures that hard-fought [*Technical difficulty—Editor*] through inaction or political or administrative shifts.

Strong accountability mechanisms actually protect the Crown as well. They create clarity around roles and timelines. They reduce uncertainty in our traditional territories. They reinforce the principle that treaty relationships are enduring nation-to-nation relationships. It is not only good governance. It is the honour of the Crown in action.

[*Technical difficulty—Editor*] of this legislation. The provisions reflected were not drafted unilaterally. They are the result of sustained dialogue [*Technical difficulty—Editor*] modern treaty partners. Our nation, along with others, sat at the table. We brought forward our experiences and worked through technical details. We arrived at language that carefully reflects the balance. Co-development must mean something. If indigenous governments engage in good faith, invest time and resources and reach consensus with Canada, that outcome should be respected by Parliament.

It reflects our shared understanding of how to improve accountability while respecting the original spirit and intent of our modern treaties. They establish indigenous governments as law-making authorities. They provide predictability for economic and infrastructure development while advancing reconciliation. In the north, they reinforce Canadian Arctic sovereignty. They reinforce the sovereignty priorities of Canada. When indigenous governments are recognized and empowered as partners, Canada's presence in the Arctic is strengthened.

• (1120)

I want to close by recalling a foundational principle of our self-government agreement: that our government has the authority to govern our own affairs in order to preserve our culture, manage our land and provide for our citizens. That principle reflects a vision of partnership, one in which we, as a government, have our rights, [*Technical difficulty—Editor*] jurisdictions, accountable to our citizens and working alongside Canada and Yukon.

Bill C-10 is a practical step towards ensuring [*Technical difficulty—Editor*]. On behalf of the Vuntut Gwitchin, I urge this committee to support Bill C-10.

The Chair: Thank you very much, Chief Frost.

Our technical people are saying that there is an issue with the Wi-Fi connection, so you were a little choppy. I think we got the gist, but can you send those remarks to us as well? I think the clerk may have them, so we can distribute them. I just note that there seemed to be a Wi-Fi connection issue. We're going to try to work through that to make sure that we get your answers to the questions that are coming up in this round.

We're going to move to questions now, and you'll be able to bring things out as we speak.

Thank you.

• (1125)

Chief Pauline Frost: Thank you.

We'll get that to you.

[*Translation*]

The Chair: Mrs. Gill, you have the floor.

Marilène Gill (Côte-Nord—Kawawachikamach—Nitassinan, BQ): Thank you, Mr. Chair.

I just wanted to say that the interpreters have notified me on a number of occasions that the choppy connection you've observed is making their job very difficult. I know you've noticed it, and it's difficult for them as well.

The same thing may well happen while the witnesses are answering, so could we also ask the witnesses to send us their answers in writing? Given the problems during the introductory remarks, there's a chance we may not get all the answers either. I would like to have them.

Thank you, Mr. Chair.

The Chair: Thank you.

[*English*]

That is an excellent idea. We will have all our witnesses send remarks to us, please. Some of you have, and some may not have, but it would be excellent to have. It will give us an opportunity to delve into them even further.

Now we're going to go to a round of questions for six minutes. Each party will have an opportunity to ask questions. We'll start with the Conservatives.

I believe we have MP Morin online.

Please take it away.

Billy Morin (Edmonton Northwest, CPC): Thank you, Chair.

Thank you to our guests, chiefs and President Clayton, for coming today.

I'm going to start with Chief Sunshine.

Chief, thank you for your testimony today and for coming to Ottawa. Note that I am at the AOTC, so maybe I'll see you here in the next couple of days if you hurry home. It would be good to see you in person as well.

Chief, you mentioned a few principles in terms of unfulfilled modern treaties when it comes to treaties 1 to 11. Would it be your position that treaties are documents foundational to the country of Canada?

Chief Sheldon Sunshine: Thank you, Billy, and thank you for the question.

It's good to see you, and yes, I'll be there tomorrow morning. I'm flying out tonight.

I think we all know the history of Canada, how it began and how the first nations of Canada welcomed settlement into our territories. It's always been through peace and friendship. First nation people have been very good treaty partners, and that hasn't been similarly reciprocated on the part of the government. When it comes to the foundational agreements, that is the reason we have Canada. That is the reason we have the provinces. It was because of those peace and friendship treaties that were allowed to happen.

When I sit here and think about different treaties, modern and historic, they've been dealing with some of these things for 26 years. We're dealing with things that happened 125 to 150 years ago. They call them historic treaties but, for us, they're from yesterday, passed on by stories and oral history from our elders and our ancestors. We deal with the impacts of what have been the failures of the Canadian government to uphold those responsibilities as we understand them.

We have to stop looking at the written text and thinking that was what was understood at the time, because it's false and it's wrong, and we deal with those impacts. I was talking to my sister from the west coast about some of the strides that they're making in their communities because of that treaty and some of the responsibilities upheld in the document, but they're still finding challenges and still wanting a commissioner to hold the government to its responsibilities.

We have a long way to go. I think that today we have the greatest opportunity to correct those, not only because of long-standing issues with the treaty responsibilities but with all the outside forces that are affecting us: the separatism in Alberta and the things happening south of us. Today is the greatest opportunity for us to change that for the better.

I hope I answered your question.

Billy Morin: Thanks, Chief. You did.

I have a quick follow-up for you, if you don't mind. Treaties pre-date provinces in this country, notably in treaties 1 to 11. Treaty 8 covers Saskatchewan, Alberta, B.C. and I think NWT too. I stand to be corrected on that, but I'm pretty sure it covers NWT. Yes, it covers NWT.

Are you aware that there's a treaty commissioner office in Saskatchewan?

• (1130)

Chief Sheldon Sunshine: Yes, I am.

Billy Morin: Have you ever had any interaction with that office?

Chief Sheldon Sunshine: No, I haven't. From what I understand, they're more of an educational piece. I'm not sure what authority they have in persuading government to uphold their treaties. I know that Saskatchewan is having the same issues, all across treaties 1 to 11, with regard to failures to uphold the treaties, from our understanding.

Billy Morin: Treaties predate provinces. A commissioner has been in place for quite some time in Saskatchewan, and it sounds like you haven't had much interaction with them. Does that give you a lot of faith in terms of creating a new commissioner's office for the communities who represent modern treaties, or do you think this one will probably still have a long way to go before being effective?

Chief Sheldon Sunshine: We don't oppose a modern treaty commissioner. We welcome it, if it works for the modern treaties. The thing we want Canada to understand is that you're going to create a two-tiered system when it comes to treaty. We know that the agreements they have with modern treaties are very comprehensive. When you look at Treaty No. 8, I think it's three pages. I know the vagueness of some of those commitments contained in the text, and the reliance of the Government of Canada, regardless of who's in power, of sticking to that treaty text. However, a treaty text is not the understanding of the true intent and inherent meaning of treaty, which was to share the land.

We talk about how my friends on the west coast are flourishing in their nations, yet when we look all across Treaty 8 territory, there is struggle. There is a crisis in every aspect of our nations. That's a

direct result of the lack of treaty commitment on behalf of the government. It's pretty simple: We have to get back to what that means, what that means for us and what the intent was at the time of signing a treaty. If there's ever any commissioner for treaties 1 to 11, then it has to come from that understanding. It can't follow the policy framework of modern legislation and policy today. We have to go back to that understanding of what was committed to at that time.

We want to be fair to the Government of Canada. One thing that really stands out in my mind is that we understand the need for change in the economy. We understand the need for better systems. We know that first-hand. We want to be part of it and to be part of the solutions, yet when things happen like Bill C-5 being passed in six weeks, first nations were an afterthought. That has to change.

The Chair: Thank you very much.

We will go to our next questioner.

Jaime, you have six minutes, please.

Jaime Battiste (Cape Breton—Canso—Antigonish, Lib.): I'd like to thank the witnesses for their discussions this morning around treaties.

I heard Chief Frost and Eva Clayton talking about looking at the modern-day treaties of more than 25 years and 30 years. I listened to Chief Sunshine talk about a treaty of more than at least 150 years since its signing. Then, as a Mi'kmaq person celebrating the 300th year of our treaties with peace and friendship, there's a wide range in terms of how treaties have unfolded in this Canada. One thing we can all agree on is that they're foundational documents that have led to the creation of this country.

I think another thing we can all agree on is that we need to find better ways to implement them, whether it's 300 years, whether it's 180 years or whether it's 20 or 30 years. I have to commend the modern treaty nations who have said, you know, these things we signed between 25 or 30 years ago aren't working out as well as we'd like. Instead of going to litigation, as many of us as nations all across Canada have done, which is costly and timely, you're taking a new approach. You're saying, you know, if we have a modern-day treaty commissioner, maybe we can figure out what the differences are and what things we're not happy with. We can create some kind of oversight, accountability and action from government; I applaud them for that.

Eva, I'll go to you for my first question. If we can get this legislation across, if we can get a modern treaty commissioner in place, what's an example of things you think you would be able to bring—things that we can't do currently—that would help be resolved with a modern-day treaty commissioner in place?

• (1135)

Eva Clayton: A good example is the issues we continue to face with the Department of Fisheries and Oceans. We should have been able to go to the commissioner's office to say that we need this help. We need to make sure that DFO understands the treaty and understands that it's a constitutionally protected treaty and that we have a responsibility to bring these issues to the commissioner. That way we're not faced with a dispute resolution that goes over 10 years. We're now faced with arbitration. If we had the commissioner, that would have been great.

That's just one example.

Jaime Battiste: You'd see this as a way to skip all of the court proceedings, the filings, all of the years of trying to fact find and all of the stalls in the justice system. You'd be able to go to someone. They would be able to potentially go to the ministers, provincial and federal, and say, "Hey, this is part of the treaty that's been there for the last 30 years. We believe you're not upholding it. There's a problem here, and we need action on that."

Is that your understanding?

Eva Clayton: That's right, because it's a huge problem. There are no consultations with the Nisga'a, for example, on what they're doing in terms of getting into agreements with other nations that really impact Nisga'a treaty rights.

Jaime Battiste: I've heard this framed in the House by Conservatives as needless bureaucracy, that you guys have mechanisms available to get these treaties upheld.

Do you think that is a valid argument?

Eva Clayton: No, we don't see it as an added bureaucracy. We see it as an independent body.

I would like to have my colleague who is involved with the technical work related to the administrative end of things comment.

Go ahead, Brianne.

Brianne Paulin (Legal Counsel, Nisga'a Lisims Government): We don't see this as an added layer of bureaucracy. As President Clayton said, it's an independent agent of Parliament.

There are currently internal processes that the federal government has established, like DMOC, the deputy ministers' oversight committee, but those are really towards the internal coordination of the federal government. One of the key challenges is that there's no internal coordination. You have one interpretation from one department and then on the same provision, there's a completely different interpretation from another department. There's no way for Parliament to obtain an independent assessment of how modern treaties are being implemented.

The agent of Parliament is separate. We don't see it as an added layer of bureaucracy as it's reporting directly to Parliament.

Jaime Battiste: Do I have time to ask Chief Frost for an example of how she believes this modern-day treaty commissioner could be utilized by her nation?

The Chair: You just did.

You have one minute to answer, Chief Frost.

Chief Pauline Frost: There are self-government agreements in Yukon. We have 11 self-governing modern treaty groups in Yukon.

It's critical and essential that we have [*Technical difficulty—Editor*] streams that we go to. We want to be able to go to one window and one door with Canada.

The Chair: Chief, you're still breaking up a bit. Perhaps, Chief, you could respond in writing as well.

Thank you.

Chief Pauline Frost: Thank you.

[*Translation*]

The Chair: Mrs. Gill, you have the floor for six minutes.

Marilène Gill: Thank you, Mr. Chair.

I would have liked to know if the technical pretexts were done or if they were done afterwards, because it didn't work the first time they were given the floor. It's important for the interpreters and for those who speak French.

Thank you all for your testimony.

As Ms. Clayton said at the outset, I believe there are no amendments to be made to the bill. Everyone agrees. This bill was co-drafted, so there was a....

Is it possible that you couldn't.... I thought the tests had been done.

• (1140)

[*English*]

Chief Sheldon Sunshine: The earpiece with translation is not working.

The Chair: We're going to suspend and we're not counting this as time for Madame Gill.

We're just pausing while we do this and then we'll start from the top.

Go ahead from the beginning, please.

[*Translation*]

Marilène Gill: Thank you, Mr. Chair.

Languages and identity are important for everyone.

Thank you for your testimony.

Ms. Clayton said the bill was co-drafted, so everyone, meaning the first nations concerned and the government, agrees. The Bloc Québécois is in favour of the bill. Ms. Clayton also said that, from her point of view, no amendments to the bill are required. I imagine the other two witnesses would agree. I could give them a chance to speak to see if they have the same point of view on this.

Since everyone agrees, we don't need to ask as many questions. However, I have a general question that may illuminate why this bill is a good thing. It has to do with the United Nations Declaration on the Rights of Indigenous Peoples.

How can Bill C-10 ensure.... We know the government often needs to be backed into a corner before it will act or react, so how can this bill help meet the government's obligations to implement the United Nations Declaration on the Rights of Indigenous Peoples?

I'll start with Chief Sheldon Sunshine, then Eva Clayton and the other lady online, whose name I've forgotten. I apologize for that.

[*English*]

The Chair: President, go ahead.

Eva Clayton: Thank you. To answer the question in relation to UNDRIP, the advocacy for the CMTI began long before UNDRIP was signed. It is not directly tied to Canada's UNDRIP responsibilities.

Canada's signing and implementing this international instrument was a positive step forward for the recognition of the rights of all indigenous people. UNDRIP provides the floor, not the ceiling, when it comes to the state's recognition of indigenous rights. UNDRIP builds upon section 35 of the Constitution, which already protects the modern treaty.

That's basically it, in a nutshell.

[*Translation*]

Marilène Gill: I don't know if my question was understood. I asked about how it introduces an additional step, how it fits.... From what I understand, it's not really an improvement. Do I have that right?

[*English*]

Eva Clayton: Yes.

Brianne Paulin: Thank you very much for the question.

Mr. Chair, if I may answer, there's an article in UNDRIP that provides for the recognition and upholding of treaties. The commissioner is, again, tied to section 35 and upholding modern treaties. It does, in fact, tend to uphold UNDRIP, because article 37 provides for the full implementation of treaties as well.

[*Translation*]

Marilène Gill: Thank you.

[*English*]

The Chair: Chief Sunshine, do you want to answer?

Chief Sheldon Sunshine: What they said....

Voices: Oh, oh!

The Chair: Perfect.

[*Translation*]

Marilène Gill: Thank you, Mr. Chair. Ms. Frost, do you have—

[*English*]

Chief Pauline Frost: Thank you.

Yes, I'd love to respond.

I would like to highlight that UNDRIP sets a minimum standard that Canada should meet for indigenous rights. However, modern treaties are protected under section 35 of the Constitution from

1982. As such, and unlike UNDRIP, modern treaties have the force and effect of law in Canada. The role of the modern treaty commission would be to ensure legal obligations contained in modern treaties are fully and effectively implemented in a timely manner and with the spirit and intent in which the parties entered into them.

As President Clayton advised, it's the floor, not the ceiling. Modern treaties give us certainty, and that's what we look for.

• (1145)

[*Translation*]

Marilène Gill: To conclude, I don't think my question was understood either, but, okay, I'll report what happened. Actually, I just wanted to.... I guess I was trying to say that it fits into.... I wanted to say that, for first nations, having an independent commissioner who will oversee the implementation of treaties is a good thing.

That will be all, Mr. Chair. Thank you.

The Chair: Thank you very much.

[*English*]

MP Schmale, go ahead for five minutes.

Jamie Schmale (Haliburton—Kawartha Lakes, CPC): Thank you very much to the witnesses. It's good to see everyone again.

As we spoke about before in person, the concern we have with this piece of legislation is the consequences piece. We agree that governments of all stripes, over hundreds of years, have failed to live up to the word of treaties, whether historic, modern or otherwise. We agree that there needs to be fundamental change within government departments. We agree that an extra oversight body adds some additional, well, oversight.

At the same time, we talk about officers of Parliament. The Auditor General is one. I can't tell you how many reports we've had that outline the many issues with the government and indigenous peoples. I can't tell you how many studies we've had in this committee in my time. I've been on this committee for six or seven years now. We've done multiple studies on indigenous policing. We've done multiple studies on food prices in the north and how they're out of control. We've done multiple studies on housing on reserve. We get reports back showing that, yes, funding has increased, but the improvements made do not match up.

We have all this information in front of us and nothing seems to change. There seem to be no consequences. Now we're creating a new officer of Parliament who is going to come up with a new report, and there are many things to criticize. Absolutely.

Where is the enforcement piece? That's our concern. Will there be any changes? We want to see the government live up to the word of its treaties. Will we get there with this?

That's for Chief Sunshine, Chief Clayton or their legal friend.

Jaime Battiste: You just depressed all of us with that. We're going nowhere. We have nothing.

Voices: Oh, oh!

The Chair: Go ahead, Chief Sunshine.

Chief Sheldon Sunshine: Thank you.

That would be best answered by the modern treaty folks, since this is a commissioner for them.

Jamie Schmale: Eva is ready to go. It looked like she was taking notes.

Eva Clayton: Thank you for the question, MP Schmale.

I want to highlight what you talked about—the multiple studies.

This isn't about studies; it's about accountability. It's about holding all of us accountable to the agreements we made. It has nothing to do with studies and everything to do with the implementation of the provisions of the treaties.

Jamie Schmale: If I could quickly point this out, my linking to the studies was about the fact that more information continues to be put on the table and nothing seems to change. Whether it's in studies or reports, there's a ton of information. That's what I was trying to get to.

Eva Clayton: Thank you for the clarification. Still, it's all about accountability.

I will do one piece, and then I'll turn it over to my colleague in terms of enforcement.

The Auditor General has a specific mandate regarding the Government of Canada. There's no specific mandate for the Auditor General regarding modern treaties. I think that will be my answer to your question.

• (1150)

Jamie Schmale: Okay.

I have a follow-up to that one.

The Chair: Go ahead, Ms. Paulin.

Brianne Paulin: Thank you very much, Mr. Chair.

We need to go back to the purpose of the commission itself. It is to provide oversight and credible, independent information to Parliament. The enforcement blurs that line. If an agent is now responsible for enforcing their own recommendations, it blurs the independence of that agent. Ultimately, it's up to Parliament to make sure those recommendations are implemented.

What is interesting about this commissioner is that, on the other side, you have the modern treaty groups, which will be reviewing every report that comes out and can even ask the commissioner to undertake investigations. Those investigations will come directly to Parliament and this committee, so the committee will be able to review them and ensure that recommendations are implemented.

I'm speaking for President Clayton, and I hope I don't get kicked under the table. The modern treaties.... Of course, we'll be taking those reports and implementing them as well, because that's the

point of the commission. It's independent from both Parliament and modern treaties. We'll be implementing the recommendations.

The Chair: Thank you. That's all the time we have.

Jamie Schmale: I don't think your glasses are working, Chair. There's an extra couple of minutes. I'm just going to....

The Chair: No, that's the time we had.

You can follow up on anything in writing as well, if you want.

Next, we have Philip for five minutes

Philip Earle (Labrador, Lib.): Thank you.

If I have the will of the committee, I'm going to convey some of my time to Lori, the representative from the NDP.

The Chair: Is it the will of the committee? I have a thumbs-up. We're okay over there.

Philip Earle: Thank you.

My question is going to be directed to President Clayton. It was nice to chat with you before the committee.

To all the witnesses, thank you for being here today.

I heard you, in your earlier testimony, talk about how important Bill C-10 is and that you support it. I'm a bit preoccupied with the consultations that were done between the government and the modern treaty holders.

Can you tell the committee about your journey in this regard, your own experience as it relates to the consultation and why it's so important to implement Bill C-10 now?

Eva Clayton: It's so very important for Bill C-10 to go through, simply because we've been living....

I set out the example that under the Nisga'a treaty, there have been no consultations from Canada and the various departments when it comes to speaking with other indigenous groups. I want to give one key example. In the negotiation of the new treaties, Canada, without consulting with the Nisga'a, added a piece of our territory to be negotiated, and that's just not right. I think that's important when we look at how those consultations will work, and the commissioner will come up with a consultation policy when it comes to that.

The other area is mining. There is a piece on mining, whether it's in B.C. or Canada, so mining and exploration companies have to consult all indigenous groups within the nation. There's no consideration of the treaty-protected lands when they issue those consultations. That happens as well.

That's it in a nutshell.

The Chair: Thank you.

Lori, you have two minutes and 25 seconds.

Lori Idlout (Nunavut, NDP): *Qujannamiik*. Thank you.

Thank you so much to the witnesses.

Just to create clarity on this important study, which the NDP supports, I think what we need to understand is the difference between policies and what governments study as policies, and what indigenous peoples and the modern treaties are talking about, which are rights. I think that's where the differences are.

I wonder if you agree with me that Bill C-10 is about making sure that rights are being upheld through the commissioner's role. Are there other bodies that help to make sure that rights are being upheld through non-partisan ways or in an independent way? Can you share your responses to that?

• (1155)

Eva Clayton: Thank you for the question, Lori.

Yes, it's so very important for the rights of the treaty to be respected. Those rights were negotiated in each of the agreements that modern treaties hold, and they have to be upheld. The commissioner will assist the modern treaties in doing that.

Brianne Paulin: I just want to add to President Clayton's comments.

Clause 8 of the bill provides the mandate of the commissioner. It clearly says:

- (a) strengthening the relationships between the Government of Canada and Indigenous modern treaty partners;
- (b) fulfilling the Government of Canada's obligations under, and achieving the objectives of, modern treaties, these obligations and objectives being interpreted in a broad and purposive manner;

I think that's an important piece, because the courts have often said that when you look at modern treaties, you have to look at them in a broad and purposive manner and also implement them in the spirit and intent with which they were drafted.

The Chair: Thank you very much. That brings us to the end of your time.

Now we will go to MP Gill for two and a half minutes, please.

[*Translation*]

Marilène Gill: Thank you, Mr. Chair.

This may be my last question, and I'll turn it around.

What would be the consequences for first nations if this bill were not passed quickly?

[*English*]

Eva Clayton: Thank you.

It's a two-part answer.

The consequences of not having a commissioner are that we will continue to be faced with dispute resolution and court action. It would be best for all parties to the treaties if we had that commissioner so we could avoid all of the added costs of dispute resolution and the courts.

Brianne Paulin: President Clayton gave an overview of the consequences, but what's also important is that this bill was fully co-developed with modern treaty partners. The full co-development of this bill is a great example of reconciliation in action and how modern treaties can be upheld. It would be an unintended consequence

if the work that was done directly with the federal government was not respected and implemented.

[*Translation*]

Marilène Gill: My last question is for Ms. Clayton or Ms. Paulin.

The Supreme Court has indicated on a number of occasions that modern treaties are important. What principles do the courts keep reminding us of that would be good to remind us of here as well?

[*English*]

Eva Clayton: On the principles that the courts have for us, there are really none, because that's the other aspect of what the commissioner would do. The courts have no knowledge of the treaties. There's been no education of the courts of law when it comes to understanding the nature and authorities of the treaties. There is none.

The Chair: Thank you very much. That brings us to the end.

Again, you can submit in writing to answer the question even further.

Next, we have MP Schmale for five minutes.

Jamie Schmale: Thank you, Chair.

Thank you again to our witnesses.

Like I said, we agree with the issues you have. What we're trying to do here on this side is improve this legislation so that if it passes—when it passes—it achieves everything you want it to achieve. Again, where we see there is a shortfall is in the enforcement part of it.

As I said before, we have tons of information on where governments of all stripes over hundreds of years have failed indigenous peoples. They haven't lived up to their word on the treaties yet. The Auditor General is an officer of Parliament or an agent of Parliament, and has tabled those reports. When we're in power, it's in the media headlines for a few weeks. When it's the Liberals, it's a couple of days or a couple of hours, maybe.

What will change? I know the commissioner is going to focus specifically on treaties. I get that. When they release the report on where the failures are, when or how will we see progress other than a report at the next cycle showing there is no progress?

• (1200)

Eva Clayton: Again, I'll give a very short answer, but in two parts.

Thank you for the question, MP Schmale.

On when or how the enforcement will work, I think it's important to note that it'll be the commissioner's job to do that, not the Auditor General's, as I said earlier. The Auditor General has a responsibility to the government for indigenous people, not necessarily the modern-day treaty groups.

Brianne Paulin: I'll just reiterate my earlier answer, in terms of enforcement. The purpose of the commissioner is to have the oversight and be an agent of Parliament that is independent. Again, the reports are coming directly to Parliament and this committee. It's also up to Parliament to implement those recommendations.

The commissioner will provide that independent view of how the federal government is undertaking its modern treaty activities. One example is, as President Clayton said, that there are many disputes with the Department of Fisheries and Oceans or other departments, where we have one interpretation, the federal government has another interpretation and that interpretation stands. There's no one we can turn to and ask what this obligation actually means.

Those reports are going to be invaluable to us because modern treaty implementation is a day-to-day exercise. We are implementing treaties every day. It's going to be invaluable to modern treaty partners and to the federal government. It will enhance the relationship and the implementation of those treaties.

Jamie Schmale: Wouldn't it be fair to say that if the government is signing on the dotted line that it is going to live up to the word of the treaty, it should actually do it? We're continuing to sign these treaties, yet we have so many that haven't been lived up to. There have been failures along the way. I still don't see the government....

Politicians will sign, there will be a big ceremony and then the failures will happen after that. The politicians and the departments seem to be failing in terms of living up to this treaty. If they fail, there are no consequences. Other than being named and shamed, what happens?

The Chair: MP Schmale, Chief Frost had her hand up. Would you like her to take a shot at that, too?

Jamie Schmale: Yes, I didn't see her picture, so I wasn't sure if she was still on.

Chief Pauline Frost: I just want to highlight that when we speak about the enforceability of Bill C-10, the accountability rests with parliamentarians. It doesn't rest with one government in power. That's the objective here.

We have the responsibility for the implementation of the recommendations that come out. The objective is independence. Ultimately, Parliament will oversee the ministers who will be essentially responsible for the action, so it's up to the parliamentarians. It wouldn't go to the government in power. That's what we're trying to get at with the—

Jamie Schmale: Parliament's job is to hold the executive branch to account. It will be for the executive branch, for the most part, to implement any legislation that is passed by Parliament. It's usually the governing party leading the way, unless the opposition manages to get together, in a minority situation, to make that happen. Having said that, it will be the executive branch that actually implements this.

What punishments do we have to make that happen?

• (1205)

The Chair: That brings us to the end. If you could submit that in writing to the committee, we would appreciate that very much.

That's for all of you, if you want to take that opportunity. Thank you.

For our last round of questioning, we have MP Lavack.

Go ahead. You have five minutes.

[*Translation*]

Ginette Lavack (St. Boniface—St. Vital, Lib.): Good morning, everyone. Thank you very much for your testimony today.

I want to dig a bit deeper into the commissioner's mandate. People have talked about clause 8 of the bill, which specifies that its mandate is to independently assess all activities and to ensure the effective implementation of modern treaties.

In your opinion, what should the commissioner's priorities be in terms of implementing modern treaties as they set up their office and powers?

[*English*]

Eva Clayton: I'll be very brief again and then turn it over to Brianne.

The committee must understand that all the technical work on Bill C-10 has been conducted by the LCAC project technical team.

One of the matters, in terms of the commissioner's first opportunity, is to do a meet-and-greet with all the modern treaty groups to learn about and understand all of the treaties. When you think about the provisions of our treaties, although they're not cookie-cutter agreements, the issues for the commissioner will be the same. The first priority for the commissioner is to understand the obligations of that office.

Brianne Paulin: The commissioner will be able to set their own priorities as well to maintain that independence so that they can undertake their own reviews and investigations. The modern treaty partners can also submit requests for investigation, as well as the minister.

It's very important that they will be able to set their own agendas and determine their own priorities. The bill does specify that when appointing a commissioner, their expertise and knowledge of modern treaties also has to come into consideration before their appointment. That's going to obviously help them determine the priorities and the urgent questions that need to be addressed.

[*Translation*]

Ginette Lavack: Thank you.

Chief Frost, it's great to see you again today on the screen. We met last week in Yukon.

Would you please answer the same question?

[*English*]

Chief Pauline Frost: Thank you for the opportunity.

Regarding the commissioner, with respect to priorities, if we think about our modern treaties, there's a review period. We review our agreement's efficiencies every five years. There's an obligation to set priorities on what's working and what's not working for us. We go to various departments within Canada to negotiate elements of the effective implementation of our agreements. That has to be done in good faith through a collaborative approach.

When we set the priorities, modern treaty partners need to be at the table, ensuring that urgent matters are brought forward. With respect to the priorities, they need to be determined—the number and the frequency of audits and reviews—to protect independence from political direction and to try to create independent, autonomous oversight. That's really important, as you can imagine.

We go to many different doors to negotiate effective implementation of elements of our modern-day treaties. We want to be able to go to one door, with consistent interpretation, and I think, in our view, we see it as reconciliation in action. True implementation reflects our Crown-indigenous relationship.

[Translation]

Ginette Lavack: Finally, in your opinion, do modern treaty holders need more resources to work with the commissioner?

• (1210)

[English]

Pauline Frost: I believe so. We have an obligation. If you think about my little community of Old Crow, it's not a Vuntut Gwitchin-only community. Canada has residents in the community; citizens of Canada live in our community. Think about the elements of our agreement that speak to ensuring that every citizen is treated equal to other Canadians.

Our obligations and our commitment to Canada are to work collaboratively on all the targets of governments in power. When you think about sovereignty in the north, geopolitical pressures, 30 by 30 obligations, greenhouse gas emissions targets and a clean future, all of it will not happen without your partners at the table. A modern treaty commission will help us to oversee that, but the treaty partners also have an obligation to commit.

It not only rests on Canada but also rests on the modern treaty holders. We have an obligation to come to the table in good faith to have these conversations and discussions about efficiencies and effectiveness on balancing the economy of Canada, balancing program services for all citizens and ensuring that we essentially come to the table as accountable governments. That's our objective.

The Chair: Thank you very much.

MP Morin, go ahead. You had a couple of questions.

Billy Morin: Thank you, Chair.

I'll go to Chief Frost.

Part of the clarification piece in this act says, "For greater certainty, a review or performance audit provided for in this Act is not a substitute for a dispute resolution process provided for in a modern treaty, an agreement referred to in section 3 or an Act that implements a modern treaty."

I share the sentiments of my colleague, Mr. Schmale, about the actual power of this bill and this office. Again, I wholeheartedly agree with the challenges of every first nation and modern treaty holder, which were stated here today and beyond. However, I'm still having trouble with what the power is and what will change.

In five years, if this office turns out reports like the Auditor General does—because I believe it's structured principally in the same way—and if there's no ability to act on these things and hold the government to account, how are you going to feel if that's the case?

Chief Pauline Frost: Let's think about it this way: Bill C-10 was co-drafted. Because we co-drafted it, we commit to being partners with Canada.

Our agreements require us to review our agreements every five years around efficiencies. In reviewing those agreements, we also identify the flaws. With regard to implementation, efficiencies and clarification, as you highlighted, those need to come from our partnership arrangement. We don't ever want to get caught in litigation. The most effective way to resolve disputes is by having partner-to-partner conversations. Modern treaty implementation allows for that to happen.

I'll turn to Brianna. Maybe she has a direct answer to that question with respect to litigation.

As self-governing modern treaties in the Yukon, we have 11 of the 26, so we have 30 years of experience. We've had many opportunities to resolve disputes, and we try to do it in a Crown-indigenous relationship conversation without going to the courts to find dispute, because that's costly. It takes years. It takes time and resources, and it takes away resources from our own people in implementing program services. We don't want to do that. We want to look at a process that works effectively.

Billy Morin: I do share your sentiment, even with the historic numbered treaties across Canada all the way through the Maritimes and the north—each coast. I want to stay out of litigation, but I still fail to see how this changes the path of staying out of litigation, quite frankly. That's just my personal opinion.

The Chair: Thank you very much.

We're going to go to Jaime for up to three minutes.

Jaime Battiste: I think one of the things we can all agree on here is that when we're talking about treaties, whether they're modern, numbered or historic, they're all protected by the Constitution of Canada. Section 35 of the Constitution recognizes and affirms all existing treaties. Section 52 of the Constitution of Canada goes further to say that the Constitution is the supreme law of Canada, above any laws made by provincial governments or municipal governments that are inconsistent with it.

When we talk about studies and parliamentary reports and compare them to the treaty rights, I think those are two completely separate conversations. I understand this as looking at the constitutional basis for this country's existence and an approach by the modern treaty commissioners and modern treaty nations to say, "We need a tool to ensure that these constitutional rights are upheld." I think that's a vastly different argument than housing, policing and other things around health.

Would you agree that we can't be looking at the implementation of treaties in the same context as the administration of the Indian Act?

• (1215)

Brianne Paulin: Thank you for the question.

Yes, absolutely. The Indian Act doesn't apply to modern treaty groups.

I think that's the issue. The federal system is just not set up, frankly, to implement treaties. There are over 8,000 obligations in these agreements, and they cut across all departments. The accountability that I will bring—and to MP Morin's earlier question—is that whenever there's an issue with interpretation or implementation of an obligation, there's no other choice but to turn to litigation dispute resolution. However, if we have a separate, independent commissioner who can provide their views on what this obligation means, what the treaty means, that provides another avenue to avoid having to go to dispute litigation, which is really not to the benefit of anyone. It's very costly.

To answer your question a bit more broadly than I think you intended, yes, I agree about the Indian Act—it doesn't apply. Also, the commissioner is really there to ensure that those modern treaties are fully implemented as intended.

Jaime Battiste: I see President Clayton nodding her head.

Would you you agree with the overall context of that question?

Eva Clayton: Yes.

Jaime Battiste: Chief Sunshine, I don't know if I have much time, but if the modern-day treaty commissioner proves to be effective at implementing treaty rights for those nations, would you not see this as an innovative approach that other nations could look at?

The Chair: You have about 15 seconds.

Chief Sheldon Sunshine: Thank you for the question.

I would remind the government that while that might work for modern-day treaties that deal with modern-day legislation and policy, we have to go back to the signing of a treaty and the understanding of what that is, what that means to us. These are two different things.

We're afraid of having a two-tiered treaty system, where we have the modern treaties with their commissioner instituting the agreement that.... The negotiations took a long time, and they're fixed and capped. When we're talking about historic treaties, treaties 1 through 11, those are separate, distinct treaties that have to be taken in that context.

The Chair: Thank you. Again, feel free to follow up in writing. The study will go on for a little bit, so feel free to respond to questions further or to send in written briefs on stuff you think may help this committee. I really appreciate all of your testimony. It was very good.

Thank you to our committee members.

Very quickly, before I ask for adjournment, I'd like to ask the following questions of the committee as they relate to the approval of two budgets. They have been circulated to the committee.

A budget has been prepared for the study of Bill C-10 in the amount of \$56,400. I need someone to move the motion.

An hon. member: I so move.

(Motion agreed to)

The Chair: I have one more. A budget has been prepared and circulated for the study of issues related to the Indian Act registration in the amount of \$58,600.

An hon. member: I so move.

(Motion agreed to)

The Chair: I need permission to adjourn.

Some hon. members: Agreed.

The Chair: Thank you very much. We're adjourned.

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