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Chair

Mr. Chris Warkentin

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•(0845)

[English]

The Chair (Mr. Chris Warkentin (Peace River, CPC)): I call this meeting to order.

This is meeting 77 of the Standing Committee on Aboriginal Affairs and Northern Development.

I am recognizing Ms. Crowder, who I believe has a motion.

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

I do have a motion: that the committee initiate a study on the Yale First Nation agreement act, and that all testimony received under the study be deemed to have been received under the study of Bill C-62 once the bill will have been referred to the committee.

The Chair: Thank you. I appreciate that.

Not seeing additional speakers to the motion, let's go to a vote on it.

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

The Chair: Folks, in terms of the study that we now have under way, you have a budget before you. That is required for reimbursing our witnesses, who we have requested to be here.

If there aren't any questions with regard to it, we'll go to a vote on it immediately.

Ms. Jean Crowder: I so move.

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

The Chair: Thanks, colleagues.

I do apologize for that, but it's necessary housekeeping to ensure that we can continue on with our work.

We'll turn now to our study at hand. We are in the process of this study of the Yale First Nation agreement act.

Today it's our privilege to be joined by the Stó:lo First Nation, represented by Grand Chief and President Joe Hall. We also have Grand Chief Doug Kelly. Thanks, gentlemen, for being here.

We also have Jean Teillet. Thank you for joining us as well.

We'll turn it over to you for the first opening statements. Then we'll have some questions for you.

We'll begin with your opening statement, Chief Hall.

Chief Joe Hall (Grand Chief, President, Stó:lo Nation): Good morning. Thank you for the opportunity to present before the committee this morning.

As just a quick backgrounder, I've been involved in politics in the Stó:lo area for 32 years now, so I've seen a lot of things, I've seen a lot of changes, and I have to say that the current time and the initiative before you in the form of the Yale treaty is probably the most critical and terrifying one to the Stó:lo right now. The reason I say that is because of the issue that's in front of us and the fact that the Stó:lo people are people of the river. What this treaty, unfortunately, is going to do is it's going to take away or infringe on the rights of the Stó:lo. I don't think this is insignificant; it certainly isn't. Saying fishing is important to Stó:lo is like saying air is nice to have around. It's critically important to the Stó:lo people.

The Yale First Nation.... I want to make it very clear, and it is important for this committee to know, that Yale is a Stó:lo community, no ifs, ands, or buts. My colleague will probably elaborate a bit more on that, but they are a family member of the Stó:lo. They have the same rights; they are collective rights. What we're looking at is to ensure that those rights are continued to be shared among the Stó:lo. The Yale community, a community of 150 members, of which 60-some-odd voted in favour, are on the verge of receiving, through this treaty, controlling gatekeeper responsibility for a very critical fishing area in the Stó:lo territory. This will impact in the area of 10,000 Stó:lo, so you can see the significance of the issue before us.

Imagine, if you will, if the United States of America suggested for a moment that Ontario now is going to be governed by Saskatchewan and that's it. Anything Ontario wanted to do, they'd have to go to Saskatchewan to get permission. I'm trying to find an example where people can understand what we're saying here. This land is shared by the Stó:lo, including the Yale, and should not be given to one family of the Stó:lo for gatekeeper control.

Approximately 60% of all the fish caught in the Stó:lo territory are caught in the Five Mile Canyon area, and of the 77 fishing sites that belong to the Stó:lo people, only one of them belongs to the Yale. Yale has fishing sites south of the Five Mile Canyon area, but what this treaty will do is take those 76 sites away from the Stó:lo and/or put them under control of the Yale First Nation. This is significant, for the obvious reasons I mentioned before.

I need to say this, and I don't want to use up too much of my time on details, but when I talk about the Yale First Nation being a member of the Stó:lo...unfortunately, B.C. failed in recognizing the magnitude of the dispute that's in front of us. They suggested that they were improving access to the Stó:lo by suggesting these were Yale reserves. They were first nations villages that were in the Yale electoral district, and they were called Yale first nations, but history, unfortunately, has not been shared with all of the members who are involved with voting on and enacting this treaty. They have bought into the fact that these reserves belong to them, when that is not the case. If Canada were to check their records, they'd see that it was set aside for the Indians in the Yale district, and all the Stó:lo. That in itself has created problems, because it's going to lead to alienation of lands, alienation of the ability to access the fishing sites.

We all know that treaty had a primary purpose, and that was to provide certainty not just for the governments, but also for the first nations as well. It was also to provide peace and harmony. This treaty does the exact opposite.

I want to make sure you understand that I am personally involved, as my colleague, in negotiating Treaty 7 for Stó:lo. We are in the treaty process, and we are attempting to achieve a final agreement with the governments of Canada and British Columbia. We feel there is an opportunity there, notwithstanding that there are some challenges that we're going to have to overcome. Nonetheless, it's the only game in town, and we're going to continue to pound away at it until we get something that is going to work for our people, not just our people in treaty, but also our brothers and sisters, the other Stó:lo.

• (0850)

Our approach is significantly different from the one before you today. I honestly feel that if we were given the time and the adjustments and amendments to this treatment, we could support the agreement in that fashion. We support Yale in their attempts to get a treaty, we supported Tsawwassen, and we support In-SHUCK-ch. All of these groups are on our periphery, sharing the boundaries of our particular core territory.

We're not anti-treaty. People would paint us as being anti-treaty, but that's not the case at all. We're in treaty negotiations.

One of the principles that the B.C. treaty-making process was founded on was that outstanding land disputes were to be resolved before Canada and B.C. entered into legislation to approve these treaties. Unfortunately, that has not happened. This is one of the fundamental flaws that has come to create the situation now, where we're before the standing committee.

There have been land disputes in the world, history has shown, and obviously there will continue to be land disputes. Resolution of these disputes must take place at the negotiating table. I fear, as I mentioned before, the terrifying experience that's on the horizon for us. There has been conflict on the river; there has been bloodshed on the river. This is a serious issue. The Stó:lo have a long history of protecting their rights and titles, and quite frankly, I don't think that history has been removed from the minds of people. There have been battles on the river and on the railway lines. The Stó:lo are not going to sit back.

This is why our group here spent a tremendous amount of time at different meetings trying to resolve this issue. We have been doing this for the last 10 years, ever since the concept of treaty has been moving forward with the Yale First Nation, but to no avail. We've used every opportunity and followed every policy rule. We're here today as well with the hope that this still could be resolved. We will continue to try to negotiate a settlement of these issues in this room or in other rooms, with the government as well as with the Yale First Nation.

There is an opportunity, we believe, to correct this and prevent the type of confrontation that is not intended by the treaty-making process. We have suggested, for the last five years, some of the ways this could be corrected. We know a precedent has been set with respect to carving out sections of the treaty until they've been resolved. Canada has done that, and it needs to do that again. I'm afraid that the conflict between the Stó:lo and the Yale First Nation is going to spill over into other areas, with respect to the governments and—I hope not—businesses. That's what we're here to try to prevent. We're working diligently. There's been unprecedented mobilization of our people to ensure their rights are protected, something I haven't seen in 32 years. It is not going to be fun to experience, to go through that again, because we have had flashes of issues. That's why I am using the word “terrifying” in relation to the direction we're going.

This is ultimately, and I can't characterize it any differently, theft of our lands and an attempt to try to transfer these lands to one of our other sister organizations. It is more than a fisheries issue. It is not simply an access issue. There are aboriginal rights and titles that are being infringed here. What I'm speaking of is the fact that this area has long been occupied by the Stó:lo. It wasn't until the gold rush and the railways and the highways that people actually moved, but we always went back there for our fishing.

While B.C. failed in that regard, to take the time to understand the issue, Canada has an opportunity to look at this and make a determination as to whether this is the right thing to do, under the concept that the treaty was there to create a harmonious relationship with the Stó:lo, or with the aboriginal people, or among themselves. I think that while they failed, Canada has an opportunity here. To do otherwise would make the Prime Minister's apologies and the statements of a renewed policy on the comprehensive claims process hollow. It would make all those comments hollow, because in essence there was an opportunity for people to step back and say, listen, let's let this comprehensive claims policy run its course, because there are some significant issues in the comprehensive claims policy that would help resolve the issues we're facing today.

• (0855)

But this race to conclude a treaty has usurped that, and it is going to create unprecedented conditions in British Columbia, as many other first nations are attempting to achieve treaty, if it's seen that history doesn't play a role in treaty-making. Other first nations communities in the province right now are rallying because we have been informing them of our situation. They too will be facing the same challenges, and they will be here before standing committees in the future as well.

I again want to reiterate that we have attempted to follow every single process that the BC Treaty Commission has developed for us, and we have attempted on many occasions to consult and work with the first nations—but to no avail. There were some close moments when mediation was established by the federal government. There was a recommendation made to us by the mediator that we thought was going in the right direction, but when you have one party that has already entrenched themselves in a position because they've had a sign-off from the province and the feds, how can you have open discussions and negotiations to find a resolution when they constantly play that card or refuse to come to the table?

I'm going to stop there. I don't want to use up all the time of my colleague.

● (0900)

The Chair: Grand Chief Kelly.

Chief Doug Kelly (Grand Chief, Stó:lo Tribal Council): Good morning.

I was there in 1992 when then Prime Minister Brian Mulroney, Premier Mike Harcourt, the first nations summit leadership of Grand Chief Edward John, the late great Chief Joe Mathias, and Miles Richardson signed the agreement that created the BC Treaty Commission. I was a witness to that ceremony. I was very excited that through good faith negotiations we would resolve the outstanding land question, that we would create certainty, that in the creation of certainty we would create economic opportunity, and that we would realize social justice. That was in 1992.

Two treaties have been completed since then—two. Now we're looking at a third, and I have to ask, are you achieving certainty? Are you achieving social justice? Are you creating economic opportunity? The short answer to all those questions is no, we are not. It will not.

I'm told there are rules about language. I'm going to read two excerpts that I did not have time to get translated into French. They are from an article in the *Chilliwack Progress*, published Wednesday, August 17, 1938:

Over the burial site of many generations of Indians, a white cross now stands blessed and dedicated, at Yale, B.C., following a picturesque ceremony on Eayem reserve Sunday afternoon. Archbishop W. M. Duke carried out the dedication, watched by taciturn bucks in high-crowned hats, and squaws in shawls and gay velvets.

The language is pretty telling, very insulting and very racist. I'm here to tell you that racism still exists today. It exists in this room. It exists in the Department of Indian Affairs. It exists in the Department of Fisheries and Oceans. It exists where I live in Chilliwack. That same attitude is alive and well. People may frown at the terms used in this article published in 1938, but the colonial thinking has not changed.

The closing of the article says:

The cross bears the inscription: *Eayem Memorial 1938 AD, Erected by the Stalo Indians. In memory of many hundreds of our forefathers buried here, this is one of our six ancient cemeteries within our five mile Native fishing grounds which we inherited from our ancestors. R.I.P.

You should ask yourselves where that memorial is today. Where is it? There's a picture of it. I'll tell you where it is. It's on the banks of the river. The Chief of Yale took a backhoe and destroyed the sacred

monument. It put a lie to his story that he's not Stó:lo. I'll share this with you when I comply with your rules.

The Seabird band was made a band of Indians in 1958. Before 1958, it was a reserve held in common by seven Indian bands, including Yale. Those bands agreed to give up the Seabird reserve to create the Seabird band of Indians. The second elected chief of Seabird Island was Alfred Hope, grandfather of the current chief of Yale. Why that chief would deny his ancestry is beyond me.

● (0905)

In 1992, the government of the day launched the aboriginal fishing strategy. I negotiated the arrangements on behalf of the Stó:lo. I'm a little younger than Joe, but I've been working since 1980 for my people. Later this month I'll be 53. So it has been 32 years for me, too. I negotiated those arrangements. Soon after, we had an agreement with the Department of Fisheries and Oceans, the Government of Canada, whereby we would be permitted to sell a portion of our catch without fear of prosecution.

Bob Hope went to court. He went to court to gain exclusive control of the five-mile fishery. He lost. I have to tell you, it was really strange sitting in that courtroom watching the Department of Justice lawyer, who was often in court against us and prosecuting us for fisheries offences. That same Department of Justice lawyer was standing up there defending our right to fish in the canyon. Rich with irony.

We're here today because Indian agents, with that same attitude of racism, didn't bother to do a little bit of due diligence. They didn't bother to do a little bit of homework and find out who they were dealing with. All they had to do was a little bit of research and they would have discovered this article. If they had looked at their own lands records and the creation of the Seabird band, they would have realized that this notion that Yale is not Stó:lo is a no-go. They would have known then that we're dealing with a family of 10,000, and while the rules permit Yale to proceed under the BC Treaty Commission, Yale is a small parcel of a very large family.

I agree with my brother Joe. We're not opposed to Yale securing a treaty. We have no issue with Yale pursuing a treaty. What we're concerned about is our section 35 rights. It's the highest law of this land. We have constitutionally protected rights that have been confirmed by the court. It has been argued by the Department of Justice that it's a right that belongs to us and it belongs to our citizens. It belongs to our families. It's a communal right. It doesn't belong to an Indian band; it belongs to the people.

I was so excited. I am one of those who support our national chief, Shawn Atleo. I'm one of those who supported him meeting with the Prime Minister to talk about the very important issues that are bubbling and maybe threatening to boil over. One of the things I was very excited about was the acknowledgement of the simple fact that the comprehensive claims policy of 1986 is entirely inadequate. A promise was made by the Prime Minister to work with the national chief, the Assembly of First Nations, and first nations to rewrite that policy, to make it work, to fix the problems that are preventing us from achieving good-faith negotiations under the auspices of the BC Treaty Commission.

● (0910)

I was a founding member of the BC Treaty Commission. I often tell people the jobs I've had, and I realize I shouldn't do that. That's why I didn't this morning. I often sound like someone who cannot hold a job. I've been chief of my own community. I've had four terms, eight years. I've been a senior manager for my tribal council and for the Stó:lo Nation. I'm a founding member of the BC Treaty Commission. I'm a founding member of the B.C. First Nations Leadership Council. I'm a past member of the First Nations Summit political executive. I'm a founding member of the B.C. First Nations Fisheries Council. I'm currently the chair of the First Nations Health Council.

I know all about negotiations. We negotiated a major deal with this government and the Province of British Columbia. I know how to do the work. I know how to do due diligence. I know how to get a deal that works for Canada, that works for the Province of British Columbia, and that works for B.C. first nations. I know how to do it because I've done it. The people you put at the tables don't know how. It's become a federal program with bureaucrats who have no training in negotiations, no training in conflict resolution, and no training in terms of creating win-wins. They have none of that. This, I'm afraid, is headed for serious conflict.

There are people who will say the Stó:lo can't get along. The fact that we're here together tells you differently. The fact that Joe and I were both willing to participate in a meaningful and real mediation process puts a lie to that. It's true that we fight amongst ourselves, and I'll tell you why. We fight first with Indian agents—always have, always will. A very close second is the Department of Fisheries and Oceans and federal fishery officers. It's neck and neck; sometimes we fight with federal fishery officers more than we fight with Indian agents. When we're not fighting Indian agents and when we're not fighting fishery officers, we fight amongst ourselves to stay in shape for the fights with the feds.

I'm not opposed to Yale securing a treaty. I am opposed to a treaty that tramples on the rights of 10,000 Stó:lo. I'm opposed to a treaty that does not create certainty. I'm opposed to a treaty that does not achieve social justice. I'm opposed to a treaty that does not create economic opportunity.

Thank you.

The Chair: Thank you.

Ms. Teillet.

Ms. Jean Teillet (Chief Negotiator, Legal Counsel, Stó:lo Nation): Thank you, Mr. Chair.

Good morning, everyone.

Since Grand Chief Kelly and Grand Chief Hall have given their credentials, maybe I should, too.

I may look like your quintessential white lawyer, but I am actually a Riel. I am from Red River in Manitoba. I have been a negotiator on treaties for 20-some-odd years. I started out at the end of the Yukon agreements, I worked on the Tlicho Agreement, and I work now as the chief negotiator for the Stó:lo Xwexwilmexw Treaty. So I have a long history in treaty with all kinds of governments—Conservative and Liberal governments. I have many, many years of working with them.

My impression is that it isn't about partisan politics. Everybody is trying to get treaties resolved. I want to start with that tone, that I think everybody in this room wants to have treaties and wants to have them resolved. The problem is how we do that and if this particular treaty should go through.

What I want to say here is that you've heard from the grand chiefs very eloquently about the problem here. It's what usually is described as an overlap problem or a shared territory dispute. That's really what's going on here. I think in this situation, overlap is usually two different peoples. Shared territory is really what we're talking about here. This is the Stó:lo territory, one small group, being proposed by the treaty to give them what belongs to the larger group.

Grand Chief Joe Hall was struggling for an analogy. The way I think about it is that you and your husband or you and your wife own a house and you hold it in joint title. Then you divorce. Instead of it being split or being kept in joint title, the house is given to one person. The way the proposal is in this treaty, to fix it, is to give the other party access rights. So we say, "Okay, Mr. Rathgeber, I'm going to take your house away from you. I won't pay you for it, by the way. It's not expropriation; I'm just going to take it away from you. I will fix it by putting an access clause in this agreement. You can come and visit it when I tell you that you can come and visit it, if I feel like letting you come and visit sometimes. But after a while, I may decide that you can never come and see this again." That is what is being proposed here. The land is being taken away and given to one, and they will own it in fee simple. They get to decide then whether the rest of Stó:lo can ever come. That's the proposal on the table in this bill.

What I want to say to you is that Canada has played a very important role in solving these overlap problems in the past. Let me give you some examples. Tlicho is up in the Northwest Territories, just north of Great Slave Lake. It borders on Nunavut, it borders on Sahtu territory, and at the bottom it borders on a people call the Akaitcho people. The Tlicho got overlap agreements with everybody else, and it was not a problem. Akaitcho are historic enemies, right? I mean *historic* enemies. I've walked into rooms where one of the Tlicho chiefs would say, "Akaitcho, that murderer!" I remember saying to somebody, "Is that today?" It turns out it was 150 years ago. That's how vehement the dispute was.

It was a hard thing, but Canada played a really important role in solving that. What you did I think was actually right. We negotiated the whole treaty, it was all done, except that overlap. Canada took a very principled position and you said to us, “Okay, we won't sign this treaty until you solve the overlap problem.” That put real pressure on us, representing the Tlicho, to go and solve the problem. We wouldn't get a treaty until this was solved, and we solved it because they wanted a treaty.

Everybody has to have skin on the table if you're going to negotiate an agreement. That's one way you solve it. I think that is a very good way.

Well, you had the opportunity to do that here many times, and you didn't do it. You sat back and waited in the weeds. Canada had muscle to use to solve this problem, and you didn't do it. So you've signed the agreement—we're too late for that—but you can still exercise your muscle.

● (0915)

You've done it in other ways in other agreements. That's just one example. In 1975, with the James Bay and Northern Quebec Agreement, there were islands in James Bay that were hotly in dispute, so you carved those islands out. You pulled them out of the agreement and you said, okay, we'll give you the agreement, the rest of the agreement; sign that agreement, but we're going to take this disputed area out of that agreement for now and we'll give you the whole agreement, and then we'll come back when you have solved that overlap problem and we'll figure out how to put it back in your treaty.

You did it. It was another way of solving the problem and it worked. You did solve the problem.

You had overlap problems in the Nunavik agreement that was signed in 2006. In James Bay you solved this problem as long ago as 1975. Canada resolved these overlap issues. In 1993, with the Nunavut agreement, you also had overlap problems and you solved them. In the Nunavik agreement in 2006, you solved them, and the Tlicho agreement in 2005.

I've just given you five examples of where you have solved these overlap problems. Why didn't you do it here? Why didn't you do it here?

We're here today because as far as I can see, Canada vacated the scene. But you don't have to sit there; you can still fix this. We suggest that there are some amendments, very small amendments, you could make to this agreement, which I would suggest would go into a subclause 7(1) of the bill. I'll read it to you. You probably have the bill in front of you.

There is no subclause 7(1) right now. I'm proposing you add a subclause 7(1).

Clause 7 says:

On the effective date of the Agreement, the Yale First Nation owns the estate in fee simple, as set out in Chapter 12 of the Agreement, in Yale First Nation land.

I'm saying that should be amended to say:

Subject to 7(1), on the effective date...Yale First Nation owns the estate in fee simple

I'm saying that you add a subclause 7(1), which would essentially be a carve-out of the five-mile fishery. I'm suggesting the language be:

7(1) Any or all of the lands described in Appendix B2 - Part 2, Maps 1, 2 and 3 or Appendix C, Map 2 of the Agreement shall form part of the estate in fee simple in Yale First Nation Land or be subject to Yale First Nation laws only after the Agreement is amended to give effect to a shared territory agreement with Stó:lo.

What I'm suggesting to you is that Yale can have their treaty. You've heard both grand chiefs say we're not against Yale's treaty. What I am suggesting to you is a win-win here. Yale can have their treaty and you can exercise your muscle to insist on a resolution of this five-mile fishery dispute by just carving that part out of the treaty. It is a minute part of the land they're getting. It is not the major part; it's really just one tiny little area up in the canyon. The bulk of their land—something like 97% of their land—would still transfer to them. All of their jurisdictions with respect to everything else would transfer to them. They would get their treaty, and then when this is resolved, however it's resolved.... It may be resolved by an overlap agreement that's amending the treaty and added in, as in the Nunavut agreement, or the James Bay and Northern Quebec Agreement, or the Nunavik agreement—those are all possibilities. It's a very simple way of doing this.

What I said earlier about having skin on the table.... I've been a negotiator for a long time, and I think a lot of people in this room have probably sat around some negotiation tables, too. Everybody does have to have some skin on the table or you don't get a deal. If somebody walks in and they have nothing to gain from sitting down at a negotiation table and everything to lose, then you have no possibility of resolving that. That's the situation we were in, in these processes, the consultation process and the mediation process. Yale came to the table with the deal signed and sealed in their back pocket, and with nobody telling them they had to negotiate. Chief Hope said to us—and we were in the room, all of us—“Over my dead body will one word of my treaty change and over my dead body will Stó:lo be mentioned in my treaty.”

● (0920)

I'm sure you're going to say, “Well we've gone through all the processes. We tried everything we could.” If that's the position he took—and it is—going into the treaty consultation process and the mediations, then there is no possibility, and there never was.... He didn't have anything to gain to come to this table because nobody put any pressure on him to resolve the issue. So there was no process that was meaningful, ever, for us to solve this problem.

I'm putting forward what we suggest is a solution. We would ask that this be given some very serious consideration, because it is a possibility for giving them what they want—their treaty—and giving you what you want—their treaty—but also giving us an opportunity still to solve this problem with respect to that small area.

I want you to know that we had a lot of disputes and issues about a whole bunch of other things in the treaty. We've given those up and said that we'll pass on those. But it is the most important area for Stó:lo. You couldn't pick an area that will cause you more problems in the future than that particular area.

We're asking you to seriously consider this amendment.

I've also suggested that it would need "Subject to 7(1)" in subclauses 4(1) and in 5(1), so that it would carry all the way through the Yale act that you're proposing—that it go through except for that carved out section.

I want to thank you for the opportunity to make some submissions to you.

● (0925)

The Chair: Thank you.

We'll have time for three questions, and we'll begin with Ms. Crowder.

Ms. Jean Crowder: Thank you, Mr. Chair.

Thank you, Grand Chief Kelly, Grand Chief Hall, and Ms. Teillet, for coming before us.

Just so you know, the briefing document provided by Aboriginal Affairs says:

Taking steps to address government consultation obligations does not diminish the desirability of having First Nations resolve overlap issues amongst themselves, and Canada and British Columbia have continued to encourage Yale First Nation's efforts to discuss and resolve any shared territory issues with neighbouring First Nations.

What comes out of the department is very different from perhaps what people believe. We've seen this in other agreements.

Tsawwassen was a really good example where there were issues around overlap. The Cowichan, Penelakut, and the Stz'uminus alliance pointed to overlap issues that were not resolved before the treaty. We raised concerns around that, and essentially the government of the day indicated, "Well, it's up to the first nations to sort it out. We've done our bit."

Ms. Teillet, you pointed out Tlicho. Tlicho is a really good example. We managed to pass that bill at all stages in the House because it was resolved before it got to the House.

It's a frustrating process because—Tsawwassen is a good example—once the agreement is signed, essentially the government washes its hands. This isn't a partisan remark. This isn't about whether it's Conservatives or Liberals who are negotiating treaties. It doesn't matter. It's the stance. It's the policy that it's up to first nations to sort it out, even though often the territorial disputes are as a result of policies imposed by governments in the past that did separate nations, that did separate families, that did divide territories.

I have two questions.

The clause 7 amendment, in your view, would take the shared territory off the table. What process would need to be in place in order to move forward to get some sort of an agreement on that?

Chief Kelly.

Chief Doug Kelly: We're engaged now as Stó:lo leaders in talking about what we need to do together to organize ourselves to look at how we manage lands, resources, and opportunities. Our leadership is keen to avoid what's taking place today, where one part of our family is creating a potentially violent altercation on the river and on the banks of the river.

For us, we're already doing it. We're meeting among ourselves as tribes, as leaders. We're talking about how we are going to work together, how we resolve differences in a good way, how we make sure we support one another. When it comes to Yale, they are working with us through various fisheries management regimes.

● (0930)

Ms. Jean Crowder: Sorry, they are working...?

Chief Doug Kelly: They are working. They attend Lower Fraser Fishing Authority meetings along with our technicians and our leadership. So it is possible. There are some issues where there is common ground. But we don't have common ground because the federal chief negotiator is not interested in seeing any amendments, or because the provincial chief negotiator is not interested in seeing any amendments. So why would Yale? Yale already has the support of both levels of government to ram it through.

Ms. Jean Crowder: During this process, I can say with confidence that Stó:lo would have presented their case to the provincial and federal negotiators, would have provided the information around this history. Was there a response on why it wasn't accepted or considered, Chief Hall?

Chief Joe Hall: One of the puzzling things happened back in 2005. We provided boxes and boxes of evidence to Mr. Lofthouse and Mr. Barkwell at those sessions. They had all of the evidence. They promised and promised to respond. It wasn't until after B.C. actually passed their legislation that we received a formal letter of response on all of the issues we put in.

The process has been bizarre right from the start. We asked for evidence to support Yale's claim that they are not Stó:lo. We were told that this was not part of the B.C. treaty-making process. You just need to put a claim in, your statement of intent, etc.

It's important to note, too, that...I'm not sure which document you are referring to, but the BC Treaty Commission attempted twice to mediate with Yale. You have to know that all of our Stó:lo attempts to contact Yale during the development of their AIP went unheeded. There was no response to our attempts to get together to talk about it. It wasn't until the BC Treaty Commission actually brought in the chief of Yale that we met for the very first time, and he already had the initialled agreements in his hand.

That's something worth asking the BC Treaty Commission. At that session, who was not prepared to negotiate any kinds of changes? Not one comma was going to be altered in the agreement. They were there at that session. The Treaty Commission attempted twice, and then AANDC, the department of Indian affairs, put Vince Ready in and he attempted it. He came up with a solution. It was worth pursuing—the memorandum of respect and understanding, and the Stó:lo responded favourably to him. Unfortunately, the Yale First Nation decided they were not interested in pursuing it, and it collapsed the whole process for the third time.

I want to make it clear that we've attempted in every manner to try to resolve this, to sit at the table and resolve this. It isn't as though we sat and waited for the government to resolve it, because that's not the case at all.

The Chair: Thank you very much.

Ms. Jean Teillet: Could I just respond, Mr. Warkentin?

The point is that this overlap or shared territory dispute is not the same as Tsawwassen. It isn't the same. In that dispute, they were talking about a shared fishing territory that they were worried about. This is not the same. This land is going to be taken and given in fee simple to Yale. This is a taking of land. In law we would call that a *nemo dat* problem. For those of you who don't have the Latin, "nemo" means nothing and "dat" means to give. The federal government is giving to Yale what you don't have. You don't have it to give and you're giving it to them.

From what I'm suggesting in the amendment in 7(1), there is no process to fix it, but they would have to do it. If they want the rest of their treaty, they would have to sit down for the first time and honestly broker a deal, which they've never done.

The Chair: Thank you.

We'll turn now to Mr. Rickford for seven minutes.

Mr. Greg Rickford (Kenora, CPC): Thank you, Mr. Chair, and thank you, Jean, for the significant and substantive contributions to this process.

We don't mean to be rushing you, but normally we have a more limited presentation time, so that we have close to 50 minutes.... Right now we're trying to make sure that my colleague Carolyn gets some minutes. I'm going to jump in here to talk about some practical impacts of this agreement, in light of my colleague Jean's line of questioning.

During the course of the negotiations and the consultation process, both of your organizations have stated that STC and SXTA—I'll use the acronyms, since we're all familiar with them—have not had an opportunity to have input into the Yale First Nation final agreement. STC and SXTA have also stated that the Yale First Nation has refused to consider any changes to the final agreement post 2009.

My question is—and I have just a couple of minutes because I want to go to what I think is an important second question—haven't measures been taken to significantly reduce the practical impact of the Yale treaty on the STC and SXTA interests?

Joe, do you want to comment on that?

• (0935)

Chief Joe Hall: I'll try to be quick, and thank you for that. I recognize the time limitations, but put simply—and we encounter this in British Columbia as well—they feel what they've done is to improve access. They're missing the point about infringement and the taking of land, as my colleague Jean referred to. It's much more than simply an access issue here. It's quite a bit more: it's immemorial, as Grand Chief Doug spoke of. It isn't simply an access issue.

It seems as though the governments have convinced themselves that this is the problem, and they're missing the point of our presentation.

The Vice-Chair (Ms. Jean Crowder): I think Chief Kelly had a brief comment he wished to make, Mr. Rickford.

Mr. Greg Rickford: Sure.

Chief Doug Kelly: There's an unresolved tension between section 35 rights and the content of the Yale treaty. It's been boiled down to

access, but it's not access. Right now those fishing sites belong to Stó:lo families. They're managed by Stó:lo families. They're not managed by federal fish officers. They're not managed by Indian agents. They're not managed by chiefs and councils of any communities. They're managed by families.

What you're proposing to do with the Yale treaty is put a gatekeeper in the name of the Yale chief and council, who now has the arbitrary power to decide who may or may not access their families' fishing grounds. That has provided a serious ground for significant violence and altercations in the future.

Mr. Greg Rickford: Thank you, Grand Chief Kelly.

I should say, I appreciated your presentation very much. As a lawyer who's been involved in similar kinds of negotiations, it's inspiring when someone with your amount of experience, often probably much better than their own legal counsel's, comes to the table, particularly the standing committee, with this kind of information.

Jean, you clarified the proposed amendment very well, but I want to build on the technical part of this. I'll leave it in the last couple of minutes for you to break that question down. Most of the fishing sites being fished by Stó:lo members in the five-mile area, which is where most, if not all, of the preoccupation here is, are located below the high-water mark or are on rocks in the river itself. These are part of the public waterway governed by federal law and cannot be owned privately. The public waterway is not part of what would become Yale treaty lands. It is also the case that Yale has agreed to provide reasonable access, and you've dealt with the access issue it is focused on over Yale treaty lands.

Is the question, then: doesn't this significantly reduce the practical impact of the Yale treaty on both of the treaty associations' interests?

Ms. Jean Teillet: That argument is so fascinating to me because it completely misunderstands the nature of the Fraser River. The Fraser River is a wild river. It's coming through a bottleneck there. The idea that's proposed there is that you can access your fishing spot from the water. When the freshet is coming down at this time of year, which is the prime fishing time, it is virtually suicidal to go out on the water and try to access your rock.

It's also based on an idea that a rock is a rock is a rock. On one given year, that rock might be under water, so the people don't fish on that rock. They would fish on the rock up here, which would be above the high-water mark. It also negates the idea of the dry racks. The dry racks are not on the little rock down below the water; they're up on the land behind. This is the only place in B.C., in that five-mile area, where you can do this wind-dried fishing because of the unique area of the canyon. So this idea that somehow it's below the water mark, that you can access it that way, and that you can fish from that and that solves the problem—it doesn't solve the problem.

The other thing I want to really make clear is that more than 60% of the fishing sites we're talking about are not on reserves. They're on crown lands.

I want to make it really clear: it isn't an answer. In other words, it is not an answer because although we talk about them as "a" rock, it's actually an area. People often own two or three or four. A family could have two or three sites that they access. So it's absolutely not an answer.

• (0940)

Mr. Greg Rickford: Okay.

Madam Chair—

The Vice-Chair (Ms. Jean Crowder): You have 20 seconds.

Mr. Greg Rickford: Actually, I have one full minute, according to my stopwatch, but I'd be happy to give it—

The Vice-Chair (Ms. Jean Crowder): I'm sorry, but you don't.

Ms. Bennett, for the final question.

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

As you can understand, it's difficult for parliamentarians to understand their role when we're presented with something that was, to all effects, negotiated in good faith, was approved by the BC Treaty Commission, and is being sent here. I guess we want to have faith that what's happening at the high-level table between the Prime Minister and first nations leadership is going to fix some of these issues.

I understand that in terms of comprehensive claims, the Department of Justice, up till now, just looks at the strength of the individual claim in that analysis and hasn't really had the wherewithal to deal with the overlapping shared territory or—I think what you're describing—hasn't somehow exercised it, even if it maybe could have, should have, or ought to have. I guess what we're trying to determine, in terms of how you end up ensuring there is some reconciliation or the kinds of things you're talking about.... What we're hearing here this morning is very serious, in terms of a tinderbox, in terms of tensions that are worrying.

I'm pleased that you've brought these amendments forward, because I think you are describing to us the danger of exclusive access, and the idea that there has been, in many other previous negotiations, shared rights territory. Indeed, I think at the Eeyou it was actually on the map: it said "shared". Even in the B.C. legislature, they did talk about the present system being a sort of first past the post system: whoever gets there first gets what they asked for. Now we have to actually figure out that this process needs to change.

I would like my colleagues to understand whether you're comfortable that these rules are going to change as the negotiations go on, in terms of the Prime Minister and the leadership and how this negotiation process and the BC Treaty Commission process will change over this time. Therefore, without your amendments, this bill almost puts a problem in cement.

Chief Doug Kelly: I very much appreciate the comment and the question.

For me, there's a real opportunity with the work the Prime Minister and the national chief have set out to do with the redrafting, re-crafting, and renewing of the comprehensive claims policy. The

very issues we're dealing with today deal with the failure of the current policy.

I was hopeful that because of the commitment by the Prime Minister we wouldn't be here at all now, that we would allow that process created by the Prime Minister and the national chief to complete its work, that any shortcomings in this Yale treaty would have to be measured against a new and improved comprehensive claims policy, and that those gaps would then be addressed by the parties.

But that's not what we're doing. In the zeal to get treaty number three, your chief negotiator has not done his homework. The BC Treaty Commission has taken on the role of cheerleader, instead of being a facilitator for the process. I've told them that to their face. They've been at summit meetings and I've told them that directly. They need to move away from being a cheerleader to providing leadership in the resolution of the problems.

The process that was approved and signed off on in 1992 contemplated all these issues. There were 19 recommendations made and approved by Canada, British Columbia, and first nations. This was anticipated years and years ago, but no one has done the work.

The treaty commission is supposed to be the keeper of the process, but it has not kept the process. So in addition to renewing the 1986 comprehensive claims policy, Canada, B.C., and the first nations summit need to make the treaty commission an independent, impartial keeper of the process, because right now it's not: it has pompoms and short skirts.

• (0945)

Chief Joe Hall: I'd like to add to my colleague's comments. The summit is later this week. I've come here and will race back home to attend the summit meeting. There's a resolution on the floor to discuss the need for an aboriginal body to deal with overlap and shared territory disputes, because it is running rampant.

I sit in on the chief negotiators' meetings in British Columbia as well, and they're all fearful of what's happened in the Stó:lō territory, and they already feel that this is possibly happening in their areas as well. The issue is mainly the fact that it was a voluntary process, to get together and try to resolve the dispute and overlap. As it turns out, it didn't work; it's not working.

So we're going to be discussing later this week at the summit perhaps establishing a body that will deal with these issues, and not leaving it to government to make the final decision. The government's response to us was that they're obligated to make a decision to move this process along. That was painful to hear. I said no, under the principles that Doug is referring to, we have that responsibility to do that. But what we're seeing now is that communities in this particular case, when they get the initialled agreement from the federal and provincial governments.... It's now not bilateral; it's now become I guess a multilateral approach, because what has happened is that Yale is saying, "If you want to change something, you have to come after us later, and you have to deal with the federal and provincial governments." He actually said that at a BC Treaty Commission meeting.

That's what we're trying to prevent—to have these resolved before, and then notify government of the decision of a body in British Columbia that's going to deal with overlaps and dispute resolutions, using what I suggest is a blue chip aboriginal panel to deal with disputes and resolutions, so we can put forward all our evidence. Right now, Yale has not had to put any evidence on the table for us to look at and debate, while we've been doing all the submission of documents to the process.

The Chair: Thank you.

Folks, that completes our time. We want to thank you for coming. We appreciate the fact that it's three hours earlier in British Columbia, so this is early yet. We thank you for your testimony and your willingness to come this morning and make your opening statements, but also to answer our questions.

We'll now suspend, colleagues, for a few moments, and then we'll hear from the B.C. Treaty Commission.

Thank you.

• (0945) _____ (Pause) _____

• (0950)

The Chair: Colleagues, we'll call the meeting back to order. We are joined by representatives from the BC Treaty Commission.

We have Sophie Pierre, Dave Haggard, and Mark Smith. Thank you so much for joining us.

We'll continue in the customary practice of the committee. We'll hear your opening statement, Ms. Pierre, and I'm certain we'll have some questions for you.

Ms. Sophie Pierre (Chief Commissioner, British Columbia Treaty Commission): Good morning, everyone. Thank you very much for this invitation to appear before you today on this very important matter.

I'd like to just acknowledge my colleague Dave Haggard, the commissioner who's been appointed by British Columbia to the BC Treaty Commission, and Mark Smith, our director for process who provides advice and leadership to the various table negotiations.

I also want to acknowledge my friends and colleagues who have just presented, in particular Grand Chief Doug Kelly and Chief Joe Hall. I worked with those two gentlemen for many, many years.

Despite the picture that Grand Chief Kelly put in your mind about the commission and about the chief commissioner, I don't come here with a short skirt and pompoms. I do come here very much committed to the role we have, as the BC Treaty Commission, being the keeper of the process.

My presentation to you is in three parts. I first of all want to give you just an overall introduction to the BC Treaty Commission. I don't know how much information you have. I'll try to bring everybody to the same place.

I want to talk about the principles that created the made-in-B.C. treaty process. Then I want to talk about the actual policies we have as a commission, those policies that we follow in all of our negotiations.

Finally, I want to end by talking specifically about Yale, which you're gathered here to talk about. I think it's important that we set the foundation as to why we have the position we have in terms of the Yale treaty.

First and foremost, every first nation has the right to enter into a treaty with the Government of Canada. Our Constitution recognizes this, and directs that aboriginal rights may be acquired by way of modern land claims through subsection 35(3). This is the goal of the made-in-B.C. treaty process, to which Canada is one of three participating principals.

I, too, along with my former colleagues Grand Chief Doug Kelly and Chief Joe Hall, was there that day in 1992 when this was created. I am a signatory to those documents. So I've kind of come full circle.

The intent is for negotiations of fair and honourable treaties with first nations in British Columbia. That is also the work of the treaty commission. That's why we were formed, to oversee the made-in-B.C. treaty process, to be keepers of the process.

The B.C. treaty process is an extremely complex set of constitutional, legal, and political negotiations involving 60 various tables. That involves about 120 individual Indian bands, because many tables have more than one Indian band at them.

Each set of negotiations involves three separate parties, large transfers of land and cash, complex self-government provisions, fiscal matters, and the right to and management over resources such as fish, forestry, wildlife. Adding to all this complexity is the issue of overlapping and shared territory claims amongst and between first nations.

Although overlapping and shared issues have gained increased attention in the past few years, these issues are not new. They were contemplated as part of the process when it was started back in 1992, when Canada signed on to it, when we all signed on to it. The principles established to address these issues still hold firm today.

The principles of the made-in-B.C. treaty negotiation process were as a result of a tripartite agreement between the first nations summit on behalf of the various first nations that agreed to look for solutions through a treaty-making process, the Government of Canada, and British Columbia. The Government of Canada committed in September 1992 to this unique made-in-B.C. process.

I keep stressing that: this is a made-in-B.C. process. As such, treaty-making in British Columbia is distinct and different from other processes to reconcile aboriginal rights issues in other provinces and territories.

While the recommendation about what is going on nationally on the comprehensive claims policy will have some effect on this, it cannot take away from the intent of why we have a made-in-B.C. treaty process.

The report of the British Columbia claims task force report led to the establishment of this process. The task force report includes a number of primary and related principles that pertain to overlap resolution. Recommendation one is that the process be based on political negotiations.

• (0955)

The process is open to all first nations in British Columbia, and the organization of first nations for negotiations is a decision that is to be made by each first nation. This was the decision that was agreed to by the first nations themselves. Those are recommendations 6 and 7.

The primary responsibility for resolving overlaps or shared territory issues lies with the first nations. That's recommendation 8.

All the parties and the courts recognize that resolution of overlapping disputes is best accomplished by first nations themselves. This responsibility must remain with the first nations, and the Government of Canada and the treaty commission can and should support first nations in their resolution efforts. However, unresolved overlaps must not lead to government intervention, must not prohibit the conclusion of final agreements, nor provide a veto to neighbouring first nations. The concept of a veto is also not supported by the highest court of Canada.

In *Haida Nation v. British Columbia (Minister of Forests)*, 2004, the Supreme Court discussed the concept of a veto in context of crown decisions that could impact first nations with unproven aboriginal claims, which is currently the situation with overlapping claims in the B.C. treaty process. Section 48 states that:

this process [of consultation and accommodation] does not give Aboriginal groups a veto over what can be done with land pending final proof of the claim. The Aboriginal "consent" spoken of in *Delgamuukw* is appropriate only in cases of established rights, and then by no means in every case. Rather, what is required is a process of balancing interests, of give and take.

Requiring that overlap issues be resolved before agreements can be concluded or requiring the consent of neighbouring first nations over another first nation's final treaty would give that neighbouring first nation a veto over the treaty, a situation that our courts have determined is untenable. The concept of a veto is a blunt tool that is contrary to legal principles, contrary to the founding principles of the treaty process, and contrary to the right of first nations to move forward with modern treaties.

The United Nations Declaration on the Rights of Indigenous Peoples, known as UNDRIP, and its provisions relating to "the free, prior and informed consent of the indigenous peoples concerned" has been referred to by some first nations to support the concept of a veto on lands subject to overlapping claims. UNDRIP contains numerous articles that support the principle of self-determination, a founding principle of the B.C. treaty process, as well as articles promoting state mechanisms such as the treaty process to protect and enhance first nations rights.

Article 45 of UNDRIP also states that:

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

To permit first nations a veto on overlapping claims would do just that and would take away the right of first nations to enter into a modern treaty with the Government of Canada.

It's very difficult to have this discussion knowing that it's more than just a political or a philosophical kind of argument, and that what we're talking about is people being able to continue to share territory as they move forward. However, we have to continue to find ways in which we can work together to make that happen, and not just look to others to find those solutions. We have to find them ourselves, as first nations.

Now I want to talk about what we as a treaty commission have put into place, because as was suggested, this idea of resolving these overlapping claims has been on the table right from the beginning.

The treaty commission's authority, as set out in the task force report and the 1992 commission agreement, is to receive first nations' statements of intent, including maps outlining their traditional territories. The statements of intent establish the basis for negotiating a treaty with a first nation. The role of the BC Treaty Commission does not include making determinations on the boundaries of traditional territories. In submitting SOIs—statements of intent—first nations are only required under the B.C. treaty agreement to identify the general geographic area of their traditional territories. The made-in-B.C. treaty negotiations process was deliberately established as a political process, not requiring proof of claim or territory, in order to make it as accessible as possible to all first nations. The first nations were part of that decision, part of that creation, and that's what we have to live with now.

• (1000)

As set out in recommendation 8 of the task force report, the primary responsibility for resolving overlapping claims and shared territory disputes lies with the first nations. The B.C. treaty negotiations process states that overlaps should be resolved by the conclusion of an AIP, and the treaty commission's policies and procedures outline steps that a first nation must take in order to address any overlapping territorial issues with neighbouring first nations. Our policy focuses on establishing processes for resolving overlaps between first nations: reporting to the BCTC on the progress of these processes, and subsequently by BCTC to the parties, and whether best efforts have been made to resolve the disputes. As first nations move through the negotiation process, it is expected to implement its agreed process for resolving overlaps.

The treaty commission is available to provide advice and resources and assist the parties to obtain dispute resolution services where requested. The treaty commission itself has become very active in these past few years in facilitating overlapping and shared territorial disputes. It is currently active in facilitating overlap issues with several first nations that are close to their agreements.

Earlier engagement on overlapping and shared territory issues is encouraged by our commission, as well as the federal government negotiators. The treaty commission has recommended to the Government of Canada that earlier land and cash offers to first nations would go a long way to assisting first nations to engage in their overlap issues.

The BCTC policy focuses on best efforts, and supporting those efforts with active facilitation and resources. If those efforts have been made and overlap remains unresolved at the time that a treaty is being completed, the treaty must move forward. The overlap issues would be dealt with through the non-derogation language of the treaty, and other processes, such as court, if necessary. It's not anyone's choice, but sometimes it's necessary.

To be specific in terms of Yale, it is the position of the BC Treaty Commission that the Yale final agreement must move through the parliamentary process expeditiously. We're pleased to see that Canada is moving ahead with Yale despite the complexities of the overlapping and shared territory issues with their Stó:lo neighbours.

These issues are important, and for this reason the facilitative measures were undertaken by the treaty commission and mediator Vince Ready in an attempt to bring resolution to these issues. However, as has been described to you this morning, those efforts have not brought a successful resolution. The Yale treaty must now move forward. The first nations, both Yale and Stó:lo, have made best efforts to resolve these issues, and they are at an impasse. However, the overlapping claims cannot result in a veto by one first nation over another first nation's right to move forward with a modern treaty, to get out from under the Indian Act, and to improve the lives of their members.

The Yale First Nation final agreement needs to be introduced into Parliament this session. The other two parties have been waiting for the federal parliamentary process since it was passed by the Yale First Nation in March 2011 and the B.C. legislature on June 2, 2011. This is too long a wait, given the time and resources expended by all the parties to conclude negotiations and the fact that people had come to these negotiations with the intent that they were going to be in good faith.

Thank you very much.

● (1005)

The Chair: Thank you so much.

We'll begin our rounds of questioning with Ms. Crowder for the first seven minutes.

Ms. Jean Crowder: Thank you, Mr. Chair.

I want to thank the commissioners for coming.

I'm from British Columbia, so I'm well aware of some of the challenges in British Columbia with treaties, and I know that sometimes it's difficult to come to a resolution that works for all parties involved.

I mentioned the Tsawwassen agreement earlier. I live on the traditional territories of the Cowichan peoples, and I know Cowichan had some concerns with Tsawwassen.

With regard to the matter before us, I'm understanding you to say that in your view best efforts were taken by all parties in terms of trying to achieve a resolution.

Ms. Sophie Pierre: Yes.

That's what we've been encouraging, particularly in these last few years.

Ms. Jean Crowder: I did have a chance to look at the mediator's report, and he booked out at some point, saying that the issues were unresolvable by mediation.

Is that your understanding as well?

Ms. Sophie Pierre: That is our understanding.

My colleague may want to say more to that. Commissioner Haggard actually has the responsibility for the Yale table.

Ms. Jean Crowder: Commissioner Haggard.

Mr. Dave Haggard (Commissioner, British Columbia Treaty Commission): Thank you, Sophie.

I don't know that I can add a lot to it, but there's no doubt that Vince Ready, who is probably one of the most prominent mediators in British Columbia, booked out, saying that the two sides were too far apart in the resolution of the issue.

As you heard this morning, the issue is very clear. It's over the five-mile fisheries in the Fraser Canyon and the areas surrounding that. There was a lot of good work done, in my view, but we did not get there.

Ms. Jean Crowder: Does the BC Treaty Commission have any role in considering the claim from another nation that has overlap concerns? Would you have looked at Stó:lo's historical documents?

We heard today from Grand Chief Hall that there was not a response from the negotiators until after the agreement was signed.

Would you have a role in examining the validity of Stó:lo's claims to the territories?

Ms. Sophie Pierre: Again, as I mentioned, in the principles of the negotiation process we do not make a determination about a first nation's traditional territory. We receive their information, their statement of intent, as we did with Yale, and as we have done with the Stó:lo who are at the negotiating table, which Chief Joe Hall spoke about.

Ms. Jean Crowder: Go ahead.

● (1010)

Mr. Dave Haggard: Maybe I can just add to that. The treaty commission doesn't have the authority to draw lines on the map, nor should we. It's not our role in life, although we are involved at this point in time in working with nations throughout British Columbia in trying to find mediated settlements to those disputed territory issues.

Good heavens, I would be afraid to drive through Chilliwack if I ever started drawing lines on Joe's or Doug Kelly's territory. It just wouldn't happen, and we don't do that.

We have had success in getting the nations to sit down at a table and start to talk about how to resolve issues in a disputed area. There's no question that disputed areas are throughout British Columbia.

Ms. Jean Crowder: The issues around overlap are interesting.

I know, Commissioner Pierre, you pointed out the principles around the BC Treaty Commission, and the view is that it's up to the nations to resolve that.

Again, in the briefing document that I referenced earlier, which was provided to the committee in a briefing binder, they did indicate that although they say overlapping claims are the responsibility of first nations, they did go on to cite a number of Supreme Court decisions, including Haida, Taku, Mikisew, Cree, Rio Tinto, and so on, that the crown has an obligation to consult with and, where appropriate, accommodate the interests of first nations claiming aboriginal rights and title over areas subject to a treaty or final agreement.

I think we've seen that there are some real challenges with the current overlap and shared territory mechanism to deal with it. I think we heard Chief Kelly suggest that there should be an independent body that can work with the nations that have these overlapped and shared territories. Do you have a view on that?

Ms. Sophie Pierre: We do, and right now I guess we fill that, because there is no other body that is specifically set up for that in British Columbia.

The intent, from what I understand of what Grand Chief Kelly was talking about, is that through the AFN and the review of the comprehensive claims policy, this particular issue, of course, is a national issue. So there would be a body set up that would deal with that at a national level.

What I get concerned about is when the made-in-B.C. treaty process is brought into a national exercise. The parts that make it important in British Columbia, which is that we have very few historic treaties—we have only two historic treaties, whereas the rest of the country has historic treaties, so they're on a different page. It gets a little bit worrisome about how we would deal with that.

I should say that as the BC Treaty Commission we have made recommendations to the treaty revitalization process that is going on right now. We made that presentation last year, I believe to the Senate committee. We made that recommendation that as we go through treaty rewrite, we look at enhancing and making it very specific and giving some teeth really to the commission to have a role in supporting the dispute resolution for overlapping claims.

Ms. Jean Crowder: Do you have any views on the amendments that were proposed by Stó:lo to the legislation?

Ms. Sophie Pierre: I would like to ask my colleague to speak to that. This thing has gone on for...it has been here for two years. It's a matter of concern that this hasn't moved forward much faster than it has up to now. If we're going to be looking at any amendments, they have to be set into some kind of timeframe to get this thing.... Either we should do this and stand with what we put in place by way of a treaty process or find something else. I don't think we can drag this out forever. National reviews sometimes drag out.

The Chair: We'll turn now to Mr. Boughen for seven minutes.

Oh, pardon me. Mr. Haggard wants to speak.

Ms. Sophie Pierre: Yes, my colleague was going to speak specifically to the question on the amendment.

Mr. Dave Haggard: This is still a long way from a conclusion, but I think it has showed promise. But regardless of whether a new organization is set up to deal with overlap and shared territory disputes, somewhere in the parameters there has to be, in my view, something that brings a final and binding conclusion to the issue.

I don't know that many first nations are prepared to go down that pathway. Some may be and some may not be. Some of my colleagues and friends, where I come from, I suspect would not be. But it's worth a try, and I think it's something the first nations have to come to a conclusion on, to begin with.

•(1015)

The Chair: Thank you.

Mr. Boughen.

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

Let me offer thanks to the panel for taking time out of your busy schedule, I'm sure, to appear here and share with us today. Welcome.

Ms. Pierre, you were present at the committee on October 25, 2011, and you answered some specific questions regarding the Yale First Nation negotiations. Since then, your commission has made various attempts to assist with an outstanding overlap concern between the Yale First Nation and Stó:lo organizations who have been here speaking with various senators.

What role did the British Columbia Treaty Commission play in attempting to resolve the competing claims of the Yale First Nation and the Stó:lo, and what has been the result?

Ms. Sophie Pierre: That's what we were describing earlier. A mediator was appointed, and we tried to bring the parties together to help with that process. Many other efforts have been made, from the commissioner responsible for that table as well as from the rest of the commission, to provide opportunities, to provide resources, to provide whatever we could to have the parties come together and resolve this issue.

Mr. Ray Boughen: And so far, there has been no luck?

Ms. Sophie Pierre: Unfortunately, no.

Mr. Ray Boughen: The British Columbia Treaty Commission is noted as saying that one first nation cannot in essence veto another first nation's treaty.

What is the British Columbia Treaty Commission's rationale for taking this position?

Ms. Sophie Pierre: The way we're describing it is that if the treaty that Yale and the other two parties have negotiated.... Granted, there are overlapping claims with the rest of their Stó:lo people, but if we look at the way the process was set up—and the first nations were responsible for setting it up this way—they agreed that a first nation would identify themselves, come forward, identify their territory, and be accepted into the treaty process. If certain things were set out in their statement of intent—their readiness, etc.—then they would move through the treaty process.

Yale has been going through the process for 18 years. It's not as if... There needed to be accommodations or protocols reached amongst the people on how they're going to continue to use that process, because it's clear that this is shared territory that has been used by the Stó:lo people for many years. At some point, after you have gone through all of...and everyone has made...and we suggest in our presentation to you that both parties have made best efforts and there is still no resolution.

We have one party that has negotiated a treaty with the Government of Canada and the Government of British Columbia. If it does not go ahead, we're suggesting that it creates a veto. We're asking whether that is really what we want to do.

Mr. Ray Boughen: Okay. How does the Yale First Nation agreement compare with the B.C. first nations final agreements?

Ms. Sophie Pierre: I'm sorry, I don't follow the question.

Mr. Ray Boughen: The comparison between the agreement with B.C. first nations—

Mr. Dave Haggard: Is that with the ones that have been done?

Mr. Ray Boughen: Yes.

• (1020)

Mr. Dave Haggard: They all have their different nuances. All of them have overlapping issues, shared territory issues. We helped to resolve one on the west coast with Maa-nulth and Tseshah. They all have those issues, but each treaty is negotiated separately by those nations that do the negotiations, so there are some things that are the same, and some things that are very different.

Mr. Ray Boughen: Is the similarity between treaties not big enough to cause both parties to step back and have another look at it?

Mr. Dave Haggard: They've been stepping back for 20 years.

Mr. Ray Boughen: That hasn't been finalized yet.

I have a last question for you. How will the final agreement provide the Yale First Nation with more governing authority over its own affairs?

Ms. Sophie Pierre: Right off the bat, when you have “effective date”, then the laws that they have set up, the jurisdictions that Yale has assumed, come into place on the day the agreement comes into effect. That then eliminates the Indian Act and it eliminates the responsibilities that are found under the Indian Act and places them squarely with the Yale government. They are responsible for that.

The whole point of getting into treaty negotiations is that you negotiate for specific jurisdictions where you want to have the responsibility for your people in order to have those opportunities, including economic opportunities, to develop your nation.

Mr. Ray Boughen: Thanks, Chair.

The Chair: Ms. Bennett, we'll turn now to you.

Hon. Carolyn Bennett: Thanks very much.

Obviously in your work you need to feel that there is some integrity to the process, but am I hearing from you that you think the mandate and the process are perfect right now, or do you think there need to be some changes, particularly around the issue of a strength of claim, who gets there first, and the real ability to put some pressure on the negotiation around overlapping or shared territory?

Ms. Sophie Pierre: There is a lot of work that needs to be done with the different parts of the process. I think what we created in British Columbia in 1992 is a framework that can work. There are parts of it, over the years, that have deteriorated.

When I first came on as chief commissioner, I described the process similar to what Grand Chief Doug Kelly just said earlier, that it has become a program. One of the very first things I said, as the chief commissioner, was that we needed to change that and we

needed to bring some life to the negotiations so that they were actual negotiations.

We are looking at first nations to have self-sufficiency and self-determination, and governments and first nations are looking for certainty. Then there had to be a way to ensure that does happen, not just a rehash of what's there. We're talking about building something new, about giving authorities to first nations so that they can then become self-determining.

Yes, there are changes, and we've made many recommendations. In fact, just shortly after the meeting with the Prime Minister that our national chief had, we immediately sent off a letter to the Prime Minister's office making four recommendations on some of the changes that needed to be...and they started right off with the mandates of the federal government.

It's not a perfect process, but the framework we have created is something that can work if we all put our minds to it.

Hon. Carolyn Bennett: What were the four recommendations? Can you provide the clerk with a copy of that letter?

Ms. Sophie Pierre: We certainly can. We can also provide the clerk with a copy of our latest quarterly report, which has just come out.

The very first point is something we've been saying for the last two years that we've been coming to Ottawa.

By the way, when I became chief commissioner in 2009, we immediately made it a priority to come to Ottawa. In fact, the very first meeting we had was with the pre-budget Standing Committee on Finance to talk about considering the investment that all of us as Canadians have put into this process, and that we need to start seeing some return on that investment by having treaties that are actually settled, unleashing the economic ability of first nations to become great contributors to our country.

We've been saying that we need a directive specifically around section 35. It's a part of the Canadian Constitution, the highest law in the land. It's very clear that we need leadership directly from the Prime Minister's office to give some legs to section 35.

We found that because everyone was thinking about the process like a program, the various ministries were forgetting that this comes right from the Canadian Constitution. In fact, the policies of the department of national parks do not supercede the Canadian Constitution. Parks has to be at the table in negotiations, but they were taking the position that they're not at the table because their act supercedes that of Indian Affairs. It probably does, but it doesn't supercede section 35 of the Canadian Constitution.

That's our first recommendation, that we need that directive from the Prime Minister on section 35. When we had our meetings with Parks, with Defence, and with others, we asked how they were ensuring that the federal government was meeting its responsibilities under section 35. It was a question they had not been asked to answer for a very long time.

Secondly, there are some first nations that are not going to “re-treaty”. We know that the federal government just last year was involved in an assessment, and the first nations themselves are getting to the point where there's a lot of frustration. There needs to be an exit strategy. Right now, either you negotiate or you've racked up a \$10 million debt, and then everybody is just kind of at a standstill. The first nation is frustrated because the mandates they're looking for from the federal and provincial governments are not brought to the table, so they can't move ahead. We need an exit strategy for that. We need to get serious about an exit strategy.

There are opportunities here to actually talk about some of those mandate issues that are frustrating the process, mandate issues like own-source revenues. I believe the last time we were here we talked about why own-source revenue is so important and why we need to talk about that. The federal government's position right now is that it's not on the table. That's not really how you negotiate.

There are reasons that own-source revenues needs to come back to the table. Own-source revenues like fish.... We haven't had a mandate on fish since I started, nor for a couple of years before I started. We need to have that. There were others, like taxation. These are issues that need to have sober second thought, if you will. We have a group of people right now working on it.

The federal government also said that “certainty”, “extinguishment”, and that kind of language...when we first started, all of that stuff wasn't on the table. It is on the table, we are talking about it, and we've been able to find ways of resolving that. We've got this technical working group, and we're suggesting that they also be given the opportunity to look at these other issues, like taxation, own-source revenue, fisheries, etc.

The last one was in terms of interim measures. There need to be more benefits going out to first nations who have been at the table for the last 18 to 20 years negotiating. Benefits need to be going to them. The federal government needs to be a real partner in that, and they're not right now.

Those were the four recommendations.

Sorry I took so long in saying that. I get kind of carried away with this stuff.

•(1025)

The Chair: Well, you've lived it, so we appreciate your wisdom in this.

Mr. Clarke, we'll turn to you now for the next round of questioning.

Mr. Rob Clarke (Desnethé—Missinippi—Churchill River, CPC): Thank you, Mr. Chair.

And I thank the witnesses for coming in.

Earlier on, you mentioned the veto of one first nation. Could I get some further clarification on that? If the Yale final agreement is not passed, what impact will it have on the British Columbia treaty process?

Ms. Sophie Pierre: I think it sends out a clear message that when you negotiate a treaty and you've actually signed onto a final

agreement, it's not a final agreement. Another party can come along and stop that from going ahead.

Mr. Rob Clarke: So what does the British Columbia Treaty Commission recommend for further resolution on overlapping first nations in general?

Ms. Sophie Pierre: Clearly we still have much work that needs to be done. We've made the recommendation that land and cash offers need to be made a lot sooner. We just get different positions at different tables about when land and cash are actually put on the table. It's hard to start having real substantive discussion with a neighbouring nation, or if you're all within the same language group and you're looking at carving out a piece of your traditional territory for a particular community, if you don't really know what land you're going to be talking about, because clearly it's not the entire statement of intent. When you place a statement of intent, it is a responsibility for that first nation to contact everybody around them and say, “This is our statement of intent”, and place that. In fact, when we do get requests from other first nations, we provide that information on what the statement of intent is.

But when it comes right down to what pieces of land are going to be in the treaty, the treaty table needs to know what the land and cash offer is, and it needs to come earlier than it does now.

•(1030)

Mr. Dave Haggard: If I could, I'll just add to that.

The two things, and we've been talking to the federal government about them, are resources and the ability to compel nations to come to that table to discuss the issue around overlap and shared territories. It costs a lot of money to bring nations to that table. If the treaty commission is going to do it, which we're currently doing under our current budget, we need to be able to bring people together like that and compel them to come. If you get three first nations at the table and there's still a fourth one out there that has a veto authority, then you don't accomplish anything. So somehow you have to have the ability to compel those nations to come to the table to discuss the overlapping shared territory issue.

Mr. Rob Clarke: In your previous statements to the committee, you had given us the content of concerns, as expressed by the Stó:lo, as being primarily connected to the stretch of the Fraser River north of the town of Yale in an area known as the primary five-mile fishery. You frame the concern as being a Stó:lo desire to allow access to traditional fishing sites in that area, to allow the Stó:lo members to continue fishing activities. The current position of the Stó:lo is that the accommodations made are woefully inadequate. They state that these accommodations do not address the proprietary interests of the Stó:lo to Yale reserves.

What is your view of the accommodations undertaken by the parties to the Yale final agreement, and by the Yale first nations, proposing a 10-year binding agreement on access to Stó:lo groups?

Ms. Sophie Pierre: The negotiations that Yale has completed include that particular area we're talking about. This is why we were encouraging the parties to come together and have a resolution on that. We understand the real complexity here, and the real difficulty. But if all best efforts have been made, then what? We're saying that when all best efforts were made and the three parties, the governments of Canada, B.C., and Yale, came together and agreed on a treaty, that particular negotiation was done in good faith. In particular, for Yale, they created a large debt in order to have these negotiations happen. At some point, it has to move forward; if it doesn't move forward, it is a veto. I don't know what else you can call it.

Mr. Rob Clarke: This is just a quick question. How many times have the Yale and the Stó:lo sat down at the same table and discussed these issues? Do you have an idea?

Ms. Sophie Pierre: I don't know.

Do you have any idea?

Mr. Dave Haggard: Four times that we have been involved in. Some of them didn't last long, some of them lasted longer, but we have convened meetings four times.

Mr. Rob Clarke: Thank you.

The Chair: We'll turn to Mr. Genest-Jourdain for the next round of questions.

•(1035)

[*Translation*]

Mr. Jonathan Genest-Jourdain (Manicouagan, NDP): Thank you, Mr. Chair.

I will now talk about some fairly technical issues involved in the contentious aspect of this treaty signing.

Witnesses who spoke before you told us about those noticeable tensions in the field. Section 2.12 of the Yale First Nation Final Agreement stipulates that the provisions of the agreement can be replaced or renegotiated if a court determines that they adversely affect the rights of other aboriginal peoples.

Do you think the agreement is referring to a court of first instance?

[*English*]

Ms. Sophie Pierre: Can you answer that?

Mr. Mark Smith (General Counsel, Process Director, British Columbia Treaty Commission): I believe it's the first-level court initially.

[*Translation*]

Mr. Jonathan Genest-Jourdain: Okay.

Would an appeal of the trial decision have an effect on the enforceability of the initial ruling?

[*English*]

Mr. Mark Smith: I believe you would have to go all the way through the appeals for a final decision.

[*Translation*]

Mr. Jonathan Genest-Jourdain: And those appeals can ultimately be carried all the way to the Supreme Court of Canada. Right?

[*English*]

Mr. Mark Smith: Yes.

[*Translation*]

Mr. Jonathan Genest-Jourdain: That can take decades. A good example is the decision made in the Delgamuukw case. I submit this respectfully.

Let's now consider the contentious aspect of this treaty's ratification, as that's always key. The Yale First Nation Final Agreement also provides for a transfer of fishing allocations for various species of salmon—all to the benefit of the Yale First Nation.

Do you think the allocations attributed to the Yale First Nation will apply to other considerations and to the rights that could be exercised by other nations or individuals who fish in the region covered under the agreement?

[*English*]

Ms. Sophie Pierre: I'm not sure I understand the question. Are you asking if Yale places a higher emphasis on fish than they do on other parts of their treaty?

[*Translation*]

Mr. Jonathan Genest-Jourdain: In reality, will the rights conferred to the Yale First Nation with the signing of the treaty take precedence over and exceed the exercise of activities by other communities, such as subsistence activities that may be enshrined in the Constitution?

Ultimately, will the rights granted to the Yale First Nation take precedence over the rights that could be exercised by other nations and other citizens of British Columbia?

[*English*]

Mr. Mark Smith: I don't believe they would. I think that's an unknown legal question right now. What rights take priority, whether it's a section 35 right or a section 35 treaty right? The courts haven't determined that, but I think the answer is that they wouldn't take priority.

[*Translation*]

Mr. Jonathan Genest-Jourdain: It is highly likely that this contentious aspect will meet with objections, and that the case will go to court.

Should section 2.12 be signed and implemented quickly, there is a strong possibility that the legislation will be challenged by the Stó:lo, with whom I have met a few times. They are not happy campers, if I may use that expression.

Do you think this disputed aspect will rear its head fairly quickly after the signature? Finally, how much money will be invested in this?

[*English*]

Ms. Sophie Pierre: We expect that there—

Mr. Mark Smith: I don't think it's for us to say. I think that's probably for Stó:lo to decide if they want to pursue that process. If they do, there is nothing stopping them from doing it immediately.

I don't believe there is funding available for that. That's always a consideration for the Government of Canada to decide if it can fund those sorts of things. The courts have sometimes granted funding for those kinds of cases.

[Translation]

Mr. Jonathan Genest-Jourdain: Ms. Pierre, do you want to add anything?

[English]

Ms. Sophie Pierre: What I was going to say is that we do expect there is going to continue to have to be a way to resolve the issues. Unfortunately, it may end up having to go to court, and that will cost a tremendous amount of resources, yes, absolutely.

• (1040)

[Translation]

Mr. Jonathan Genest-Jourdain: Thank you.

[English]

The Chair: We'll move now to the final questions.

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Thank you, Chair, and thank you to all the witnesses for your very interesting testimony.

I find the whole issue quite confusing.

My first question is for Commissioner Haggard. You indicated that in your view—and I agree with your view—that it's not the role of the committee to draw lines on a map. I think we all agree that lines on a map, in a perfect world, would be negotiated and there would be some sort of consensus.

But we live in the real world, and in the absence of consensus, in either your view or in the view of the commission, whose role is it to draw the arbitrary lines?

Mr. Dave Haggard: I believe it's the role of the first nations to come to an accommodation with each other in the disputed territory, whatever that territory is and however many nations are involved in it. That's what we have been attempting to do.

Whatever body that is, I believe there should be some way to compel first nations to that set of discussions, and, if necessary, to have some ability to create a binding solution, whether or not it's a binding mediated solution, in my view. Now I'm not sure we can ever get there, but that would definitely resolve the problem.

But you have to get all the nations in British Columbia to agree to that type of a process before we can start to address it.

Mr. Brent Rathgeber: In this specific issue with respect to overlapping lands, I understand there was a mediation process in place, and the mediator at one point walked away because it was hopeless, in his view; the parties were too far apart.

We all agree that consensus is the most desired outcome, but in the real world, where that can't always be accommodated, who, in your view, should be charged with drawing arbitrary lines in a situation when a meeting of the minds is just simply impractical?

Mr. Dave Haggard: You don't have to draw lines. What you have to do is find a solution for how you're going to deal with the territory in the disputed areas.

In Toquaht in Maa-nulth, what they did was create a joint committee that meets once a year, or more if necessary, to decide what activities will take place in that disputed territory, whether it's fishing, gathering, hunting, or economic development. They can do it together or agree that one or the other nations can do it in that territory.

It was an overlay of territory right on top of the other one.

Mr. Brent Rathgeber: Does the creation of that mechanism fall under the mandate of the BC Treaty Commission, or, in your view, does it fall—or ought to fall—under the authority of some other governing body?

Mr. Dave Haggard: You heard Chief Hall say that there was a resolution going to the summit that may deal with creating another organization. Or if it were done through the treaty commission—all of which is possible—you'd have to come to an agreement with the first nations and the two levels of government.

Number one, somebody has to fund it. Number two, you have to come to a consensus and an agreement on how it's going to be activated and how it's going to come to a final and binding conclusion in those territories.

You can do it in either one of two ways: find another outside body and create a new body, or I believe you could do it under the BC Treaty Commission.

Mr. Brent Rathgeber: Thank you.

Chief Commissioner Pierre, we heard in the first hour that the Stó:lo community believes that Yale is actually a subset of the larger Stó:lo community. In fact, the words the Grand Chief used were that it is a small portion of a large family. Does the BC Treaty Commission accept that proposition?

Ms. Sophie Pierre: It's not up to us to accept it or not accept it. The way the process was set up—and it was set up by the first nations themselves—was that first nations would come forward, identify themselves and their statement of intent, and that's when the BC Treaty Commission got into the act with the six stages.

So it's not really the BC Treaty Commission that will determine whether or not a first nation comes forward and says they're a first nation. It's not our determination whether or not we accept that is the case, and whether they're part of a larger group or they are individual unto themselves. That process was set up by the first nations summit.

Mr. Brent Rathgeber: I accept that it's not your mandate to determine what is included in a first nation, but do you know, anecdotally or otherwise, if there's support through judicial decisions or through other...? Is there support for the proposition that Yale is a subset of Stó:lo in any other mechanism or judicial authority that you know of? Is that contention supportable?

• (1045)

Ms. Sophie Pierre: I don't know that it matters.

Mr. Dave Haggard: It doesn't matter.

Maybe I can use a different example. The Nuu-chah-nulth Tribal Council is made up of 14 tribes. They're all one, they all speak the same language, but they move. Sometimes Tseshah is made up of so many people from Huu-ay-aht, so many people from Kyuquot, and they call themselves Tseshah. They're part of Nuu-chah-nulth, but they call themselves Tseshah. Who am I to tell them they're not? Or you, or anyone else? And that's no different for Yale and Stó:lo. Yale has moved forward as a separate nation, and we believe, because that's what was decided by first nations, that they have that right.

Mr. Mark Smith: Perhaps I could also add that there is some legal discussion in the Tsilhqot'in case in the Court of Appeal

affirming the right of a nation to self-define. The UN declaration also speaks to that principle of self-definition and self-determination.

Mr. Brent Rathgeber: Thank you for your answers, although I tend to be more confused than I was when we started.

Thank you.

The Chair: Thank you, Mr. Smith, Commissioner Haggard, Chief Commissioner. We want to thank you for your work and your willingness to come here today to bring testimony and answer questions.

Colleagues, we will now adjourn. The bells are ringing.

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