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# Standing Committee on Fisheries and Oceans

EVIDENCE

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Monday, November 2, 2020

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Chair: Mr. Ken McDonald





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• (1610)

[English]

**The Chair (Mr. Ken McDonald (Avalon, Lib.)):** I now call this meeting to order.

Welcome to meeting number six of the House of Commons Standing Committee on Fisheries and Oceans. Pursuant to Standing Order 108(2) and the motion adopted by the committee on Monday, October 19, 2020, the committee is resuming its study of the implementation of Mi'kmaq treaty rights to support a moderate livelihood.

Today's meeting is taking place in a hybrid format, pursuant to the House order of September 23, 2020. The proceedings will be made available via the House of Commons website. So you are aware, the webcast will always show the person speaking rather than the entirety of the committee.

To ensure an orderly meeting, I would like to outline a few rules. Members and witnesses may speak in the official language of their choice. Interpretation services are available for this meeting. You have the choice, at the bottom of your screen, of floor, English or French.

For members participating in person, proceed as you usually would when the whole committee is meeting in person in a committee room. Keep in mind the directives from the Board of Internal Economy regarding masking and health protocols.

Before speaking, please wait until I recognize you by name. If you are on video conference, please click on the microphone icon to unmute yourself. For those in the room, your microphone will be controlled as normal by the proceedings and verification officer.

As a reminder, all comments by members and witnesses should be addressed through the chair. When you are not speaking, your mike should be on mute; I can't say that often enough.

With regard to a speakers list, the committee clerk and I will do the best we can to maintain a consolidated order of speaking for all members, whether they are participating virtually or in person.

I would now like to welcome our witnesses today.

We have Naiomi Metallic, chancellor's chair in aboriginal law and policy and assistant professor, Schulich School of Law, Dalhousie University. We have Dr. Rodon, associate professor and Canada research chair in northern sustainable development, Université Laval. We also have Dr. Wicken, professor in the department of history at York University.

We will now proceed with opening remarks.

Professor Metallic, we'll go to you, for five minutes or less, please.

**Prof. Naiomi Metallic (Chancellor's Chair in Aboriginal Law and Policy and Assistant Professor, Schulich School of Law, Dalhousie University, As an Individual):** Thank you very much.

My name is Naiomi Metallic and I am a Mi'kmaq woman from the Listuguj Mi'gmaq First Nation. I am also a lawyer and a law professor. I clerked at the Supreme Court of Canada with the Honourable Justice Michel Bastarache. I have practised in the area of aboriginal law and, as a full-time law professor since 2016, I have taught constitutional law and aboriginal law, particularly section 35, and the Supreme Court of Canada cases on those. I have some knowledge of circumstances in the Atlantic region in the various communities. I've also done work on a case involving social assistance and have been part of research projects that have looked at high unemployment and social assistance dependency and some of the causes around that. I know some of the issues around needs in the communities in the Atlantic provinces.

My submissions are primarily intended to clarify the law regarding Canada's obligations regarding a moderate livelihood fishery. The term "regulate" gets used a lot. Yes, the Supreme Court of Canada said, in both Marshall I and II, that Canada has the right to regulate treaty rights, but what I am offering, and what the materials that I submitted in advance attempt to do, is to show that "regulate" does not mean that Canada may legislate and limit the treaty right in whatever way it sees fit. There is far more to it than that.

To give some broad brush strokes to the submissions that I provided, when section 35 was introduced and the Supreme Court interpreted it for the first time in a case called Sparrow in 1990, the court acknowledged that section 35 had changed the rules of the game and that these rules would provide a strong check on the legislative powers of the government. That didn't mean that the federal government didn't have any legislative powers—recognizing that, particularly with respect to the federal government, there's a section 91(24) power in relation to indigenous people—but there was also a clear recognition that now, because of section 35, there would be limits on how far regulation in respect to aboriginal and treaty rights could go.

The focus of my paper looks at... When there is an infringement of an aboriginal and treaty right, there is in fact a two-step test, a justification test, that the court has provided, and it has been extremely consistent in how this test works since the decision in Sparrow in 1990. The two prongs to this test are, first, that there has to be a valid objective and, second, that the government has to show that it has followed a certain process that ensures its treatment of aboriginal or treaty rights is in line with the honour of the Crown and the government's fiduciary duty with respect to indigenous peoples.

On the valid objective front, the court has identified that conservation and management of natural resources can be part of a valid objective. In fact, in the commercial context, in a case called Gladstone, the court also noted that there can be additional objectives, such as addressing economic and regional fairness within an industry, as well as historical reliance and participation of non-indigenous groups in an industry. But the court also makes a point in another case, called Powley, that it is simply not sufficient to just assert a valid objective. The government also has to bring evidence supporting that valid objective and that they're acting on it in good faith.

That is the valid objective prong, but there's more to it than that. I think often the media coverage on this issue tends to forget step two, and that's the harder part for governments to meet.

Step two, as I said, is about meeting Canada's fiduciary duty and honour of the Crown in addressing and accommodating aboriginal and treaty rights. Here, the court has said there are various things the government needs to do. First, it needs to show that it gave priority to the right. Depending on the right and issue, that priority can be different.

• (1615)

When we're talking about food, social and ceremonial rights, after conservation, the court has said this has to be an exclusive priority before the interests of other users of the fishery. Now, in a commercial context, in Gladstone and in both Marshall decisions, the court said that it's not exclusive priority, but nonetheless there still has to be priority given to the aboriginal right. So—

**The Chair:** Thank you, Ms. Metallic. Your time has gone over.

We do have a copy of your speaking notes, which will be circulated to all committee members, but hopefully anything you didn't get out will come out in the line of questioning.

**Prof. Naomi Metallic:** Thank you.

**The Chair:** We'll go now to Professor Rodon for five minutes or less, please.

[Translation]

**Mr. Thierry Rodon (Associate Professor and Canada Research Chair in sustainable northern development, Université Laval, As an Individual):** Thank you for the invitation.

I will be speaking in French and I will try not to speak too quickly.

I am a professor of political science. Therefore, I might have a slightly different view of the crisis. I have been working with in-

igenous communities for a very long time, in particular on the issues of fisheries management, salmon management and agreements negotiated with governments.

The first thing that stood out for me with respect to the crisis we are discussing is access to resources. That is the central issue and it has a very specific context. Before the arrival of the Europeans, indigenous peoples were politically autonomous and self-reliant, as stated by the Royal Commission on Aboriginal Peoples. It is important to keep that in mind.

This issue affects the Mi'Kmaq as well as other indigenous communities in Canada, although the files and the positions differ. In some cases, it is about access to the resource and the commercial fishery. The Algonquins in Quebec have asked for a moratorium on moose hunting to protect the species. At any rate, the issue is always access to and protection of the resource. It is important to point that out.

With respect to the Mi'Kmaq, we often hear that all they want to do is fish for salmon and make money. However, it is much more complicated than that. It has a great deal to do with self-governance. The Mi'kmaq from the Sipekne'katik community decided to create their own fishing season and to issue their own permits, which is clearly recognized by Canada's 1995 inherent right policy. This policy clearly states that self-government is an aboriginal right and that natural resources management is a right that they can negotiate as a priority or exclusively. One of the most important rights is access to the resource, and that is what is at stake in the case we are studying.

This type of situation is going to occur more and more often in Canada. One must have experienced the salmon fishing crisis on the Moisie River to know how to arrive at a solution. In the end, this type of crisis, where access to a resource and competition between sport fishers and commercial fishers are at issue, can be resolved through co-management. The co-management of natural resources allows for the recognition of a dual authority: that of the federal government over the commercial fisheries and that of the indigenous communities over the management of their resources.

This makes it possible to collaborate and to harmonize fishing practices, and also to alleviate the concerns of some fishers who are protesting against this fishery, which they consider to be illegal. It is actually not illegal because it stems from the aboriginal rights of indigenous peoples. In the case of the Mi'Kmaq, these rights were never extinguished, unlike what happened in the United States.

It is really in this context that we must understand the issue.

I know that the Supreme Court spoke of the concept of reasonable livelihood, which struck me somewhat. It seems restrictive for a community because indigenous peoples, like all other Canadians, have the right to access a resource and to make money.

We should also know that the indigenous fishery, even a commercial one, is a collective. The permits issued under the Aboriginal Fisheries Strategy and Beyond are community permits. This fishery therefore serves to make money for communities, not individuals.

I am very familiar with the Uashat experience of commercial fishing. It created some conflicts at the beginning, but now it is accepted. Innu fishers of the Uashat band council have their own fishing boats, crew and so forth.

Therefore, solutions can be found. On the one hand, self-governance must be recognized and, on the other, co-management institutions must be established to jointly make decisions and to harmonize practices in order to protect the resource.

• (1620)

As Ms. Metallic stated, according to the Sparrow decision, the only issue warranting government intervention is the resource conservation.

The way to resolve this is to work together on conservation. That is what I would recommend.

That concludes my remarks.

• (1625)

[*English*]

**The Chair:** Thank you for that.

We will go to Professor Wicken, for five minutes or less, please.

**Mr. William Craig Wicken (Professor, Department of History, York University, As an Individual):** Mr. Chair, I'm a historian at York University in Toronto, a city you might love to hate. Unfortunately, I'm also a fan of the Toronto Maple Leafs.

I am also an expert witness. I have testified for first nations, the Government of Canada and the attorney general of New Brunswick. I testified in the Marshall case.

It is reasonable to say that non-indigenous fishers may be upset with how the Marshall decision has affected them. They have a large capital investment in the industry. They have worked hard. They want to maintain their communities for their children and grandchildren. Many families date back to the 17th century, such as the D'Entremonts.

It is also reasonable to say that first nations communities have the same purpose: They want to maintain their communities for their children and grandchildren. Their families date from before the 17th century, such as the Battistes.

There are shared as well as different histories here that need to be honoured and remembered so that the past doesn't become a lodestone around our necks but emblematic of our strength as a diverse but unified people.

However, there are elephants in the room.

First, non-indigenous fishers might feel that every time a commercial licence is retired, bought by the federal government and given to a first nation, there will be fewer non-indigenous fishers, and perhaps their scenic coastal towns will become good summer

places for rich upper Canadians. Second, first nations might feel that their land was stolen, their resources monopolized, their livelihoods taken away. They might wonder how they are now being accused of not wanting to conserve lobster. They might wonder, as well, why there should be a limit on their livelihood.

Then there are the politicians who grapple with how to represent all their constituents, knowing that indigenous people form a small proportion of their voters. So many people blame the government, and that's a problem because government is a force of good. There are many intelligent, hard-working people in the Department of Fisheries and Oceans.

How, then, do we reconcile these diverse interests?

It is true that many people living in coastal communities in Atlantic Canada were poor well into the 20th century. It is also true that the Maritimes form the three poorest provinces in Canada. However, it is not true that everyone has been historically marginalized. The most disadvantaged have been the Mi'kmaq, Maliseet, and Passamaquoddy.

Let me give you an example of how that happened. The Mi'kmaq are historically a fishing people. Why, then, is Shubenacadie not on the coast where that community was originally located? It's because coastal areas south of the Shubenacadie River in Nova Scotia were only for white settlers. The Mi'kmaq became refugees in their own land. The Acadia band in southwest Nova was a creation of this diaspora, formed in 1960, but they were placed far away from the sea.

Did the treaties they signed with the British Crown not protect them? The Mi'kmaq and the Maliseet signed six treaties with the British Crown between 1725 and 1779. The treaties were how the British hoped to integrate indigenous people into the common law, making coexistence possible. After 1783, colonial and then federal governments dismissed the treaties as having no legal validity. The Mi'kmaq and the Maliseet, however, remembered the treaties. Why? It was because governments had worked to marginalize them economically, socially and politically. The Mi'kmaq and the Maliseet remembered the treaties because they were a means to maintain a semblance of their own identity. By the early 20th century, they came to identify principally not as Canadian, but through their treaty relationship.

When my family moved to Nova Scotia in 1993, there were already problems in the lobster fishery in Yarmouth. Both the government and the Mi'kmaq believed that the courts were the only way to resolve the issue, and lawyers on both sides wanted the case to be decided by the Supreme Court of Canada.

Both indigenous people and non-indigenous fishers are trying to maintain their historical relationship to their communities, to maintain their families and their culture. On the one hand, we have fishers who have a private right to the fishery through the licensing system. However, the Mi'kmaq don't have a private right to their licences; the community does. They also fish through the food fishery program.

One question you might ask is what that right to the food fishery program means and why the first nations may want to exercise that right. The other question to ask is why Shubenacadie/Indian Brook is an issue. An examination of the council members today suggests they are mostly young, and perhaps part of a generation who felt the sting of discrimination at their local high school in the 1990s. You need to understand their history and how they think about their history to understand why they do what they do.

• (1630)

Thank you.

**The Chair:** Thank you for that.

We'll now go to our questioning.

We'll start with the Conservative Party. I'll go to you, Mr. Bragdon. We didn't receive any list of the order of speakers or questioners, so I'll leave that up to you. You have six minutes or less, please.

**Mr. Richard Bragdon (Tobique—Mactaquac, CPC):** Thank you, Mr. Chair.

Thank you to each of the witnesses who've joined us. This evening provided valuable insight and testimony, and we appreciate the input you've brought to the committee.

As you know, we find ourselves in a situation that didn't emerge overnight. This is something that has been ongoing for a number of years, and recently, obviously, has escalated to a very serious point in Nova Scotia. There are a lot of misunderstandings from all sides.

I think what's happening is that, throughout this process, there seems to be a whole element of people who have felt like perhaps they haven't been properly consulted or haven't been part of the process. There seems to have been an absence on the part of the minister to be actively and proactively involved in coming to a solution sooner than now.

We're hearing compelling testimony from indigenous representatives and folks from the indigenous community, which is definitely shedding light on their right to fish. We're also hearing from representatives of the commercial fishery, talking about their concerns about being left out of the process.

I would just ask this of each of the witnesses who have spoken here this evening: Do you feel there is something that could have been done differently, or could be done better, to help us get to a peaceful resolution and make sure all interested parties are part of a solution?

I'll start with you, Mr. Wicken.

**Mr. William Craig Wicken:** I'll be short, and then I'll pass it over to the other panellists.

What I would say in response is partly because I testified in Marshall. The lawyers for the federal government at that point, as well as the federal government, did not believe they would lose that case at the Supreme Court of Canada. What happened from that is there wasn't a plan, and I think we've heard that through other witnesses. That created chaos, particularly in New Brunswick, but also in Yarmouth.

That, I think, provided the bad context—and not a good context—for the public to view what was going on, as well as the non-indigenous fishers. That's really not fair in terms of both the Mi'kmaq people and the non-indigenous fishers.

I'll pass it over to the other panellists.

**Mr. Richard Bragdon:** Ms. Metallic or Mr. Rodon, go ahead.

[*Translation*]

**Mr. Thierry Rodon:** Co-management brings together all stakeholders and can certainly prevent this type of conflict. A sort of nation-to-nation relationship is forged, which has great symbolic significance.

In this case, the federal government and the Mi'kmaq nation must engage in negotiations. That does not prevent the establishment of certain co-management groups, which we see across Canada, especially in the north. However, the federal government generally appoints people who participate in the co-management of the resource. In the case of co-management with a first nation, the federal government could appoint non-indigenous fishers, for example. That would result in a forum where everyone could talk to one another, which would make it easier to resolve problems that might arise.

I spoke to you about the Moisie River management council. In that case, Innu representatives, representatives of the ZEC (zone d'exploitation contrôlée)—the controlled harvesting zone, or public land—and representatives of outfitters were present to negotiate access to salmon, the fishing practices and the protection of salmon. I believe it is a model that would respect Mi'kmaq rights while ensuring social peace, create an understanding of the issues and make it possible for commercial fishers to also earn a living without feeling threatened. That is what seems to be missing so far.

• (1635)

[*English*]

**Mr. Richard Bragdon:** Thank you, Mr. Rodon.

Ms. Metallic, would you like to answer that? I'm not sure what we have left for time, but we'd love to hear from you on this as well.

**Prof. Naiomi Metallic:** Sure.

**The Chair:** Before you start, Ms. Metallic, could you please get the microphone as close to your mouth as possible, because the interpreters were having a problem?

**Prof. Naiomi Metallic:** Yes.

I think some key messaging going forward is really important, and that's where I feel things could have been improved in terms of what has happened before. These are complex issues, but letting some strong voices from the government explain that these are constitutional rights that have to be balanced, instead of perhaps letting a narrative unfold in the media that allows people to question whether indigenous people have the right to a moderate livelihood, or letting people think that perhaps they're violating the rule of law by exercising such rights. I think the better messaging is that these rights exist. They are complex, but the law gives us various tools to make sure that everyone's rights and interests are recognized and accorded. I think some key messaging would be really important in moving forward on this.

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

We'll now go to Mr. Battiste for six minutes or less, please.

Again, if you want a particular witness to answer, please identify them so we're not left in dead air. Thank you.

**Mr. Jaime Battiste (Sydney—Victoria, Lib.):** My question is going to be for Ms. Metallic.

Before I do that, I want to recognize William Wicken for his books on Mi'kmaq history and all he's shared over the years. My only regret is that we only got to hear him for five minutes. I know he could give an hour-long lecture on this, and it would have been absolutely amazing and for the betterment of this whole committee.

With that said, I want to talk a little bit, Ms. Metallic, about the law. You mentioned the honour of the Crown. We've heard some witness testimony that says the Mi'kmaq have gotten all of these licences from the Marshall response initiative. Do you believe that the honour of the Crown would be met, in your personal opinion, by that initiative and that the minister could regulate the fisheries as is under those licences?

**Prof. Naomi Metallic:** As set out in our paper, we conclude that the Marshall response initiative would not meet the requirement of the test set out by the Supreme Court of Canada. In particular, the second branch, on which I didn't get to spend as much time as I wanted, requires the government giving a priority to the right, consulting with the indigenous group, but also recognizing that indigenous groups have a right to manage their rights as well, and reflecting that in how priority is given.

On my assessment of the Marshall response initiative, first of all, it would be problematic for the government to say this meets the Marshall decision, when the negotiators were very clear, in negotiating those agreements, that they were not about meeting a moderate livelihood right. So, to make those representations and then 20 years later resile from them does not seem to be in keeping with the honour of the Crown.

In addition to that, even if you could make the argument that they do address this or they could be considered a justified infringement, there's no evidence, really, in terms of priorities, whether or not it met priorities when it was originally negotiated in 2000. The court talks about a proportionate share based on the population of the community as well as the importance of the resource to the indigenous group. So, there is that issue that it may not have met priority, but in 20 years since, there has not been any addition or

amendment to those, so we know that they certainly don't meet the current needs of the community in terms of population and need. That would be another thing that would detract from the current Marshall response initiative meeting that. There has to be more.

I believe that licences and questions about seasons are things that have to be worked out through an honest negotiation and discussion. Going to Monsieur Rodon's earlier point about the right to self-government, that's implied also from Marshall II. Marshall II talks about these rights being exercised with communal authority, and that implies a right to govern and manage. The government has to be respectful of that. Yes, they also have the right to manage. I think Monsieur Rodon is right on with respect to this idea of co-management, and it's part of working this out.

● (1640)

**Mr. Jaime Battiste:** Thank you for that.

I have another question. I've heard a lot of testimony that we can't have a separate Mi'kmaq fishery outside of the Fisheries Act. I'm confused about that, because within our Fisheries Act, in 2019, section 2.3 says: "This Act is to be construed as upholding the rights of Indigenous peoples recognized and affirmed by section 35 of the Constitution Act, 1982, and not as abrogating or derogating from them."

Do you think that our Fisheries Act is recognizing the legal plurality of the Mi'kmaq to govern their own fisheries as part of this?

**Prof. Naomi Metallic:** Yes, I think that provision is great because it's a recognition to the minister that she has to be aware of section 35 rights, but that's the state of the law anyway. The minister does have to exercise her discretion and jurisdiction, and so does Parliament, in keeping with recognized section 35 rights.

It is possible. The Supreme Court provided several guidelines we can look to, which also talk about how it will depend on what sort of species we may be speaking about in terms of how Canada can regulate, but there are no hard and fast rules that have been supplied by the courts. They are more flexible and require more thoughtfulness and more analysis in terms of the competing demands, but also in terms of trying to give some priority to section 35 rights.

This could involve a right that is potentially outside of a closed fishery, but again, it requires discussion, analysis and speaking together. There hasn't been enough of that.

**Mr. Jaime Battiste:** Thank you.

Bill Wicken, my question is for you. Can you tell me what happened in 1928 to the Mi'kmaq rights? Was that ever overturned?

**Mr. William Craig Wicken:** Thanks for the question.

This is the Gabriel Sylliboy case I think you're referring to, in which Judge Patterson of the county court in Nova Scotia, on Cape Breton Island, ruled against Grand Chief Gabriel Sylliboy, who had been charged with hunting muskrat out of season. The upshot of that decision became seminal in terms of understanding Mi'kmaq treaty rights, whether there was a treaty or not, and whether it was valid legally. That continued up until the 1980s, with the Supreme Court decision in 1985.

The other point about that, which is important to remember, is that the Mi'kmaq never surrendered, through any of their treaties, title to their land. They were told in the 1970s and 1980s that the title no longer existed because it had been "superseded by law".

Part of the issue for many Mi'kmaq people and Maliseet people across Atlantic Canada is that they still have title to their land, and there is a sense that they have been marginalized and that their resources have been taken away without their consent. When I look at the situation today and even back to the 1990s, that is part of what drives their understanding of their own history and of what you could call their historical consciousness.

**The Chair:** Thank you, Mr. Battiste. You've gone over your time.

We'll now go to Madame Gill, for six minutes or less, please.

[*Translation*]

**Mrs. Marilène Gill (Manicouagan, BQ):** Thank you, Mr. Chair.

First, I would like to thank all the witnesses who are with us today.

This committee would like to make recommendations and work together to find solutions. We have not heard much about co-management, a subject that Mr. Rodon is an expert on.

The Uashat Mak Mani-Utenam live in my riding, and that is where the Moisie River is located. I would like Mr. Rodon to tell us about co-management and give concrete examples of co-management cases that have been successful in the area.

**Mr. Thierry Rodon:** Co-management has existed in Canada since 1978. Parks Canada first used the term for the management of national parks on land claimed by indigenous peoples. This was then included in all land claims agreements that were signed in the north. In fact, this began with the James Bay and Northern Quebec Agreement, which included co-management bodies. Since then, all agreements have included the co-management of land and natural resources. It is a model that has existed for a very long time.

Obviously, this model is used more in the north, but it is used elsewhere as well. I gave the example of the management council for the Moisie River, or the Mishta-shipu. The purpose of this council, which operated for five or six years, was to resolve a conflict with salmon fishing. However, there was also a very serious conflict involving the death of two Innu people. The community had always believed that they were killed by fisheries officers. It was an underlying conflict. Many Innu fishers were trying to regain control of the salmon and the activities of the clubs, among other things. Finally, they settled on this solution because they had to make space for Innu subsistence fishing, even though the Moisie River was used entirely by public and private clubs. The solution was ar-

rived at with the help of the Quebec government in the late 1990s. This made it possible to resolve a conflict.

I worked on this when writing my doctoral thesis. There are many examples where co-management has solved conflicts related to resource management and access. I am thinking in particular of the Beverly and Qamanirjuaq Caribou Management Board. There was an example in Kénogami also.

This model works well, but it is not perfect. Clearly, it always takes goodwill. Co-management works just like any entity created by people: it requires the will to work together to find solutions together. The advantage of this formula is that it brings together in one room all the people involved and forces them to find solutions. Naturally, this takes time. In any event, in the case of a conflict like the current one involving the Mi'kmaq, co-management would result in solutions.

When I talk about co-management, I am not talking about consultation. Fisheries and Oceans Canada has many consultative bodies that are in contact with the users of the resource, such as commercial fishers. On the North Shore, the Innu are among them. However, only recommendations are made to Fisheries and Oceans Canada. With co-management there is real influence and the opportunity to take action. Sometimes recommendations are all that comes of it, but they are made directly to the Minister and not to an official. In some cases, a decision is made. There are a number of co-management committees in Canada that decide how resources are shared. There is one in Nunavut working on wildlife management and it has the authority to make decisions.

This exists in Canada and, therefore, we can find solutions. There are many models. In fact, this does not exist in Canada alone. Co-management is used a great deal by the state and local populations in Africa, for example, to manage protected areas. It is a model that works. There are no guarantees. However, if you are asking for my opinion, based on my experience I would say that it makes it possible to sometimes resolve difficult conflicts.

• (1645)

**Mrs. Marilène Gill:** Thank you.

On another note, I know that time can be an issue. There can be difficulties depending on whether or not the stakeholders want to collaborate.

In the short term, if we implement co-management, could it lower social tensions in the area right from the start?

**Mr. Thierry Rodon:** Co-management only works if all parties are at the table. If some parties are excluded, there definitely can be no progress. Even if they are there on behalf of Canada, commercial fishers must be there nonetheless. There will be no solution without them. Obviously, the Mi'kmaq will also have to be there.

Then, as is the case for all committees, including parliamentary committees, a synergy develops after a certain period of time. Or at least that is the hope.



As I demonstrated in my study, co-management often does not work because of external issues. For example, in Nunavut there was one case where the co-management committee gave Nunavut fishers a turbo quota, but the federal government intervened and subsequently gave this quota to Newfoundland and Labrador for political reasons. In such cases, co-management does not work. Committees must arrive at a consensus themselves and then—

• (1650)

[English]

**The Chair:** Thank you, Professor Rodon. The time has more than expired.

We'll now go to Mr. Johns for six minutes or less, please.

**Mr. Gord Johns (Courtenay—Alberni, NDP):** Thank you, Mr. Chair. I want to thank all of the witnesses for their important testimony.

Chancellor Metallic, I know you weren't finished in your opening statement, so I'm going to try to give you some time to finish that, but I want to thank you for talking about Marshall, Gladstone and Sparrow. Ahousaht et al is a court case that's important to where I live.

I'm in Muchalaht territory. Their right to catch and sell fish is particularly related to wild Pacific salmon. Do you feel the government has had a mandate to not just accommodate the rights of these indigenous fishers and communities, but to implement these court decisions?

**Prof. Naomi Metallic:** Forgive me if I don't get the question. I may get you to reframe it. I was involved when I was a lawyer in a court case in 2013 and represented 12 of the 13 Mi'kmaq first nations from Nova Scotia in going to court. At that time, because they had been at the negotiation table seeking over and over again to have the negotiators come forward with a mandate to discuss implementation of a moderate livelihood fishery, we brought the court case. Eventually it ended up being put on hold so that negotiations could continue, but unfortunately here we are, seven years later.

Have I answered your question about a mandate?

**Mr. Gord Johns:** Let me give you an example. Judge Garson, who oversaw the Ahousaht court case here in British Columbia, in 2017, eight years after the court decision of 2009—the Government of Canada appealed that decision—scolded the Government of Canada for knowingly sending their negotiators to the table without a mandate. Do you feel that the Government of Canada is going to the table with a genuine goal of accommodating the right, or do you believe that they're constantly going to court to diminish and restrict the rights of indigenous peoples?

**Prof. Naomi Metallic:** There was a long period of time, I believe, when the government did not have a genuine mandate in going to the table. I hope this is part of it and that perhaps we might see some change.

What I worry about is government looking for quick solutions, which I think is what the Marshall response initiative was, even though they told the indigenous group it wasn't. This is a treaty relationship, and I think there needs to be a different way of seeing how this works. You can't just throw money at something. That's

what the Marshall response initiative was. I don't know as much, perhaps, about the rights recognition initiative, but from what I've heard and what I've been able to read about it, I worry that we're just simply going to throw some money at it. Buy some more licences, buy some more gear, and that's it.

As Professor Rodon was saying, and I'm saying too, it's about a relationship and about recognizing that indigenous people want more than that. They want a moderate livelihood, but they also want to be a part of this as well. There's this governing right that they have with respect to the moderate livelihood right. They want to be able to have a say in terms of the management of this right. I think that there could be a much more meaningful approach taken.

**Mr. Gord Johns:** Can you elaborate on that? Can you talk about what that meaningful approach could look like?

**Prof. Naomi Metallic:** I think co-management is a really interesting approach. I'm really interested in what Professor Rodon is saying. We also see examples of that in some of the modern-day treaties. I know that Yukon and other groups also have co-management regimes, as do the Haida and Haida Gwaii. Those are some interesting models.

I think, too, it's not seeing it as a one-time transaction. This is just going to keep going. This is an issue that needs to be looked at regularly. Is it meeting the moderate livelihood needs? Are we respecting the views of the Mi'kmaq on this? It's continuing to work together, because I think it is really a relationship and not something that's just going to go away.

• (1655)

**Mr. Gord Johns:** That's great feedback.

I know that right now the government's approach has been to spend on lawyers. For example, on the Ahousaht et al court case, they spent \$19 million just on legal fees. I think we need to see the government break away from that.

We received correspondence at this committee from Regional Chief Kevin Hart from the Assembly of First Nations calling for the UN special rapporteur on the rights of indigenous people to investigate the government's failure to uphold the rule of law and protect indigenous fishers. Do you agree with the AFN's assessment that there are systemic racism problems within the Department of Fisheries and Oceans?

I'll stick with you still, Chancellor Metallic, if that's okay.

**Prof. Naomi Metallic:** I haven't read the letter, but certainly there is some concern that perhaps the government has not been coming out clearly with messaging in terms of what these rights are. It's letting people try to take the law into their own hands and allowing narratives that make it sound like the indigenous people are not following the rule of law, when it's in fact Canada that hasn't been implementing a decision that is over 20 years old. I do think there are legitimate concerns in that. The role of the RCMP in this, as well, is questionable.

**Mr. Gord Johns:** Okay.

How much time do I have, Mr. Chair?

**The Chair:** You have about 10 seconds, so I don't think you'll have a question in that length of time.

**Mr. Gord Johns:** All right. Okay, thanks.

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

We'll now go to Mr. Williamson for five minutes or less, please.

**Mr. John Williamson (New Brunswick Southwest, CPC):** Thank you very much, Mr. Chair. I think this is a really interesting discussion. Our witnesses have all been very good in presenting different perspectives.

My belief, though, is that we're in a state of debating Marshall and other first nations treaty rights. I think Professor Metallic has a very good understanding of the rights and the obligations, and the need to work together and consult.

[*Translation*]

Professor Rodon, you are focusing on first nations. Today, we are discussing the Atlantic fisheries. I think that you are somewhat mistaken when you say that the Supreme Court of Canada was too restrictive in the Marshall decision.

[*English*]

Professor Wicken, I think you're also offering a pretty straight-up view of the decisions to date. As Professor Metallic has said, the challenge or the problem is that there's no one taking the lead on the dialogue and speaking to resolve this situation. That, I think, is the real problem. It's the inaction of the federal government. Professor Metallic just said it was Canada. Again, that responsibility is the federal government's, and in particular, the federal minister's. We have a federal minister who has been hiding from traditional fishers on the east coast. She has been hiding from first nations communities, and now she's hiding from this committee.

Mr. Chair, I'm going to table, in both official languages, a motion that the clerk is receiving right now. It reads as follows:

That the committee request the Minister of Fisheries, Oceans and the Canadian Coast Guard to appear for no fewer than two hours as a witness for the committee's current study titled "Implementation of Mi'kmaq Treaty Fishing Rights to Support a Moderate Livelihood", and;

That the committee suspend future meetings of its current study until the Minister appears as requested, with the department officials requested.

Chair, I table that motion to this committee so that we can hear from the Minister of Fisheries and her officials to begin to get some answers from the Government of Canada on this important topic and so that the minister's hiding will finally end.

• (1700)

**The Chair:** Okay, we've heard the motion.

Mr. Calkins, you had your hand up.

**Mr. Blaine Calkins (Red Deer—Lacombe, CPC):** Thank you, Chair.

I want to thank my colleague for bringing forward this motion. I offer my regrets to the witnesses who are before the committee today, but we're now in our fourth meeting, I believe, on this particular issue. I have been a member of Parliament for almost 15 years and a member of this committee for a number of those, and this is the very first time I can recall the committee undertaking a study

without having department officials lead off by giving the committee members a lay of the land on what the issues before the government were.

Furthermore, we have no assurances at all that the minister has any intention of actually coming to this committee and providing us with a sense of what the government wants or where the government needs to go. She has not asked the committee in any way, shape or form to do any of this work for her. This was brought on by a member of the committee, and it is that member's right to do so. We are basically, for lack of a better term, fishing in the dark as to where this could possibly end up and where it needs to go.

We have a very untenable situation, in that the courts have indicated that the Mi'kmaq and others have certain rights to access the fishery. Nobody at this committee is denying that. We also have an untenable situation for fishers who are following the laws and regulations put down by the Department of Fisheries and Oceans to access their livelihoods, as has been rightly pointed out by some of the witnesses who are here today.

Even Professor Rodon has basically said the government hasn't come to the table yet. The professor is exactly right. The government hasn't even been at this committee table. For those who are watching these committee proceedings right now, I don't recall a committee ever starting a study without first consulting with department officials to set the groundwork, even for studies that are not controversial. Studies that are just there to provide the basis of information and understanding about better governance usually start with departmental officials. Here we have a potentially explosive situation on the ground and on the water off our eastern coast, and this committee hasn't been given the benefit of the doubt.

It's not a slight against the clerk or the chair, but on the motion we're bringing forward right now as Conservatives at this committee, we would like very much to have the departmental officials come in with the minister to let us know exactly what's happened so we can ask the right questions of the witnesses and we can get a sense of the debate going on at government tables. I know they can't disclose all the information, but I feel that this committee is basically floundering in its study right now. It's not because we don't have good witnesses and it's not because we're not asking good questions, but we're actually not able to direct the committee's actions in a way that will provide useful feedback for the government. That's the committee's primary responsibility here: to provide useful recommendations and feedback on behalf of all Canadians so we can have a sense of what questions to ask and what responses would be beneficial.

Mr. Chair, I would encourage the members of the committee who are here to take that responsibility seriously, to take this study very seriously and to support the motion my colleague has moved. As I said, I've been a member of this committee for the better part of 10 years, I'm guessing, and I have never, ever, seen a study start off without at least the departmental officials, and I've never seen a minister unwilling to come to talk to the committee about these issues.

• (1705)

Through you, Mr. Chair, I would ask my colleagues at the committee to support this motion. I want to hear from the minister. I want to know the minister's sense of the issues on the ground so that when more witnesses come, I'll be able to do my job better as a member of Parliament.

I want to ask the department officials some very pointed and tough questions about how they're managing this particular situation. I want to hear from those departmental officials on how they manage the lobster fishery so that I can put that in context with the other witnesses who come before the committee.

Canadians deserve better results and better responses from this committee's work. We can give them those better responses if we do things in a bit of a better order. I support my colleague's motion wholeheartedly.

**The Chair:** Thank you.

Mr. Battiste is next.

**Mr. Jaime Battiste:** When we started this discussion, I put forward a motion. It was the Conservative Party and the Bloc Québécois who expanded it to include indigenous knowledge holders and enforcement and the RCMP. We took something that was focused and expanded it, because you needed to see this.

However, I object to the notion that we need to hear from the minister or the fisheries department. What we are talking about in essence is law, Mi'kmaq law. The witnesses we have today are excellent. They have been relied on in court testimony and they're amazing.

The Conservatives said that we're fishing in the dark. Well, the witnesses we have called are giving you a spotlight.

Can we do this discussion during committee business and allow the valuable testimony we're going to hear to move forward, before we talk about when we bring the minister forward? As far as I know, there is a notion to bring her here before November 30, but I would like to get to the witnesses and the expanded group of witnesses who were asked for by both the Conservatives and the Bloc when this motion came forward initially. I would like to do so in a time that gives our committee members a chance to hear from these expert witnesses.

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

We will now go to Mr. Arnold.

**Mr. Mel Arnold (North Okanagan—Shuswap, CPC):** Thank you, Mr. Chair.

I'm happy that Mr. Williamson has brought this motion forward. In my five years of being on the fisheries committee, as Mr. Calkins stated, I don't ever recall not having officials come in to give us the background, the history, the reasons and the place on the ground where we are at this point in time, so that we can understand better the information we've received from witnesses.

This certainly isn't to detract from the three witnesses we have today. This is something the committee should have hashed out before we started off on this path, so that we have some groundwork, a foundation to work from, so that we know the reasoning behind

the Marshall I and Marshall II positions. How did we go 20 years...? Some say there's been no movement, while some say there has been movement on those decisions. However, without knowing what the department has done, without hearing from the minister on what's taking place at the current time, I don't believe there's any way we can move forward as this committee to make reasonable recommendations for resolving this issue as quickly as possible so that everyone can get back to doing what they really want to do.

I fully support the idea that we need to hear from the department, from the officials and the minister, so that we can better understand where we need to move on from at this point. Without that, there's so much that's up in the air. We've agreed that this is an urgent and emerging study, but who has the responsibility to define what a moderate livelihood is? Is that the government's responsibility? Is it the Mi'kmaq band's responsibility to define that? Is it the people of Canada? Who should have a say in that?

There are many people's lives at stake that we, as a dozen committee members, are expected to rule on, or at least make recommendations on. We need to have the basis to make those decisions.

Thank you, Mr. Chair.

• (1710)

**The Chair:** Thank you.

Madame Gill is next.

[*Translation*]

**Mrs. Marilène Gill:** Thank you, Mr. Chair.

I would like to ask you a procedural question. I would like to know if it is possible to propose certain types of amendments to Mr. Williamson's motion. First, we should indicate a date for the Minister's appearance at one of our regular meetings. As Mr. Battiste said, we want to hear from several witnesses, but we also want to hear from the Minister. I completely agree with Mr. Williamson on that. That said, would it be possible to create a subcommittee that would hear from witnesses on a more regular basis and the committee could welcome Minister Jordan as the next witness? We could work at the same time and thus speed up the work given that it is urgent.

I defer to you, Mr. Chair and Madam Clerk, on whether it is possible to propose such an amendment.

[*English*]

**The Chair:** As far as I know, Madame Gill, you can amend any motion once it is presented to the committee. That's happened many, many times.

[*Translation*]

**Mrs. Marilène Gill:** Very good. I have not yet written my amendment. I do not have the printed document. I will state my amendment in French and it will be interpreted into English. I have the text of the motion here and I will do the best I can.

I would like the Minister to come to the committee before November 13, 2020, and, in the meantime, that a sub-committee be established with five members, including the Chair and one member for each party, and that this committee have the sole task of completing the current study.

I'm sorry, I made my amendment orally.

[*English*]

**The Chair:** Thank you, Madame Gill.

I will go to the clerk for clarification regarding whether we as a subcommittee can order witnesses or have witnesses appear. I thought all of that, with regard to witnesses, had to take place in actual committee.

Nancy, I ask for your guidance, please.

[*Translation*]

**The Clerk of the Committee (Ms. Nancy Vohl):** Thank you very much, Mr. Chair.

First, we must determine whether it is an amendment. It is my understanding that Mrs. Gill is proposing an amendment. By definition, an amendment is a change that improves or changes the principal motion. What Mrs. Gill just suggested seems to be an entirely different motion. The proposal should be rephrased so that I can understand that it is an amendment and not another motion.

Can you please read it again, Mrs. Gill?

**Mrs. Marilène Gill:** It would be easier for me to quickly write it out. Is it possible to suspend the meeting for two minutes so I can do so?

Thank you very much, Mr. Chair.

[*English*]

**The Chair:** I'll suspend for two minutes, but I will remind everyone on the committee that we are running out of time.

• (1715) \_\_\_\_\_ (Pause) \_\_\_\_\_

• (1715)

**The Chair:** I'll call us back to order.

Madame Gill, I think everybody should now have received this from the clerk.

**Mr. Richard Bragdon:** On a point of order, Mr. Chair, could you just quickly clarify what we have left here for time?

**The Chair:** The remaining time in the scheduled committee meeting is 10 minutes.

**Mr. Richard Bragdon:** Thank you, Mr. Chair.

**The Chair:** You're welcome.

Now, has everybody received a copy of the amendment by Madame Gill?

Okay, I see some people shaking their heads. Perhaps I can read it out.

The amendment from Madame Gill now reads, "that the minister appear before committee before November 13, 2020".

That has been moved by Madame Gill. Do we have any discussion on the amendment?

Go ahead, Mr. Morrissey.

• (1720)

**Mr. Robert Morrissey (Egmont, Lib.):** Thank you, Chair.

As a committee member, I'm a bit frustrated. We've had expert witnesses ready to appear before the committee, and for once this committee has put the people impacted, the first nations community and commercial fishers, first. We've been hearing from them because they're impacted.

Quite frankly, we can have officials from the department, including the minister, before this committee anytime this committee chooses. To have the Conservative opposition spending all this time on when we're going to bring officials from the department or the minister in is, excuse the pun, a bit of a red herring. The testimony we've been getting will allow me as a committee member to be better informed when the officials from that department appear before this committee.

This issue has gone on for 20 years. As for this jostling back and forth and this "let's pretend" with the officials, the committee will have the officials when it chooses to, by majority. To be spending this time when we could have been....

We've had expert witnesses in here before us. This has been a bit of a filibuster from the Conservatives, when we could have been hearing from these witnesses, and a bit of pretending. Yes, we've started different studies by hearing from ministers and officials, but not all of them. There's no precedent in it, quite frankly. We made the right decision by bringing in the people who were impacted, the most important people, who had not been heard from—the first nations community and commercial fishers—to present to this committee. Then we could hear from the officials and the minister.

This is like a filibuster. We're wasting our time here when we have expert witnesses ready to put on the record compelling evidence that would allow me as a committee member to be better informed when we finally have these officials.

I'm really disappointed.

**The Chair:** Okay.

I'll remind members that we're still speaking to the amendment by Madame Gill.

Mr. Beech, did you wave?

**Mr. Terry Beech (Burnaby North—Seymour, Lib.):** Mr. Chair, I just want to say that the minister is always happy to come to the fisheries and oceans committee and that everyone had a wonderful opportunity to submit their witness list in due course, which could include the department and include the minister.

The minister also has an outstanding request to visit this committee prior to the end of the month. If the committee sees fit to move that request up, I'm sure the minister would be more than happy to attend. However, I have to imagine that the motion put forward by the Conservatives to suspend this very important study is going to be incredibly disappointing to everyone in eastern Canada who was hoping that this good work would go forward. I just can't comprehend where the Conservative Party is coming from with wanting to suspend.

That said, I want to be clear that the minister will be happy to come to the fisheries and oceans committee to give testimony.

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

Madame Gill, do you want to speak to that? You've put up your hand.

[*Translation*]

**Mrs. Marilène Gill:** Thank you, Mr. Chair.

First, I would like to jokingly say that, in politics, we must manage our frustration even if it is difficult to do so. There is a lot of frustration, but let us put it aside.

For the past few weeks, and right from the beginning, we have said that this is urgent. The purpose of the motion is to determine what has been done by the government over the past five years. This does not prevent us from continuing our work and hearing from witnesses. One does not preclude the other. I believe that it is a false dilemma.

We could move another motion asking the committee to hold two meetings next week, for example. We could also fit in a meeting with the Minister. As Mr. Beech said, the Minister is happy to appear before us. There is a meeting slated for Thursday of this week. We could meet her then. We would not even have to wait until November 13; it could happen right away. We would not have to suspend our work, and we could continue to hear from those witnesses we really need to hear from.

We actually want to do more than what Mr. Morrissey is suggesting.

[*English*]

**The Chair:** Thank you, Madame Gill.

Mr. Bragdon, you had your hand up. I don't know if that was to speak to the amendment or to the original motion.

**Mr. Richard Bragdon:** As a matter of fact, I can speak to both.

In regard to the amendment—

• (1725)

**The Chair:** You can only speak to the amendment right now.

**Mr. Richard Bragdon:** Okay.

In regard to the amendment, I think that having a timeline set to have the minister appear as quickly as possible—and it being firm—is very relevant to the work of this committee. In fact, we've heard from numerous witnesses so far. They have confirmed directly that the minister's absence on this has been a significant factor as to the reason why we're in the situation that we're in right now, along with several others, but that does not mitigate the fact that we need to hear from the minister right away.

This is an emergency. We've had an emergency debate in Parliament. This committee needs to hear from the minister sooner rather than later. Very much, I think, the quicker we can have the minister appear before this committee, the better.

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

Mr. Calkins, you had your hand up. I don't know if that was to speak to the amendment.

**Mr. Blaine Calkins:** It's to speak to the amendment, Chair.

**The Chair:** Go ahead.

**Mr. Blaine Calkins:** Thank you so much.

In an effort to be efficient, if I may, I'll just ask our colleague Madame Gill where in the original motion she is placing the wording of her amendment, so that I can have a clear picture of it. I know what the words are that she wants to add to the motion. I just don't know where in the motion she wants to add them. Or is it just an independent sentence that is part of the motion?

If it is just an independent sentence that's part of the motion, then I just want some clarification from her that if the minister is unable to come by that date, she would agree that the motion's interpretation would be that this committee suspend this study until the minister actually does come.

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

We'll go to Madame Gill now to respond to your question.

[*Translation*]

**Mrs. Marilène Gill:** The text proposed by the amendment would be inserted right after the first paragraph.

[*English*]

**The Chair:** Thank you, Madame Gill. You answered that question.

Mr. Williamson, go ahead.

**Mr. John Williamson:** Thank you.

[*Translation*]

Thank you very much, Mrs. Gill.

[*English*]

I view this as a friendly amendment. I think the placing of it in between is the correct place.

To my colleagues Mr. Morrissey and Mr. Beech, I'm pleased that the minister will be able to join us quickly. I think, therefore, that this motion will then receive all-party support, hopefully, so that we can hear from the minister in a timely fashion.

Mr. Beech, I can assure you that folks down east want to hear from the minister. That includes traditional fishers. It includes first nations. It includes provincial governments. She has been hiding out east, she's hiding in Parliament and she is not going to hide from this committee. We need to hear from the minister to set the parameters of the debate so that we can begin to have some direction and focus for us to study here.

Thank you, Mr. Chair.

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

We'll now go to Mr. Johns.

**Mr. Gord Johns:** Thank you.

First, I do support the minister coming, and I support the department coming. I don't think that it needs to happen before next Friday. I absolutely don't agree that we should be suspending the study in the meantime. I think we should set a date, such as November 20, when we come back after a break week. Next week many of us are going to be committed to being in our ridings, standing with our veterans, honouring our veterans and people in our communities, as we should be.

Second, this study isn't meant to replace the nation-to-nation dialogue that's supposed to be happening right now. I'm hoping that's what the minister is doing, meeting with the nation, having that important dialogue, as she should be. This committee is looking at the Marshall decision and the implementation of it, but this is not to replace the important work that the minister is supposed to be doing with that nation. I don't think we're going to change how that discussion is going, and that should not be our job.

In fact, if that's what people on this committee think, then we're undermining the process that's happening, which is the proper process, and that is the minister having nation-to-nation dialogue.

I would support an amendment to both motions. One would be to extend this one to November 20. Then I'll be looking at moving a motion that we don't suspend this committee before the minister comes. We have important witnesses, like the ones today, whom we should be listening to. Instead, this motion was tabled in the middle of their testimony, which I think is totally disrespectful, and it is disrespectful to everybody who is listening to this whole study.

• (1730)

**The Chair:** Mr. Johns, are you moving a subamendment?

**Mr. Gord Johns:** I'm asking Madame Gill if she will amend her date to November 20 so that we can give the department and the minister an opportunity to testify before this committee. Then I'll be moving another amendment after this amendment, to see if Mr. Calkins will not suspend the study and take that language out of his motion.

First I'm asking for a friendly amendment from Ms. Gill, that we look at November 20—

**Mr. Blaine Calkins:** I have a quick point of order, Mr. Chair.

Sorry, Gord, I don't mean to interrupt.

**The Chair:** Yes, Mr. Calkins.

**Mr. Blaine Calkins:** I think you're confusing me with Mr. Williamson, who moved the motion.

**Mr. Gord Johns:** My apologies, Mr. Calkins. Absolutely.

**The Chair:** Mr. Johns, it has to be considered a subamendment. You're moving a subamendment.

**Mr. Gord Johns:** I am moving a subamendment to Ms. Gill's amendment that we look at November 20 for department officials and the minister to appear before the committee.

**The Chair:** Okay, we've all heard the subamendment by Mr. Johns.

I'll keep going down the speakers list, I guess, but we have to speak now to the subamendment.

Mr. Arnold.

**Mr. Mel Arnold:** Thank you, Mr. Chair.

It's more of a point of order. I'd like to confirm that we're able to continue the meeting. I believe we're at our time, but I would like to be able to continue past our scheduled time to continue this debate.

**The Chair:** I don't think we're allowed to adjourn the meeting until we deal with the amendments.

Now I'll go to Mr. Williamson.

Are you speaking to the subamendment?

**Mr. John Williamson:** I put my hand down. I'm going to listen first and then talk later—imagine that.

Thanks.

**The Chair:** Madame Gill.

[*Translation*]

**Mrs. Marilène Gill:** Thank you, Mr. Chair.

I want to comment on the subamendment proposed by Mr. Johns. I don't know if it is the right time for this, but I do not agree with changing the November 13 date. We have been told from the start that this is urgent, and now it is about respect for the witnesses. I would like to point out that we must also respect the reality of not just the Mi'kmaq, but of the entire population of Nova Scotia and the Maritimes, where solutions must be found quickly. I absolutely disagree with the proposal to postpone the meeting ostensibly to November 20 because we cannot work next week, which is a break week. I would like to keep the date of November 13.

[*English*]

**The Chair:** Thank you, Madame Gill.

Hearing nothing else, we'll go to a vote on Mr. Johns' subamendment first.

**Mr. Robert Morrissey:** Mr. Chair, on a point of order, could you clarify just what we're voting on? It's not clear to me.

**The Chair:** Mr. Johns' subamendment is to have the minister appear before November 20.

Nancy, go ahead when you're ready, please.

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

Indeed, as you said, it is the subamendment from Mr. Johns that the minister be invited, but no later than November 20, and not the 13th, as in the amendment from Ms. Gill.

• (1735)

**Mr. Jaime Battiste:** As I understand, I'm voting on November 20 and that we're not stopping the study. If that is the case, then I support Mr. Johns' amendment.

**The Clerk:** Let's clarify. Mr. Johns mentioned two things, but amendments must be dealt with one at a time, so this subamendment is the subamendment to Ms. Gill's motion, and it is to modify the date of November 13 to November 20. This is the one subamendment you are voting on.

(Subamendment agreed to: yeas 6; nays 5 [*See Minutes of Proceedings*])

**The Chair:** The subamendment has passed.

Is there any further debate on the now amended amendment from Madame Gill?

**Mr. Gord Johns:** Mr. Chair, on the amendment, I move that we remove the words “that the committee be suspended”.

**The Chair:** Okay. We've heard—

**Mr. Blaine Calkins:** Point of order, Mr. Chair.

**The Chair:** Yes, Mr. Calkins.

**Mr. Blaine Calkins:** I don't believe that Mr. Johns' amendment is in order at this particular point in time, because we're simply dealing with the amendment from Madame Gill, which has been amended. I'm not trying to do your job for you, Chair, but I think Mr. Johns is a little premature in his motion. It would need to be applied to the entire motion, which would be dealt with after this amendment.

**The Chair:** Yes.

Seeing no other hands, Nancy, do you want to record the vote on the amendment?

**The Clerk:** Yes. At this time, you would be back to debate on the amendment from Ms. Gill.

**Mr. Terry Beech:** Point of order, Mr. Chair.

**The Chair:** Yes, Mr. Beech.

**Mr. Terry Beech:** Could we just, for the clarification of everybody on the committee, have the entire amendment that we're voting on right now be read?

**The Chair:** Nancy, can you read exactly what we're voting on right now as the amendment to the original motion?

[*Translation*]

**The Clerk:** Here is the text of the motion as amended:

That the committee request the Minister of Fisheries, Oceans and the Canadian Coast Guard to appear for no fewer than two hours as a witness for the committee's current study titled “Implementation of Mi'Kmaq Treaty Fishing Rights to Support a Moderate Livelihood”; that the Minister appear no later than November 20, 2020; and

That the committee suspend future meetings of its current study until the Minister appears, as requested, with the department officials requested.

[*English*]

**The Chair:** Thank you, Nancy.

Seeing no hands—

**Mr. Gord Johns:** Mr. Chair.

**The Chair:** Yes, Mr. Johns.

**Mr. Gord Johns:** I would like to move an amendment to that motion, if I can, that we strike out the second part of the motion, “that the committee suspend future meetings of its current study until the Minister appears, as requested, with the department officials requested.”

**The Chair:** Nancy, is that in order, to do another amendment now, or should we wait until we get to the voting on the main motion as amended?

**The Clerk:** You have to vote on what I just read. Once this is adopted, then you will be able to move a different motion.

**Mr. Blaine Calkins:** I have a point of order, Mr. Chair.

**The Chair:** Yes, Mr. Calkins.

**Mr. Blaine Calkins:** Again, the only thing we're voting on now is the addition of the words in English “that the minister appear before November 20, 2020”. That's all we're voting on.

• (1740)

**Mr. John Williamson:** That's correct. That's what the clerk said.

**Mr. Blaine Calkins:** That is the amendment that Madame Gill put forward, which was amended by Mr. Johns. The entirety of the motion is not up for debate, outside of that one clause. I would respectfully ask Mr. Johns again to wait until we vote on this amendment, and then he can move his amendment.

**The Chair:** Exactly. Thank you again, Mr. Calkins.

Now we'll go to the vote on the amended amendment.

(Amendment as amended agreed to: yeas 11; nays 0 [*See Minutes of Proceedings*])

**The Chair:** Mr. Johns, I see you have your hand up to speak to the amended motion of Mr. Williamson.

**Mr. Gord Johns:** Yes.

Mr. Chair, I move that we strike out “that the committee suspend future meetings of its current study until the Minister appears, as requested, with the department officials requested.”

**The Chair:** We've heard the motion. Is there any discussion?

Mr. Calkins.

**Mr. Blaine Calkins:** Thank you, Chair.

Thanks, Mr. Johns, for proposing that. However, as used as I am to the NDP throwing a lifeline to the Liberals these days, any notion that we should remove this clause is simply going to put the committee in the unfortunate position of having no leverage to ask the minister to come.

As the committee members all know, ministers will come only if they so choose. They're not compelled in any way, shape or form. This clause is there as an effort to compel the minister with a consequence if she does not appear before the committee, which is the suspension of this study.

Now, I don't know, maybe I'm being facetious and maybe the minister will come in good faith before the committee prior to November 20, but I would not wager that it's improbable that the minister would find other places to be—perhaps looking for Waldo, who is also missing—and not appearing at the committee before November 20.

If we strike this clause, then we will simply continue on with where we are right now, with no knowledge from her or from her department officials as to what their position is, what their knowledge is or what their experience is before this committee as we continue on our journey, which would basically undermine the entire notion of the minister and department officials coming here in the first place.

I don't know why, Gord, as a member of an official opposition party, you wouldn't want to hear from the minister and from the department officials. I wouldn't presume to impugn your motivations, but it would seem to me that this would only serve to weaken the motion, and I don't know why that would happen.

• (1745)

**The Chair:** Mr. Williamson.

**Mr. John Williamson:** Thank you, Mr. Chair.

Mr. Johns, use your “raise hand” button. You're not on the list, and I can see you're anxious to speak, Gord. Hit “participants” and you'll get a whole list of names there, and then on the bottom right corner it says “raise hand”.

**The Chair:** I think you're supposed to be speaking to the actual—

**Mr. John Williamson:** Yes, pardon me, I could see—

**The Chair:** I could see him wave his hand. I caught him.

**Mr. John Williamson:** Gord, I would urge you to reconsider this, not because I think you don't have a desire to hear from the minister and not because I think you don't want this committee to function, but I do believe my colleague Mr. Calkins is correct that there is a very good chance the minister might not show if there's no leverage.

This will be three long weeks now before the minister will appear—all of this week, possibly the recess week and then the week after that. There will be multiple opportunities for the minister, and should she not appear, there will be no consequence, except I can tell you what one consequence would be—I'll be back at the next meeting with another motion.

Unfortunately, that will again disrupt our witnesses, because I, like most people in Atlantic Canada, want to hear from Minister Jordan, and she has not been doing her job. She has appointed a special envoy to continue dialogue with first nations and to begin discussions with traditional fishers. But she has been invisible out east. She has been invisible in Parliament, and now she's invisible for this committee.

Three weeks is a long time, and I hope you'll consider that we do need leverage. I ask you with all sincerity and goodwill to consider keeping the leverage we have in this motion.

Thank you.

**The Chair:** Mr. Johns, you had your hand waving.

**Mr. Gord Johns:** First, I'm going to respond to a couple of things here, having heard the Conservatives trying to frame me as giving a lifeline to the Liberals here.

First of all, it is not this committee's job to replace the process that's going on. That is a nation-to-nation process, and this committee cannot undermine that process. I cannot underscore that more.

Second, having the minister come and testify should not mean suspending the work of this committee. We have a motion with an amended date of November 20 directing the minister and the department to come to testify to this committee. I know that the Conservatives like to take these partisan shots that I'm giving lifelines and not wanting the minister to be here. That couldn't be further from the truth.

It's actually peculiar that they would put this motion forward in the middle of very important testimony—testimony that they clearly didn't want to hear—that stands up for the rights of indigenous people in this country. They say they stand up for these rights, but when they were in government they spent millions of dollars—in the tens of millions of dollars—fighting against the rights of the very people of my riding to a fishery that were supported in the courts of this country.

I find it shameful—

[*Translation*]

**Mrs. Marilène Gill:** Point of order, Mr. Chair.

[*English*]

**Mr. Gord Johns:** —to be accused of not supporting the direction of this—

**The Chair:** Excuse me, Mr. Johns. Madame Gill has asked for a point of order.

[*Translation*]

**Mrs. Marilène Gill:** It's all right, Mr. Chair. I simply thought we were moving away from the subject and I wanted to return to it.

[*English*]

**The Chair:** Thank you.

Gord, are you finished now?

**Mr. Gord Johns:** Mr. Chair, my motion stands, or the amendment stands.

I appreciate the Conservatives putting forward a motion to invite the minister and the department, which we wholeheartedly support. We do not believe that this committee has a right or a role to undermine a very important process that is happening right now with the minister and that nation.

I want to see the minister here before this committee. This motion, when it's passed, is calling on the minister to testify before this committee. It doesn't change anything. It really doesn't. Therefore, I'm standing with the motion that I put forward, or the amendment.

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

We'll now go to Mr. Battiste.



• (1750)

**Mr. Jaime Battiste:** I'm going to support MP Johns' motion for the reason that the Atlantic is watching. People are watching this. People care about this. For the Conservatives to threaten to filibuster witnesses at every single meeting when the Mi'kmaq nation is watching and when the fishermen are watching....

There's a lot at stake here, and we're trying to get it right, so for you to make those threats.... My family is down there fishing. These are my people, my community members. They're also fishermen who are scared. For you to sit there and say that you're going to threaten to filibuster every time we bring witnesses until the minister comes in is shameful.

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

Go ahead, Madame Gill.

[*Translation*]

**Mrs. Marilène Gill:** Mr. Chair, I wonder if Mr. Johns' amendment is in order given that it distorts the motion. I am asking for your opinion.

[*English*]

**The Chair:** Yes, it is in order.

We'll go now to Mr. Beech.

**Mr. Terry Beech:** Mr. Speaker, I just want to reiterate that despite the accusations from our Conservative friends, I can assure the committee members.... This is my second go-round on the fisheries and oceans committee, and we've been fortunate enough to avoid some of this political hackery in the past, having done work together on a number of great motions. In fact, traditionally this is one of the most productive committees of Parliament in terms of addressing issues right across the country.

I just want to give the members of this committee the assurance that you do not require leverage. The minister is happy to appear. She is seized with this issue.

I'll be happy to support Gord's amendment. I share his frustration that the wonderful testimony that was happening today was obstructed by the Conservatives. I am hoping that this will not happen in the future, because this is an important study, and important not just to Atlantic Canada but to all of Canada.

This leverage is simply unnecessary, so I would emphasize that members of the committee should support Gord's amendment.

**The Chair:** Mr. Bragdon is next

**Mr. Richard Bragdon:** Thank you, Mr. Chair.

Again, to my colleagues on the other side, all of us want to get to a solution here. Everyone wants to move towards finding a solution, but going way back to the beginning of the elevation of this crisis that has been happening for a long time, and obviously augmenting this fall and even prior to this fall, we have repeatedly raised questions in the House, wanting answers and clarifications.

Then there was an emergency debate, and now we have a special study, yet some of the most important players and people with the ability to make decisions and help get to a resolution are not appearing before this committee, which was set up to do this study

based on an emergency situation that was happening. Then to be accused of somehow stalling and to hear "you just don't want to get ahead with the good work of the committee".... I think it's a priority of any committee to make sure that the key decision-makers are at that committee table to help provide answers and clarity around some of the situations we're facing.

The witnesses we've heard from so far were, yes, wonderful and good witnesses, and this does nothing at all to take away from those witnesses. We'll be glad to hear more input from the witnesses at any time, but here's the issue. The issue is that right now we need to have the minister come before this committee right away. If it is an emergency and it has seized the government and the government is seized with this issue, the minister should be seized with getting to this committee and providing clarity.

Thank you.

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

Mr. Calkins is next.

**Mr. Blaine Calkins:** Thank you, Chair.

I'm not going to belabour this too much longer, but again, if Mr. Johns' argument is that this committee ought not to be interfering, well, we're not interfering. Our job as opposition members is to hold the government to account—at least, with some opposition members, it's to hold government to account; with some opposition members, it seems, it's to hold the government up.

Yes, it's a nation-to-nation discussion, but that's the way democracy works. We hold that government to account. Taking away this notion from the motion, as I said, undermines that compelling argument for the minister to appear.

If Mr. Beech suggests that the minister is available—and I'll take him at his word—I suppose he could probably get her on the phone right now and put her in the committee room as we speak. However, that would be an unreasonable thing to request.

Thursday was not unreasonable, but now we've moved it until the 20th, after the break week, with no assurances for certain that the minister will find her way here.

In good faith, so that our witnesses understand, these things do happen from time to time, regardless of who the governing party is.

I would be more than happy, Mr. Chair.... Our three witnesses today, if we do run out of time, would be more than welcome to join in at a future committee meeting on the same business. I would welcome them to come back and at least be part of the question-and-answer portion of a future meeting. There is no reason to suggest, other than taking a little of their time, that they would not be welcome to this committee. For any member to suggest that this is stalling testimony that we wouldn't like to hear is pure balderdash. It's simply not true.

We have three very knowledgeable witnesses before the committee today. However, Mr. Chair, the one knowledgeable witness we want to hear from is the minister, so let's get on with that and get this done and make sure that she comes to the committee.

• (1755)

**The Chair:** Okay.

Go ahead, Mr. Williamson.

**Mr. John Williamson:** Thank you very, very much.

I don't want to belabour this point, but just to respond, I am not at all threatening to filibuster the meetings. I actually want to see these meetings continue.

My point, Mr. Battiste, was that should the minister not show up—should the minister decide to turn her heels on us or ignore this committee—then I shall come back with another motion calling on her to appear after the deadline. Until then, should this motion proceed—and I can count—this work will continue, because this is important work. However, so is hearing from the minister and her department officials and ensuring that the Government of Canada is doing its job. Right now, that does not seem to be the case from any vantage point in Atlantic Canada, whether it is indigenous, non-indigenous or provincial governments.

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

Madame Gill is next.

[*Translation*]

**Mrs. Marilène Gill:** My view is that this is not leverage, but rather an assurance. The Minister is not required to appear before the Committee if that is her decision. No matter, the given date is November 20.

This simply assures us that the minister could come to testify. I imagine that everyone agrees with that. We must simply view it as an assurance.

[*English*]

**The Chair:** Thank you, Madame Gill.

Go ahead, Mr. Johns.

**Mr. Gord Johns:** Mr. Chair, we've now heard different perspectives on this situation. Again, I assure the committee that I do want to hear that the minister is coming. I understand that with Mr. Williamson's amended motion, the minister will come to testify before the given date or they will step up their action.

I want to say something, Mr. Chair. The Conservatives might want to use next week to reach out to the people of Sipekne'katik. They haven't heard from the Conservatives to date, despite the situation they're in. Even though the Conservatives asked the Prime Minister to get out there to sit down with them, they might want to try that themselves.

I hope we can vote on this motion and get rolling.

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

Seeing no other hands up for interventions, I wonder, Nancy, if we could go to a vote on Mr. Johns' amendment, please.

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

The vote is on the amendment of Mr. Johns to delete the second paragraph of the motion.

(Amendment agreed to: yeas 6; nays 5 [*See Minutes of Proceedings*])

• (1800)

**The Chair:** We will now vote on the motion as amended.

**Mr. Terry Beech:** Mr. Chair, would you please read the entire motion as amended?

**The Chair:** Nancy, could you look after that, please?

[*Translation*]

**The Clerk:** Yes. Here is the motion as amended:

That the committee request the Minister of Fisheries, Oceans and the Canadian Coast Guard to appear for no fewer than two hours as a witness for the committee's current study titled "Implementation of Mi'kmaq Treaty Fishing Rights to Support a Moderate Livelihood"; that the Minister appear no later than November 20, 2020; and

That the committee suspend future meetings of its current study until the Minister appears as requested, with the departmental officials requested.

**Mr. John Williamson:** Point of order, Mr. Chair.

[*English*]

**The Chair:** Nancy, one second, please.

The amendment that Mr. Johns put forward and was voted on just now is to remove the part that says the committee will suspend until the minister appears, so I believe that is stricken from—

**The Clerk:** You are correct. I went by the PDF that I could not modify myself. I'm sorry about that.

I will read it again.

**The Chair:** Yes, if you would, please.

[*Translation*]

**The Clerk:** Here is the amended motion:

That the committee request the Minister of Fisheries, Oceans and the Canadian Coast Guard to appear for no fewer than two hours as a witness for the committee's current study titled "Implementation of Mi'kmaq Treaty Fishing Rights to Support a Moderate Livelihood"; and that the Minister appear no later than November 20, 2020.

[*English*]

**The Chair:** Okay, we have heard the motion as amended.

Nancy, will you do the call for the vote, please?

(Motion as amended agreed to: yeas 11; nays: 0)

**Mr. Robert Morrissey:** Mr. Chair, I believe I heard from the Conservative opposition that they would like to get the witnesses back, so we should get clarification on whether we can have the three witnesses back to conclude their questioning before the committee.

• (1805)

**The Chair:** Mr. Morrissey, I'll get the clerk to get in touch with the witnesses tomorrow or the next day to see if they are available to come back on another date.

In saying that, I will apologize to the three witnesses. The contribution they made while they were here was, again, most informative, and I would certainly support having them come back, as I'm sure everyone around the table would.

Thank you to everybody for your participation tonight.

In saying this, we've run completely out of time and over time. I have to adjourn right now. Another committee is waiting on the very room we're using.

The meeting is adjourned.

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