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—
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Mr. Colin Mayes

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• (1105)

[English]

The Chair (Mr. Colin Mayes (Okanagan—Shuswap, CPC)): I open the Standing Committee on Aboriginal Affairs and Northern Development this Thursday, February 8, 2007. Committee members, you have the orders of the day before you.

The witnesses here this morning on the topic of the British Columbia treaty process are from the Office of the Auditor General of Canada, Mr. Ronnie Campbell, Assistant Auditor General, and Mr. Jerome Berthelette, principal; and from the Department of Indian Affairs and Northern Development, Mr. Michel Roy, assistant deputy minister, claims and Indian government, and Mr. Jeff Goldie, executive director, Federal Treaty Negotiation Office, British Columbia.

Welcome to our committee.

We'll begin with a presentation led by Mr. Campbell, then we'll have the presentation by Mr. Roy, and then we'll be asking questions.

Thank you for being here, and you can begin whenever you're ready.

[Translation]

Mr. Ronnie Campbell (Assistant Auditor General, Office of the Auditor General of Canada): Good day, Mr. Chair.

It is a pleasure to be here today to discuss our audit of the British Columbia treaty process. With me today is Mr. Jérôme Berthelette, Principal.

The objective of our audit was to assess the federal government's management of its participation in the BC treaty process.

The Auditor General of British Columbia tabled a separate audit report with the BC legislature on the same day as our report was tabled. He reported on the provincial involvement in the treaty process. The two audits were performed concurrently to present a broader perspective on the treaty process.

The BC treaty process began in 1992. Initially, the federal government expected that all claims in BC would be resolved by the year 2000. To date, three final agreements have been initialed but no treaties have been signed.

[English]

Mr. Chair, first nations involved in the process have borrowed close to \$300 million to cover their negotiating costs, which must be paid back out of their settlements, while the federal government in turn has spent about \$426 million. By March 31, 2009, the

department estimates that the federal government will have spent approximately \$580 million on the process and the first nations will have borrowed a total of approximately \$375 million. Mr. Chair, it is unlikely that the federal government will achieve its policy objective of signing treaties with most first nations in British Columbia under the treaty process as presently constituted.

We found that fundamentally different views on the nature of the treaties being negotiated have contributed to the fact that most of the 47 negotiation tables are either inactive or not making any progress, and that 40% of the first nations eligible to participate in the process are not currently involved. Further, options available to first nations outside the treaty process to pursue their claims have made it challenging for the government to make offers to first nations that meet or exceed those available outside the process.

Mr. Chair, we found that Indian and Northern Affairs Canada complies with the authorities and policies that apply to federal participation in the B.C. treaty process and that an interdepartmental structure is in place to coordinate federal policy development. While INAC has been able to respond to some policy issues, the existing federal policy base and policy development process have not adequately addressed some important issues raised during the negotiations.

For instance, since the Supreme Court of Canada's 2004 Haida and Taku River decisions, the federal government has had a duty to consult and, where appropriate, accommodate first nations. This duty arises when the government has knowledge of the potential existence of an aboriginal right or title, and is considering taking actions that might adversely affect it. At the time we tabled our report, the federal government had not yet put in place a policy to fulfill this duty.

Finally, Mr. Chair, INAC has not conducted the necessary analyses to be able to estimate how much time and what resources will be needed to negotiate treaties with the first nations presently in the process. In addition, at the time of the audit there was no formal estimate of the results to be achieved in the short term.

[Translation]

Mr. Chairman, it is going to take more time than originally estimated to negotiate treaties with all the first nations currently participating in the process. The department needs to reconsider the way it currently manages the negotiations based on a more realistic timeline. The committee may wish to discuss this point further with the department.

[English]

Mr. Chair, notwithstanding the complexity and challenges involved in the B.C. treaty process, negotiations remain an effective means by which the parties can build the new relationship they are seeking and resolve the first nations claims. Treaties are important and can help first nations in British Columbia narrow the gap between their standard of living and that of other British Columbians. It is essential that all parties find a way to make the treaty process successful.

Thank you, Mr. Chair, for this opportunity to discuss this report with the committee. We would be happy to answer any questions that you may have.

The Chair: Thank you, Mr. Campbell.

Mr. Roy.

[Translation]

Mr. Michel Roy (Assistant Deputy Minister, Claims and Indian Government, Department of Indian Affairs and Northern Development): Thank you, Mr. Chairman.

Good morning, everyone.

Thank you for the opportunity to speak to you today. I have with me Mr. Jeff Goldie, who is the Acting Executive Director of the Federal Treaty Negotiation Office in Vancouver. The Vancouver office is part of the Claims and Indian Government sector, based here in Ottawa, which I head at the Department of Indian Affairs and Northern Development.

Claims and Indian Government is responsible for developing and implementing key federal policies covering the negotiation and implementation of comprehensive land claims and self-government agreements, and for negotiating these claims with first nations across Canada. The FTNO executes that role in British Columbia and plays a key role in much of the policy work supporting those negotiations.

I would like to speak a little about the Auditor General's November 2006 report and what I see as its importance for the British Columbia treaty process. I will then address the report's four recommendations and our department's action plan to address them. Afterwards, Mr. Goldie and I would be pleased to answer any questions you may have.

First of all, I would like to thank Auditor General Fraser for her report. I find it to be thorough and timely. The report provides extensive context to treaty negotiations in British Columbia, in terms of both historical background and the current economic, political and legal environment. It conveys well the challenges of negotiating modern-day treaties, particularly in British Columbia where, unlike the rest of Canada, few historic treaties were signed and most of the province remains covered by unresolved land claims. And the report provides a good sense of the diversity of perspectives and expectations of the parties involved in treaty negotiations.

• (1110)

[English]

I also think that the Auditor General's report could not have come at a better time. Its November 2006 release, coupled with a similar report by British Columbia's auditor general, captured widespread

attention, especially in British Columbia but also nationwide. This is a very good thing. Canadians who read the report will come away with a much better appreciation for both the complexity and the importance of negotiating treaties in British Columbia.

As citizens, they will be better able to assess the treaty process and, I hope, support it. Even if they have not read the report, they will have heard about it in the media. They will have heard that the negotiations have been going on for 13 years and have cost hundreds of millions of dollars without producing a single treaty. But they will also have heard the Auditor General's conclusion that, notwithstanding the difficulties and the high financial price tag, negotiations remain an effective means by which the parties, Canada and British Columbia and first nations, can build the new relationship we are all seeking and at last bring a resolution to first nations outstanding claims.

This endorsement of treaty negotiation in British Columbia is important now as we move into advanced and final stages of several final agreements and agreement-in-principle negotiations in different parts of the province. So the momentum is building right now, and we must not lose it.

In October 2006 Canada initialled the final agreement with the Lheidli T'enneh First Nations, the Government of Canada, and the Government of British Columbia. On December 8 we initialled a final agreement with Tsawwassen First Nation, and on December 9 we initialled one with the Maa-nulth First Nation on Vancouver Island.

This year these three first nations communities will be voting on whether or not to ratify those agreements. If they do so, the agreements would then go to British Columbia and Canada for ratification. At the same time, we anticipate concluding final agreement and agreement-in-principle negotiations with other first nations this year.

[Translation]

While the most obvious evidence of successful treaty negotiations is the conclusion of agreements, the truth is that less obvious, but perhaps equally important, success has been happening for some years now, in various parts of the province.

Since the British Columbia treaty process began, British Columbians' awareness of first nations issues has risen immensely. Polls show that the majority of people now think that first nations have been treated unfairly and that governments must do something about it. This view is a substantial change from common opinion just 15 years ago.

Businesses are recognizing the economic necessity of ending the existing uncertainty regarding the ownership, use and management of the province's lands and resources. They have awakened to the vast potential for partnering with first nations in joint ventures of all kinds.

Many local governments have much improved relationships with their first nations neighbours and are working with them on service delivery and joint planning. None of this would be possible, but for the growth of capacity and hope within first nations themselves. Slowly but surely, first nations people are becoming major players in British Columbia.

Of course, these developments cannot be attributed entirely to the British Columbia treaty process. Far from it. But the treaty process has been a major factor, and I mention it because I disagree with those who believe that the only measure of success is signed treaties.

Having given you some sense of what has been accomplished, I wish to acknowledge that we face many challenges. As the Auditor General's report noted, only 60% of British Columbia first nations have so far chosen to join the treaty process. Of the existing treaty tables, only a minority are currently making substantial progress in negotiations. This is not good enough and we will continue to seek, along with our provincial and first nations partners and with the facilitation of the British Columbia Treaty Commission, ways to make the British Columbia Treaty process more effective.

As one of the three parties in a voluntary process, the federal government cannot, by itself, determine outcomes at individual treaty tables nor can it control timeframes for completing treaties. Nevertheless, there is much room for improving federal participation in the treaty process. The department has accepted all four of the Auditor General's recommendations and has created an action plan to address each of them.

● (1115)

[English]

We are finalizing our action plan. Of course we will be consulting the Auditor General on its content. I can tell you, however, that the department is fully committed to making significant progress in all four areas addressed in the report.

First, working with our colleagues in other federal departments and agencies, we will improve existing internal processes with respect to policy development in order to respond more effectively to policy-related challenges and opportunities at the treaty table.

Second, in response to the Supreme Court of Canada decisions in Haida and Taku River, we will develop a federal approach to consultations and accommodation that will apply to all federal departments and agencies.

Third, we will explore opportunities to improve time and resource management, and place a greater emphasis on results-based negotiations.

Fourth, we will look for ways to keep Parliament more fully informed on the progress, cost, and timeframe.

Our action plan is ambitious, and much work needs to be done in order to achieve our objectives. However, I can report today on some initial steps that the department has taken regarding three of these commitments.

With respect to improving time and resource management the Federal Treaty Negotiation Office in Vancouver has just completed its annual assessments of progress at the 47 treaty tables.

Implemented some years ago, table assessments help the department with its internal work planning and resource allocation for the coming year. This year we have adopted more rigour in assessing the productivity of the tables, and we will be taking appropriate steps to advise the parties.

[Translation]

With respect to keeping Parliament better informed about British Columbia treaty negotiations, just yesterday we held four information sessions on the Hill for members of Parliament and their staff to tell them about the treaty process. We talked about the economic, political and legal environment that makes treaty negotiations so challenging. We described the six-stage, non-rights-based nature of British Columbia treaty negotiations. We defined the key federal interests which Canada brings to the table and explained what the key components of a treaty are.

Mr. Goldie delivered presentations yesterday and would be happy to answer any questions you may have.

Lastly, outside of the British Columbia treaty process, but included in the Auditor General's report because of its relevance to the treaty negotiations, further progress has been made regarding the development of a consistent and efficient federal approach to consultation and accommodation that strengthens federal decision-making, supports sustainable economic growth and promotes reconciliation of aboriginal and treaty rights with other societal interests.

Further to preparatory discussions held last year with first nations, Native and Inuit groups across the country, representatives of provincial and territorial governments and federal officials regarding how best to work together to develop the federal approach, a report was sent in to all of the participants about what was heard during those discussions. A plan is being proposed for the next steps in the development of a federal approach to consultation and accommodation.

In closing, I would like to once again thank the Auditor General for her report and this committee for giving Indian and Northern Affairs the opportunity to present its perspective. Mr. Goldie and I look forward to your comments and questions.

Thank you very much, Mr. Chairman.

● (1120)

[English]

The Chair: Thank you, Mr. Roy, and also thank you for the presentation that was made on the B.C. treaty process. I didn't attend, because I was on House duty yesterday, unfortunately, but my staff did, and they supplied me with the handout. It was very interesting, and I understand it was very interesting for the staff also.

We'll start with questioning, with the Liberal side.

Hon. Anita Neville (Winnipeg South Centre, Lib.): Mr. Merasty will lead, and if there's time, I'll follow.

The Chair: Okay. Mr. Merasty.

Mr. Gary Merasty (Desnethé—Missinippi—Churchill River, Lib.): Thank you, Mr. Chair.

Thank you to the witnesses. I have a couple of quick questions.

The Auditor General talks about the duty to consult and the impact this may have on negotiations. My question, maybe to both, is has the impact of the Haida and Taku River decisions, and for that matter, of the Mikisew Cree decision, been analysed against the comprehensive land claims agreement of 1986?

Some of the premise of the comprehensive claims policy of 1986 seems to be thrown out the window with recent court decisions, and if the 1986 comprehensive claims policy is the basis upon which land claims policy is proceeding, then I think we have a conflict. That's one point.

Second, has the department ever looked at all the case law in this country over the last 25 years, as has been done by John Burrows? The collective impact of the case law makes a very strong statement as to the rights of aboriginal people, as to land claims, as to many other things. It seems to me that INAC looks at the case law one case at a time as they come, but never as a collective. That to me contributes to the policy vacuum or lack of a quick response to case law, as pointed out by the Auditor General's office.

I think that's a significant barrier. Has any work been done by the department in this area to look at it as a collective? It seems to me there's a direct correlation. When I look at John Burrows' work and at what the Auditor General has identified as issues, there seem to be some connections that can overcome some of those challenges.

I have just those two questions.

Mr. Ronnie Campbell: Mr. Chairman, let me respond on behalf of the Auditor General on the issue of the duty to consult. That analysis at the time we conducted the audit had not been done, and certainly it's something that we felt should be done that would have an important impact going forward.

Mr. Michel Roy: Monsieur le président, if I think about the first question, on the duty to consult in relation to previous agreements signed, I have to say that those previous agreements put in place some initiative or some structure to make sure that first nations that signed those agreements are being consulted on any development in their territory. They are now part of the system. They are being consulted. They are real players.

I don't think that the decisions in Haida and Taku River will bring a new dimension in that context for those first nations that have signed agreements because they haven't faced those structural consultations and co-management, and they have a say on the development of what is going on, on their land and territory.

• (1125)

Mr. Gary Merasty: The only backdrop to that would be when they talked about the Maori examples. Did they meet the test of what the Supreme Court put out in that case?

But we don't have time to answer that, so go on.

Mr. Michel Roy: Thank you.

On the case law for the last 25 years or whatever, the policy has evolved. We are following very closely all of those decisions coming out of the court because they are guiding us in our approach and negotiations.

We have to modify on a regular basis the approach and the policy to reflect those new decisions from the tribunal. The policy has been adapted over the years to accommodate those new decisions.

Mr. Gary Merasty: My point is that there have been a few court cases that put an exclamation mark on some of the unknowns or the previously not-for-sure areas.

As you've said, it's been evolving one-by-one, but I think there has to be a reflection now on the cumulative impact, and because of those certain exclamation marks recently, I think that's key. That may help resolve some of the challenges.

Mr. Michel Roy: I have to say it's a good point. Following the report of the Auditor General and the work going on right now with first nations and provinces, that's one aspect we will be considering in the context of looking at the policy itself and the approach that Canada is taking on the negotiations.

That's a good suggestion, to make sure that we are looking at the case law, and not case-by-case but as a package.

Mr. Gary Merasty: Thank you.

Hon. Anita Neville: How much time do I have, Mr. Chair?

The Chair: You have just two minutes.

Hon. Anita Neville: I don't know whether this is a two-minute question or not.

We had testimony before the committee, of which you are undoubtedly aware, from Robert Morales from British Columbia. He talked about the Auditor General's recommendation that government needs to develop a more expeditious and coordinated process for policy development and review. He also talked about the tables that have been formed.

He also went through the six areas that are up for discussion and the barriers that are there in terms of the government's mandate for dealing with them. I haven't got time to go through them, but he talks about aboriginal and treaty rights, the constitutional status of lands, issues of co-management of governments, fiscal relations, taxation, and fishery. He speaks well about the inflexible mandate that the federal government comes to the table with.

I wonder if you can speak to the mandate you bring to the process, how you arrive at them, whether there is flexibility, and how you see the progress of these negotiations continuing if there is not flexibility.

The Chair: There's a good question. Okay.

Hon. Anita Neville: And we may need the next round to respond.

The Chair: Briefly, please.

Mr. Michel Roy: Thank you for the question.

Of course you can understand, too, that Mr. Morales and the first nations he is representing are involved in the negotiation process. Of course we come to the table with our own mandate.

For the federal side, the mandate is obtained through a cabinet process, and we have some flexibility. For example, when they talk about Canada requiring extinguishment of rights, it's not the case any more. It was the case at the beginning of the process when we started to negotiate comprehensive claims. We do not require that any more. We are adjusting the rights and we are defining the rights, but we are not asking for extinguishment of rights.

There is some flexibility, too, in terms of the land compensation component and self-government aspects.

Of course on the federal side, too, we have to balance the interests of Canada and of Canadian citizens with the interests of the first nations, and we also have the provinces at the table. You will find at the table a mix of all those things.

There are some issues, of course, on which there is no flexibility on the federal side. They have issues on the first nations side on which they have no flexibility, and the same is true for the provinces, so we have to find a balance in all of that.

Of course our minister agreed with Mr. Morales about having some discussions to try to find out other ways of maybe addressing some of the concerns that first nations may have, to try to find out new ways of doing business that would hopefully be faster in terms of a conclusion.

We certainly want to work with other departments on that, and I am convinced that the B.C. Treaty Commission is a key player we should bring into the picture to work with us to try to define or design some new ways or new processes.

• (1130)

The Chair: Thank you.

Who wishes to speak on behalf of the Bloc?

Go ahead, Mr. Lemay.

[Translation]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): First of, I want to tell you that I've read everything, and it's quite substantial. I think we're going to have to re-invite you here because this question is not strictly limited to B.C.

I am from Quebec. In Quebec we signed an agreement with the Cree, called the Paix des Braves. What was started in 2001 is now settled. Yesterday was the fifth anniversary of the signing of this treaty. Negotiations did not drag on for 20 years. Yet, we see that the federal government is unable to come to an agreement with the Cree.

Regardless of which party is in power money remains the sinews of war. At least that's my opinion. It may be that I'm mistaken, and Mr. Roy or someone from the Auditor General's Office could correct me if that is the case, but I think the federal government has a conflict of interest here. It sets the negotiation standards and advances the money which will be used. It is hard to believe that the first nations, which are going into serious debt, will have this amount deducted from a compensation they will be receiving.

I don't know if I am completely out in left field here, but it seems to me that this may take another 1,000 years or more. No one, neither me nor you—nor anyone else—will be around to see it. Despite the Auditor General's recommendations, things have slowed down in

British Columbia. When I read all of this, I think, quite seriously, that it may take another 200 years.

What can we do, as electoral representatives, to speed things up? Let's not get into the politics of this. One is no better than the other. We all agree. We should not lose sight of the fact that this is a minority government.

How can we force people to pick up the pace?

Mr. Michel Roy: Mr. Lemay, I would like to clarify one thing with respect to the example you just gave. I would like to point out that we signed a treaty referred to as a modern treaty with the James Bay Cree and the Nunavut Inuit, 30 years ago. We did celebrate this treaty's 30th anniversary. The Paix des Braves is an out-of-court settlement between Quebec and the Cree. What we are now negotiating with the Cree is an out-of-court settlement related to the implementation of the treaty which was signed 30 years ago. So it is not exactly the same type of issue.

In British Columbia, there are 47 treaty tables and a very specific process for the province. The B.C. Treaty Commission manages loans to aboriginal groups. The first nations contacted this commission to join in the process and obtain funding.

Elsewhere throughout the country, there are 13 treaty tables on comprehensive land claims, treaties which are considered modern. We have already signed 20 treaties of this type throughout Canada, not including in British Columbia. We still have 13 left to negotiate; then, it will be complete. We will have covered all community groups which are not themselves covered by historic treaties.

In Quebec, for instance, we are negotiating with the Innu and the Attikamek. We still have some negotiations left to undertake in the Maritimes, Ontario and the northern part of the country. There are also 47 treaty tables in British Columbia.

Mr. Marc Lemay: How many years should this take?

Mr. Michel Roy: In the case of the three agreements we've just finalized with British Columbia, the negotiations took 13 years.

The 20 agreements which were signed in the past required on average 20 or so years of negotiations.

• (1135)

Mr. Marc Lemay: Why does it take so long?

Mr. Michel Roy: Because of how complex the discussions are. When treaties are signed they are protected under the Constitution. Reference is made to the distribution of jurisdictions, to self-government and to land sharing. It is a very complex area involving several partners including the province, third parties and municipal governments, when municipalities are involved. In short, many people are involved, and these issues are tremendously complex.

Mr. Marc Lemay: Take for instance what the good minister wants to do. Are the negotiations on the Mackenzie pipeline, going from north to south, included?

Mr. Michel Roy: The pipeline actually goes over land which is still the subject of claims or was the subject of claims by aboriginal groups. First nations groups have an agreement, a modern treaty, that covers some lands. That facilitates the pipeline's passage, because there is already a consultative process provided and the community is involved. When there is no treaty, it is a bit more difficult. So, we are currently negotiating a modern treaty with the Dehcho. It makes the issue of the pipeline a bit more complex. You have to negotiate accommodations.

Mr. Marc Lemay: Are fishing rights included?

Mr. Michel Roy: Yes, they are considered in the context of modern treaties. There are two aspects of that which are reflected in the treaties we have finalized in British Columbia.

Mr. Lemay, Nunavut was created as the result of a land claim and negotiations. It shows how complex these types of agreements are and in a way it explains why the process takes time. I am not saying we cannot improve the situation; that is why we are prepared to work in that direction and to try to see how we can get things moving.

[English]

The Chair: Madam Crowder.

Ms. Jean Crowder (Nanaimo—Cowichan, NDP): Thank you, Mr. Chair.

I want to thank you all for your presentations today.

I have a two-part question, one for Mr. Campbell and one for Mr. Roy, and I'm going to ask them both.

In the Auditor General's report, on page 3, you talk about the fact that based on the treaty process as it currently exists, it will be difficult to get more treaties signed. In the report you also talked about, on page 19, the fact that as many of the events and negotiations today are with smaller first nations, implementation issues must be addressed. You'll see why I'm asking that with the next part of my question.

I think there are real problems with the process, so even though I think the recommendations are very good, I don't see them substantially improving the treaty process. For Mr. Roy, the fact that three agreements have been initialled and are with small first nations and in meetings with the chief negotiators in British Columbia they have indicated they have some major concerns that in their view these three small treaties.... I heard Mr. Goldie say yesterday it's not a cookie-cutter approach, but that's not the feeling of the chief negotiators. They've done an analysis of the language in those treaties and compared it to what's been on the table.

In their view, a cookie-cutter approach is being taken. These small treaties are being used for much more substantial treaty negotiations, and they feel that resources are being withdrawn from tables for nations that are not prepared to accept that cookie-cutter approach. In addition, they feel that, and you can refer to page 20 in the English version.... It talks about court decisions may now interpret treaty negotiations as a reconciliation process in which rights of first nations are implicitly recognized, since negotiations on those rights are taking place, and this may be inconsistent with the federal government position, and so on. In your presentation you talked about the non-rights-based nature of British treaties. This seems to be consistent with the fact that the Auditor General has identified

that nations come at it with a rights-based approach and the government comes at it as a non-rights-based approach.

I know that's convoluted, but Mr. Campbell, would you comment on the small treaties and the lack of progress, and Mr. Roy, would you comment on those two issues?

• (1140)

Mr. Ronnie Campbell: Thank you very much, Mr. Chairman.

I want to ask Mr. Berthelette to comment on the issue of the small nations, the negotiations thereof.

In response to the comment about the recommendations, I would agree that the recommendations we have are recommendations to the government on the process. What we did in paragraph 7.27 is set out some of the important background, and that's the issue of those fundamentally differing views. I accept that we don't have recommendations to make and have those resolved, but I think that people need to appreciate and understand that those differing views are there, and clearly they will colour how things go.

The other comment I would make is that, yes, in relation to the federal government's slow pace in developing policy as a result of cases like the Haida and Taku River case and, as we mentioned earlier, other court cases, that in itself can create a sense of uncertainty in terms of what that policy will be.

So I recognize that those things cast a shadow, if you like, over the rest of the negotiations.

Perhaps Mr. Berthelette would have comments on the smaller first nations.

Mr. Jerome Berthelette (Principal, Office of the Auditor General of Canada): Mr. Chair, I'm not sure how to respond to the honourable member's question with respect to small first nations. I think the point the member is making is that small first nations' treaties that have reached the point of being initialled are going to be the basis upon which the other treaties with the larger first nations are going to be negotiated. It becomes sort of the template for other negotiations.

When we looked at the issue of small first nations in our audit, we were looking at the issue of the relationship between the federal government and the small first nations after treaty and the amount of infrastructure you will have to have in place to maintain treaty relationships once treaties have been signed. When the small first nations enter into these treaty negotiations, the amount of loan they have to borrow as a proportion of the amount of money they're going to receive under treaties can take up a substantial amount of the payment that comes out of treaties.

So I'm not quite sure how I can help the honourable member with the question related to how it's used for the larger treaties, because we did not examine that particular part of your question.

Ms. Jean Crowder: It's probably outside the scope, so maybe Mr. Roy could address that from the department's perspective.

Mr. Michel Roy: Yes, I'll talk about the small first nations.

First of all, I would just like to say that the treaties we initialled in B.C. recently are, of course, with small first nations, but there are three different types. If we talk about the first one, Lheidli T'enneh, it's really in the interior. It's a small community. It's one community, essentially, close to non-native communities.

When we talk about Maa-Nulth, it's five communities, which are regrouped, and they're on Victoria Island—

Ms. Jean Crowder: Vancouver Island.

Mr. Michel Roy:—Vancouver Island, sorry, and the fishery industry is very important to them. I mean, it's a component of their lives.

Tsawwassen is really in an urban area.

So there are three different realities. When we talk about cookie cutters, it cannot be a cookie cutter for the treaties because we have to recognize those different realities. They have something specific to each of them. Of course, there is common ground for everybody, but I think we try to recognize the reality of those three different communities.

I think the challenge for Canada and for first nations and the province will be the implementation of agreements in the context of small communities. I don't think anybody would support the idea of implementing, for example, a board of education for all communities, community by community. It does not make sense.

It's one thing to recognize the rights; the implementation will be the challenge. The treaties are done in the way that will help the aggregate of first nations when it is time to implement. That's a bit of the approach Canada is developing to deal with the small first nations.

The Chair: Thank you.

Who would like to speak on the government side? We'll go to Mr. Bruinooge.

Mr. Rod Bruinooge (Winnipeg South, CPC): Thank you, Mr. Chair.

Thank you for your presentation so far. Perhaps I could start with a few questions for Mr. Campbell.

I just wanted to get more specific on the timeframe the audit covered. I know it was presented last year, but is there a specific timeframe it covered?

Mr. Ronnie Campbell: Yes. I think Mr. Berthelette will have that information.

• (1145)

Mr. Jerome Berthelette: The audit work for this chapter was substantially completed on June 9, 2006.

Mr. Rod Bruinooge: Okay.

Do you believe that the three agreements that have been signed—I know Ms. Crowder made reference to them—represent somewhat of an improvement, recently? And what would you indicate as being the reasons for these recent signings?

Mr. Ronnie Campbell: Mr. Chair, we haven't analyzed those cases to assess lessons learned or what the good practices might have been, but I think a point worth making, and I know that the

department made this, too, during the course of the audit, is that there's a lot of work in progress, if you like. Obviously the objective is to sign treaties, and at the time we did the audit none had been signed. Nonetheless, there were many that had significant progress, and I think those three represent three of those that were close at the time.

So I would just sort of add that comment. The progress is a result of work already done. There are various things that could get in the way of signing agreements at the last minute, but the work would still have been done.

Mr. Rod Bruinooge: The biggest obstacles that you've seen in this process have been laid out in a few spots, but I find section 7.27 somewhat interesting.

Could you please give your analysis of what you feel is the disconnect that might exist between the first nations groups and the federal government? Also, what are the various perceptions as to the bottom lines or the criteria for negotiation? Could you perhaps speak a bit from the negotiator's point of view about first nations' perception?

Mr. Jerome Berthelette: Mr. Chair, as we set out in paragraph 7.27, it seemed that there was a fundamental difference in the point of view that the parties bring to these negotiations. On the part of first nations, they come to the negotiating table with the view that they have aboriginal rights and title. They come to the table wanting these aboriginal rights and title to be recognized, and a treaty put in place that will allow them and Canada to have these aboriginal rights and title evolve over time.

From the first nations' point of view, when they sit across from the federal government at the treaty negotiation tables they feel that the federal government comes to the table wanting to limit aboriginal rights and title, and by virtue of the need for a full and final settlement limit the ability of this treaty and relationship to evolve over time. As we pointed out, Mr. Chair, this seems to us to be the fundamental difference in the bigger picture of the relationship between the first nations and the federal government.

Of course there were the six points Mr. Morales raised when he appeared before the committee members, which are more specific to the negotiations when the two parties are seated at the table. They somewhat reflected the fundamental difference between the two parties as well, in terms of the question of full and final settlement for certainty, access to fish—salmon in particular—and having the commercial right to harvest salmon constitutionally protected.

Those flow from that fundamental difference that exists between the two parties as they approach these negotiations.

Mr. Rod Bruinooge: Would you suggest that the degree to which this perception exists within the first nations negotiators correlates to the likelihood of negotiations coming to a fruitful conclusion in the short term?

For instance, in the case of the three first nations that signed off, would you suggest that those that didn't hold this viewpoint to the same degree are on the other end of the scale—perhaps the ones that you view as being the least likely to sign in the short term?

Mr. Ronnie Campbell: No, Mr. Chairman, we wouldn't say that. Nor would we be in a position to say it. What we're saying is that those fundamental differences affect to some degree, and possibly to varying degrees, the negotiations that are taking place in the process. But we didn't do the type of analysis that would determine the extent to which they would have affected one negotiation more or less than another.

• (1150)

Mr. Rod Bruinooge: How much time do I have?

The Chair: You have a little over a minute.

Mr. Rod Bruinooge: What's the projection as to future settlement, perhaps in the next year? Is there a sense of timing that potentially a few more cases could be summed up?

[Translation]

Mr. Michel Roy: Mr. Chairman—

[English]

Jeff, do you want to answer?

Mr. Jeff Goldie (Executive Director, Federal Treaty Negotiation Office, British Columbia, Department of Indian Affairs and Northern Development): It is possible that we could reach an additional four final agreements in the next 12 to 18 months, and possibly several additional agreements in principle with first nations in British Columbia.

Mr. Rod Bruinooge: Thanks, Mr. Chair.

The Chair: On the Liberal side, Mr. Russell, you have five minutes.

Mr. Todd Russell (Labrador, Lib.): Good morning, and my apologies for being a little late.

My questions are going to pertain to comprehensive land claims. They will deal with the Labrador Métis Nation land claim and the Labrador Inuit land claim. I do note that Mr. Roy, in his presentation, opened that door in terms of those particular processes.

Can you give me a brief update on the status of both those claims? As you are clearly aware, I have a lot of familiarity with at least one of those particular claim processes. The Labrador Métis Nation claim was filed back in 1991 and subsequent information in 1996, with a reconciliation process that started in 1998, and a fair exchange back and forth over that length of time, right up until 2006.

The minister did demand a response from the Labrador Métis Nation by September 2006 to various points that he raised in his letter in the summer of 2006. He wanted that letter by the end of September, but there has been no response from the department since, only a letter of acknowledgment. Can you fill me in on where the department is in relation to the Labrador Métis Nation claim, and how close is the Inuit Nation claim to an agreement in principle? I understand it is fairly close, although there might be a few outstanding issues.

Mr. Michel Roy: Mr. Chair, on the Labrador Métis land claim, there is discussion going on with the group there. I am sure the honourable member knows about the discussion or the exchange that we have with the Labrador Métis and the department and the minister. Discussion is going on in terms of the validity of the claim.

So I don't think I am in a position to go further than that, because of the discussion.

For the Labrador Innu, it is still in negotiation, and you're right that we are coming close to reaching an AIP with the Labrador Innu. We still have a couple of things to negotiate, but it's at the negotiation stage right now.

The Chair: Thank you.

The topic of our discussion today is the British Columbia treaty process. It is unfair to the witnesses if we ask anything outside that scope, because they haven't had ample time to prepare.

Mr. Todd Russell: With all due respect, though, Mr. Chair, in the presentation made by Mr. Roy, he said "outside of the British Columbia treaty process but included in the Auditor General's report". He goes on and talks about these things—relevance to treaty negotiations, further progress, and all that type of thing. So my question is based on what was presented at committee.

Since you're developing here sort of a cross-Canada approach to claims or how to deal with pending claims and that type of thing, and you've talked to provincial and territorial governments, federal officials, and members of first nations, Métis, and Inuit groups, and there is a report that has been issued, is that report public?

Mr. Michel Roy: On the consultation and accommodation?

Mr. Todd Russell: Yes.

Mr. Michel Roy: Yes, the report has been sent to everyone who has been consulted, all organizations and governments that have been consulted. So it's a public document.

• (1155)

Mr. Todd Russell: And this report is specifically on the consultation obligations of the federal government.

Mr. Michel Roy: Yes. It's a synthesis of the consultations that they had.

Mr. Todd Russell: But coming out of this, you're developing a plan for next steps.

Mr. Michel Roy: Yes, exactly.

Mr. Todd Russell: When is this plan going to come out? Is there any indication?

Mr. Michel Roy: I don't have an indication for you today. I'm sorry about that. The work is in progress right now.

Mr. Todd Russell: Has the department identified any timeline or any specific date by which they'd like to have this plan completed?

Mr. Michel Roy: I'm sorry, I don't have that information with me, but we can provide it to the committee.

Mr. Todd Russell: Thank you.

I just want you to carry one message back to the minister, if you could.

The Chair: You have 30 seconds to do that.

Mr. Todd Russell: The only message is, if he demands a letter from an organization by a certain date, there should also be some, I would think, goodwill on his part to get back to the organization in a fairly decent timeframe. He wanted the letter by September 2006. He demanded it or else he was going to put the hammer down and make a decision one way or the other on the Labrador Métis Nation claim. He got a letter by 2006. I think it's incumbent upon him to answer.

I'll certainly give that message to him myself. I already have. But if you can carry it back through this venue, I would appreciate it.

The Chair: We'll go to the government side. Mr. Albrecht.

Mr. Harold Albrecht (Kitchener—Conestoga, CPC): Thank you, Mr. Chair.

Thank you to each of you for being here today.

I'm very pleased to see the optimism in your report where you say that momentum is building and must not be lost. I notice that optimism, and with the large number of dollars that all Canadians have invested, I'm sure they'll be glad to hear about that optimism as well.

I wonder if you could comment briefly on page 5 of the deck. I wasn't able to get to your briefings, although I have gone through them. You mention there on the second-last bullet about the Supreme Court decisions imposing on governments the obligations to consult. What are the parameters of what "consultation" means? How do we come to a point where we say consultation has occurred? Are there any guidelines on that at all?

Mr. Michel Roy: That's exactly what we are trying to define right now when we talk about going on with a process; we're now trying to define a process of consultation. We have to come to a conclusion about defining those parameters, about the definition of a conclusion, and then accommodation.

Mr. Harold Albrecht: Mr. Chair, will we not get into the same question of perception, as Mr. Berthelette outlined, regarding the area of the evolving nature of treaties, as opposed to closed book, signed off? I'm just wondering how long will we consult about what "consultation" means.

Mr. Michel Roy: For now, in the context of treaty negotiation, since we don't have those guidelines we have some interim ways of consulting, or interim measures or guidelines. We are consulting with first nations and interested third parties in the context of treaty negotiations right now without a definition of what are the limits or the parameters. So we just do it right now the best that we can.

Mr. Harold Albrecht: Okay, thank you.

I have another question to Mr. Goldie. On page 10 of the deck you mentioned there about redressing inequities and that tax exemptions cease to apply after a transition period. Is the transition period defined on a case-by-case basis, or is it clearly outlined?

Mr. Jeff Goldie: No, that's in place for all claims agreements that are reached across the country. For self claims and self-government agreements there is a standard phase-in period for transactional taxes and income taxes.

Mr. Harold Albrecht: Could you identify what that is? What is that standard phase?

Mr. Jeff Goldie: It's eight years for transactional, twelve years for income tax.

Mr. Harold Albrecht: Okay. I'll get the definitions later.

One last point, if I have time, Mr. Chair.

The Chair: You certainly do.

Mr. Harold Albrecht: One page 4 of Mr. Roy's comments today he talks about working with colleagues in other federal departments. I noted in the preamble to the Auditor General's report, in the foreword, rather, on page 1 she mentions that at the federal level, Indian and Northern Affairs Canada represents Canada in the B.C. treaty negotiations. Then she goes on to say that about 40 other federal departments and agencies provide assistance to INAC.

I'm wondering at what point the number of people or groups providing "assistance" becomes an obstacle, a barrier to having us move forward expeditiously in arriving at a conclusion. It would seem to me that the more groups we need to consult and work with, the more bogged down we become.

Could you comment on that? Are there any ways we could streamline this process by having some of these duties of negotiation subsumed under fewer than 40 groups?

• (1200)

Mr. Michel Roy: Thank you for the question.

Of course you have to think that when we are negotiating a treaty with a group, with a first nation, if we are dealing with fisheries issues, for example, the department doesn't have the expertise, so we have to refer to our colleagues from the Department of Fisheries and Oceans to get their support, to get their input, to get their mandate. They would be providing a mandate. It's the same thing for taxation: we are not the finance department, so we have to refer to our colleagues from the finance department to get advice, to get the support that we need.

For us, there is no choice other than to refer to our colleagues, to work with them, to get their advice and support.

Mr. Harold Albrecht: I can certainly understand that this is a very complex issue. I think I'm having difficulty understanding how there can be 40. I can imagine 10, but 40 seems a large number.

Mr. Michel Roy: When they are referring to the 40 departments, it's the caucus, and it's to make sure that we have all of the departments onside. So we have a process in place to make sure that we are consulting with those departments and dealing with them.

Mr. Harold Albrecht: I think it just underlines what you said in your presentation, that it's complex and we can't expect immediate results, but if we can look for ways to streamline it, obviously we're all working to that end.

The Chair: There was also a comment by the Auditor General, and I quote from her report, that "departments and agencies supporting INAC in treaty negotiations do not always provide timely responses about their treaty positions". So I think that's an important observation. I don't know if it's a case of the numbers, but it's maybe how timely they are with their positions. I think they all need to be sitting at the table, because they all have the interests of the Government of Canada, to make sure their positions are given in a timely fashion. I think that's important.

Mr. Harold Albrecht: Chair, did you use up the last 30 seconds of my time?

Some hon. members: Oh, oh!

The Chair: No, actually I didn't. Did you think I did?

Mr. Harold Albrecht: Yes, sure.

The Chair: Mr. Lévesque, please.

[*Translation*]

Mr. Yvon Lévesque (Abitibi—Baie-James—Nunavik—Eeyou, BQ): Mr. Albrecht, I am sad to say that I do not share your optimism as to the speed at which we will see a final decision in this case. If we rely on Mr. Roy's report, there won't be a solution to the problem for at least another 140 years. Even my grandchildren won't be around to see that.

In paragraph 6 of Mr. Campbell's brief, it says that 40% of first nations are not currently involved in this process and that due to the resources they have, you can hardly make offers which are on a par with what they could get through other means.

I will ask you all my questions at once, because the chairman is watching me and he is not going to grant me an extra second to ask my questions.

Mr. Morales criticized you in the report. So did the Auditor General. Do you not have strategies? Because most of you are lawyers, you must be used to admissions being made before a case goes to trial, and you seek a number of these admissions to help speed up the process. I am wondering if this type of thing doesn't also exist in the department and the various other departments?

We may end up having to deal with costs in the order of \$20 billion to \$23 billion to finally settle this issue. It's all well and good to say that these nations will govern themselves, but they won't be able to survive under the weight of the debts they have contracted.

On the basis of all of this, given the criticism leveled at you and what is being done to develop strategies, etc., I am wondering how you feel about all of this.

Can you live with this?

Mr. Michel Roy: Thank you for your question. Incidentally, we're not all lawyers; I am not a lawyer.

It is true that deficiencies in the process have been pointed out to us. Mr. Morales expressed this here before this committee. The Auditor General also indicated a number of deficiencies to us. We're also aware of some of these deficiencies. We're not necessarily seeking to negotiate with everyone for 30 years and spend billion of dollars.

That's why we are trying to define other measures, other means. For example, we've developed what we call treaty-related measures. These are interim measures and they could eventually be part of a final treaty. At least, they allow for economic development on a territorial basis temporarily, even if the final treaty is not signed. Thus, the community or community groups can progress and proceed with the economic development of their region, even if the treaty isn't yet finalized.

We have the capacity to get things started or to introduce interim measures as we await a final treaty. Therefore, we develop ways of doing things to facilitate development, especially the economic development of communities, who do not have to wait for a final agreement as this requires negotiations that last several years because of the complexity of the process. This way, at least these communities can go forward.

So we're developing this type of thing and at the same time, together with our partners, we are prepared to examine an actual way of doing these things. We're trying to develop new ways of doing things that are less costly, that take less time, because we're also worried about the issue of costs and loans granted to communities that they then have to reimburse.

● (1205)

Mr. Yvon Lévesque: With regard to Mr. Campbell, I wonder if he could comment on the statements in the sixth paragraph of his brief? It refers to the means first nations have at their disposal to put forward their demands, and the fact that the federal government can hardly present offers to them that are equal or that go beyond those they could obtain otherwise.

I'd like to hear what he means by that.

Mr. Ronnie Campbell: Thank you, Mr. Chairman.

[*English*]

Yes, this is what we observed. Clearly the government set an objective to have those treaties negotiated by the year 2000. So they need a more realistic plan.

One thing, Mr. Chairman, that your committee might want to consider and that Monsieur Roy has talked about is the action plan the department is working on. Monsieur Lemay had asked a question about elected officials and what you could do. One thing I may suggest is that when that action plan is available—I'm sure Monsieur Roy would make it available to the committee—you may want to use that for further consultation and discussion. In fact, you may want to use it to deal with that very question of, given that action plan, how you think things are going to change. I think the department, probably by that time, would be ready to respond once they had that action plan in place.

The Chair: That being said, is it realistic to put an actual timeline to say once you sit down at a negotiating table, five years is the maximum amount of time you have or else there will be an arbitrator to deal with the issues? Is that realistic, or is it too complex, and are there too many different issues to be negotiating?

[*Translation*]

Mr. Michel Roy: Arbitration after five years presents a problem, in my opinion, because of the issue of the definition of rights. The first nations arrive at the table claiming that they have recognized rights, and we reply that they don't have to show evidence of these rights. We're trying to find a way to implement the rights and take into account those rights in our process...

[*English*]

what we call an orderly process to implement the rights, but we do not try to define the rights.

[Translation]

I don't know how an arbitrator could deal with this issue in this context.

[English]

The Chair: Thank you.

Mr. Blaney, go ahead, please. I did not take any of your time.

[Translation]

Mr. Steven Blaney (Lévis—Bellechasse, CPC): Mr. Roy, welcome, as well as to your friends from British Columbia.

You said that in the past 15 years, society was more accepting of aboriginal demands regarding treaties and their financial impact. Earlier, Mr. Lévesque stated his concerns. I can understand the justifications for engaging in a process, but it's important to determine whether we have the means to get to the end of that process and see the overall repercussions of it. Sometimes this can be somewhat worrisome.

I'd like you to tell us more about your view of the scope of these negotiations in terms of the timetable and the financial impact, on the one hand. On the other hand, in the shorter term, you referred to three negotiations that are currently underway. What do you think are the chances that these agreements will be successful and ratified?

I'd like to hear your views on that. If I have any time left, I would have other questions.

• (1210)

Mr. Michel Roy: Thank you, Mr. Chairman.

I will speak only about British Columbia. Studies were conducted two or three years ago that showed the absence of a modern treaty in British Columbia, and the fact that there was this uncertainty vis-à-vis titles and Aboriginal rights was costing the province approximately one billion dollars in loss of economic development and so forth. So there is a cost to that.

Mr. Steven Blaney: Is that a non-recurrent amount?

Mr. Michel Roy: The study mentioned one billion dollars, but I couldn't tell you exactly, I'm sorry. Perhaps Jeff could do so.

[English]

Mr. Jeff Goldie: Price Waterhouse completed a report about ten years ago that put a figure of that nature on it. There was a subsequent report commissioned by the British Columbia Treaty Commission, which revised that amount upward. It was completed several years ago. That's publicly available on their website.

[Translation]

Mr. Michel Roy: I think it was simply to demonstrate the impact of this. Like it or not, mentioning this type of amount and this type of impact attracts attention from citizens and from industry. Moreover, through polls that were conducted and the referendum that the province held on the issue of treaties, we saw that it had the support of citizens, in the final analysis, to go ahead with the treaties.

In addition, certain recent surveys demonstrated that even after the signature of the three agreements in the fall, there's been a 10% increase in support among BC citizens for treaty negotiations. One

poll was on that very topic. This demonstrates that there is marked interest in this issue.

You ask me about the longer term. We have these three agreements which we hope will create momentum, because this will be implemented after ratification. Mr. Goldie talked about a potential for three or four new agreements in the coming year or 18 months. We think that will create momentum.

Moreover, we also have to examine more closely the development of interim measures that will allow for economic development in forestry, fisheries etc., in order to go ahead and not wait for the final agreement, because this is very complex. There's a lot of overlap among the various land claims. Almost 150% of the territory of the province is being claimed, I believe. This has to be examined very closely.

Mr. Steven Blaney: Have you put a figure to all this? That exercise has to be done eventually, since you're telling me that three agreements have been signed and there are three or four more to come. We're still talking about 47 negotiations, and that represents 60%. How do you see the overall scope of these treaties?

Mr. Michel Roy: It's clear to me that we will never come to an agreement with all the communities. For instance, we will have to have a solid consultation and accommodation policy as an alternative to signing a modern treaty. That's my personal belief.

Mr. Steven Blaney: Those who do get signed agreements would be lucky then.

[English]

The Chair: A quick question, Mr. Blaney.

[Translation]

Mr. Steven Blaney: That's all.

Thank you, Mr. Roy.

[English]

The Chair: Madam Crowder.

Ms. Jean Crowder: I realize I tried to cram too much into my last question because I have such a short period of time, so I'm going to re-ask the question, because I didn't get the answer.

I also wanted to be on record around the fact that the treaty process in British Columbia did not start in 1993. It was the start of the BCTC process, but many nations have been attempting to get treaties for decades. One of the chiefs of one of the bands told me he started the negotiation process at the age of nine at his grandfather's knee, and he's now 63 and his nation is no closer to treaty. So the notion that it's only been 13 years is just not true. Some of these nations have been 50, 60 years. And part of it, I must admit, is because the Province of B.C. dragged its feet, but it doesn't negate the fact that many of these nations have been at it for decades.

The other thing I think is important to state is that the three treaties were initialled, but they still have a ratification process to go through in the communities, and they may or may not actually end up in final agreement. So I think that any celebration is simply around celebrating initialling, and it may not actually result in treaty in those communities.

The question I didn't get answered was around section 7.49 on page 20 in the Auditor General's report, which talks about, again, the view of first nations that there is an inherent right. In the Auditor General's report they talk about the fact that the federal government position does not necessarily come from a rights base, and in your own presentation you talked about it being a non-rights-based nature. I think that is fundamental to the lack of progress on treaties.

So please could you answer two things? One is on the B.C. mandate Mr. Goldie referred to yesterday. And I would be interested to know if we can get a copy of the B.C. mandate from the federal government. Does the B.C. mandate specifically say that the negotiators come at it from a non-rights basis? And if that's the case, how will your action plan address the lack of progress being made on these treaties because of that fundamental difference?

• (1215)

Mr. Michel Roy: Mr. Goldie may have more to add on that. I referred to it in relation to an earlier question, but it's true that we are coming to the table on the basis of a no-rights base. We do not come to the table with the acknowledgement that the group has some specific rights. They have to at least give us certain proof that they were there before and have some rights on that piece of territory.

Ms. Jean Crowder: Does that not fly in the face of the court decisions that have reaffirmed aboriginal inherent rights? We've got all of these judicial processes that the federal government is choosing to ignore.

Mr. Michel Roy: What we are trying to do with the comprehensive claims is have an orderly process to implement their rights, not to try to define those rights. For us it's less—

Ms. Jean Crowder: Why not?

Mr. Michel Roy: If it's based strictly on the acknowledgement of rights, then it means that the first nations will have to prove without any doubt that they have those rights.

Ms. Jean Crowder: Why shouldn't the federal government have to prove that they don't? Why is the onus on the first nations and not the federal government?

Mr. Michel Roy: The reason is that if we go with a rights basis, it will all be on a legalistic approach, which we try to avoid in those terms. That issue is being discussed with first nations. I know that as you said, it's right in their face. That issue is being discussed with them, but up to now that is the position of the government.

Ms. Jean Crowder: Can we get a copy of the B.C. mandate?

Mr. Jeff Goldie: Do you mean the B.C.-wide mandate from cabinet?

Ms. Jean Crowder: Yes.

Mr. Jeff Goldie: Cabinet mandates are confidential.

Ms. Jean Crowder: Do the first nations have a copy of that mandate?

A voice: No.

Ms. Jean Crowder: No? Great.

Do I have any time left?

The Chair: You have 30 seconds.

Ms. Jean Crowder: With reference to the 47 treaty tables at which you're assessing the resources—and I asked this question yesterday—I want to know how you make the determination that some nations will have resources withdrawn.

Mr. Jeff Goldie: We are negotiating at 47 tables; some are active and some are not. Canada will send representatives to any table that's active. Clearly, we want productive negotiations; this is all about results and getting treaties. We assess progress in negotiations on an ongoing basis. We allocate our resources to areas where they can be most productive and to tables that are making progress.

There are many reasons that some tables are more productive or less productive. Certainly one of those reasons might be that the groups have divergent views or divergent visions on certain key elements, but there are other reasons. In some cases the first nation will take a break to do internal consultation or to do more research in order to prepare for negotiations. In other cases the British Columbia government has stepped away from the table to consult on its mandates, and so on. There are many reasons some tables are more active or more productive, but we're about getting results.

• (1220)

Mr. Michel Roy: I should add that the funding to first nations is not coming from our department; it's coming from the BCTC, from the commission. Even if we have an inactive table, the commission may decide—because it's their prerogative—to provide funding to the first nation, even if we have no negotiation. It is not the department that is providing the funding. We do not decrease, for example, the level of funding to a community depending on the state of the table, because it's not our decision.

The Chair: Thank you.

With regard to the submission that was made yesterday on the B. C. treaty process, do all the committee members have a copy of that submission?

Mr. Marc Lemay: No.

The Chair: I would ask the clerk to supply that to you.

Mr. Goldie, I have a question with regard to local government. The Province of British Columbia has recognized local government as a level of government. Are they sitting at the table on these treaty negotiations also? The outcomes of these treaties do especially affect communities that have reserve lands within their boundaries.

Mr. Jeff Goldie: Thank you for the question.

It's the policy of the British Columbia government to include local government representatives as part of their negotiating team.

The Chair: Okay, thank you.

Mr. Albrecht.

Mr. Harold Albrecht: Mr. Chair, I just want to respond to a point that Mr. Lévesque made in answer to a previous statement of mine.

I did not indicate I was happy with the speed at which the negotiations have gone or treaties have been signed; I said I was happy with the optimism of our negotiators that there's momentum and that we would continue to be able to finalize additional ones. I hope that a year from now, or two years or five years from now, we'll all be able to share the results of the faith they have in that momentum. So I want to make that clear.

We all want them to move more quickly. I don't think anyone—
[Translation]

Mr. Yvon Lévesque: Does that mean you're as pessimistic as I am?

[English]

Mr. Harold Albrecht: I'm saying I'm very optimistic about the momentum that is currently there. I'm disappointed that the momentum has taken this long to build, but with momentum, hopefully there will be.... We said there were three treaties initialled this past year.

Maybe I could ask, what is the mood within the communities where these have been initialled? Would you say there's a 99% chance they'll be ratified?

Mr. Jeff Goldie: I would hesitate to place bets or to give a prognosis. What I can say is that in each case the first nations have very active internal communications processes to inform their members about the contents of the treaty; they're holding many, many meetings. There is a tripartite ratification committee in each case to promote ratification of the treaty. That's something the parties commit to as part of the treaty, to work to support ratification.

We'll have to wait to see what happens and what the communities decide.

Mr. Harold Albrecht: Okay, thank you.

Do I have more time?

The Chair: You have three minutes.

Mr. Harold Albrecht: Okay. Back to page 11 of your deck, Mr. Goldie, there's a comment there that jurisdictional gaps are eliminated, and then you go on to say that federal and provincial laws apply and take priority, except in defined areas internal to first nations government and integral to their culture.

I'm just wondering how that's arrived at. It would probably have to be on a case-by-case basis, but I have some concerns, especially in light of the fact that we're currently speaking of repealing section 67 of the Canadian Human Rights Act.

Could you just talk about that briefly and some of the challenges facing us there, in terms of what individual cultural elements are we prepared to allow to continue if they're in conflict with federal and provincial laws?

Mr. Jeff Goldie: I guess you have to go back to the inherent right policy of 1995, which sets out different categories of jurisdiction in which Canada is prepared to negotiate first nations jurisdiction. It's a concurrent law model where federal and provincial laws continue to apply, as well as first nations laws.

It's only in the event of a conflict and the extent of that conflict that rules of priority are applied to the situation. But clearly you

could have a situation where a first nation wanted to pass laws on who would be entitled to teach their language in a school and how those qualifications would be determined, and laws of that nature would take precedence, unless they were somehow in conflict with a federal and provincial law.

I'm not a lawyer, so it's a bit difficult to get into a more detailed explanation, but that's by and large how it works.

•(1225)

Mr. Harold Albrecht: Mr. Chair, there probably isn't a clear answer, but I again think it points out the dilemma of balancing the individual rights of people in first nations communities with the Charter of Rights and Freedoms.

The Chair: I would just caution members that you shouldn't refer to a document that we don't have, so if you have questions, they can arise out of a document, but don't pay reference to it, because it's not fair to the rest of the—

Mr. Harold Albrecht: Okay. I'm referring to page 11 of the deck that—

The Chair: We don't have the deck, so please don't refer to it.

I am going to take 30 seconds of your time, Mr. Albrecht.

Mr. Campbell, when the Auditor General was here last spring, I asked if there was going to be money set aside in a reserve, knowing there were going to be pending costs from the claims. I asked that question and the answer at that time was that there were discussions that were going to be held regarding putting a reserve together for settlement of claims.

Mr. Ronnie Campbell: Mr. Chairman, I don't have any further update on that. That would be a question for government. Government would be setting those funds aside.

Monsieur Roy might be able to help with that.

Mr. Michel Roy: We are still having some discussion about that. Essentially, we have a source of funds for those agreements we are dealing with today. There is a source of funds for that.

The Chair: Mr. Merasty, please.

Mr. Gary Merasty: Recommendation 7.52 from the Auditor General says that the ongoing policy review process should take into account lessons learned from the B.C. process, case law, and the existence of other options in the federal government. That is the crux. My colleague Jean earlier talked about this issue.

The starting point of the negotiations is the go or no-go point. It helps determine the tone the negotiations will take and whether they'll succeed or not. Not wanting to fully recognize that rights discussion—and you have the first nations who come in with that position—is the fundamental issue. The chair talked about an arbitrator. The arbitrator to the first nations has been the courts. If they disagree on a starting point, they've been using the courts to establish their arguments.

There have been a few court decisions, on which I'd put an exclamation mark, that refer to past court decisions. If you take one court decision from ten years ago in isolation and you make a decision and evolve the next policy from there, one at a time.... Recently you've had court decisions that actually put a whole different perspective on that body of case law, for example, over the last 25 years. To me, that's the issue. Unless the federal government moves from that starting point—and yes, you can argue that the first nations should probably have some wiggle room as well—we're going to be in this process for a very, very long time.

The courts have said those rights exist. They've left it to negotiations to use those decisions as a framework to negotiate land claims and other issues. One party of course comes with the narrow, and the other comes with the widest, and that seems to be the downfall at the end of the day.

The Chair: Mr. Merasty, I also have Ms. Karetak-Lindell and Ms. Neville. I don't know whether you want to ask a question, or are you going to give them some time?

• (1230)

Mr. Gary Merasty: I'll just turn it over to them.

It is more of an observation. The recommendation here is to go back to the drawing board on your opening point. If you don't, the rest of the recommendations don't matter.

The Chair: Madam Karetak-Lindell.

Ms. Nancy Karetak-Lindell (Nunavut, Lib.): I have one very short, more of a technical, question.

We all know the 2010 Olympics are being held in British Columbia. I'm wondering if that has made your situation different from the rest of Canada. Has that, as Mr. Albrecht was saying, given more momentum to having some sort of target date? I know it's difficult to put a timeframe on it and objectives that are going to be met by a certain time.

Mr. Jeff Goldie: I'll try to answer that. Thank you.

Certainly the 2010 Olympics, development of pipelines and mines, planned forestry development, all these major projects that we hope will lead to prosperity and economic activity in British Columbia and for which first nations ought to be a part will benefit from the certainty that treaty negotiations can bring. It's one of a number of projects that would benefit from what we're doing.

The Chair: Madam Neville, you have one minute, please.

Hon. Anita Neville: I have one minute.

I find an inconsistency in your presentation, Mr. Roy, that at one point you say “we anticipate concluding final agreement and agreement-in-principle negotiations with other First Nations this year”—I made a note of how many, and you've actually addressed that—but on the next page you talk about the existing treaty tables and that “only a minority are currently making substantial progress in negotiations”.

What is it? Are we making gains? Is there a momentum? What's happening?

Mr. Michel Roy: Thank you for the question.

Actually, we are talking about 47 tables. We have three who have initialled, and as was said, we don't know whether they will be ratified. We are hoping they will be ratified. We are hoping to have maybe three to four new final agreements in the upcoming 18 months. That's why I'm saying it's a minority of tables that are moving forward. Four or five out of 47, I would say, is a minority of tables.

Mr. Jeff Goldie: Let me add to that. I believe the Auditor General report quotes the review that the department does annually of progress in negotiations and refers to, I believe, 18 “productive” negotiations. So it's somewhere around 18 or 20 that are moving forward quite well. But even in the case of some tables that are quite challenged, our hope is that, with the agreements we've reached most recently, now that they are public and people can see the package available and what governments are prepared to agree to at this moment, they might encourage other groups to become more active, so that we can make more progress.

There will still be tables that are moving more slowly, for the reasons I mentioned earlier.

The Chair: Is there anybody with questions from the government side? No?

Okay. Are there any further questions from the Bloc?

Madam Crowder?

Ms. Jean Crowder: I have just one.

Are you aware of any tables where...? When I talked about the cookie-cutter approach, I was not talking about the three initialled agreements; I was talking about agreements currently underway. Some of the tables have been told that if they don't accept the template that was in those three initialled agreements, resources will be withdrawn from their table.

Are you aware of any tables where part of the negotiation has said that if they you don't accept these three templates, we'll withdraw resources?

Mr. Jeff Goldie: That answer is no, I'm not aware of any situation.

As I mentioned, apart from the BCTC funding, which is allocated at arm's length, we are prepared to send federal representatives to any table that is active and moving forward toward an agreement.

• (1235)

Ms. Jean Crowder: Okay, thanks.

The Chair: Thank you very much to the witnesses. We really appreciate your taking the time this afternoon.

Oh, I have Madam Karetak-Lindell.

Ms. Nancy Karetak-Lindell: Thank you. I have another technical question.

When different groups have an agreement on something else—let's say a focused agreement on education—does it make it easier for you to work on the whole picture because some groups have taken the opportunity to work at a single-focus agreement with the government? And then, when they see that it's beneficial for all parties, does it make it easier for them to work on the bigger picture, and also set an example to the other groups that it's beneficial to every one of us, as aboriginal people, to have an agreement that gives certainty to everyone—not just us, but the people involved also, the local, provincial, and federal governments?

Mr. Michel Roy: Thank you; that's a very good question.

Just take the example of B.C., where we have, for example, a province-wide agreement now on education. We consider it a sectoral self-government agreement on education. Of course, then it's a building relationship in question: people are learning to work together to have the capacity to take charge and control of the education part.

In terms of capacity-building, this is a way of getting first nations ready to assume greater responsibility in the future, so it's really something that is encouraged. We do it in B.C., and we are doing it in other parts of the country. These are what we call sectoral self-government agreements.

The Chair: That was a good question.

That's a thought, too: should the negotiations be split, so that one is talking about what I call actual infrastructure service needs while another one is talking about actual claim entitlement? Would it be advantageous to separate those two out?

Mr. Michel Roy: *Effectivement*, those are the things that we can do. We are negotiating right now, but it will be mainly related to the self-government component of the agreement. We will be negotiating sectoral self-government agreements. We have some negotiations going on in the country on child and family services or education, because they are priorities of aboriginal people in their communities. Those are the issues that they want to deal with initially, so we are having those discussions and negotiations.

The Chair: Mr. Campbell.

Mr. Ronnie Campbell: Mr. Chairman, as a small closing comment, the question about the case law review, which we've recommended and which the department has undertaken to do, has come up a couple of times today. I would maybe suggest to your committee that when you avail yourselves of the department's action plan, that might give you a better sense of how they're going to go about that and how comprehensive it will be and whether or not it's actually going to be, as the member says, cumulative. That would give you the basis to have more information and perhaps get more information from the department.

The Chair: I think that will be a great opportunity for the committee to follow up on regarding this discussion. When that is available, we'll make arrangements to have you back and have discussions on that plan.

Thank you very much again.

We're going to take a break for three minutes and then we will reconvene.

- _____ (Pause) _____
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- (1245)

The Chair: Members, on committee business, we have the notices of motions. There are two of them—one for Madam Crowder and one for Mr. Lemay. I will deal with them in the order in which they arrived. We will go first to the ones submitted by Madam Crowder.

Ms. Jean Crowder: Great. Thanks, Mr. Chair.

On both of these motions, they were actually in response to experts who came in from other areas. I think we could see some benefit today of having both the department and the other presenter here so that we can ask them both questions. I am suggesting that the department come and respond to the presentations that we already heard from the Cree-Naskapi and from the annual report on the Office of the Correctional Investigator.

The Chair: We are not in camera any more. Does everybody understand that? Okay.

The motion is that the committee invite officials from the Department of Indian Affairs and Northern Development to appear before the committee to respond to the findings and recommendations from the 2006 report of the Cree-Naskapi Commission. That's the first motion.

Is there any discussion?

Ms. Nancy Karetak-Lindell: Are we doing them separately?

The Chair: Yes, we are.

Mr. Lemay is bringing up something with regard to the department coming here to ask questions on various outstanding issues, so we can do this separately or we could possibly put together a list of questions that we want to have answered by the department, and have them on a consistent basis. We can refer this to a list and maybe do it in conjunction with some other issues that are outstanding.

(Motion agreed to) [See *Minutes of Proceedings*]

The Chair: The next motion is that the committee invite officials from the Department of Public Safety to appear before the committee to respond to the findings and recommendations with regard to first nations, Inuit, and Métis people from the annual report of the Office of the Correctional Investigator, 2005-2006.

Madam Crowder, do you have anything to say further on that motion?

Ms. Jean Crowder: No, just that it would be good to hear from the department.

The Chair: Okay.

Mr. Albrecht.

Mr. Harold Albrecht: Mr. Chair, I don't know if we agreed to something. When you made a comment about a written list, I am not sure I got where we are going with that.

The Chair: We are in separate departments. One was the list for the INAC and this is the Department of Public Safety to appear before the committee. The list that we would have would be for INAC and this one is a separate issue. Okay?

Mr. Harold Albrecht: Okay.

The Chair: Is there anything further?

(Motion agreed to) [See *Minutes of Proceedings*]

The Chair: We will move on to the motion of Mr. Lemay.

I'm just going to read it the way it is, then suggest a couple of changes, Mr. Lemay. It reads:

That the Committee receive a report from officials at the Department of Indian Affairs and Northern Development, every six weeks, on the situation in Pikangikum, Kashechewan and Kitcisakik.

There is some clarification other than the pronunciation of the words that I need here. First of all, on "the committee receive a report", is that oral or written, Mr. Lemay?

[*Translation*]

Mr. Marc Lemay: It depends what the committee wants. The objective of this proposal is to obtain a report on the situation following the appearance of departmental representatives. I want to know where things stand.

Of course, I would prefer it if these people could report to us live, so that we can put questions to them if the answers aren't satisfactory. They could send us a written report, appear before the committee and answer our questions if we have any.

• (1250)

[*English*]

The Chair: Mr. Albrecht.

Mr. Harold Albrecht: Mr. Chair, I certainly agree with the spirit of the motion in the sense that we need follow-up reports. I think that is good committee work. I am concerned, however, with the number of times that we are going to potentially ask people to appear here. I would suggest that we say "a written summary" or "a written report" and that we do it on a quarterly basis. Otherwise we could get bogged down here every six weeks just doing a lot of work on that type of work. I would suggest that it be a written summary and that it be quarterly. If we are not satisfied with the written report, we would still have the door open to ask officials to appear.

The Chair: We do have the minister's representative here in Mr. Bruinooge. If we were supplied with a written response, then those questions could be asked of Mr. Bruinooge. If the committee is not satisfied with those answers, then the committee could recommend having the department here.

The other thing that I might mention is the fact that this motion covers only these three topics. I wonder whether we want to be a little bit broader than that, whether there are other topics of concern to the committee.

Mr. Lemay, it's your motion.

[*Translation*]

Mr. Marc Lemay: I have no objection to opening this motion, there's no problem. You can write what you want, but I want ongoing information on the files that we've dealt with and concerning which

individuals appeared before us. I want to have that information every six weeks or every two months. However, a period of three months seems too long to me. There could be urgent matters in Pikangikum, in Kashechewan and Kitcisakik. It doesn't bother me that things be added to this motion.

You understand the essence of the proposal and that's what is important.

[*English*]

The Chair: I just want to clarify this motion first. As Mr. Albrecht mentioned, it is every six weeks. Of course we were away for break and what not. Do we want to have it every six weeks just when we're sitting? I'd like to just clarify that. There are gaps when we're back in our constituencies. How do we want to address that issue?

Mr. Lévesque.

[*Translation*]

Mr. Yvon Lévesque: Mr. Chairman, we could have a written report sent to us every six weeks. At our meeting, we could decide if the written report is clear enough. If not, at the following meeting, we could bring the witnesses in to hear from them.

[*English*]

The Chair: That's a good point.

I'm sorry for butchering your motion, Monsieur Lemay, but I just want to make sure that we get the intent.

[*Translation*]

Mr. Marc Lemay: We could write "every two months". Six weeks is, indeed, perhaps somewhat optimistic. I would not want officials to spend all of their time writing reports. I want files to progress.

[*English*]

The Chair: The motioner has suggested that we change the wording from "every six weeks" to "every two months".

Madam Karetak-Lindell, please.

Ms. Nancy Karetak-Lindell: I have some difficulty with the motion because of a couple of things. First of all, there are many other situations in the country. I haven't heard a response to the Berger report yet either. It's in a way picking out the ones that know how to get hold of aboriginal affairs committee members. So it's being unfair to the ones who are patiently waiting for a resolution to their issues.

We can come up with easily thirty other groups in the country that are waiting just as well as these three mentioned. That's not trying to put these three situations as any more or less than the other groups, I'm just trying to figure out how we can be fair to all the different groups that are waiting for some resolution.

We had some delegations from Manitoba who came to us talking about four situations in that province. I've got in Nunavut situations that are being worked through. I'm sure there are some in Labrador, there are some.... We just heard in B.C. I just don't know how we can focus on just these three and not focus on all the others. I know we need to be following up.

Secondly, every member has the ability to ask for briefings on specific issues from the Department of Indian Affairs. I've always been very impressed that if I phone them and tell them I want to get a briefing on a specific issue, as to where it's at, they respond. We have that option, as does every single member of Parliament, and if we want to get specific status reports, we can.

I don't want to be unfair to these three groups, but in doing so I'm feeling that we're being unfair to all the other groups in this country. So I have difficulty with supporting the motion only out of fairness to all the other groups that have not made presentations before us, because it's very difficult to get the opportunity to be selected to appear before the committee on their specific issues. I'll leave it at that.

• (1255)

The Chair: Okay, Mr. Lemay.

[*Translation*]

Mr. Marc Lemay: I understand what Ms. Karetak-Lindell is saying. For my part, I hope that our work is not pointless. If people from a community take the time to ask us to hear from them and we do that, we take the trouble to hear from them, I think—and I respectfully submit—that it is up to us to follow up on what is happening.

Indeed, there are probably other communities and other files that are evolving. The proof is that we have been told that 47 treaty tables in British Columbia are holding discussions and that there are at least three or four of these tables in other places.

For me, that is not it. People in Pikangikum, Kashechewan, Kitcisakik and probably one or two other places went to the trouble of apprising us of their situations. I simply want an update on these files that we have dealt with and on which we have heard witnesses. I am not asking for anything more than that, but it is important for the people.

[*English*]

The Chair: I think it's important that what you've said was from witnesses who have been here, because as Madam Karetak-Lindell has pointed out, there are a lot of issues out there. But maybe we should look for responses from the witnesses. The list that Madam Crowder gave us were both witnesses who clearly want to ask the department for answers, and maybe the situation in Pikangikum is something because that actually came to this committee.

So we should stick with presentations from the committee for which we look for responses from the department. Would that be agreeable?

We could do that, Mr. Lemay, rather than your motion. After we have those witnesses I would just ask the committee that if you have those kinds of questions, then maybe you need to pass a motion and ask the parliamentary secretary for a response to them in the ensuing

meeting so you can get that information. To me, that's the purpose of the parliamentary secretary being here. No? I know he's not here right now, but that's something.

The way the motion reads now is:

That the Committee receive a report from officials at the Department of Indian Affairs and Northern Development, every six weeks, on the situation in Pikangikum, Kashechewan and Kitcisakik.

• (1300)

Hon. Anita Neville: Could we ask for a report, an update on these three situations, and then determine if any more are required?

The Chair: We're getting away from what Madam Karetak-Lindell brought up, but if the committee wants to vote on this, on these three communities, then after that, if you have questions on issues brought forward by witnesses, I think that would be something of merit on which the committee could get a report out.

Madam Karetak-Lindell.

Ms. Nancy Karetak-Lindell: I have a technical question. I don't recall hearing witnesses before us on Kitcisakik—

The Chair: I have no problem with that, but I'm dealing with this motion.

Ms. Nancy Karetak-Lindell: Yes, and I'm dealing with the motion.

The Chair: I know.

Ms. Nancy Karetak-Lindell: I don't recall hearing witnesses on the last two places. We heard them in the media, but not necessarily before the committee.

The Chair: Then don't vote for this, or else amend the motion. You can amend it by deleting the last two. I have no problem with that.

Mr. Gary Merasty: Maybe I'll make an amendment to the motion—and then we can rip it apart—based on what my colleague Ms. Neville has just said.

We could ask for a report, period, of these communities, and just the once. Then if at that point we're not satisfied, we can make another request for another report.

Hon. Anita Neville: Recognizing that two have not been before the committee.

Mr. Gary Merasty: Okay.

So that's my amendment, that the report be made in six weeks—

The Chair: The amendment put forward is that the committee receive a report from the Department of Indian Affairs and Northern Development on the situation in the three communities listed.

Mr. Harold Albrecht: Within six weeks?

The Chair: No, there's no time limit. This is just asking for a report.

An hon. member: I thought he said within six weeks.

The Chair: Within six weeks, he said?

An hon. member: No, two months.

The Chair: Mr. Merasty, what do you have?

Mr. Gary Merasty: That the committee receive a report from officials at the Department of Indian Affairs and Northern Development, in two months, on the situation in PKK.

Mr. Marc Lemay: In Pikangikum, Kashechewan, and Kitcisakik.

The Chair: *Oui*. Is that okay?

Mr. Marc Lemay: Yes.

The Chair: On the amendment, all in favour?

(Amendment agreed to) [See *Minutes of Proceedings*]

(Motion as amended agreed to) [See *Minutes of Proceedings*]

The Chair: Thank you.

We're adjourned.

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