



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Aboriginal Affairs and Northern Development

AANO • NUMBER 008 • 1st SESSION • 41st PARLIAMENT

EVIDENCE

Tuesday, October 25, 2011

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Chair

Mr. Chris Warkentin

Standing Committee on Aboriginal Affairs and Northern Development

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• (1105)

[English]

The Chair (Mr. Chris Warkentin (Peace River, CPC)): Committee members, I want to call to order....

May I get the attention of all the people in the room? We are going to proceed with our hearing this morning. We're running a little late.

Committee members, I want to call to order the Standing Committee on Aboriginal Affairs and Northern Development. This is the eighth meeting of our committee.

Today we have before us the BC Treaty Commission. We have asked them to come and provide us with a briefing. We appreciate their coming and want to thank the commissioners and the chief commissioner as well as their legal counsel. We know you have had a busy day. You've spoken to senators this morning.

We have Sophie Pierre, who is the chief commissioner. Thank you very much for coming. Celeste Haldane is a commissioner. I don't see her yet. She must—

A voice: She's on her way.

The Chair: She's on her way.

We have Robert Phillips, who's also a commissioner. We have Dave Haggard, who is also a commissioner—I think he's on his way—and Mark Smith, legal counsel. Thank you for being here.

Sophie, we want to turn it over to you. Please provide us with your testimony, and then we'll start with the questioning. Thanks so much.

Ms. Sophie Pierre (Chief Commissioner, BC Treaty Commission): Thank you.

Thank you very much for inviting the BC Treaty Commission to come and make this presentation to you. We really appreciate this opportunity.

As was indicated, we just came from a meeting with the Senate standing committee on aboriginal affairs, so we apologize for being a little breathless getting here. Luckily, it was fairly close.

I want to start off by saying that it was two years ago, almost to the day, that we were here as the BC Treaty Commission. We appeared before the House Standing Committee on Finance's pre-budget consultations. We did that specifically to seek their support in achieving the economic stimulus effect that will result from concluding treaties in British Columbia.

We have travelled here again, two years later. We're appearing before your committee and before the Senate committee to ask again for your help to unlock the economic potential that will be the result of settling treaties in British Columbia. We are asking for your support to regain the sense of urgency—to put that back into the negotiations that are happening—because, quite frankly, we feel there is no sense of urgency left in the negotiation process after 19 years.

For modern treaty-making to succeed, Canada as a country and the federal and provincial governments, as well as first nations governments, all need to move ahead on an economic agenda. Up till now, what we basically have—particularly with Canada, with the federal government and with the Department of Indian Affairs—is a social agenda. An incredible amount of money goes into the social agenda and always has. We have very, very little—and I'm quite concerned that in fact there's going to be less—going into an economic agenda. We feel that's wrong. That just keeps us in this big, deep hole we're already in. We need to start filling up that hole to bring us back to the top. We can only do that through an economic agenda and economic stimulus in our communities.

The Government of Canada has a unique constitutional obligation to aboriginal people. Under our Constitution, aboriginal rights and treaty rights—those that exist now and those that may be acquired—are recognized and affirmed. We all know that's our starting point. The reality in Canadian law is that aboriginal land title, and the rights that go with it, exists whether or not there is a treaty, but without a treaty there is uncertainty about how and where those rights apply. That is our situation in British Columbia: the situation of uncertainty. Through treaties, the free, prior, and informed consent of first nations citizens in British Columbia is achieved. There is certainty of ownership and jurisdiction.

In September 1992, the Government of Canada, along with the Government of British Columbia and first nations governments, committed to this unique, made-in-B.C. approach, because for the rest of Canada, as you're very well aware, we have the historical treaties. We have a couple of historical treaties in British Columbia, but for the majority we have no treaties. The intent then was to form a distinct process to reconcile the aboriginal rights issues there in British Columbia, to meet the unique and specific needs of British Columbia. But given the time and money that's been spent—19 years—and at the latest count we can tell only what's gone to the first nations, we have no idea what the feds and the province have spent on this process.... In terms of the financial resources that have gone to the first nations, that is upwards of a half a billion dollars and 19 years of negotiations.

You will have received a copy of our annual report, and the cover I think says it all: when are we going to start seeing a return on that investment? In fact, we feel that the time is now. We should be seeing a return on that investment. That's a substantial investment already, and we need to start seeing a return on that.

The state of the economy, of course, is the major issue on everyone's mind, as it is on ours. Understandably, the way the world economy is now, the Government of Canada has to be very strategic in its investments.

• (1110)

The Canadian Chamber of Commerce report, "The Business Case for Investing in Canada's Remote Communities", makes a strong case for strategic investments in remote communities. We believe the same case can be made for first nations communities because in most instances they are both remote or rural. Also, the Canada-first nations joint action plan aims to unlock the economic potential of first nations. It's recognized that there is economic potential there. How do we unlock it?

We feel that through the treaty process we have a way of doing that in British Columbia. We feel the treaty process is an effective way to ensure economic growth. We say treaties are an untapped source of economic wealth because where a first nation benefits—just think of this in any of your ridings—and has an economic base, the whole region benefits. This is not necessarily true the other way around. That's why we have such pockets of poverty among first nations.

When a first nation benefits, when they have economic activity, the whole region in your various ridings all benefit. It makes sense for us to support an economic agenda for first nations communities.

Recently, the Government of British Columbia had its Speech from the Throne and they unveiled their plans; they continue to unveil their plans to ensure the economy remains strong in British Columbia and includes first nations people. Much of the type of development we're looking at in British Columbia is land-based. Therefore, it needs certainty. It's around mining, gas and oil, pipelines, etc.

The Government of British Columbia, quite frankly, is getting quite frustrated with the treaty process, feels that it's taking too long and is not effective, and it has started going into bilateral agreements with first nations. While we support that, and we say, good on you, keep doing that because it brings immediate economic benefit to the first nation, we are also being very careful and reminding British Columbia that whatever agreements they enter into have to tie into the treaty process for us to achieve what we're all looking for, which is long-term certainty on all sides. The bilateral agreements are good, and they're around natural resources in particular—energy, transportation—which are going to bring those short-term and immediate benefits. That's really good, but together all three parties need to re-energize this treaty process so we can all benefit from that certainty.

For the most part, the federal government has not been a party to these bilateral arrangements with British Columbia—that's why they're called bilateral—and we feel that on its side the federal government has become more involved in what are called treaty-related measures. This would be a way of providing benefits now,

rather than waiting until the end. The treaty-related measures we get are usually in terms of financial resources for first nations in areas of capacity building, which is perfect. We need that, in some instances for economic development. Mainly it has gone to supporting first nations as they finalize their agreements around capacity.

As I mentioned a few minutes ago, the federal government's agenda in terms of aboriginal people has not deviated from a social agenda. I described it with the senators just a half hour ago. I said we have a culture with the federal government and the Department of Aboriginal Affairs and Northern Development that is one of always helping the aboriginal people, to the point where they hold both hands, so you can't do anything because your hands are always held. We need to figure out a way to let go so we can all help each other go forward.

The Mining Association of BC talked about the treaty process last spring, and while they said that treaties are not perfect, they see that treaties are one of the best ways of providing a level of certainty on the land base and a vehicle for reconciliation with first nations, which of course is very important.

• (1115)

You have an agenda of reconciliation, as does British Columbia. So we say that the treaty process is really the most effective way of reaching recognition and reconciliation.

The Mining Association went on to say, though, that in its view, "the federal commitment to the BC treaty-making process has waned in recent years".

We also come to report to you that we don't feel the commitment is there to actually finalize treaties. However, the Government of Canada has demonstrated in the past that it can move quickly on treaties—for example, Parliament's passage in 2010, just last year, of the Maa-nulth treaty. The Maa-nulth First Nations Final Agreement made its way through the House of Commons, through the Senate, and the Standing Senate Committee on Aboriginal Peoples, and received royal assent in four days. So that's on the one hand, where we know that kind of work can be done.

On the other hand, we have the exact opposite that is also true, where the federal government has taken more than 16 months to initial a final agreement with the Sliammon First Nation—to simply initial it. This is not final signature yet.

The process, in case you're not fully aware, is that after it's negotiated, the chief negotiators shake hands around the table, they bring it back to their parties, they all agree, and they come back together with an agreement. Everybody puts their initials on it because then the first nation has to bring it into their community for a ratification vote. Once it passes that vote, it goes to the British Columbia legislature. Once it passes that vote, then it comes here to you.

Because it took 16 months—and not just the 16 months, but there was a lot of frustration before that, particularly around fish—the community has lost a lot of its trust in this. They don't know if this is such a good treaty for them after all this time. So now that it's been initialled, it still needs to go back for ratification, and the negotiators in the community need the assistance of all the parties to ensure that there is good communication, that the right message is getting out to all of their people, and in fact that the questions the people have are answered, straightforwardly, so they can make an informed decision on this.

But it makes it really tough. There was a big hoopla back in June of 2010 when they agreed to it, and we thought initialling was going to happen in two or three months. It would have been very quick, but it took 16 months to get that agreement. When we have that kind of delay, it just makes it really difficult to convince everybody that there is a real commitment to treaty-making.

Quick passage of the Yale First Nation Final Agreement by Parliament, because it's here now.... Yale has gone through its ratification, it's gone through the B.C. legislature, and it's now sitting here for you to deal with. So quick passage this fall would also help in reinstating some of that trust in this whole process.

We recognize that court decisions in the past have helped in terms of the negotiations and the agreements that are reached, but those court decisions were the result of litigation, obviously. So we've always believed that as an alternative to litigation, we support, and are very aggressive in supporting, dispute resolution at negotiating tables, whether those disputes are among the three parties—Canada, a province, and the first nations—or within the first nations themselves on overlapping claims on shared territory.

Human resource planning is also very essential to first nations governance once the first nation signs off on a treaty and gets into the enactment, past the effective date—as we've had with the Tsawwassen First Nation and with the Maa-nulth First Nation.

● (1120)

We're wanting to learn from those examples. We have the support of Chief Kim Baird, from Tsawwassen, who is sharing her experience so that we can assist first nations that are ready to take over and be self-governing once they reach the effective date. Human resource planning is a major part of our agenda, and we are doing some very progressive and very active work in that area. If you're interested, we can talk more about it later.

There are really two initiatives we have as a treaty commission where it refers to first nations, and those are, specifically, assisting first nations with their overlapping claims on shared territory and helping them with human resource planning.

What we're asking you to consider and to support us in, and again, it underscores the reason we need to finalize these treaties, is for the economic benefit of all of us. We're requesting some very specific actions, some very specific recommendations. They are in the area of a recommitment from all parties. We feel, as a commission, that the Prime Minister, the premier, and the first nations leadership need to be engaged, in a public way, to a recommitment so that the message gets out to all Canadians that there is a commitment to this B.C. treaty process. What does that recommitment mean? Specifically

we're talking about actions and making recommendations to overcome the bureaucratic inertia.

When I started in this position as chief commissioner two and half years ago, it became clear to me very quickly that what had happened over the 17 years was that we had gone from quite a dynamic process to a process that really was no longer about negotiations; it was really just part of an Indian Affairs program. And it was being dealt with as a program. We weren't looking at real negotiations. We weren't looking at ways of dealing with uncertainty by reaching a negotiated settlement.

The bureaucratic inertia is also caused by the lengthy delays when federal negotiators have to come back to Ottawa to get everything kind of cleared through. We feel that the negotiators need to have real authority and flexibility to complete treaties. Basically what we're saying is that we need some deal closers. We need people who know how to make deals and close them for everyone's benefit.

We're also saying that we need a commitment to transparency. We need to have on the table, much earlier than they have been, land and cash offers, because the heart of a treaty is the land and cash offer. All the other stuff is important too, yes, but it's that land and cash offer. We need to have that land and cash offer made sooner, instead of wasting years and years while first nations build up debt in the millions of dollars so that people can sit around a table like this for months on end moving commas. That's basically what they do. They move commas as opposed to dealing with substantive matters. Let's have those mandates to deal with substantive matters.

We need to give the federal negotiators real mandates to negotiate. This is the situation right now. We're not having any negotiations going on because every table is affected by national reviews. These are just the ones we're aware of right in front, and there are probably half a dozen more. There are a series of multi-year, pan-Canadian federal reviews ongoing at any one time. Right now, the comprehensive claims review is going on. We have the fiscal harmonization review. We have the Cohen commission and the west coast fisheries review. When I started two and half years ago, we were right in the middle of the west coast fisheries review. I understood that the review had kind of followed on the heels of the Pearse review on fisheries.

In the middle of the west coast fisheries review we started with the Cohen review. We don't really know what happened to the west coast fisheries review. Are they going to bring that back out of a drawer sometime and continue it after Cohen?

● (1125)

We're also told that we will have a better sense of what the negotiating position is going to be on fish once we finish the Cohen review, which is scheduled to finish in 2014. But we find that difficult to really accept because what it's going to take is two or three years to figure out what Cohen says and how you deal with it.

So we could be, I don't know, seven years without a fisheries mandate, and all that time first nations will be building debt because they're supposed to be in negotiations. You get my drift.

We also have the national capacity program review, and a very big one that is going to affect us is that in 2014 there is the expiration of the current five-year federal budget for Canada's participation in the B.C. treaty process. So we have all this work right now to get us to 2014. All of this work goes on, and it makes it very difficult to actually have negotiations at the table.

What we're saying is that we need to have a public recommitment, a recommitment that sends a message throughout all of our systems that says settling treaties is a way of reaching certainty, settling treaties is the right thing to do, and most importantly it's a way of generating the economic benefits that we can see coming out of settling these treaties.

So we're asking that you help us to revive the spirit and the meaning of the made-in-B.C. treaty process by supporting a public recommitment at the 20th anniversary of the B.C. treaty process. Next year, in September 2012, it will have been 20 years since we signed on to this process. At the time—and I was part of the original signatory—we all figured we were going to be finished with this business by the year 2000.

Thank you very much.

The Chair: Thank you so much for your testimony this morning.

We're going to begin, committee members, with our rounds of questioning. We're running a little bit behind—I just want to make committee members aware of that—so if you can keep your questions to the concise period of seven minutes, we'll get through a lot more questioners that way.

Madame Duncan.

• (1130)

Ms. Linda Duncan (Edmonton—Strathcona, NDP): I'll do my best, Mr. Chair, but I can't control the answers.

The Chair: Well, then, the chair may have to do that.

Ms. Linda Duncan: We'll leave that to you.

The Chair: I may have to do that, yes.

Committee members, let's give time, I guess is what I'm saying, for the questions to be answered within your seven minutes.

Ms. Linda Duncan: Okay. Now my time starts.

Thank you very much. It's an honour to have you here, and I look forward to following up with you tomorrow. Unfortunately, we didn't get a chance to talk to you before now, with the timing of your presentation. I highly respect the work you're doing and commend you that you are here before the committee. Thank you for the great presentation and the annual report. It's very concise and to the point.

It's hard to know exactly where to go at it. What's coming through to me is actually a very interesting point. I'm wondering if you can elaborate on this a bit. You're calling for a public recommitment to the process, and there's some mention in some of your ancillary documents and so forth—your press release—about concern with some of the ancillary activities going on. For example, there are a number of tripartite agreements coming forward between the provincial government, the federal government, and the first nations organizations. There's some interest, it appears, on the part of the government in pursuing alternative approaches to land management.

I really picked up on your point, which I think is a really important one, that all this is good—sidebar agreements on housing, education, training, land management, and so forth, looking towards a land code—but if you don't have a constitutionally entrenched treaty, there is not that, not just legal certainty, but the constitutional insurance that you are being recognized as an order of government and that you have these entrenched rights.

I wonder if you could elaborate a bit more about where you see some of these potentially being at cross-purposes or where you see they may be deflecting the tension by the already overwhelmed first nations in actually trying to work at the table. Do you see federal officials being distracted from giving their attention to resolving the first nations final agreement and self-government agreements by pursuing other matters?

Ms. Sophie Pierre: In regard to the other matters you describe, things like the land code...the land code refers to Indian reserve lands. It's good, because, again, it's like the bilateral agreements, where we describe it as a stepping stone. If you can be a good manager of your little Indian reserve lands, then when you have treaty settlement lands you can translate what you've learned managing Indian reserve lands to the greater land base. It is a stepping stone, and it's a good thing.

We are concerned that for the first nations that are committed to the treaty process and want to see that kind of certainty for their people, and want to see the economic benefit coming from treaty, we don't have the kind of movement happening at the negotiating table that we see happening in the other areas. Maybe it's because the other things are easier. I don't know.

In terms of negotiating treaties, we know it's hard work, but we also know that if there are clear, strong mandates, where the three parties come together, first of all, to express the interest in settling a treaty—and what are those interests? So that we can meet the needs, to some degree, of each party. What we've found very difficult right now is that we have federal negotiators coming to the table with fixed positions, saying, "This is it, take it or leave it." That's not a negotiation. Instead of coming with fixed positions, you need to come in with interests in order to actually be negotiating.

In some instances, those fixed positions would actually leave the first nation at the same place, or worse off, than they are in being an Indian reserve. That doesn't meet the interests of the first nation in wanting to become economically self-sufficient and a viable self-governing nation.

Ms. Linda Duncan: I have a second question. I notice you raised it as, obviously, a significant issue in your annual report. That's about overlapping claims. I have had some of the B.C. first nations meeting with me several times—not surprisingly the Stó:lo Nation—and I would like to hear...

I notice you're asking for separate funding to help you move toward dispute resolution.

Ms. Sophie Pierre: Yes.

Ms. Linda Duncan: I wonder if you could elaborate on that. I worked in the Yukon, and everything was to do with finalizing the first nations final agreement on self-government. Clearly there's overlap between even Yukon and B.C.

Ms. Sophie Pierre: Oh yes.

Ms. Linda Duncan: It's not fair to one first nation if the other signs and gives away some of their rights. I'd like to hear your recommendations on how we might better manage that to make sure that one first nation is not harmed by the negotiations with another. Fisheries, obviously, is a big one, and you've explained where the problem is with that.

• (1135)

Ms. Sophie Pierre: Sure. I'll give a brief answer, and then I'll ask my colleague, Commissioner Haggard, to speak to some specific examples where he's been involved.

Specifically, in terms of the Yale treaty and its impact on the Stó:lo people, the first point is that the fishing sites that are contentious are those that were part of the Yale Indian Band when the Indian reserve was formed. The message that we give out to first nations as a commission is that we all have very intricate and challenging overlapping claims on our shared territories, but it is only ourselves who can settle these.

Going to court, in all likelihood—and we saw that already in Tsawwassen, I believe it was, where after a couple of million dollars was spent on legal fees, etc., the court said, you need to settle this yourselves. The court was not prepared to make a decision on that, nor do we feel they should. This needs to be settled internally, amongst the first nations. We've all known that this kind of stuff was coming down the pipe. We all need to be working at it now.

In the specific case of Yale and Stó:lo, as I said, this was—

Ms. Linda Duncan: If I could intervene here, I don't want to talk about specifics. I'm more interested in your recommendations of how to help them do that.

The Chair: Your time has run out. I was giving just enough time for the completion of that answer.

Mr. Haggard, you had some comments with regard to that.

Mr. Dave Haggard (Commissioner, BC Treaty Commission): Thank you.

We have started to intervene in the processes where we run into overlaps on shared territories. We had a big success on the west coast with one treaty that was being implemented, and we developed an accord with another nation that's not even the process, within days before the implementation of that treaty. It is a big success. We're trying to replicate that throughout other parts of the province. We have about six areas now that we're working on. We believe that's the only way we'll have success, because the courts aren't going to rule in favour of one over the other.

The Chair: Thank you.

Mr. Boughen.

Mr. Ray Boughen (Palliser, CPC): Thank you, Chair.

Welcome to the panel. We're pleased that you could share your morning with us.

I have a couple of questions. In the past five years, we have seen two treaties implemented in British Columbia, with a handful of others approaching conclusion. What opportunities do you see to

build on the successes that we've had so as to increase the productivity of the B.C. treaty process?

Ms. Sophie Pierre: We're looking for mandates that are clear, that are wide enough to accommodate negotiators who are closers, negotiators who know how to negotiate and how to close a deal. We have a couple of those people in British Columbia, but they need to have the ability to move forward, so that they are not always being forced to bring everything back into the system. What we hear is that it has to go into the system, and every time I hear that I shudder, because I know we're not going to see anything for another 12 to 18 months.

When the chief negotiator has a clear mandate and reaches an agreement, they shake hands over it. That should be it, and it shouldn't have to go back and be rewritten and then brought back again, which is basically what happened in Sliammon.

• (1140)

Mr. Ray Boughen: In the 2011 annual report there's a criticism of federal mandates and resulting delays in negotiations. Can you say something about the implementation that may come from B.C. or first nations mandating processes?

Ms. Sophie Pierre: With respect to B.C.'s mandating, its focus now is more and more turning toward bilateral agreements, and that is going to have a direct effect on the tripartite negotiations. So we are reminding B.C.—and it was said in the throne speech—that while B.C. wants to have immediate economic benefits flow to first nations through these bilateral agreements, they must recognize that it has to tie back into a treaty. We need to ensure that their chief negotiators have that as a strong mandate. We're not sure if that is the case right now, and I continue to push that.

As to the first nations, the biggest issue they have to resolve is overlapping claims on shared territory. It's for every table, because there are first nations in the treaty process that have overlapping claims with first nations that are not in the process. What we are saying to the federal government, particularly to treaties and aboriginal governments at Indian Affairs, is that financial resources need to be put toward to help those first nations to reach these agreements between themselves so that they can reach the protocols that Commissioner Haggard described. It is difficult when it's between a first nation that's in treaty and a first nation that's not in treaty.

Mr. Ray Boughen: Thank you, Commissioner.

Thank you, Chair.

The Chair: Thank you.

Was there anybody else?

Mr. Payne.

Mr. LaVar Payne (Medicine Hat, CPC): Thank you, Chair, and my thanks to the witnesses for coming today.

I was just listening to your comments, Ms. Pierre, and your discussion with regard to the length of time it took for initialling the agreements. Maybe you could lead us through the process of the negotiations for the Sliammon and the Yale treaties. When did it start, and when did it get to the point that documents came to us for initialling?

Ms. Sophie Pierre: It's a six-stage process, so it would have started anywhere after 1993. That is when the commission first started accepting a statement of intent, which is the first step. So a first nation puts forward a statement to say they intend to negotiate a treaty. They describe their people. They describe the land involved in the treaty negotiation. Then they move through a process that's called readiness, and then they move into a framework. The B.C. Treaty Commission determines the readiness of all three parties, and it's something that we're concerned about now. We're stating that because the federal government has not had a mandate on fisheries, were they really ready to start negotiating way back in 1993 or 1994? We determine readiness when all three parties are ready to negotiate.

That's the second part. Then there's a framework. You outline what you're going to be talking about. Then you get into agreement in principle. The majority of the tables that we have in active negotiation are in the agreement in principle stage. I think that's about 27 tables. Some are further ahead than others. There's a whole range of agreements in principle.

You move from agreement in principle into a final agreement, and at the final agreement stage, the chief negotiators shake hands over a deal, it goes back into the system, and then it comes back as a final document that people can initial. All three parties initial. This is what happened to the Sliammon final agreement last Friday. Minister Duncan was there initialling, as was Minister Polak and the first nations.

Once it's initialled, it has to go into the community. So now the Sliammon treaty group has to convince their community that this is a good treaty and the community has to ratify it.

We are very concerned with where the community is at right now, because quite frankly they're pissed off about what has happened in the last 16 months. They thought they had a deal last June, and it has taken this long for it to come back to them for ratification. They have lost a little bit of faith in this. There's not as much trust as there was earlier. The community has to work very hard to bring that trust back, so that when they actually bring it to a vote it passes. You can imagine the situation where after the ministers have initialled you get to a point where the community just says no and they don't pass it. It dies there.

Once it has gone through the ratification—the community has accepted it—then it goes to the provincial legislature and the legislation votes on it, as they've done with Yale, and then it comes here for your vote and your process.

• (1145)

The Chair: Thank you very much.

Ms. Bennett, for seven minutes.

Hon. Carolyn Bennett (St. Paul's, Lib.): Thanks very much.

Thank you for coming, commissioners.

I'm new here. As you said in your remarks, Commissioner, I've known the social agenda a little bit more than the economic treaty agenda, so bear with me.

Since I arrived at this committee, we've been presented with the James Bay Cree Inuit approach, which seems to be pretty straightforward and has a pretty decent agreement on the shared land. It seems that will be something that will go ahead very quickly and will be expedited, I hope.

But as you can imagine, we have also been visited by the Stó:lo people. I certainly understand that settling treaties is about certainty, about going forward, but it seems the actual reserve-making was arbitrary to begin with in terms of when the crown drew those little tent pegs. We're feeling that strongly with Lake St. Martin right now. They need a new community on higher ground immediately and they don't really care where those original tent pegs were.

Could you explain to me why you as a commission have agreed to the Yale treaty without any carve-out for the overlapping contentious area? It could have been creative. This is the part that would be contentious. What I understand is that this actually may lead to violence, whether it's to highways, railways, hydro lines...this is a very, very contentious area, and with the traditional fishing and hunting in the Fraser, is there a reason why this went forward without the ability to settle this area of overlapping traditional shared territory of fishing and hunting? I think we're all just a bit unclear as to what we have to do, and as you said, Commissioner, if the chiefs will shake hands, then it's done. But if they won't, how can you go forward when both sides aren't in agreement?

Ms. Sophie Pierre: Thank you.

First of all, as a commission, we're called the keeper of the process, so it's our role to ensure that the process that has been formed, the six stages that I described, is being followed and that the negotiations are on a fairly level table—we know it's never going to be a level table—and that those negotiations go forward. It's also our role that when we see problems arising, we bring them to the table's attention. This is what we've been doing all along in terms of overlaps, for everyone, including Yale and Stó:lo, but for all the other tables also.

The treaty process was set up so that when a first nation determines that it wants to get into a treaty, it negotiates with the other two parties and reaches that treaty. As the keeper of the process we cannot determine that one treaty is better than another treaty, that one treaty should go ahead and not the other. The process needs to be fair to everyone, and those overlapping claims are issues that are not going to be determined by the three parties sitting around negotiating—the feds, the province, and the first nation. Those overlapping claims need to be taken out from that particular venue and shared, with the protocol reached amongst the first nations themselves, and then that agreement brought into the treaty. It's that particular part that is a very difficult process. We have made arrangements and tried to set the scenario and give the supports to the first nations so that they can do that, either with us mediating or by bringing in people like Justice Lambert—which we did with the Tsawwassen Cowichan—bringing in people who know how to mediate; it's their livelihood.

We provide that type of support.

•(1150)

Hon. Carolyn Bennett: I understand that in this treaty an archeological area has been removed as contentious, but traditional fishing, that five-mile stretch, has not been removed as contentious, when it would indeed be part of a negotiation with other bands.

I want to know how you can settle this one when the other people are pretty upset?

Ms. Sophie Pierre: Do you want to answer?

Mr. Dave Haggard: The reality is that in British Columbia, every nation has overlaps with their neighbours, some more than others and some less than others. This is probably one of the more significant ones, although we have a couple in other parts of British Columbia that we're also working on.

We have never tried to stop a treaty because there's a disagreement between two nations. What we have always tried to do, and we're starting to have success, is go in and help mediate on interest-based mediation—which is what I call it—so that you can deal with the interests of both the nations in the disputed area.

Hon. Carolyn Bennett: If one won't come to the table, and if you end up in this situation where the neighbour...where there is unwillingness to cooperate on accepting something as shared, like they did in James Bay just now, and there's the fact that the people who are unhappy will have to be permitted by these people who've refused to negotiate....

Mr. Dave Haggard: We just got a call two days ago, actually. There are three or four interests in that area. There's the Stó:lo Tribal Council, there's the Stó:lo Nation, and the Yale, of course. On any given day, they may or may not get along, although they're all related and they're all families. We got a phone call from one of the groups. Yale has always said they'd like to sit down and negotiate access to that disputed territory. Now they've moved off the permit issue. The one other nation is not interested at this point in time, and the third one has now phoned us. So we see an opportunity there. If we can have one success between the two, then we'll move forward, probably, with the other one as well.

It's not an easy process. It's like anything else when you have.... It's very emotional in that territory. But is it right to hold up a treaty of the smaller nation because someone else is upset about it? We have never tried to hold up a treaty because of it. We actually allow the treaty process to enable us to find a solution on the disputed territory. If they all know that the treaties are going to move forward, then there's more, eventually, of a willingness to sit down and find that peace between those nations.

If they think they can hold it up by protesting, we will have protests across the province of British Columbia and we'll never get another treaty.

The Chair: Thank you very much.

I gave an extra minute and a half to get an answer to that question because I think it's an important one for many people around the table.

Hon. Carolyn Bennett: Mr. Chair, if we could later find out whether in the B.C. process there is provision for shared territory, that's the piece I'm not really sure of.

The Chair: Thank you.

If that can be supplied through you, we'd be interested in it. If not, we'll get some direction as to whom we might seek that information from.

Thank you.

Mr. Wilks, you have seven minutes.

Mr. David Wilks (Kootenay—Columbia, CPC): Thank you.

It's very nice to see Sophie here today from the traditional territory of the Ktunaxa. Kathryn and Scott send their regards.

I have a couple of questions, which I'll quickly get to, Chair.

In your letter introducing the 2011 annual report, you suggest that you need clarity from the federal government as to our mandate and transparency concerning its delivery. Could you elaborate on that and describe how B.C. and first nations mandates are clearer and more transparent than those of Canada?

•(1155)

Ms. Sophie Pierre: Okay.

We're talking about clarity and transparency. I mentioned transparency in my original presentation, that we should know a little bit sooner what is actually going to be on the table. That also applies to British Columbia. As I said, British Columbia puts land on the table and Canada puts cash. We need this to happen a lot sooner than it is happening. As I indicated, we spent years moving commas around, in terms of the language, without knowing what land and what cash we were talking about.

In the case, for example—going back to what we were just discussing a few minutes ago—of Yale and Stó:lo, Stó:lo really didn't know what overlap was going to be on the table until the actual land offer was made to Yale. And then it was accepted. This only happened in the not-too-distant past; it didn't happen back in 1993 when they first entered the process.

They've always known that there was going to be an issue that they had to deal with, because in fact, as I said, it was when the reserve was formed 140 years ago that the problem started, with the Indian reserve and the Indian Act. This treaty process doesn't create that problem; it was there to begin with. We were suggesting and supporting the idea that it be dealt with sooner rather than later. That's the transparency question.

Clarity in mandate is what I was referring to earlier. We need negotiators who know what the devil they're doing and what their mandate is, so that when they shake hands on a deal, the deal is done and doesn't go back into a system in which it is rehashed for months and then comes back.

That's the best answer I can give about having clarity. We need to know that each party has negotiators who are closers and who have the authority to close.

Mr. David Wilks: Further to your annual report, you asked for a recommitment to a made-in-B.C. approach to treaty negotiations.

Can you describe that approach for us, highlighting some of the reasons why negotiations in B.C. should be distinctive?

Ms. Sophie Pierre: First and foremost, it's because the rest of Canada pretty much—90% of the rest of Canada—has the historical treaties. We don't have that situation in B.C., other than for that little piece around Victoria on Vancouver Island, the Douglas treaties, and then the little piece of Treaty 8 that comes in on the north. Other than that, there's no certainty; we've never had treaties in British Columbia. We need to deal with this separately because we don't have those historical treaties.

There is a comprehensive claims process that happens across the country. It's a mix of all the claims, whether involving the interpretation of historical claims or new claims. What we're saying is that rather than be part of that mix—obviously, British Columbia was a part of the comprehensive claims prior to 1992—we could see that if we stayed with comprehensive claims it was going to be 600 years before we got any kind of certainty in British Columbia. So we said, let's make it easier on everybody and make it easier on ourselves, carve out the situation in British Columbia because it is unique, form a made-in-B.C. treaty process, and get on with the business in order to have all these treaties signed by the year 2000. Here we are 11 years later, and we still only have two.

The Chair: You still have a couple of minutes.

Mr. David Wilks: Lastly, I've certainly sat in your area and watched the Ktunaxa as they move forward as well. I look forward to the day that happens.

Ms. Sophie Pierre: Thank you. So do I.

•(1200)

Mr. David Wilks: There have been some great advances with St. Eugene and such.

Ms. Sophie Pierre: Yes.

Mr. David Wilks: I wonder if you could expound a little bit on your personal views, as you looked at the Ktunaxa, on how that process has proceeded and how you feel about that.

Ms. Sophie Pierre: As the Ktunaxa Nation, we entered the treaty process right at the beginning, back in 1993. We have a very astute treaty negotiator, chief negotiator Kathryn Teneese. She knew we had an opportunity to use the treaty process to rebuild the Ktunaxa Nation, and that's what we've done.

We've been rebuilding from the inside out, so that we're not going to be faced with a situation, when we get to the point of the enactment, of creating and being ready to govern. We've taken all those steps that help us move forward. We've taken over everything except the final step in child and family services. We did that 10 years ago. We have a very solid child and family services section within our nation. It's the same thing with education and housing.

We do all of these things incrementally, so that we're ready to enact a treaty when we get to that point.

We just made that decision that we were going to use this process and we were going to use it in a way that we could rebuild our nation in order to be able to take advantage of the economic activity that goes on in our area.

Yes, our nation is one of those that is benefiting from those bilateral agreements. We have a bilateral agreement around mining. And good on us. I'm really happy that we have that.

We have bilateral agreements in other areas. I believe we have one in forestry. It's definitely a bilateral agreement. I'm not sure what acronym it has. So we have these, and we're in a position that we can take advantage of those.

Mr. David Wilks: Thank you.

The Chair: Mr. Bevington, you have five minutes.

Mr. Dennis Bevington (Western Arctic, NDP): Thank you, Mr. Chair.

I want to thank the commission for coming here today. I look forward to actually talking with you more tomorrow.

I come from the Northwest Territories, where we've engaged in a number of processes over the years to try to come to some solution of the claims issues. I have seen what you have laid out and I have seen the slow progress of this treaty commission in such a major area. I saw a press clipping; it seems that there has been about a half a billion dollars spent now by first nations in trying to come to grips with this. All that money is on the books for repayment out of the resource quantum from....

Ms. Sophie Pierre: Yes.

Mr. Dennis Bevington: So in many cases this is going to eat up a lot of the economic benefits that could come out of the treaty agreement.

Ms. Sophie Pierre: It could, yes. We're concerned about that, yes.

Mr. Dennis Bevington: Are there interest charges being attached to those dollars?

Ms. Sophie Pierre: Not until 2014. The way the agreement was set up, 12 years after you started accepting loan funds, the interest was going to start kicking in, but we've been able to have agreement from the federal government to move that back. They've moved it back a couple of times, because of course we've been into the process now for 19 years.

We don't know, and this is where we're getting very concerned and we want to ensure that we're totally involved with this comprehensive review that's going on about the funding for the B.C. treaty process, which is going to come up in 2014.

We're saying we want to get involved now in how this is going to shape up, rather than just being told later what's going to happen and not have it workable.

We are involved, by the way, in something called the treaty revitalization. That includes our continued relationship with the federal and provincial governments and the first nations groups that are involved in treaty.

Mr. Dennis Bevington: So through this time, these 20 years with all the groups, did everyone stay outside with the treaty commission?

Ms. Sophie Pierre: Oh, no.

Mr. Dennis Bevington: No. You lost a lot on the way.

Ms. Sophie Pierre: Yes.

Mr. Dennis Bevington: Could you give me some statistics here about how many?

Ms. Sophie Pierre: Statistics? I'm sorry. I can't give you any statistics off the top of my head.

But I do know that we have 60 tables that have gone through the process. They've put in their SOI. They were determined ready. They got their framework done. And of those 60 tables, we have 27 that are in stage 4, which is the agreement in principle.

• (1205)

Mr. Dennis Bevington: Yes, I understand that.

Ms. Sophie Pierre: At the back of our annual report, actually, are all those numbers.

But what has happened is we've got many of the tables.... For example, the Westbank First Nation, which was very involved in treaty negotiations, was involved in something called the "common table"—which again, is something you need to be aware of—where all three parties really did make an effort to identify common areas and deal with them that way. My colleague, Commissioner Haldane, can speak some more about that, if you want to know more.

We have these efforts, but they frustrate the first nations so much so that they walk away. Now the question is.... And it's been indicated that perhaps we need to look at the 12 or 16 treaties that we feel are really doable in the next three to five years. We have identified these tables and we know what's doable, given the scenario I've described in terms of mandates and getting deals done.

But then what about the other tables that are not really moving? It's been suggested that those tables should not be funded any more. They're raising their debt, but they're not getting anywhere moving their commas. So maybe they shouldn't be raising their debt any higher.

But our question is, what happens to them? What do those first nations have, then? If they leave the treaty table after all these years, having created this incredible debt, what are we offering them in place of it? And what happens to their debt?

Mr. Dennis Bevington: It's a very serious issue, and it's something that....

Ms. Sophie Pierre: It would be so much easier if we just had the mandates to get these things done.

The Chair: Thank you very much.

Mr. Seeback, for five minutes.

Mr. Kyle Seeback (Brampton West, CPC): Thank you for being here.

As my colleagues have said, as a person who has very little experience in any of these matters, I find the information that we get at this committee both useful and somewhat overwhelming, because it seems to be incredibly complex.

In your annual report you talk about efforts being under way to find common approaches to certain treaty issues. We also hear that some first nations don't want a one-size-fits-all approach. They want approaches that are unique to their communities. What are your thoughts on how we reconcile those two approaches?

Ms. Sophie Pierre: I will turn to my colleague, Celeste Haldane. Before she became a commissioner, she was actually sitting at that common table. So it's very relevant.

Mrs. Celeste A. Haldane (Commissioner, BC Treaty Commission): To provide some information on the common table and how that process unfolded, it was a coming together of several first nations—actually, 60 in British Columbia—from all over the province to deal with issues in common around some of the negotiating mandates, the take-it-or-leave-it positions that were coming to the tables.

One of the issues was certainly recognition, fish was an issue, and own-source revenue was another substantive issue, where there was just a take-it-or-leave-it basic policy. Taxation, the section 87 exemption, was another issue. Some nations were not prepared to perhaps have that model forced on them.

What this table really did, and what it allowed for, was the dialogue between the nations, those sitting at the negotiating tables or on the ground, and representatives from both Canada and British Columbia to really flesh out some of the substantive issues on the ground and come up with some solutions and creative options that the parties could endorse—that there could be more than one option. There were maybe three options to deal with these very specific substantive issues. That would break the logjam of the treaty negotiation process.

At that time, it became extremely stagnant. So through the frustration, these tables came together, the nations came together. There was work that started in 2001, but the process really started to kick off in 2005 and 2006 to deal with the substantive issues that were on the ground, these positional take-it-or-leave-it negotiations. And it did create some opportunities. There was a report generated from the BC Treaty Commission, which is out there and available. And it also created more space to have that additional dialogue, which is still ongoing. Recognition language was tabled from the first nations grouping to the federal system. So we'll see where that's going to go. That is still open, again, trying to come up with some creative solutions to deal with the logjam that was in the process.

Hopefully that has answered you somewhat.

• (1210)

Mr. Kyle Seeback: What opportunities do you see to speed up that progress?

Mrs. Celeste A. Haldane: I think Sophie touched on that quite a bit in her presentation around opening up the negotiator, having negotiators who have the mandate but have the flexibility to come up with some of these creative solutions. Have it endorsed internally, so there's not a big.... They have the mandate to negotiate, so they can have these options presented through their negotiations, and that can be endorsed from the chief negotiator level and hit the table. I think that is part of the problem.

Ms. Sophie Pierre: I could add one thing in particular to that. I mentioned how we need to have a firm mandate on negotiating fish. I mentioned we have all these studies that have been going on forever, and that has made it difficult to have a mandate on fish.

In January 2010, then Minister Strahl came to the principals' tables—the principals being the province, the first nations, and the federal government—with a position on carving out, and he used that language, “carve out”, the fish so we could finalize agreements and we would carve out fish. It's always going to depend on the fish. It's not going to depend on us how much fish is going to be out there; it depends on how much fish is available. It's one that is better served if it is fluid.

So we have this carve-out language, and we were very supportive of that. Unfortunately, we've never seen the carve-out language hit a table, and this is 16 or 18 months later. So where's that carve-out language? Get it to the table.

It's the same thing...we have recognition language that has gone to one or two tables that we know of. Why isn't that made available? It goes back maybe, David, to your question about transparency and about clarity, that when you have that language—and when it's recommended we're going to have that language—it's made available so the negotiators can start dealing with it.

The Chair: Thank you very much.

Mr. Phillips.

Mr. Robert Phillips (Commissioner, BC Treaty Commission): Just briefly, along with that common table, and not to throw in a name, but Barry Dewar was the federal negotiator at that table, and he certainly had a full mandate and he certainly knew how to negotiate in terms of representing the federal government at that time. That's why it was...along with B.C. and the first nations summit.

The Chair: Thank you so much.

Mr. Genest-Jourdain, you had a short question. Any time left over will be shared with your colleagues.

Mr. Jonathan Genest-Jourdain (Manicouagan, NDP): *Madame Pierre, bonjour.*

I have a brief question with regard to first nations not currently negotiating a treaty, 18 of them, as I understand. Are those nations now hostile to the treaty process?

Ms. Sophie Pierre: “Hostile” might be too strong a word, but maybe not. They certainly have lost faith in the treaty process.

Mr. Jonathan Genest-Jourdain: Thank you. It was quite short.

The Chair: Ms. Duncan, you had some follow-up questions.

Ms. Linda Duncan: Yes, thank you.

I want to go back to the overlap. I have two issues.

One is if you could outline if you see a role or a responsibility on behalf of the federal government to ensure that the overlaps are resolved, because if the end result of a particular treaty is a great advantage to one party, why would they bother sitting down and negotiating with the other? Surely there is a responsibility on the federal government, who is signing off on these treaties, to ensure equity and reflection of traditional practices, history, and fairness. I'm surprised that resolution of the overlap is not a prerequisite to a final agreement. Would that not spur the recalcitrant party to come to the table and start being more reasonable?

Ms. Sophie Pierre: I think it is incumbent on all three parties to be very aware. It's not just the federal government; it's the first nations in particular. When they put forward their statement of intent, there is a requirement through the B.C. treaty process that they identify their overlaps and that they identify they're dealing with it. It doesn't say they have to have it dealt with, but that they are dealing with it.

There are a couple of reasons why that hasn't happened immediately. As I stated, if you enter into the process and you don't get a land offer until 10 or 12 years into the process, what land are you going to be talking about? That's why you need to have that land offer much sooner. When you have that land offer, then it is incumbent on that first nation, if they want a treaty, to work it out with their neighbours.

•(1215)

Ms. Linda Duncan: If the party is getting everything they want but they are hurting the rights and interests of another one, that doesn't solve the problem.

Ms. Sophie Pierre: Yale isn't getting everything they want.

Ms. Linda Duncan: I'm not singling out anyone. I don't want to necessarily single out...I don't think this is the table to get into that.

The Chair: I believe that Mr. Haggard or Mr. Phillips had some comments with regard to that as well.

Mr. Dave Haggard: Just on that, without naming any nations, we're dealing with at least six. Some are just as sensitive as the one that slipped out of Sophie's mouth a few minutes ago, and the same results... But if a small nation with a major interest in getting to a treaty for their economic benefits and other issues has a large nation right beside them that has no interest in finalizing a treaty, then the reverse of what you suggest becomes true. The large nation just stalls everything because they don't want a treaty and the small nation gets frustrated. They can't get there, because if they follow what you're suggesting, they would have had to resolve the overlap issue before.

Where we find more success is in the way it happened with such first nations as Maa-nulth and Tseshah on the west coast of Vancouver Island. Tseshah is really not in the process any longer. For Maa-nulth, it was four days before they finally had the celebration for their implementation date; we finally managed to get an agreement, because they were overlaid on top of each other in the broken group of the Barkley Sound. We got an agreement two years after the treaty was passed through the federal government, the provincial government, and the first nations. We would never have got that accord signed if it wasn't in the best interest of both nations to get there.

Ms. Linda Duncan: I understand it's really important to sign off, because then it looks like we have success, but it may not be success for the one who is prejudiced.

One other question I have, briefly, is on third-party interest. You've raised the issue about transparency and openness. Of course, we all know that a lot of third-party interests who are opposed to the whole treaty-making process may perhaps be less prejudicial if they knew what was going on. And if there was some kind of engagement on how that might benefit—for example, your presentation about the economic benefits....

We had a previous panel talking about that.

The Chair: Ms. Duncan, you're running out of time, so maybe just get to the question.

Ms. Linda Duncan: I would be interested to know how you resolve that, or do you have recommendations to resolve that?

Ms. Sophie Pierre: It's definitely a part of our mandate—public education and public information. We take that very seriously. Just last month we were at the Union of B.C. Municipalities specifically for that purpose, to talk about the relationships that need to be built amongst the local governments, municipalities, and first nations. We do that on a regular basis because the rest of British Columbians, and the rest of Canadians for that matter, need to understand the benefits of finalizing these treaties. Both the federal and provincial governments need to pick up a little bit in terms of their support for those third parties.

When we started this process, there was a lot of activity, and we had treaty advisory committees or groups. These were made up of the general public, so they had a place to go for answers if they were hearing about treaties and were getting concerned about their own business or livelihood, or their land. Over the years, with cutbacks and everything else, those have kind of disappeared. It's making it very difficult for the average citizen in British Columbia and in Canada to understand what this process is about.

The Chair: Thank you very much.

Mr. Clarke, for five minutes.

Mr. Rob Clarke (Desnethé—Missinippi—Churchill River, CPC): Thank you, Mr. Chair, and I thank the witnesses for coming here today.

I will give just a little background about the region where I come from. It's in northern Saskatchewan, and about two-thirds of the province is in my constituency. We have the Athabasca chiefs, predominantly Dene; we also have the Métis. But they are dealing with the same issues of the overlap. When they're sitting down talking at the table, they're dealing with the Manitoba provincial government. They're dealing with the Cree in northern Manitoba. They're dealing with the Inuit and also with the Akaicho in the Northwest Territories.

This agreement process has been going on for the past 10 years. They're actually able to resolve a lot of the overlap agreements and negotiations one on one, from community to community, and doing the process. Unfortunately, right now I think it's stalled because of one provincial government over the overlap issue on land quantum.

Now to get further into this, just to get some further clarification, if you don't mind, could you also give your opinion on how to proceed if agreement cannot be reached or if an otherwise successful negotiation may be delayed indefinitely until an agreement is reached? Or does there come a point when the treaty must move forward without unanimous support?

• (1220)

Ms. Sophie Pierre: The way the process is right now, there comes a point when the treaty must move forward. But before it gets to that point, we encourage the process as much as possible and provide as many resources as possible. However, the resources that flow to the

first nations come from Indian Affairs, through the treaty and aboriginal government section.

Every year we put in our submission. What is frustrating in this exercise is that last year we got our funding in January and we had to spend it by March. You know the usual story. We're worried that this will happen again, because we have the submission in and we don't know yet what kind of funding is available.

We try to give as much support to the first nations as we can, but when it comes to those two first nations trying to sort it out through a third-party mediator, we have no resources until they become available through Indian Affairs. So this may not happen, and that is part of what frustrates the whole thing. If we were able to know that for the next three years we have x number of dollars to hire these mediators to ensure that these questions are dealt with, we wouldn't see ourselves in the situation we are in.

Right now, we do as much as we can internally, as commissioners. But I don't have any training in being a mediator. I am, however, a mom, a wife, and a grandma, so I know about those natural mediations, but sometimes you really need the professional mediator.

Mr. Rob Clarke: In your 2011 report you touched on the benefits of treaties for first nations.

Ms. Sophie Pierre: Yes.

Mr. Rob Clarke: Could you give me more detail? What impact will treaties have on the economy?

Ms. Sophie Pierre: Two or three years into this process, the first economic impact analysis was done, and since then we've been updating it. We had PricewaterhouseCoopers do an update in 2009. At that point, the annual benefit was around \$10 billion if we were to have a number of treaties settled. I don't know if any of my colleagues know what the other numbers were, but that number sticks in my mind—\$10 billion.

The point, though, is that we have the economic benefits analysis. It has been done by a third party, PricewaterhouseCoopers, and they show, without doubt, the economic impact to be positive for British Columbians and for Canada if we can get these treaties settled.

I mentioned in my report the B.C. mining association. While they didn't give us any numbers, we know that's a major industry that needs certainty on the land. Part of the provincial agenda is to increase mining activity. So those numbers, I think, are going to blow our own PricewaterhouseCoopers study right out of the water, because there's tremendous benefit.

• (1225)

Mr. Rob Clarke: Thank you.

The Chair: I wonder if there's a chance that we might be able to see the PricewaterhouseCoopers report, if it's public.

Ms. Sophie Pierre: Absolutely. We'd love to share it.

The Chair: We'd love to see it.

Thank you for that.

Mr. Bevington.

Mr. Dennis Bevington: Included in that report, I guess, would be the intangibles to the communities. The leadership has been tied up in these seemingly unending negotiations. It sometimes ties up the best people in your community, doing this work. Perhaps you could describe how that affects communities.

Ms. Sophie Pierre: Yes, certainly, it has a big impact, but it kind of relates back to the question our MP, David, raised with me earlier. What we have done at our own table is take advantage of that. That scenario has not been repeated at very many tables.

The majority of the work, the majority of the emphasis, has been on the negotiations. In fact, the majority of the financial resources have gone right out of the communities, because they've been paid to lawyers and consultants to do these negotiations and the communities have seen very little benefit. It's something we certainly don't encourage. In fact, we have been in a situation where we have suggested to a first nation that maybe they don't want to take on any more debt, because we don't see that the benefit is going directly to the first nation. In fact, it is going right out the door. So yes, there's been a lot of emphasis placed on negotiation, and it's time that we spend more time learning how to be effective managers of our communities.

Mr. Dennis Bevington: Now, I want to ask you a question about one a little closer to the Northwest Territories, and that's the Acho Dene Koe First Nation, the ADK. It entered into this process in 2000. Is there an end in sight for their desire to enter into treaty negotiations? Are they going to be accepted? What's the status there? How can that move forward?

Ms. Sophie Pierre: I'll have my colleague, Commissioner Haggard, who sits at that table, respond to that.

Mr. Dave Haggard: We have a problem with British Columbia. Canada has been negotiating with the Acho Dene Koe. The last time I talked to anyone up there they were getting close to an agreement, actually, in the Northwest Territories. They had agreed at the time that they would wait until they were finished in that area before they started talking to British Columbia. There have been many discussions. The Treaty Commission has accepted their statement of intent. British Columbia is still very hesitant to get involved, although we have been told on several occasions that they were willing to do so on a very narrow mandate. At this point in time, there have been no meetings going on for the last year.

Mr. Dennis Bevington: That land in question is part of a very large development that's occurring in northeastern British Columbia. Has that been a major factor in the B.C. government's efforts?

Mr. Dave Haggard: I would only be guessing, but if I were a member of that nation, I'd be suspicious.

Mr. Dennis Bevington: Has the Government of Canada, which agreed to their going ahead in this direction, put any substantial effort into getting B.C. on side?

Mr. Dave Haggard: Not enough, and I say that not facetiously or anything else. I think success will finally show through when the federal government starts to put pressure on the British Columbia government.

We have those issues all along the border. We have them with Acho Dene Koe. We have them with the Kakisa Dene. B.C. is very reluctant to get involved in cross-border negotiations. For a resolution for Acho Dene Koe, there's going to have to be pressure put on B.C., I believe, by Ottawa.

The Chair: Thank you very much.

We'll go to Mr. Payne for five minutes.

Mr. LaVar Payne: Thank you, Mr. Chairman. I'm glad I can have another round of questions.

I understand, of course, that you've had discussions with the minister, and I'm sure he shared some of his frustrations with you as well.

Ms. Pierre, I'm not sure if you're aware that one of the things this committee is looking at studying, of course, is first nations land management. We certainly believe this will be a fairly broad study. In particular, we've had some discussion and will receive information on economic development for first nations and how it will benefit first nations. Certainly land modernization will create opportunities for communities and will provide stable, predictable investment opportunities.

I believe in your opening remarks you talked about economic development. What topics would you like to see in this study that would help benefit all concerned?

● (1230)

Ms. Sophie Pierre: Beyond the supports that are needed for the treaty process, so that we can start recognizing those economic benefits—the study you mentioned about land management—there are other initiatives that are directly related to, if I can put it this way, helping Indian reserves to work. That's what we're talking about with the land management act. We're talking about the Indian reserve lands. We're not talking about the treaty settlement lands. That's going to be a different scenario.

We see that things like the land management act are very real stepping stones. They help first nations learn how to manage their land within the Indian reserve. When they're at the point of managing larger treaty settlement lands, they will be in a position to do so. All of that capacity building will have happened.

We totally support that. There are other areas, too, where the Indian Act, the way it is now, can be enhanced so that it does benefit economic development. One of the major areas on all of our Indian reserves across this country, mine included...

I served on my council for 30 years. I know just how difficult it is to get support for putting in infrastructure for economic development. Indian Affairs does not have that as a mandate, so there's no money out there. The banks don't look at us because we're Indian reserve lands. There's nowhere you can go to get the financial resources you need to put in that infrastructure.

And yet every community around us has that infrastructure. If somebody wants to set up a little store, they go to the local municipality, they get the permit, and they hook into the water and sewer. Try to set up a store on an Indian reserve. You have to find your own water. You have to find your own sewer. You have to do all that. The infrastructure doesn't exist.

There's no funding to do that infrastructure from Indian Affairs—nor should there be, quite frankly—but there is a way that we can pool our resources as first nations, the way the municipalities do. We have something called the First Nations Finance Authority. If you're not familiar with that, I'd ask you to become familiar with it.

Through the First Nations Finance Authority—right now we're under the auspices of the MFA, the Municipal Finance Authority, which gives us triple-A ratings—we can go out into the bond market and raise our own money for that infrastructure.

It's taken us 15 years of fighting with every bureaucratic inertia to get this thing to happen. I had anticipated that we'd be able to put out our first bond, which would probably be in the neighbourhood of \$100 million, this year.

Well, I'll tell you, folks, it's not going to happen this year. We still don't have all the little ducks in a row. Hopefully it will happen next year.

That will be a time when all Canadians can celebrate, when first nations communities can come together. We can support each other, just like all of your municipalities do, to create that infrastructure for economic development.

I know I went a little way off the treaty thing, but it's not just all about treaties; it's about how we prepare and how we can use what exists now, which is the Indian Act and the Indian reserve lands, to help us move forward so that we are in a position to take full advantage when we have treaties settled.

Mr. LaVar Payne: Yes, I hear what you're saying.

It's interesting, because you talk about communities coming together. In my riding, although I don't have any reserves, I do have a number of smaller communities who've gotten together to provide services, not only in the larger centre. It does seem to make total sense to do that, to share resources and get people working together. So I think that is certainly a good approach to try to solve some of those problems.

• (1235)

Ms. Sophie Pierre: Yes. I'll tell you, the banks are going to look at Indian reserves a little bit differently when we get that FNFA done.

The Chair: Thank you very much.

Committee members, we are going to do what we don't often do, and that's get to our third round of questioning. However, I'm going

to have to ask that we limit our questions and answers to three minutes for the question and the answer. That way we can get through the third round.

Committee members, if you would indicate who will be questioning from your respective parties, that would be helpful.

Ms. Duncan, you have three minutes.

Ms. Linda Duncan: Okay. I'll be real fast.

This has been mentioned somewhat, commissioners—the delays and the problems with reserve extraction and development and so forth, which could include urban development, in the interim period. Obviously first nations can get very distracted by trying to either seek a piece of the benefits of a development, royalties and so forth, or be involved in fighting or litigating or intervening against it.

I'm wondering if the commission has taken a look at, or if you've seen it in your role, making some kind of recommendation for some kind of measure to be in place so that they protect the interests of first nations while the treaty negotiations drag on.

Ms. Sophie Pierre: Right from the initiation of this process, when the task group report was put out.... There is a recommendation—I believe it's recommendation 16—that speaks specifically to interim measures. That was the whole point, that it was not right that the first nations have to wait until some years down the road when a treaty is signed before they start benefiting from the resources within their traditional territory. The intent was that those would start immediately.

So we do have that built into the process. It just hasn't always worked exactly the way it should. It's a weird situation. B.C. has gotten frustrated with the slowness of the process, so they're going off and doing these bilaterals, which we agree with, but we also say, "Don't get too far ahead." We have to make sure that these bilaterals tie back into the treaty, so that we have not just a 10-year revenue-sharing agreement, but we have an agreement to share revenues into the future, so that after 10 years you don't have to do the whole thing over again, which is what's going to end up happening.

Ms. Linda Duncan: Do the bilaterals include an agreement that they get a certain portion of royalties or an interest in...?

Ms. Sophie Pierre: There are different kinds of bilateral agreements, and some of those, like the one I mentioned in my territory....

Ms. Linda Duncan: Is it legally binding?

Ms. Sophie Pierre: For 10 years it is, but then what do you do after 10 years? Do you have to start over again and renegotiate that?

It doesn't make sense. Let's make it part of the treaty.

The Chair: Thank you very much.

Mr. Boughen, for three minutes.

Mr. Ray Boughen: Thank you, Mr. Chair.

Commissioner, you mentioned in your report that there was a discrepancy in time. I'm always interested in time management things. I heard you say that one agreement took four days to be finalized, and another was 16 months.

Were they the same kinds of agreements, or were they totally different, at either end of the spectrum? Could you help us understand that?

Ms. Sophie Pierre: The four-day agreement was a final agreement, so it had a much bigger impact. That was when the House of Commons dealt with and enacted the Maa-nulth Treaty. It took four days to do that in 2009. They enacted it in 2010 or... Anyway, it was four days.

In that same year, 2010, you have another treaty group come together and they shake hands on something. They have to bring it back into their systems because their lawyer has to check the commas and make sure they're in the right place, and then they bring it back so everyone can initial it—only initial. There's still time to change this thing, because you only initial it. Once it's initialled, the community gets to vote on it. Once they vote on it, only then does it go to the provincial legislature, and once the legislature votes on it, only then does it come to the House of Commons. In the case of the initialling, it took 16 months for that handshake and agreement to do whatever it was doing.

•(1240)

Mr. Ray Boughen: Did they lose the pen?

Ms. Sophie Pierre: I think they lost the agreement. Nobody wanted to admit it. I don't know; it was crazy.

So something so important took four days and something of less importance.... I mean, it's just as important because it's part of the process, but it wasn't a finished deal yet. As I said, now the community has an uphill challenge to convince their members to ratify this to a yes vote. Right now they're asking why, if it's so good, it took 16 months to bring it back.

The Chair: Thank you.

I suspect it has something to do with the people who were dealing with it. We in this House have several lawyers, but we don't let them get bogged down in the same way that lawyers might at a different point in the process. Having been involved in some of these negotiations, I know sometimes that once lawyers get a hold of documents, and especially if there are court precedents that are being set or contributing to the inertia.... I'd be interested in your suggestions as to how we might overcome that. Not only is that an issue at this committee, it's an issue that government fights with, or it fails to be able to provide people with services because of the problems that lawyers get us involved with. They're there to ensure

we're all protected, but the inertia that's sometimes created is problematic.

Ms. Sophie Pierre: Most definitely. This is why we're coming to you and asking for your support in the whole process of recommitment. We feel there is inertia because they don't hear anything different. The bureaucracy doesn't have anybody telling them.... There's an urgency. We're losing billions of dollars. We have first nations communities into which we have to continue sinking billions of dollars because of the inertia.

So if we had the message coming down right from the top, from the Prime Minister, the premier, and the first nations leadership—and it has to be from the first nations leadership, too—saying, “Yes, we all commit to this”....

We've been at this for 20 years. Let's take advantage of what we've learned, and let's look at how we can get real benefits to come out of the investment we've already made and the investments we're going to make as we go forward.

The Chair: Thank you.

Ms. Bennett, go ahead for three minutes.

Hon. Carolyn Bennett: Thanks very much.

I would like you to give an example of where a contentious or shared area has actually worked. Is there a best practice from how this ended up being codified in treaties of both neighbouring bands? How does it work when it works well?

Mr. Dave Haggard: I think the best example is that of Maa-nulth and Tseshah. They both claimed territory in Barkley Sound and the Broken Group on the west coast of Vancouver Island. Maa-nulth had passed their treaty and there was a year and a half until the implementation date. It was so bad that the two chiefs would be in the same room but wouldn't talk to each other. I know, because I live on one of those reserves.

It was to the point where the Tseshah had gone to court and had tried to stop the treaty and had lost. I approached them and said, “Why don't we sit down and see if we can find a solution? We'll help mediate it.” In six weeks we put an agreement together, an accord. We don't argue about where the boundary is. That's a no-brainer; we'll never win it. Nobody will ever win it, because they won't agree on whose boundary line is the correct one.

So when we do mediation processes with them, we talk about the disputed territory and how to co-manage that area. The success was that we ended up putting together a committee that meets at least once a year to discuss anything that's going on in that disputed area, whether it's hunting, fishing, gathering, or even up to and including economic development. It ended up that they respected all Nuu-chah-nulth laws as part of the agreement, and they collaborated with the elected and hereditary chiefs and with the elders. At the end of the day, I would not go so far as to say that it's been tested yet, but their first meeting will be taking place, if it hasn't already, this fall. I haven't heard about any gunshots, so I'm assuming it's working. I'm pretty optimistic about it.

The other one that had some success was the Tsawwassen one. That was a different process but with a similar end result. Their fight was with the Cowichan Band on Vancouver Island and their fishing territory. Once again an accord was reached between those two nations. I did hear one of the chiefs screaming about the other one fishing when they weren't supposed to, just a couple of weeks ago, but they have a process to resolve it now.

That's what we envision. I always remain optimistic. We have a nation in the north that's really fighting over the same issues. They're all the same types of issues. We run into some difficulty when there is a treaty nation and a non-treaty nation. That becomes a little more difficult. The non-treaty nation thinks their only success will lie with the courts, which up until now hasn't been the case. The courts have always ruled in favour of the treaty. They won't stop a treaty. That gives us more influence on the ability to mediate a settlement.

• (1245)

The Chair: Thank you so much.

Mr. Wilks, go ahead for three minutes.

Mr. David Wilks: Thank you, Mr. Chair.

I'm going to go back to Sophie if I may. This is probably straying off a little, but perhaps you'll indulge me, Chair.

One of the great benefits that I see from a treaty for first nations is that they are recognized as a form of government. When we redesigned our new office at the Regional District of East Kootenay, we created a chair for the Ktunaxa to come to the table when that happens.

What do you see as the impact for first nations coming to regional government tables?

Ms. Sophie Pierre: For the whole region, I think the involvement of the first nations, given the history that this is the only place they've ever been—this is their traditional territory. It gives the kind of solid planning and understanding of the land. So it's definitely a

support for the decision-making that goes on at that particular local government level.

I'm glad you brought that up. It kind of goes back to a question that was asked earlier in terms of the readiness of the local government and the provincial government to implement treaties, because we've also heard that while we're planning it very well with the Ktunaxa table, it has thrown the Maa-nulth regional district into a bit of an uproar, because they don't have enough room right now to include the Maa-nulth. They're trying to find out how they can do that. When they settle a treaty, there's a period of time in which the first nations government does not have to participate in all the other local governments.

How long was that, two years or something?

Mr. Dave Haggard: I'm not sure, but three of Maa-nulth have already joined the regional list.

Ms. Sophie Pierre: I know. That's why I'm saying that, because they chose not to wait. I think they can wait two years or three years, something like that. Maa-nulth chose not to wait. They said "No, we want to be part of the regional government now", and then the regional government said, "Yes, we want you to be part of it, but we don't have the resources; we don't know how this will happen."

Again, this simply all goes to good planning. We're doing that in the southeast corner of British Columbia. We're anticipating the day when the first nation is going to be a part of the regional government. In fact, we're not going to wait until then; we'll slowly build it in—and we have. There are lots of land-use decisions that have included the Ktunaxa.

The Chair: Thank you very much.

Thank you, committee members, for keeping your questions short enough so we could get to that final round.

Thank you to the witnesses. We appreciate the work you're doing. I think you've sensed that we understand the complexity of your responsibilities. We want to honour and thank you for your continued contribution to your communities and to the country in your efforts. So thank you so much. We wish you well, and we're going to do what we can to assist you in your efforts.

Thank you.

Ms. Sophie Pierre: Thank you very much for having us here.

The Chair: Committee members, we're going to suspend for five minutes. We're going in camera for a committee of the whole discussion on future business.

[Proceedings continue in camera]

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