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# **Standing Committee on Aboriginal Affairs and Northern Development**

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**EVIDENCE**

**Tuesday, February 10, 2009**

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**Chair**

**Mr. Bruce Stanton**

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## Standing Committee on Aboriginal Affairs and Northern Development

Tuesday, February 10, 2009

• (0900)

[Translation]

**The Chair (Mr. Bruce Stanton (Simcoe North, CPC)):** Members of Parliament, ladies and gentlemen, good morning. This is the third meeting of the Standing Committee on Aboriginal Affairs and Northern Development.

[English]

This morning the orders of the day are with regard to a briefing on the issue of specific claims and comprehensive claims.

Members know that after the subcommittee meeting last week we circulated the agenda for this week. At the end of this meeting we'll try to reserve 15 minutes to consider the future work plan as well.

This morning we're pleased to welcome Michel Roy.

[Translation]

Mr. Roy is the Senior Assistant Deputy Minister, Treaties and Aboriginal Government; Ralph Brant is the Director General, Specific Claims, Treaties and Aboriginal Government, and Perry Billingsley is the Director General, Policy Development and Coordination, Treaties and Aboriginal Government.

[English]

I think we'll be starting with Monsieur Roy.

[Translation]

You have 10 minutes.

[English]

Then we'll go to questions.

[Translation]

**Mr. Michel Roy (Senior Assistant Deputy Minister, Treaties and Aboriginal Government, Department of Indian Affairs and Northern Development):** Thank you very much, Mr. Chair.

I would also like to thank committee members for inviting me to appear here this morning.

We want to start by explaining the context and roles of the policies and processes in place to manage aboriginal rights, treaty rights and the historic grievances of first nations peoples, and to discuss with you the way in which these policies and processes help us balance the rights and interests of aboriginal peoples with those of Canadian citizens. So we are here to provide you with some explanations, but particularly to answer your questions on comprehensive claims,

aboriginal self-government and the implementation of these agreements. In addition, at the committee's request, we will deal with the issue of specific claims.

Effective policies and processes for managing aboriginal rights and treaty rights as well as the historic grievances of first nations peoples are essential if the Canadian federation is to function harmoniously.

[English]

**The Chair:** Could you slow down slightly? Translation does not have an actual copy of your text.

Thank you.

[Translation]

**Mr. Michel Roy:** All right.

They guide us in the management of constitutional, federal and provincial responsibility in the area of aboriginal rights and treaty rights. Comprehensive claim agreements provide certainty regarding the ownership and management of land and resources. Self-government agreements, for their part, set up aboriginal governments that are accountable to their citizens and reduce federal responsibilities in managing the internal affairs of aboriginal communities.

Finally, through the specific claims programs, Canada can settle historic grievances related to the legal and financial obligations not carried out by the federal Crown with respect to first nations. These policies and processes for managing aboriginal rights and titles help us keep social order by helping us reach negotiated solutions to historic grievances and to disputes regarding aboriginal rights. Unfortunately, we need only think of situations such as the Oka or Ipperwash crises, both of which resulted in loss of life. It cost over \$100 million to manage the Oka crisis.

On a more positive note, we would mention the Supreme Court of Canada decision on the issue of the existence of aboriginal rights and titles in the Maritimes. The policies and processes we implement enabled us to strike a fragile balance between aboriginal and non-aboriginal fishers in the region. In fact, the Canadian courts, in their decisions involving the interpretation of aboriginal rights, regularly invite the parties to seek a negotiated settlement to their dispute. The courts regularly send us back to the negotiating table, when the communities take us to court.

● (0905)

[English]

So we could say that Canada's policy frameworks for addressing aboriginal and treaty rights, which we call section 35 rights, include the comprehensive land claims policy, which provides for negotiated resolution of aboriginal land rights and claims in those parts of Canada where aboriginal rights were not addressed by treaty. You have in front of you a map, where you can see the modern treaties that have been negotiated up to now. The historic treaties, as you know, cover the Prairies and the majority of Ontario, except for the area of *la vallée de l'Outaouais*. All that part of the country is covered by the historic treaties, and then you have the northern part and the northeast covered by comprehensive claims, or what we call modern treaties.

The inherent right of self-government policy provides for negotiation of practical arrangements for the exercise of self-government rights of aboriginal people, recognized by Canada in 1995 as an existing aboriginal right under section 35 of the Constitution Act. Reaching those types of agreements is just the beginning. Those agreements are establishing a new relationship between the aboriginal governments, the federal crown, and provincial and territorial colleagues and governments. The establishment of this new relationship is not without its own challenges. Comments from the land claims coalition, from the Office of the Auditor General, and from the Senate committee are helping us with the development of approaches that will help all parties develop a new relationship based on reconciliation.

The Department of Indian Affairs and Northern Development has been assigned the responsibility, on behalf of the Government of Canada, for negotiation of comprehensive land claims, self-government agreements, and specific claims, and the responsibility to oversee the implementation of those agreements.

[Translation]

The federal government has achieved significant results as a result of the agreements we have negotiated with our partners. For example, Nunavut, whose 10<sup>th</sup> anniversary we are celebrating, was established and created as a result of an agreement on comprehensive claims. As you can see on the map, agreements cover most of the Yukon and a large area of the Northwest Territories, as well as Northern Quebec, part of Labrador and the Nisga'a Territory in British Columbia. More recently, an agreement, that will come into force on April 3 of this year, has been entered into with the Tsawwassen first nation in the Vancouver area. Self-government negotiations have shown the inherent right to self-government can be negotiated under the Canadian Constitution. There is support for the

introduction of modern governance regimes, which must be accountable to the citizens they serve.

In addition, we have settled approximately 40% of the specific claims submitted to date. We have met most of the obligations arising out of historic treaties having to do with the total reserve area in the Prairies. We also gave over \$2 billion to Aboriginal communities in Canada and transferred 15,000 square kilometres of land to first nations by way of settlements. However, the government's ongoing commitment is necessary if we are to manage the issue of Aboriginal rights and treaty rights effectively.

Land claims are still in effect for 20% of the land area of Canada, and involve close to 270 Aboriginal communities. The implementation of the existing agreements requires ongoing attention, and we face constant legal and political pressure to develop new approaches, temporary or interim arrangements, and additional funding to advance the issue of Aboriginal rights and the implementation of these agreements.

In fact, Minister Strahl has given us a mandate to explore with our aboriginal and government partners the options for dealing with some of these pressures in order to help us achieve some results. Some of you may have heard of the joint table established in British Columbia. This is a process put in place to explore these options.

With respect to the implementation of the historic and modern treaties, we have identified a need to renew existing policies and processes to ensure the effective management of the obligations of all parties and to establish an ongoing relationship based on the principle of reconciliation, which underlies the signing of these historic and modern treaties.

Finally, as you all know, there has been a major reform of specific treaties designed to speed up results and to promote greater transparency and an increased feeling that the process is consistent with natural justice. Since October 16, 2008, a new tribunal has been in place along with a new process for dealing with claims, one that was devised in cooperation with the Assembly of First Nations.

In conclusion, Mr. Chair, I would like to take a few minutes to present the key components of the policy on comprehensive claims and Aboriginal self-government. If you would like to have more details on specific claims, we could ask Mr. Brant to provide them.

The comprehensive claims policy was adopted in 1973 and covers the negotiation of ancestral rights not extinguished by treaty. As you can see on the map, this covers the entire north of Canada, both east and west. The main objective is to end the uncertainty regarding the lands and resources, to encourage self-sufficiency and the social and cultural wellbeing of aboriginal communities, and to reduce, of course, the number of disputes regarding aboriginal rights. The settlement agreements define a broad range of rights and benefits such as the complete ownership of certain lands. In this case, the reserve status disappears for these communities. There are also guaranteed rights regarding hunting and fishing.

● (0910)

There is also guaranteed participation in the management of the land and resources in the region covered by the settlement, financial allowances, a sharing of revenue arising out of the use of resources and economic development measures.

To date, we have signed 22 comprehensive claim agreements in Canada, the most recent of which was the Tsawwassen agreement in British Columbia, which I referred to earlier.

Over the years, this process has taught us that there is no model for a universal treaty. The final agreements vary considerably among the provinces and territories. We really must adapt our approaches to provincial and territorial realities. Negotiating a treaty is a generation-long project. On average, it takes 15 years to negotiate a final agreement, and about 10 years for the initial implementation. At the moment, there are some 80 comprehensive claim negotiating processes underway throughout the country. Since lands and resources come under provincial jurisdiction, the provinces are essential partners in these negotiations, as are the territorial governments.

Consequently, governments' ability to manage lands and resources without a treaty is being increasingly reduced because of the case law on infringements of rights and obligations to consult. Since 1982, over 40 decisions of the Supreme Court have influenced our understanding of the nature and scope of section 35 of the Canadian Constitution.

For example, the courts have said that the honour of the Crown requires that effective, fair processes be put in place to deal with the issue of aboriginal rights, and, as I said earlier, the courts often send us back to the negotiating table to come up with a negotiated settlement.

I will touch on the issue of aboriginal self-government, just to give you an idea of what is involved.

● (0915)

[English]

In 1995, the inherent rights policy recognized the inherent right of self-government as an existing aboriginal right under section 35 of the Constitution Act.

The policy seeks to focus on the negotiation of practical arrangements to provide for the exercise of self-government within the Canadian constitutional framework, including the Canadian Charter of Rights and Freedoms.

Government negotiations cover matters that are internal and integral to the aboriginal groups. National interest powers—Canadian sovereignty, defence, and international relations—are not negotiable. Negotiations can focus on core governance in one or more jurisdictions. Quite often first nations will ask for jurisdiction on education, child and family services, or other priorities for the community. First nations might also negotiate a comprehensive government arrangement that would cover all the authorities within the jurisdiction.

Self-government represents a new governance arrangement that shifts to a government-to-government relationship, instead of the dependency that we have under the Indian Act. It provides first nations governments with more responsibility, risk, and accountability to their citizens. To date, Canada has completed 17 or 18 agreements of self-government. We have 73 active tables right now involving 385 communities. Self-government negotiations are addressing significant policy challenges related to requirements for

co-governance structure and political and financial accountability mechanisms, financial costs of implementing self-government, capacity for program and service delivery, and manageability of intergovernmental relations and implementation mechanisms.

Maybe I should stop there.

[Translation]

It will be a great pleasure for us to answer your questions. If members wish, we can also provide greater detail about specific claims.

[English]

**The Chair:** Thank you, Mr. Roy. You took a few extra minutes, but since we have no other speakers today, we allowed you a little more time. I thank the committee members for their indulgence.

Now we will proceed to questions from members.

Mr. Russell.

**Mr. Todd Russell (Labrador, Lib.):** Thank you, Mr. Chair.

Good morning, Mr. Roy. It is good to see you again.

And to our other witnesses, it's my first time, I believe, meeting you this morning.

I want to go back to the comprehensive claims implementation process. As you know, this is an ongoing matter. Since becoming critic, I've met with a couple of groups, the Nisga'a in particular, who have experienced difficulty with their fiscal financial arrangements and the negotiations that have been ongoing for some years. They're telling me that they're having to borrow from other pots of funding in order to pay for the core services and operations, which puts a bit of a strain on their particular community.

I talked to some people from the Inuit regions. There are some outstanding issues around implementation there as well. Basically, their sense is that the crown is not honouring its legal obligations under the modern treaties. I'm just wondering if the department is not undertaking some review and a different approach to the implementation of comprehensive claims, with a view to making them much more efficient and also with a view to honouring the crown's obligations.

I understand the difficulty, because under a number of different agreements you have the Department of Fisheries and Oceans handling something, and you might have the Department of Health involved, so there's a whole range of departments out there and I'm wondering if there's a different approach happening.

As well, I was wondering if you can give me a brief update on something very close to home, the Innu Nation Agreement, or New Dawn Agreement, which was announced with the province last fall. I understand they're back at the negotiating table, but I'm wondering where the federal presence is at. Have you resolved all federal issues relative to the Innu Nation claim, and what kind of timetable are we looking at?

Of course, there's also—and it's not a new one, Mr. Roy, we've talked about it many times—the Labrador Métis Nation claim, which was originally submitted in 1990 and was resubmitted in 1995. There was supposed to be a reconciliation process since 2002. Under that agreement there was supposed to be an independent legal opinion conducted. I'm wondering if there has been agreement reached between the Labrador Métis Nation and the federal government about the parameters to that independent legal opinion. As you know, there were some outstanding issues there.

I'm wondering if you can comment on those issues. Thank you.

• (0920)

**Mr. Michel Roy:** Thank you.

Maybe I can start with the Labrador Métis Nation issue. We had an agreement with them about having a third party review, but now the Labrador Métis Nation are asking us for some time because they want to put forward new information on their claim. Of course, we will be giving them the time they need to provide more information to Canada and then we will be reviewing the agreement and we'll have the third party review. We agreed to that between the two parties. We are just waiting now to get new information from the Labrador Métis Nation, who are asking us for some time for that.

In regard to your question about the Innu Nation agreement in Labrador and the discussions with the province, of course the province and the Innu Nation reached an agreement; it's a bilateral agreement. We were kept informed of the content of it, but it was really a matter between the two of them. It could be eventually leading to the broader question of the negotiation of the treaty going on right now. Negotiations are going quite well. The three parties are at the table. We are expecting to reach an agreement in principle in a year to a year and a half. The fact that the province and the Innu Nation were able to reach a bilateral agreement is a good sign that a relationship is being built here, that people can work together and reach agreement. It's promising for, eventually, a treaty among the three parties.

On your question, Mr. Russell, on the Nisga'a and the renewals, as you may have been told by the Nisga'a, we had a lot of discussions with the Nisga'a government about their cost of self-government and all of that. We are learning a lot from this experience, just as we are learning from the Yukon experience. Right now we are working internally to develop a mandate for the renewals of those agreements based on all of the information that we are getting from the Nisga'a and Yukon first nations and the sharing of knowledge with the two groups. We are working right now.

[*Translation*]

We're now working to develop a mandate to renew these agreements.

• (0925)

[*English*]

**Mr. Todd Russell:** Do I have a bit more time?

**The Chair:** You still have a minute and a half, Mr. Russell.

**Mr. Todd Russell:** My Lord, what do you do with all the time?

You know, in Labrador, for instance, there is a lot of pressure, like in many other parts of the country. We have mining exploration.

There is possible development—hydroelectric power with the Lower Churchill project. Road development is happening, and there are other resource developments. The issue is that you don't want to have the aboriginals' rights imposed upon them by third party interests. There has to be some protection for aboriginal rights. The suspension of reaching a final agreement can have an impact. I'm wondering whether there are any timeframes associated with the treaties in Labrador.

I think there's also an obligation on the part of the crown to not settle with one at the expense of the other. Some of these land claims overlap, but has any thought been given to maybe having a common table in Labrador, where you have one claim already settled, one that may be accepted, and there is another claim in negotiations? This doesn't include some overlap from claims within Quebec, from the Naskapi and the Montagnais. I'm just wondering if any thought has been given to that.

But back to my question, is there any change in the implementation on comprehensive claims policy?

Thank you.

**The Chair:** You only have time for a very brief response, Mr. Roy, and then we'll have to proceed. Perhaps you'll have an opportunity to comment further on the question.

Please proceed.

**Mr. Michel Roy:** On the policy around implementation, we are working right now with the key partners in the coalition. And we're looking at the Senate report, to review our approach on implementation and trying to develop a new approach that will hopefully help to meet the expectations of aboriginal groups.

[*Translation*]

**The Chair:** Thank you very much.

We will now go to Mr. Lemay.

**Mr. Marc Lemay (Abitibi—Témiscamingue, BQ):** Good afternoon, Mr. Roy, and thank you for being here today. Thanks too to the officials.

I have been a member of this committee for three years already. A number of people listen to what happens here, particularly aboriginal people. You made many very interesting comments in your opening remarks and in your explanations. I listened to you very carefully.

The Indian Specific Claims Commission is headed by Mr. Dupuis. What does this commission do? What are its limitations? Who gives it its mandate? We worked hard here to pass Bill C-30, which became the Specific Claims Tribunal Act. You referred to that in your remarks. You said that this body has been in place since October 16. How many cases are outstanding at the moment, and what type are they? I would ask you to start by answering these two questions.

**Mr. Michel Roy:** Fine. Thank you very much.

The Indian Specific Claims Commission headed by Mr. Dupuis is an appeal mechanism of ministerial decisions regarding the validity of specific claims. This appeal commission has the power to make recommendations, but not to make decisions.

**Mr. Marc Lemay:** Generally speaking, aboriginals do not agree with the minister's decisions because they are not favourable to aboriginal peoples. In fact, had the minister been on the side of the aboriginals, the issue would have been settled, and the process would have been underway. If I understand correctly, when the minister does not make a decision in their favour, they appeal to the commission, and it hears the case. That is why the process takes so long. Is it because of the testimony of elders and everything else that is involved?

**Mr. Michel Roy:** Yes, exactly.

**Mr. Marc Lemay:** I see.

**Mr. Michel Roy:** The commission is travelling to the communities to hear from elders, evaluate the situation and make a recommendation to government. However, under the new legislation to which you referred, the commission will be ending its activities on March 31 of this year.

• (0930)

**Mr. Marc Lemay:** That is exactly what was not clear.

**Mr. Michel Roy:** The commission will be closing out its books and shutting down on March 31.

**Mr. Marc Lemay:** And it will be replaced by the Specific Claims Tribunal?

**Mr. Michel Roy:** The tribunal has been in place since October 16. What you passed here is in fact a decision-making authority. We see this as a major improvement in the process as regards justice and equity for first nations.

**Mr. Marc Lemay:** I apologize for interrupting you, but I'm just trying to understand. I have read all the commission's reports. Its recommendations amount to several million dollars. Do you think you will be up to the job with the tribunal? Cases must be argued before the tribunal and a decision is made with no appeal. Is the department ready to deal with that?

**Mr. Michel Roy:** The department is ready to deal with that. The commission process was also demanding for the department. We will now have a tribunal subject to established, very clear rules that were in fact developed with the Assembly of First Nations. So there will be a process. Of course this will be demanding for the system, but we are preparing at the moment to deal with this.

**Mr. Marc Lemay:** Since October 16, have specific claims been filed with the tribunal?

**Mr. Michel Roy:** Not yet.

**Mr. Marc Lemay:** When does it come into effect?

**Mr. Michel Roy:** It has existed since October 16, but so far no cases have been referred to the tribunal.

**Mr. Marc Lemay:** Why?

**Mr. Michel Roy:** For all sorts of reasons. Of course, the tribunal is very new. It is just getting underway. An acting clerk is there to implement the structure and all the rest.

We also have a process in place. Claims must be rejected in order for a first nation to decide to go to the tribunals.

**Mr. Marc Lemay:** There is something else I would like to understand. These are modern treaties.

**Mr. Michel Roy:** The blue one is, yes.

**Mr. Marc Lemay:** The blue one with the figures is, yes. These are modern treaties that have been signed in the last few years, the most recent of which was signed in 2008. What is done with the treaties? The example that comes to mind immediately is Treaty 9 regarding the Algonquians. Is it still in effect?

**Mr. Michel Roy:** Yes, the historic treaties are always in effect. They form the bases of relations between the first nations that come under historic treaties and the federal crown.

**Mr. Marc Lemay:** Since I am here to represent the interests of Quebec, I would like to understand where Quebec is involved. When aboriginal communities make a claim in Quebec, like any other province, involved in these claims with the federal government? They cover lands and everything, do they not?

**Mr. Michel Roy:** Yes. In the area of comprehensive land claims, as I was saying earlier, the provinces are the players, because the lands and resources come under provincial jurisdiction. We therefore require provincial participation in order to find solutions to land claims.

**Mr. Marc Lemay:** Everything we have just discussed covers only cases where "Indians"—and I am weighing my words carefully—are recognized under the Indian Act. Is that correct?

**Mr. Michel Roy:** Yes.

**Mr. Marc Lemay:** I have a very specific example, and no doubt it is one you are expecting: Kitchisakik, in La Verendrye Park, is not recognized. How does the department deal with this matter? This is a huge specific claim. It covers almost half of La Verendrye Park.

**Mr. Michel Roy:** Usually, Mr. Lemay, when you have—

**The Chair:** Your time has expired.

**Mr. Marc Lemay:** Can he answer the question?

**The Chair:** A brief response.

**Mr. Michel Roy:** As a rule, when we discuss a land claim with an aboriginal group, we make sure we are on the same page numbers-wise. We don't negotiate with one single community, but with a group, for example the Algonquians. They're the ones that need to determine things from a logistic standpoint, i.e. who represents who, and who's represented by the group with which we're negotiating.

**Mr. Marc Lemay:** Thank you.

**The Chair:** Thank you, Mr. Lemay.

[English]

Now we'll go to Ms. Crowder.

• (0935)

**Ms. Jean Crowder (Nanaimo—Cowichan, NDP):** Thanks, Mr. Chair.

And thanks for coming today.

I'm going to start with specific claims, and in my next round I'll go to comprehensive claims.

I just need a point of clarification. I understood there was an order in council that had the specific claims commission ceasing to function at the end of December, but I'm hearing you say that it will continue to function until the end of March.

**Mr. Michel Roy:** The end of March, yes.

**Ms. Jean Crowder:** So are they still processing the claims that are before them?

**Mr. Michel Roy:** No, not really, because right now they are just developing their final report. On December 21, if I remember correctly, it's about the mediation services...

**Mr. Ralph Brant (Director General, Specific Claims, Treaties and Aboriginal Government, Department of Indian Affairs and Northern Development):** No, mediation was to continue until March 31. The inquiry side was shut down as of December 31. Now they're doing their final report.

**Ms. Jean Crowder:** Okay, so will that final report be tabled before the House?

**Mr. Michel Roy:** Yes, it will.

**Ms. Jean Crowder:** So the mediation service is continuing then. I say this because the role of mediation was one of the questions we had back in the days when we were originally talking about the bill. So has that role continued to be fleshed out?

**Mr. Ralph Brant:** Madame Dupuis decided to close the mediation function as of December 1, in effect.

**Ms. Jean Crowder:** At the commission?

**Mr. Ralph Brant:** At the commission. We've been contracting with others to provide the mediation services until we can get a new mediation function in place.

**Ms. Jean Crowder:** So that mediation function is still happening, but the new process hasn't been implemented.

**Mr. Ralph Brant:** That's correct.

**Ms. Jean Crowder:** What is happening to the specific claims that were before the commission and still in process, that is, those the commission had actually started? And how many of them are there?

**Mr. Ralph Brant:** There were about 18 claims still with the commission when the decision was taken to close the commission. We decided that the ones that were actually into the inquiry process should continue to the completion of the inquiry. For those claims that had not started into the inquiry process, we brought them back into the department and gave the first nations an opportunity to review the claim and to give us any new information they might have, and then we'll process them through our normal assessment. So they were given a second chance, really, to refresh their claim.

**Ms. Jean Crowder:** Out of the 18 claims that were in the inquiry stage, how many of those went back to the department?

**Mr. Ralph Brant:** About 10.

**Ms. Jean Crowder:** About 10. Are the claimants going to get any additional financial assistance to help them, because the process is different from the one they actually started with?

**Mr. Ralph Brant:** Yes, we provided funding for them to review their claim and to provide any additional evidence or case law that might apply since the claim had been filed.

**Ms. Jean Crowder:** You are probably aware that when the minister and the department were here last week, I raised the issue about the six months, and now I understand that I need to ask another question.

First nations were given notice that they had six months to supply additional information. Were those six months for the people who were at the inquiry stage at the commission, or were they for all of the claims that were in the hopper?

**Mr. Ralph Brant:** It was for all of the claims in the hopper, that is, at the assessment stage.

It was a fairness issue. Because some of these claims had been in the system for about 10 years, we thought we should give them the opportunity to refresh their claims before we did our assessment, under our lawful obligation, at review.

**Ms. Jean Crowder:** So all of the claims that were in the assessment process now need to be reassessed under the new rules?

**Mr. Ralph Brant:** Yes.

**Ms. Jean Crowder:** And every first nation who had a claim had this opportunity to refresh their claim.

What happens if they don't have the financial or current capacity to refresh their claim within that six months, but they know they have additional information? What's going to happen to them if they have information that comes in after the six months?

**Mr. Ralph Brant:** If they tell us that, we'll put the claim on hold until they can complete the work they need to do.

**Ms. Jean Crowder:** But they won't lose their place in the queue?

**Mr. Ralph Brant:** It'll be a new claim. The three years will start again.

**Ms. Jean Crowder:** It'll be a new claim. So if they aren't able to meet that six-month criterion of submitting new information, they will lose their spot in the queue.

**Mr. Ralph Brant:** That's correct.

**Ms. Jean Crowder:** A number of questions had come up about the transition, back when the bill was being studied, that are still not clear to me.

Every claim that was in the queue when this bill was passed has maintained its place in the queue, right? But the minister has three years and the department has three years to assess what is happening with those claims.

**Mr. Ralph Brant:** Yes.

**Ms. Jean Crowder:** But my understanding is that if they submit new information outside the six-month window, they drop to the bottom of the list.

● (0940)

**Mr. Ralph Brant:** Well, the clock will start again.



**Ms. Jean Crowder:** The clock will restart. So they'll be in a position where they have a further period of time to wait on top of the time they have already waited.

For people who have to refresh their claims because of these new rules, will they all get funding to refresh their claims?

**Mr. Ralph Brant:** Those who ask will get it.

**Ms. Jean Crowder:** Those who ask will get it. Was that included in the letter that went out to them, that there was an opportunity to have some additional funding in the event they needed to provide additional information?

**Mr. Ralph Brant:** I believe it was, yes.

**Ms. Jean Crowder:** With regard to the political agreement, now the numbers escape me, but there was going to be a process for claims that were above the limit.

**Mr. Ralph Brant:** Over \$150 million.

**Ms. Jean Crowder:** Thank you. Where are we with that process?

**Mr. Ralph Brant:** We're still engaged with the AFN to work out that process. As a matter of fact, I'm going to Vancouver on Thursday to meet with the AFN to finalize the process that we will agree on regarding how we're going to process these claims.

**Ms. Jean Crowder:** Okay, so discussion is still ongoing.

**Mr. Ralph Brant:** Yes.

**Ms. Jean Crowder:** What about the rest of the terms that were in here? There was reacquisition of land and additions to reserve, which is of course a really important topic for many bands. For example, in my area, for many of the bands there is virtually no crown land available. What crown land is available isn't necessarily being put aside for first nations. Of course there is concern, with the talk of the government selling public assets as a deficit reduction strategy, that first nations will be left out of that conversation.

Am I still okay?

**The Chair:** You've essentially finished, Ms. Crowder. A brief response would be okay.

**Mr. Ralph Brant:** With the additions-to-reserve process, there is a discussion going on with the AFN as well about that policy and how best to revise it. So those discussions are under way—

**Mr. Michel Roy:** With the expertise centre in the department, the one who was dealing with the additions-to-reserves policy.

**Ms. Jean Crowder:** Thank you.

**The Chair:** Thank you very much.

We'll go to Mr. Duncan, for seven minutes.

**Mr. John Duncan (Vancouver Island North, CPC):** Thank you very much.

Good morning, Mr. Roy, Mr. Billingsley, and Mr. Brant.

I think it's important to talk a little bit about this Indian Specific Claims Commission in terms of what a sea change this is from where we were previously. There's a strong commitment from all sides to make this thing work. I know the case of one of the specific claims that was in the system from my area. It was 20 years old. Now we're looking at a process that has a distinct timeframe to it. This has really gone down very well indeed. I'd like to commend the department on

its foresight. I think there was some real collegiality here among the Senate, the House of Commons, and the department.

In your testimony—it may have just been the translation—you talked about the Tsawwassen agreement, having that agreement come into force on April 3. Now, the translation said next year, but it's actually this year, correct?

**Mr. Michel Roy:** Yes.

**Mr. John Duncan:** Okay.

I was actually at the Yukon Days breakfast this morning. It was most enlightening. A lot has happened in the north. A significant part of what's happened up there is due to the self-government agreements, the comprehensive claims that have been settled. The Yukon has 11 of the 14 first nations that are now part of that. We have a new dynamic, which is that the three territories are now realizing that collaboration is in their best interests. I wondered if you could maybe talk about how the department has some directions that might encourage that.

● (0945)

**Mr. Michel Roy:** Thank you, Mr. Duncan, for the questions.

Under those self-government and land claim agreements we now have in the north, we have established some forums for discussion. We have, for example, an intergovernmental forum in Yukon involving the territorial government and the first nations, which are self-governing. In this forum you can discuss issues around implementation and the relationship that needs to be established among those governments. Any kind of new program that the government puts in place will, of course, be accessible to the first nations that are under self-government regimes. So they can benefit from any new initiatives.

But the fact that we have that forum in place, regrouping the three levels of government—the first nations government, the territorial government, and the federal government—is really the key to success in the area. We are working very closely with that group on information sharing, to eventually develop our mandate for the financial arrangement that needs to be renewed in the north right now.

**Mr. John Duncan:** I want to ask you this morning about your attendance at the UN periodic review. We can talk in this group about a lot of progress that's been made, and we can read the press reports from the periodic review, but was there any recognition from anyone in the review about the progress that's been made on specific claims, comprehensive claims, self-government initiatives, and those kinds of things? Nothing that was reported—certainly that I read—talked about any of that.

**Mr. Michel Roy:** I was part of the delegation last week on that review. The partnership we developed for the joint drafting of legislation on specific claims has been identified as the best practice, in terms of consultation and partnership with aboriginal groups. We were working with the AFN on that project. In the context of the General Assembly, where all the countries were making recommendations to Canada, a lot of recommendations were related to the fact that we should be moving forward in the context of comprehensive claims and resolving claims.

We heard some comments about extinguishment of rights that we have to clarify over there, because that is not the position of Canada now. We do not ask first nations to extinguish their rights when we're negotiating comprehensive claims, but that's the kind of tone they had over there. So we corrected the facts with the different nations that participated in the review. But *grosso modo* it was quite positive, with good recommendations on moving forward with some of those issues related to aboriginal people in Canada. There were a lot of comments about violence against women, asking Canada to really do something about it—and for aboriginal women too, in that sense.

**The Chair:** We will proceed to the second round of five minutes. Just as a reminder to all members, when we get down to five minutes, it's a little tougher to put your questions, so try to remember you have to fit the respondent's time into that time slot as well. I appreciate your understanding.

We'll proceed to Monsieur Bélanger.

[Translation]

**Hon. Mauril Bélanger (Ottawa—Vanier, Lib.):** Mr. Roy, could you please tell us a little about the notion of the honour of the Crown?

**Mr. Michel Roy:** I think Mr. Billingsley could probably give you a more fleshed out answer to that question. The notion of the honour of the Crown is really a matter of approach. So, when the federal Crown goes to the bargaining table, you always need to bear in mind that there is already a fiduciary role between the federal Crown and the aboriginal groups. And we're not there to... How should I put this? It's not like the bargaining that goes on in a workplace environment where people are trying to get the best deal for their own group. As far as we're concerned, we always need to take into account the best interests of the aboriginal group with which we are negotiating.

We're not there to put together a labour relations deal between a union and management, for example, where each side is really trying to look after its own interests. Under this process, you really need to bear in mind the best interests of the aboriginal groups when reaching an agreement. We look for an agreement which will serve the interests of both the aboriginal group and the federal Crown, and

that will strike a balance between the interests of both parties and those of the provinces, when they're involved, of course.

● (0950)

**Hon. Mauril Bélanger:** Can you also tell me about the Crown's obligations with respect to this concept and of the Crown's obligation in relation to the court's decisions?

**Mr. Michel Roy:** We need to make sure, for example, the aboriginal group is getting the best possible advice from a third party, that it has access to the legal services, and financial advice, for example, on a financial issue, or something to do with financial assessment. When need to make sure they get the best possible service in terms of advice and recommendations, so that they don't just have to take the federal Crown's word for it. We make sure that they get the necessary services, advice, and opinions, even if it means we pay for it. So that's the way things are done.

Perry, is there anything you'd add to that?

[English]

**Mr. Perry Billingsley (Director General, Policy Development and Coordination, Treaties and Aboriginal Government, Department of Indian Affairs and Northern Development):** In many ways the concept is perhaps not as well defined as it could be, but I find it often boils down to good manners at the negotiation table. I'm most familiar with the concept in the context of negotiations and in the context of self-government.

Michel has alluded to the support that is provided to negotiating first nations to aid them in having appropriate legal representation and financial representation. The concept also covers issues such as sharp bargaining.

The responsibilities of the crown in the context I'm most familiar with is in the transition from an Indian Act relationship to a self-government relationship, where a first nation will be taking on many more responsibilities vis-à-vis their own citizens. In that moment of transition, Canada has a number of responsibilities that it must fulfill to the individuals in that community because of the move from the Indian Act, where we have a great many responsibilities, and we need to make sure that those responsibilities are met in moving to a self-government arrangement. That includes things like protection of individual rights.

**Hon. Mauril Bélanger:** I'm interested in terms of the obligations as well, in terms of consultation that it imposes upon the crown. What, if any, impact did this concept have in terms of the court decisions and the decisions by, say, the public works department not to sell certain properties in Vancouver?

**Mr. Perry Billingsley:** I'm afraid that on the decision to not sell certain properties in Vancouver I have no specific information.

**Hon. Mauril Bélanger:** Fair enough.

**Mr. Perry Billingsley:** In terms of consultation, yes, it has a great impact on how consultations are conducted. In the business we're in, negotiations, of course, are the principal vehicle of consultation that we use, although the notion of consultation—and tied to the honour of the crown—also extends to finding better ways to move our negotiation processes along. Michel referred to the common table process in British Columbia, where we're working with first nations to understand what it is about our processes and mandates that causes problems.

**The Chair:** Thank you, Mr. Bélanger and Mr. Billingsley.

We now proceed to Mr. Albrecht for five minutes.

• (0955)

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

I want to follow up a bit on the Specific Claims Tribunal Act. You mentioned that it came into force on October 16 but that no cases have been filed. I think that's totally understandable.

My understanding is, and those of us who were around the table recognize, that the AFN had a very integral part in the drafting of that legislation and its ultimate adoption. I was wondering if you could briefly outline some of that process in terms of buy-in by not only the AFN but its component communities. Also, subsequent to the passage of the act, and now its implementation in October, what kind of feedback are we hearing in terms of buy-in and the willingness for first nations communities to use this vehicle?

Finally, perhaps you could briefly comment on the average waiting time. You indicated that it's currently around 15 years for a claim to be settled. Do you have a prognosis for when this is fully implemented? Will that time decrease?

**Mr. Michel Roy:** Thank you for the question.

To clarify, when I talk about 15 years to resolve a claim, it's in relation to comprehensive claims; it's not the specific claims.

Under the specific claims new legislation, we now have three years to make decisions on the validity of the claim and we have three years to negotiate. After the three years, the first nations could take us in front of the tribunal for a decision. It's six years maximum if we go to the maximum of the two periods, which is a big improvement compared to where we were before. We were at 13 to 14 years of delay to resolve a specific claim.

**Mr. Harold Albrecht:** To get to the heart of my question, is there a feeling in the first nations communities that this represents hope for the future in dealing with this large backlog? Is that a fair statement?

**Mr. Ralph Brant:** Yes, it's quite a significant turnaround on the part of first nations. They had the opportunity to contribute to this process. They now believe that the government is finally doing something about processing these claims in a timely and fair manner.

**Mr. Harold Albrecht:** Again, the specific claims have to be under the \$150 million, and the comprehensive ones are beyond that.

**Mr. Michel Roy:** Yes.

**Mr. Harold Albrecht:** I represent a riding from southwestern Ontario, and I want to ask something about the comprehensive claims. The ongoing dispute involving the Six Nations communities

affects aboriginal people and non-aboriginals alike. It affects the economic development and the potential of the entire community. Many of these communities, especially those surrounding Caledonia and Brantford, are having a difficult time.

I don't expect you to go into details, but I would appreciate it if you could just give me a sense of the progress that we're making in the negotiations with the Six Nations community.

**Mr. Michel Roy:** We have been negotiating with Six Nations for a few years now, and we are negotiating with the province. Last spring we put forward an offer to resolve one claim. The first nations came back with a counter-offer, and then we went "on pause" for a while. Now, for the past two weeks, we have been back to the table and we have other meetings planned. Negotiations are back on track. The parties want to find a way of getting to a solution.

**Mr. Harold Albrecht:** In your opening statement, you went through a number of statistics. You indicated that 40% of the outstanding claims have been solved. I don't know what period of time you were referring to. The cost, I believe, was some \$2 billion. It would be helpful for me as a person who doesn't have the global picture of the first nations communities to have a bit of a spreadsheet to look at these claims. I know it would be a huge spreadsheet—you have hundreds of claims. But for the future, it would be helpful if we had some general graphic picture of the progress of these claims.

**Mr. Michel Roy:** We can provide you with that kind of information. We have that information on the specific claims—where they are and how many have been resolved.

**Mr. Harold Albrecht:** It would also be helpful if you included the length of time they've been in negotiation.

Thank you.

[Translation]

**The Chair:** Thank you, Mr. Albrecht.

And Mr. Lévesque now has the floor for five minutes.

**Mr. Yvon Lévesque (Abitibi—Baie-James—Nunavik—Eeyou, BQ):** Good morning, gentlemen, and welcome to our first meeting for the year. In 2008, there was a tripartite agreement with Nunavik. A Naskapi group with a reserve in the area disagreed with the final agreement. An agreement was signed so that those groups concerned could meet. I think the federal government took part in the meetings along with the Quebec government.

Have there been any other meetings since then?

• (1000)

**Mr. Michel Roy:** I'll ask Mr. Billingsley to answer that question, if that's okay with you, Mr. Lévesque.

**Mr. Perry Billingsley:** Yes there were, I visited the Naskapis to discuss this very issue, and the meetings are ongoing. As you pointed out, they're concerned about the agreement with Nunavik, but I think they're now working with the Inuit in order to find solutions to these concerns.

**Mr. Michel Roy:** So, there is now dialogue.

**Mr. Perry Billingsley:** That is right, there is an ongoing dialogue, now.

**Mr. Yvon Lévesque:** Whether it is an existing agreement or a parallel agreement, you can validate it.

**Mr. Michel Roy:** It all depends on the nature of the agreement and its scope. When we know that, we will see what our options are.

**Mr. Perry Billingsley:** The Nunavik Agreement was an agreement in principle on self-government, which involved a lot of ongoing negotiations. So, the Naskapis may greatly influence the final agreement on the negotiation.

**Mr. Yvon Lévesque:** Let's take Kitcisakik as an example or even some existing reserves which want to expand. They do not have any more space left, they are bursting at the seams. These people would like to be able to set up businesses in their communities, have a future.

When you are faced with requests of this nature, do you need to consult with the province and get its agreement right from the outset when discussions are getting started?

**Mr. Michel Roy:** That depends on a lot of things, Mr. Lévesque. You are referring to additions to the reserves, to a community that wants to expand its reserve, and that involves a program which is actually separate from the claims process. There is a reserve expansion program under which a first nation may, if it meets certain criteria, expand its reserve lands. When aboriginals submit a claim, they have to prove that the federal crown is under an obligation to cede more land. That is an important distinction. When they come and see us with a specific claim, they have to demonstrate that the federal government owes them additional land that they would not necessarily have been given, and this would be the result of a treaty which was not upheld or a situation which existed in the past. If they are able to prove their claim, then negotiations take place. The province will take part in the negotiations since, generally speaking, these are provincial lands. So the province is involved. We have to be careful, there are two separate processes.

**The Chair:** You have a minute and 15 seconds left.

**Mr. Yvon Lévesque:** Thank you. Did the Anishnabe Algonquin Nation identify you as an interlocutor with respect to Kitcisakik, for example? If they did, how far along are you in the discussions?

**Mr. Michel Roy:** Unfortunately, I find it hard to answer that question. We are not responsible for that file in our organization because it does not involve a claim. There is no land claim negotiation underway with that particular group. It has not come to that yet.

**Mr. Yvon Lévesque:** Thank you.

[English]

**The Chair:** *Merci beaucoup.*

Let's proceed now to Mr. Rickford, for five minutes.

**Mr. Greg Rickford (Kenora, CPC):** Thank you, Mr. Chair.

And welcome to the witnesses.

My question is bifurcated here. First, I want to know a little bit about a strategy in terms of the potential for the comprehensive and specific claims in the context of treaties that overlap provincial boundaries. As a subtext to that, I want to talk about disputes between specific nations that are part of a treaty, specifically Treaty No. 3, Treaty No. 5, and Treaty No. 9.

Treaty No. 5, of course, extends into Ontario. There's been discussion amongst some in the communities there—specifically in Sandy Lake, Deer Lake, and Pikangikum, which are in my riding—about revisiting the rights under Treaty No. 5 and about any processes that are available. But of course Treaty No. 5 has a very big territory, and first nations communities in Manitoba may be part of a comprehensive claim.

Then, of course, Treaty No. 3 borders Treaty No. 5, which is considering its rights within Ontario. There are some disputes about some land there, specifically in the Trout Lake area just outside of Red Lake.

To complicate things even more, you have NAN, a wonderful organization representing 40-some first nations across northwestern Ontario in the James Bay area; it includes members of Treaty No. 5 and Treaty No. 9.

Do you have a strategy for, or have you thought through, how you're going to work with those kinds of dynamics, and the extent to which Grand Council Treaty No. 3 is involved? Is there potential for a forum there on how to...? Moving forward, how will those rights and obligations be severed in terms of the specific treaties, dealing with, of course, the potential—or not—of Treaty No. 5 within Ontario to advance its interests?

• (1005)

**Mr. Michel Roy:** Thank you for the question.

Yes, that's a very complex situation. With NAN, for example, a group of many first nations involved as signatories of different treaties, they are involved right now with us on self-government negotiations as a group. So as a group, they have to define among themselves a constitution and how it will work among them as a self-government arrangement. So it's about the jurisdiction, not necessarily about the historic treaties.

In terms of historic treaties, when, for example, you talk about the group that is mainly in Manitoba, but coming from Ontario—

**Mr. Greg Rickford:** Treaty No. 5, yes.

**Mr. Michel Roy:** In Manitoba, you have a treaty commission, with a treaty commissioner, so they have a forum for discussion around issues, around the implementation of historic treaties. We don't have those in Ontario right now.

We know that following the Ipperwash inquiry, the Ontario government has been looking into eventually establishing a treaty commission in Ontario. They are having some discussions right now. So that could eventually help the discussions in Ontario on the implementation of historic treaties. But the implementation of historic treaties has always been an issue for the federal government in the relationship with the first nations that signed historic treaties.

As I said, in Saskatchewan and Manitoba we have the treaty commissions, so we have a forum for discussion there. In Ontario we have a forum for discussion with the different signatories, but Ontario is looking right now at maybe creating a provincial commission, which would then be a forum for discussion to address those issues of implementation.

Is there anything you want to add?

**Mr. Perry Billingsley:** Yes.

One of the things that came out of the political agreement with the specific claims renewal was that we held a treaty conference in March 2008. Coming out of that, one of the things we're doing is working with the Assembly of First Nations and the Federation of Saskatchewan Indian Nations to put together an engagement process in which we will be using treaty commissions. We also have treaty tables in various areas to talk with treaty first nations and begin to address ideas on, as you mentioned, the concerns around rights and hunting and fishing, for example, and the issues that come out of the rights related to the treaty.

So we have a process in place where we're talking with people to try to understand where everyone's coming from.

**The Chair:** I'm sorry, Mr. Rickford, you've used up your time.

**Mr. Greg Rickford:** I was just getting started, my goodness.

**The Chair:** Thank you, Mr. Rickford.

Now we'll go to Ms. Crowder, five minutes.

**Ms. Jean Crowder:** Thank you. I'm going to focus on comprehensive claims.

You're saying that there are 80 comprehensive claims in negotiation right now. Do you have any idea how many nations don't have comprehensive claims and aren't in the system?

• (1010)

**Mr. Michel Roy:** Not in the system?

**Ms. Jean Crowder:** Because unfortunately, most of B.C. doesn't have a comprehensive claim.

**Mr. Michel Roy:** If most of B.C. does not have a comprehensive claim, then I would say that maybe 40% of aboriginal communities in B.C. are not part of it.

**Ms. Jean Crowder:** Yes, and outside of B.C.?

**Mr. Michel Roy:** Around 40% of the first nations in B.C. are not part of the treaty process.

**Ms. Jean Crowder:** I just want to talk about consultation for a moment. Mr. Duncan referenced the periodic review, and in the periodic review the issue was raised that actually Canada had failed to consult with indigenous peoples organizations in submitting their report. Also, a number of nations pointed out the lengthy process for resolving indigenous claims.

The Auditor General's report in 2006 made a specific recommendation around the development of a consultation policy. I wonder if you could update us on the status of that, because the department did make a response on it.

**Mr. Michel Roy:** On the consultation, I can tell you what I know about it, but we may be able to provide you with more information.

We have established a branch in the organization, in the departments, to deal with consultation. They have developed a guideline that is for the use of all departments in terms of how to approach consultation with first nations and aboriginal groups.

**Ms. Jean Crowder:** Just to clarify, the department has developed guidelines for all departments to use as guidelines in how to

approach consultations. Were first nations involved in developing those guidelines?

**Mr. Michel Roy:** Yes, they were involved.

**Ms. Jean Crowder:** They were. So the first nations are comfortable with those proposed guidelines?

**Mr. Michel Roy:** I cannot say, Madam Crowder, that they will be on side 100%. Of course they will always want to see some evolution of that, and things could evolve. With experience and with jurisprudence, things will evolve. But yes, they were consulted on that.

**Ms. Jean Crowder:** Is it possible for us to have a copy of those guidelines?

**Mr. Michel Roy:** The guidelines? Yes, of course.

**Ms. Jean Crowder:** Great.

On the land claims policy, in the same Auditor General's report, she talked about the fact that the B.C. treaty process was actually based on the 1986 comprehensive land claims policy. You referenced a 1993 comprehensive land claims policy. Has there been any effort to update what's happening in the B.C. treaty process given that there's a newer comprehensive land claims policy?

**Mr. Michel Roy:** We talked earlier about the common table, for example, which has been established in B.C. That's the forum we have right now to discuss the treaty process in B.C. with the key partners: the First Nations Summit, the First Nations Leadership Council, the province, and the federal government. We are working together to develop some alternatives and some new ways of doing business in B.C., which will have an impact nationally, of course. On our side, we are looking at the potential impact nationally and how we can do it differently across the country, not only in B.C.

**Ms. Jean Crowder:** So was the common table a response to the criticism around the Auditor General's report?

**Mr. Michel Roy:** It's one aspect of it.

**Ms. Jean Crowder:** I was interested when you raised the common table, because I spoke to some of the first nations negotiators in British Columbia and they have a slightly different perspective on the success of the common table. Their feeling is that there are not the resources and the mandate there to actually move ahead on some of these key issues.

I know you're very familiar with the unity protocol. When they're talking about certainty, constitutional status of treaty lands, governance, co-management of lands and resources, fiscal relations, taxation, and fisheries, their feeling is that these issues simply are not at the common table. They feel that the federal government does not have a mandate to address those key issues that are part of this unity protocol, which 60 nations have now signed on to.

**Mr. Michel Roy:** Of course, as I said, we are in the exploratory phase, but Monsieur Billingsley was a part of this process so I will turn to Monsieur Billingsley to give you more details on that. He was there representing Canada.

**Mr. Perry Billingsley:** Very quickly, in a sense, it's quite right. The first thing we said when we sat down at the common table is that we did not have a mandate to negotiate changes to federal mandates at the common table. However, some very interesting things came out of the common table that are contributing to our internal examination of federal government mandates as we go to the table. The minister has undertaken to work with first nations, and we are working with the first nations, the First Nations Summit in particular, on what kinds of mandate changes we will be looking at.

•(1015)

**Ms. Jean Crowder:** Do you have any sense of how long that process will take, because of course many of these first nations have been—

**The Chair:** That's it, I'm sorry. We'll catch that up.

I have two more speakers on the list right now. We'll go to Mr. Duncan for five minutes and then we'll see where we sit.

**Mr. John Duncan:** Thank you, Mr. Chair. I'll try to continue in the same vein as what Ms. Crowder was talking about, which is the B.C. common table. So if you have unanswered questions, you can just feed them to me.

To put it in a different context, more than 50% of the B.C. first nations are in the system. The common table does offer great promise, and I would like to say that for the most part the common table initiative, from my understanding, was initiated from the first nations, not from the government, so it has a lot of promise.

There was an expectation post-October 14 that there would be some federal push on the common table in order to try to get negotiations in British Columbia moved along a little more quickly. The impression I've been left with recently is that this has fallen into a state of not a lot of activity right at the moment. There are probably good reasons for that, such as the upcoming provincial election and so on, but I wonder if there is any update you could provide on where the common table is right now in terms of pushing ahead and whether real progress on negotiating mandates is likely.

**Mr. Perry Billingsley:** There are a couple of things in your question.

One of our challenges, of course, is balancing the ongoing negotiations—and there are a number of first nations who are actively pursuing settling their negotiations, settling their comprehensive claim in B.C. right now—notwithstanding the work that is going on at the common table. So we have to balance that work with the work of examining our mandates, looking at where we can improve our mandates, improving our processes, and meeting some

of the demands of first nations in terms of the federal government's negotiation mandates. We're not going to be able to satisfy all of the demands that were put on the table during the common table, but there have been a good many ideas generated in that forum. We're also exploring these ideas—with first nations in B.C., for example, who are not part of the common table—in terms of improving our mandates.

We had that flurry of activity for the common table when we sat and met rather intensively over a period of time. Now we've all gone back to doing our work. I understand that first nations are perhaps not happy with, for example, the time it takes the federal government to do its internal consultations and the internal work that needs to take place to be able to arrive at mandate changes.

**The Chair:** Mr. Duncan, go ahead, if you wish.

**Mr. John Duncan:** No, I'm not going to ask that question. Thank you.

•(1020)

**The Chair:** *Merci beaucoup.* Do you want to use the rest of the time? You have only 40 seconds. Do you want to get a short one in?

Mr. Tonks is next. You have a time slot after that.

Mr. Tonks, welcome to our committee this morning. You have five minutes.

**Mr. Alan Tonks (York South—Weston, Lib.):** Thank you very much, Mr. Chairman. I'm almost inclined to invite Mr. Rickford to take my time, based on the information he has and the line of questioning he had. I'm sure he'll get some time.

From a natural resource and environmental perspective, I would be interested, and I hope the committee is interested, in the process.

Using this as a case study, I see the Tsawwassen First Nation has completed a negotiation, and part of that, looking at the map, would involve offshore rights. I understand this is an urban first nations community that has negotiated this relationship.

From the perspective of Parks Canada and the Auditor General reports on sustainable practices in aquatic and offshore sensitive areas, I would be interested to know, once you have completed your negotiation, is there a contractual responsibility or accountability continuum? With the Auditor General not responsible for reporting, obviously, on that particular area, offshore, do you build into that process a responsibility on the first nations of reporting, after the treaty has been resolved or arrived at? Do you make recommendations with respect to that ongoing sustainable development responsibility?

**Mr. Perry Billingsley:** In terms of relationships and accountability, yes, there is accountability back to other governments, particularly other governments that are providing funding.

With respect to environmental management, because Canada has a relatively complex web of environmental management, first nations will have responsibilities with respect to environmental management, and the province has responsibilities with respect to environmental management in some of those same areas, as does the federal government, because of the nature of Tsawwassen—it being offshore, the shipping routes, all that kind of thing.

What the agreements typically do—and I'm afraid I don't have the text of the Tsawwassen agreement here in my brain—is assign to each level of government its responsibilities, and then it really focuses on how those governments are going to harmonize environmental protection and resource management and development.

**Mr. Alan Tonks:** I'm not asking for the content of that particular agreement, but generally, does the treaty define the parties as levels of government, inclusive of the first nations that are part of that treaty?

**Mr. Perry Billingsley:** As levels of government, yes, in the sense that municipalities represent a level of government, and provinces represent a level of government. The treaty sets out the roles and responsibilities of each level of government in that context for any number of things, but including environmental protection.

**Mr. Alan Tonks:** This is my final question, Mr. Chairman.

Municipalities are levels of government responsible under provincial legislation. But under the treaty, the first nations are treated as a separate level of government. So is there a defined route to report through on sustainable development practices?

**Mr. Perry Billingsley:** The short answer is yes. The longer answer would be that the treaty sets out the roles and responsibilities of the first nation in respect of those kinds of issues, and also their relationship and roles and responsibilities vis-à-vis the provincial government and vis-à-vis the federal government.

**Mr. Alan Tonks:** I see.

Thank you very much.

•(1025)

**Mr. Michel Roy:** I would just add that when we're negotiating an agreement, we're always getting directions and mandates from the departments that are responsible for, for example, the environment or natural resources. We will get mandates from those departments in terms of negotiations; they're not things that we do by ourselves.

**Mr. Alan Tonks:** Thank you, Mr. Chair.

**The Chair:** Now we'll proceed to Mr. Clarke, for five minutes.

**Mr. Rob Clarke (Desnethé—Missinippi—Churchill River, CPC):** Thank you for coming tonight.

My question is on specific land claims. The negotiations for specific land claims can be very complex and difficult, especially when you're dealing with different territories and provincial jurisdictions. Very specifically, in regard to my riding in northern Saskatchewan, what's taking place right now is the Athabasca land claim, which has to do with the Northwest Territories, Nunavut, northern Saskatchewan, and Manitoba.

My question is this. How is this specific land claim proceeding through this new negotiation phase that we've proceeded to enter?

With this being so vast and dealing in consultations with many agencies or groups, will this one specific land claim be able to meet the timeline set out from this specific land claims process?

**Mr. Michel Roy:** Thank you for the question, Mr. Clarke.

This table that you are talking about is not a specific claim. It's not covered by the specific claim policy. It's not covered by timelines or whatever. This is a special claim that we are dealing with. We have a special mandate for that claim. As you may know, we are quite advanced in the negotiations of that claim. We had an overlap agreement amongst the first nations, the aboriginal groups, Nunavut, and the Northwest Territories. We have the support now of the Nunavut government on the overlap agreement. So we are really trying to finalize an agreement.

But it's not a specific claim, so it's not covered by the timeframe that we were referring to. It's really a special claim in that case.

**Mr. Rob Clarke:** Do we have a timeline or the best, most optimistic timeframe to resolve this? If you don't know the answer, just get back to me later.

**Mr. Michel Roy:** We need to renew the mandate, actually. That could take some time, but we can come back to you with more information on that.

**Mr. Rob Clarke:** That would be great. Thank you.

**The Chair:** You still have a couple of minutes, if you want to finish.

**Mr. Rob Clarke:** I could share my time with Mr. Rickford.

**Mr. Greg Rickford:** Okay.

**The Chair:** You have two minutes.

**Mr. Greg Rickford:** Just for some appreciation of the background to my question earlier, I want the witnesses to understand that it was the richness of some of the stories between Kitchenuhmaykoosib Inninuwug and Sandy Lake, and of course Island Lake. For the benefit of the committee, there's a great book called *Killing the Shamen*. It's a Yukon book by Thomas Fiddler and James R. Stevens, which gives us a context for Treaty No. 5 and Treaty No. 9 and their historical relevance.

That being said, my last question builds on Mr. Tonks' question about the strategy for land management. It's about the provincial ministries of natural resources and how they'll play a role in disputes between some of the treaties of adhesion, specifically 3 and 5 in areas of northwestern Ontario, and how that might be dealt with in the context of the specific claim. It has a lot to do with things like power generation in places like Ear Falls and the rights to traditional land use cabin permits through the Ministry of Natural Resources. It's not always clear who has those rights on specific lakes, etc.

**Mr. Perry Billingsley:** The question is particularly complicated. It straddles a number of our different areas. Of course I can't speak for any of the provincial governments, but they too are bound by Supreme Court decisions in respect to consultation and necessary accommodation. They need to be very aware, as they pursue their land management activities, of those obligations with respect to the specific claims.

• (1030)

**Mr. Michel Roy:** I think we have to take into consideration that those decisions from the court around conservation changed the dynamics. In the past in these historic treaties area you had first nations living on reserve and development was happening on what they called "traditional territory" without any consultation. People were essentially saying, well you have jurisdiction over reserve land; outside of it we don't have to consult with you. With the court decision now, there is a need for consultation on the use of traditional territory.

It is not an issue in the context of specific claims. We are dealing with obligations under the historic treaties. Sometimes it's land that we didn't provide to the band, or mismanagement of assets.

[Translation]

**The Chair:** Thank you very much.

We now turn to Mr. Lévesque.

**Mr. Yvon Lévesque:** In James Bay in Quebec, there is the Peace of the Braves Agreement. Last fall, I think, the federal portion of the agreement was finalized. Was that part of a specific claim? Are there any specific claims to be dealt with in that area?

**Mr. Michel Roy:** The agreement between the Crees and the federal government, which was termed the *new relationship*, deals with the implementation of a modern treaty which was signed in 1975. The purpose of this was to settle an implementation-related dispute before the courts. So this was not a specific claim. These are currently negotiations between the Crees and Quebec concerning a self-government agreement for the Crees. And that has resulted from the comprehensive agreement that was reached.

**Mr. Yvon Lévesque:** Thank you very much.

**Mr. Marc Lemay:** May I say something?

What you are saying is interesting. Are there any other self-government implementation agreements, for example, with the Attikameks or the Algonquians?

**Mr. Michel Roy:** Self-government is one of the elements of any modern treaty-based comprehensive claim negotiation process. It was the first land claim agreement in modern times for the Crees, and there was no self-government at that time.

**Mr. Marc Lemay:** The community already has to be recognized by the department as a first nation, doesn't it?

**Mr. Michel Roy:** Yes, it does.

**Mr. Marc Lemay:** So it has to be recognized before claims are filed.

**Mr. Michel Roy:** That's right. And when it comes to self-government, the community's ability to take charge of its own affairs also must be assessed. All that needs to be thrown into the mix.

**Mr. Marc Lemay:** Before considering claims, self-government, and land claims, the community has to have held its own consultations.

**Mr. Michel Roy:** Yes, that's right.

**Mr. Marc Lemay:** They have an issue which isn't very clear to politicians, myself included. We get bombarded with questions on this.

Take the example of the Métis in Quebec. Three quarters of Quebec belongs to the Métis and the aboriginals. So what do you do there? It's not clear. In my opinion, the Quebec government really needs to take a look at this. And that applies to the other provinces too, even Ontario. The fact is, there are Algonquians on either side of the Ontario border. And three quarters of Ontario belongs to them.

Are there any joint negotiation tables? In Quebec, there aren't any.

**Mr. Michel Roy:** Between which groups?

**Mr. Marc Lemay:** Between the Algonquians or the Attikameks or the Innus, for example, and the department.

**Mr. Michel Roy:** There are negotiation tables for land claims between the Quebec Innus and the Attikameks. As far as the Algonquians are concerned, there's one in Ontario, which covers the Outaouais region, but there still aren't any in Quebec.

• (1035)

**Mr. Marc Lemay:** Thank you.

[English]

**The Chair:** There is one speaker left. I have a couple of follow-up questions, so I may take one of the government slots to finish up.

Let's go to Ms. Crowder for five minutes, and then we'll try to wrap this up. We'll have time left for our committee discussions.

Ms. Crowder.

**Ms. Jean Crowder:** I want to go back to the surplus crown lands. The Auditor General's report says that in 1998 INAC received authority and funding to acquire and hold lands. You said that was a different department, but it's part of comprehensive land claims.

**Mr. Michel Roy:** I'm sorry about that. For surplus crown lands, we have a specific program and an initiative within the department to acquire those lands when and if a treaty is negotiated, and we know we are planning that the land will be used in the context of modern treaties. Then we can acquire the land.

**Ms. Jean Crowder:** For example, in Nanaimo there's a DND site that's largely vacant. Would you negotiate with DND for that site for the Tsawataineuk?

**Mr. Michel Roy:** If DND declared that land surplus—

**Ms. Jean Crowder:** So they have to declare it surplus first.

**Mr. Michel Roy:** Yes. Then there is a process within government. We are one player among others that could be there to say we need that land.

**Ms. Jean Crowder:** So you can't influence them.



**Mr. Michel Roy:** No. It's up to them to decide.

**Ms. Jean Crowder:** I have a quick question on implementation. It came up here around the land claims coalition implementation group. Of course, a couple of years ago they did a report and made a number of recommendations. The renewal of those is seriously behind for many of those nations—by three to five years. They're almost at the next round of renewal.

**Mr. Michel Roy:** Yes.

**Ms. Jean Crowder:** What has been done to speed up that process of renewal?

**Mr. Michel Roy:** The renewals have been a challenge for the federal government. We have the report of the Auditor General and the report of the Senate committee, and we are working with the coalition to try to develop better ways of implementing and renewing those agreements. We are learning from what is going on in Yukon, and with the Nisga'a and other groups like that. We recognize that we are behind, but we are trying to find a way of moving forward.

**Ms. Jean Crowder:** But what sort of timeframe are you looking at in improving the process? Again, these nations are now seriously behind in terms of—

**Mr. Michel Roy:** Our hope is that if we are successful in getting a mandate now for those renewals that are pending right now—the Nisga'a and the Yukon—that will give us the direction we need for the future. So that will, hopefully, happen in the coming year.

**Ms. Jean Crowder:** I'm not aware that any formal response was ever made to Justice Berger's report on Nunavut from, I think, 2005.

**Mr. Michel Roy:** I think you're right. I don't think we had a formal response for that.

**Ms. Jean Crowder:** A very important part of that report was the recommendation for some significant—\$20 million—investment in education. He wasn't actually recommending a huge amount of money. Do you know if there's been any movement made on that? It's an important part of that.

**Mr. Michel Roy:** We have had some discussions with the Nunavut government and NTI on some follow-up to Mr. Berger's report, but during those discussions we were unable to come to an agreement.

I have to say I am a bit careful here, because as you know, we have a court case now with NTI in the context of implementation, so it's difficult for us to comment.

**Ms. Jean Crowder:** Just to come back again to the number of comprehensive land claims potentially in Canada—not just in British Columbia—can you tell me the number of nations that don't have comprehensive land claims in place, including British Columbia?

**Mr. Michel Roy:** I think I will have to come back to you with some specifics on that.

**Ms. Jean Crowder:** I'm asking that, of course—and this is a resource issue, for both specific claims and comprehensive land claims—because the department needs sufficient resources in order to address these issues. Of course, more and more nations are becoming more aware of their rights and title, and I would expect that there will be more nations that file these claims. That's why I was wondering about the numbers. I wonder if you could comment

on whether or not you feel the department has enough resources to actually handle these claims.

**Mr. Michel Roy:** If you think about the Inuit, for example—and this will not give you all of the answers—all of the Inuit of Canada are covered by comprehensive claims. They all have modern treaties. We have the issue about the Labrador Métis group, but *grosso modo* all of the Inuit now have a land claim in Canada. If you think about eastern Canada and the Atlantic, all first nations right now are involved in the comprehensive claims process. In Quebec we have the Innu and the Atikamekw. There were questions about the Mohawk and the Huron in Quebec.

● (1040)

**The Chair:** I have at least one or two questions, and by the way, there have been some excellent questions from members this morning.

In the course of your responses, you touched on a couple of statistics. The 40% number was given out in terms of what has been completed in specific land claims. For the three areas mentioned—comprehensive claims, specific claims, and the progress on self-government agreements—I wonder if you could give us some idea of the scope. For example, you have *x* number of claims in front of you, and there are still *x* number in the hopper at this point. For each of those three, I wonder if you would give us some context, some ability to understand the scope of the work that you have left.

**Mr. Michel Roy:** I have to say that if I look at the business line right now, we have around 200 tables of negotiations going on.

**The Chair:** That includes all three—

**Mr. Michel Roy:** That includes everything—all three—and even implementation table negotiations, so we have around 200 negotiation tables going on right now. Of those, I would say probably around 120 are specific claims going on right now, and the rest are self-government and comprehensive claims.

**The Chair:** All right.

There was one other thing. In your opening remarks, Monsieur Roy, you mentioned that in the course of monitoring existing agreements, there are legal and political pressures that come to bear. I know there's probably not quite enough time to elaborate on that, but could you define what some of those are and give some examples?

**Mr. Michel Roy:** We have some court decisions, of course, that will challenge the federal government in its interpretation of "obligation", for example, under land claims agreements. Since we established the government-to-government relationships with first nations and the aboriginal groups, there is the same dynamic as the provinces have with the federal government in terms of pressure, in terms of making the point about moving forward their agenda, and in terms of getting support from the federal government to move their agenda. That dynamic is part of the Canadian Constitution, but that's what we are creating with the aboriginal groups right now. So we are under that kind of pressure in the negotiations. It's exactly what is going on with the provinces and the federal government right now. It's *grosso modo* the same thing.

[Translation]

**The Chair:** On behalf of members of the committee, I'd like to thank you for your presentations this morning. I'm sure they'll be very helpful to us in our future discussions.

[English]

We're going to take a brief two-minute break, and then we'll resume with committee business.

• \_\_\_\_\_ (Pause) \_\_\_\_\_

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• (1045)

**The Chair:** Members, let's get under way here.

**Mr. Michel Roy:** We brought the CD for all members here. It's a briefing note on self-government and comprehensive claims and all of the files that we have in negotiation right now. It's in French and English, so you can use it.

**The Chair:** *Merci beaucoup.*

Let's continue with our discussions. We're in public session at the moment. Do members prefer to be in camera for the discussion of our work plan?

**Some hon. members:** No.

**The Chair:** All right, that's fine.

I think there seems to be consensus that it's okay if we stay public for the time being.

[Translation]

Is that okay?

[English]

As I mentioned, the subcommittee met last Thursday and briefly considered what we have in front of us. By and large, members agreed that with two potential bills in front of us in the fairly near future, we ought not to proceed into any substantive studies. Therefore, we opted, as we did today, to receive briefings and updates from relevant departments on three topics, the one we did

today, of course; and on Thursday there will be an update on the TRC and the residential schools issue, and where we stand on that issue; and a third meeting will be an update from Statistics Canada and the First Nations Statistics on their work as well.

The understanding now seems to be that Bill C-5, the Indian oil and gas bill, may not get through the House this week. They're putting it off until the week after the break, perhaps. When we had our discussions on Thursday, we considered that in all likelihood we would have the oil and gas bill commencing in the week after the break. But it appears that might not happen now.

At your pleasure, I think we should consider moving the Statistics Canada meeting and update to February 24, and then consider having an additional briefing day on February 26. That will leave the first week of March open, hopefully to receive the bill on Indian oil and gas. So that's the proposal.

I have a question from Monsieur Lemay.

• (1050)

[Translation]

**Mr. Marc Lemay:** If we can't address Bill C-5, I'd like to talk about post-secondary education and get briefed on the current state of affairs. There are issues. I'd not only like to hear from the representatives from the department, but also from the Assembly of First Nations. Many people have asked me to raise the issues of post-secondary education and education in general at committee, so that we have an opportunity to ask the officials what's happening. You don't just fix the problem by building or renovating schools. The amount earmarked for post-secondary education is a discretionary sum and that's something that needs to be discussed.

[English]

**The Chair:** So in general, the issue would be the education in first nations communities, and the proposal by Mr. Lemay is that the briefing come from the department but also from the AFN.

Let's go to Mr. Russell.

**Mr. Todd Russell:** Thank you, Mr. Chair.

What you've suggested in terms of moving the briefings up and hoping we'll get to Bill C-5 is fine with us. When you talk about a Statistics Canada presentation, that will have to be broad in terms of aboriginal peoples. I mean, there's an Aboriginal Peoples Survey out there as well, and it would be good to get some feedback on that.

Now, I'm open to it, but if we're talking first nations, we're talking Métis, and we're talking Inuit as well? So that's the gamut?

**The Chair:** It's a big area.

Going back to earlier comments, the issue of the post-secondary school support programs was discussed.

**Mr. Todd Russell:** With Statistics Canada you can have a very refined presentation or you can have it broader in terms of looking at the Métis statistics and Inuit statistics. I think you want to include it all.

I firmly agree with Mr. Lemay on post-secondary education. A lot of the correspondence coming in now is dealing with that particular issue. But I would also like to open it up a little bit. I've had some representation from Inuit regions as well that are also affected by post-secondary education. I'd just like to broaden it in terms of the briefings.

**The Chair:** Just so that I understand, then, on the suggestion that we look at this education question, that would be unrelated to my comments; it would be more specifically the post-secondary school student support program in particular and how that is rolling out. Is that the issue? In a one-meeting briefing, obviously we're not going to be going into a study per se.

Mr. Lemay, and then Mr. Russell.

• (1055)

[Translation]

**Mr. Marc Lemay:** Mr. Russell told us we have received a lot of requests for information about the government potentially withdrawing from its commitments in the areas of first nations post-secondary education, obviously, because there is no legal obligation in that regard under the Indian Act, but also with respect to secondary education. We get the sense that the federal government wants to transfer this responsibility to the provinces.

What is the department's intention with respect to education?

[English]

**The Chair:** Let's go to Ms. Crowder.

I'm sorry, Ms. Crowder, I'd had that flipped around. Pardon me.

**Ms. Jean Crowder:** That's okay.

I just want to support Monsieur Lemay's request to have a briefing from the department on education, and I would support having the Assembly of First Nations, ITK or an Inuit organization probably would be important as well. We've had Justice Berger's report and recommendations around education; it wasn't just post-secondary.

Again, it's not a study—the committee already did a fulsome study on post-secondary education—but it would be important to know where the department has gone based on that.

**The Chair:** Very good.

Mr. Duncan.

**Mr. John Duncan:** Building on the comments of those who have spoken previously, I think it's great that we get the department in to talk about post-secondary education and get a briefing. But if we start going to the AFN and others, I'm sorry, but that's not a briefing. We're getting into some other territory, and it won't be devoid of politics.

Is that really a briefing? No, it's not. We're getting into a study all over again. I wouldn't know where to draw the line if we started doing that. If we invite AFN, then do we have to invite CAP, for instance? Where do we stop?

So I do have a concern there.

**The Chair:** Mr. Russell, and then Monsieur Bélanger. After that, members, we'll have to wrap this up, unfortunately.

**Mr. Todd Russell:** It's an important issue. You can have briefings from agencies other than the federal government. There's nothing wrong with AFN briefing the committee on where they're at in terms of the post-secondary education or the 2% cap. There's no problem with ITK. All we're doing is just getting as fulsome information as possible.

That doesn't mean we're going to move into a full-fledged study. That means we're getting different aspects of this particular matter presented to the committee. So I don't see that being protracted. We can get these various viewpoints, these various briefings, and then we can decide as a committee where we want to go. I don't see this spanning any more than maybe two meetings right now, with a series of briefings from different national aboriginal organizations in conjunction with the department.

[Translation]

**The Chair:** Fine.

Mr. Bélanger.

**Hon. Mauril Bélanger:** May I raise another matter, Mr. Chair?

**The Chair:** No, it is on the same topic.

**Hon. Mauril Bélanger:** I'd like to bring up another issue.

**The Chair:** I see, go ahead.

**Hon. Mauril Bélanger:** I'd like to begin by thanking the clerk and our staff for having distributed the list of members with their contact details.

Also, we received notice of a nomination by order in council. In previous committees I've sat on, it was common practice for the clerk to attach a copy of the nominees' curriculum vitae to the notice. Could this be done here? This would give us a sense of who the nominee is.

• (1100)

[English]

**The Chair:** These are sessional papers provided to the committee from time to time. I don't even have much history with this. We got them in the industry, science, and technology committee, but I don't recall that the CVs were actually distributed with the appointments. Mr. Bélanger, can we check into that to see if that's available and report back?

[Translation]

**Hon. Mauril Bélanger:** That sounds good, Mr. Chair.

When the government proceeds with a nomination by order in council, a curriculum vitae is also produced. This curriculum vitae is made available. You just have to get a copy and have it attached to this document.

Thank you.

[English]

**The Chair:** Of course.

Okay, members, we'll take that under consideration and plan the next four meetings accordingly. As you can tell, we have some uncertainty around timing here, but we'll do our best to make sure we have a fulsome agenda in front of you and we can continue our good work.

Thank you very much.

The meeting is adjourned.

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