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Chair: Mrs. Jenica Atwin



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• (1555)

[English]

The Chair (Mrs. Jenica Atwin (Fredericton, Lib.)): I call the meeting to order.

[Translation]

Welcome to meeting number 69 of the Standing Committee on Indigenous and Northern Affairs.

Today's meeting is taking place in a hybrid format, pursuant to the House order of Thursday, June 23, 2022. Members are participating in person, in the room, and remotely using the Zoom application.

The proceedings will be made available via the House of Commons website. Just so that you are aware, the webcast will always show the person speaking rather than the entire committee.

[English]

I would also like to acknowledge that we are operating our meeting today on the unceded, unsurrendered Algonquin Anishinabe territory.

For those participating virtually, I would like to outline a few rules to follow.

You may speak in the official language of your choice. Interpretation services are available for this meeting in French, English and Inuktitut. You have the choice, at the bottom of your screen, of floor, English or French. Please select your language now. If interpretation is lost, please inform me immediately and we will ensure interpretation is properly restored before resuming the proceedings. For members participating in person, proceed as you usually would when the whole committee is meeting in person in a committee room.

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

[Translation]

Please address all comments through the chair.

[English]

When speaking, please speak slowly and clearly. When you are not speaking, your mike should be on mute.

With regard to a speaking 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.

Thank you so much for joining us this afternoon.

Pursuant to Standing Order 108(2) and the motion adopted by the committee on November 21, 2022, the committee is resuming its study of land restitution for first nations, Inuit and Métis peoples.

Today on our first panel we welcome Mr. Clarence “Manny” Jules, chief commissioner, First Nations Tax Commission. Thanks for visiting us again.

We also welcome Mr. Shannon Cumming, legal counsel, Northwest Territory Métis Nation. He is online.

You will each have five minutes for introductory comments. We'll begin with Mr. Jules.

You have five minutes.

Mr. Clarence T. (Manny) Jules (Chief Commissioner, First Nations Tax Commission): Good afternoon.

I am Manny Jules, chief commissioner for the First Nations Tax Commission. I was also chief of the Kamloops Indian Band from 1984 to 2000.

Thank you for the invitation to appear before this committee as part of your lands back study, specifically the examination of economic growth opportunities possible within Canada. In that regard, I wish to present some proposals on how to speed up the land back process and ensure that the returned lands are productive.

First, I have some historical context. In 1927, first nations from British Columbia, some of whom were my relatives, travelled to Ottawa to argue that their title had been ignored and that they had been unlawfully dispossessed. The government responded by rejecting our claim and removing our ability to raise funds that defend our rights. As a result, it took 70 years before our title was recognized. We are dealing with the economic consequences of this unlawful dispossession. This is why I advocate for both the return of land and the fiscal powers attached to it.

We have found in the past that it takes 10 times longer to facilitate an urban reserve than a municipal boundary expansion. Many of the lands we were allocated were not suitable for economic development or housing, as was promised under federal legislation. Our rights to access water, our riparian rights, were not properly considered. We have not adequately dealt with the reality that much of our lands are now held by third parties.

I have some concrete solutions to address these issues.

First, we need an orderly process for land expansion that accommodates population growth. My colleagues at the Lands Advisory Board are working on a new land title registry system. Their work should be enhanced by developing first nation institutional capacity to conduct our own assessments, appraisals and land surveys on current and added lands.

Today, returned lands must go first from the provincial Crown to the federal Crown and then from the federal Crown to reserve. The Lands Advisory Board initiatives and our proposed assessment and survey authority will allow lands to go directly from provincial title to first nation title.

Second, we need to ensure that returned lands have the fiscal means necessary to become investment ready. The tax commission has demonstrated that, when property tax and local revenue powers are in first nation hands, it becomes much more valuable and generates more revenues and economic activities.

This committee should support the ceding of more federal tax room to first nations. This would include the federal excise tax on fuel, alcohol, cannabis and tobacco. It could also include ceding the federal corporate income tax room to support the application of a proposed first nations resource charge. These revenues would ensure that infrastructure and services can be applied on the returned lands. It will free first nations from transfer dependency to respond more easily to changing opportunities and circumstances.

This committee should support the development of an indigenous trust that would help first nations buy back lands that are now held by third parties. There is a model for this in the United States that should be closely examined.

We should enable more regional economic co-operation between first nations and local governments by ensuring that the FNTC's protocol and service agreements are always available as necessary.

I should note that our model agreements were recently used by the City of Winnipeg and Treaty 1 on the former Kapyong barracks lands. Kapyong will be the largest urban reserve in Canadian history and, with the support of our models, one of the best service agreements in the country. The success of this approach needs to be publicized. This committee should advocate for the expansion of FNTC's capacity to support service agreement negotiations.

This committee should also support the expansion of the Tulo Centre of Indigenous Economics. An expanded Tulo centre would provide more accredited training and capacity to support interested first nations and local governments. This would support better, faster service agreements, and it would help align first nations and municipalities around the shared goals of enhanced investment, ser-

vice efficiencies, improved infrastructure and improving a regional quality of life.

• (1600)

To conclude, I believe these proposals would significantly speed up the land back process and provide opportunities to urban first nation persons. This would be a benefit to all Canadians.

Thank you very much.

The Chair: Thank you very much, Mr. Jules.

Mr. Cumming, the floor is yours for five minutes.

Mr. Shannon Cumming (Legal Counsel, Northwest Territory Métis Nation): Good afternoon.

The Northwest Territory Métis Nation appreciates the opportunity to appear before you today. President Garry Bailey asked me to convey his kind regards.

I'd like to give a brief history of the NWTMN.

We are indigenous Métis with aboriginal rights to lands, resources and governance throughout our traditional territory. We are aboriginal people of the Mackenzie and Athabasca river basins. That includes lands we have traditionally used and occupied in Wood Buffalo National Park and in Thaidene Nëné National Park Reserve. Our ancestors lived on these lands that the Creator provided, and they governed themselves according to our own laws and customs from time before memory.

We are a distinct Métis nation within Canada. We have a right to self-determination. Our rights are protected under section 35 of the Constitution Act, 1982.

In 1900, an adhesion to Treaty 8 was signed with treaty Indians at Fort Resolution. Our Métis ancestors were there, but the Government of Canada failed to deal honourably with Métis rights. This legacy of differential treatment between Métis and treaty Indians continues to this day. We regard it as a matter of fairness, equity and justice that reconciliation and redress for historical wrongs must be addressed through our NWTMN negotiating process.

The NWTMN comprises indigenous Métis members from the Fort Smith Métis Council, the Hay River Métis Government Council and the Fort Resolution Métis Council. Our members comprise a significant portion of the communities of Fort Smith, Hay River, Fort Resolution and Yellowknife.

NWTMN were full participants to the Dene/Métis negotiations from the late 1970s to 1990. When the Dene and Métis leadership did not ratify the final agreement in 1990, some regions pursued regional land claim agreements, with the failed Dene/Métis agreement becoming a template for regional negotiations.

In August 1996, the NWTMN, Canada and the Government of the Northwest Territories signed a framework agreement. An agreement-in-principle was signed in July 2015. Final agreement negotiations are under way. In May 2021, a self-government framework agreement was signed. These negotiations place the NWTMN in the unique position of being the first stand-alone Métis land, resources and self-government agreement in Canada—a modern-day treaty.

The NWTMN has chosen the path of good-faith negotiations on lands, resources and self-government as a means to achieve what we understand to be at the core of the land back principle. [*Technical difficulty—Editor*] the land back principle has gathered momentum recently in light of article 28 of the UN Declaration on the Rights of Indigenous Peoples, which provides indigenous peoples, in part, “the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation”.

We also note the importance of article 26, which upholds indigenous peoples' right to the lands, territories and resources that they have traditionally owned, occupied or used and the need for states to recognize such lands, territories and resources.

We were encouraged in May 2018 when Parliament passed Bill C-262 to harmonize Canada's laws with the UN declaration. Further, the mandate letter of December 2021 from the Prime Minister to the Minister of Justice and the Attorney General calls for the full implementation of the UN declaration across government. The NWTMN looks forward to Canada honouring the implementation of the declaration in respect to Métis rights.

We will continue to seek creative solutions to address the key outstanding issues for our negotiating process, and we can offer a few points, based on our experience, for the committee's consideration.

Indigenous governments may choose different approaches to resolve fundamental questions of land, resources and governance, and land back is one way of looking at the issues. The NWTMN, having chosen the path of good-faith negotiation, is confident that our decision to negotiate can achieve what the land back issue seeks to achieve: a balance between the Crown's actions in respect of our traditional territory and the rights that indigenous Métis will have recognized and affirmed in the modern treaty.

Resolving the key outstanding issues for negotiations may require Canada to examine any impediments that stand in the way of concluding these critical processes and achieving reconciliation. For example, in our process, we have to deal with different ministries to address land issues: INAC or Parks Canada. Although the Crown, as a matter of law, is indivisible, it does at times operate in silos.

• (1605)

In summary, the resolution of long-standing Métis rights, title and governance remains at the forefront of our approach to engaging with Canada and the Government of the Northwest Territories. The NWTMN has always preferred the path of good-faith negotiations. While the path has not been easy, we are approaching a final agreement. In our view, the modern-day treaty we are seeking will achieve the principles that underpin the land back issue. A Métis government with jurisdictions and authorities over its land and people will provide us with what we need to move forward on the path of reconciliation with Canada.

Thank you, and I would be happy to answer any questions at the appropriate time.

The Chair: Thank you very much, Mr. Cumming.

We'll proceed to our first round of questions, beginning with Mr. Zimmer for six minutes.

Mr. Bob Zimmer (Prince George—Peace River—Northern Rockies, CPC): Thank you to our witnesses for coming today.

Manny, I know you've made many trips out here really trying to bring economic prosperity to first nation communities, so I applaud you for that.

You mentioned the first nations resource charge. Our leader has spoken about being positive about it and really seeking more feedback from indigenous communities about what it should look like. Since this is, I think, a brainchild of yours, Manny, for the folks watching, what is a first nations resource charge?

Mr. Clarence T. (Manny) Jules: In essence, a resource charge would help facilitate resource development and extraction throughout Canada. This really came about after many years of thinking about how we could benefit from the resources that are exploited from our traditional territories and, in particular, my nation, the Shuswap nation.

The conclusion I came to is that there has to be an orderly way to be able to get the federal and, ultimately, provincial governments to vacate tax room, so that we would be able to occupy it and benefit from resource extraction. We could put in badly needed infrastructure into our communities and participate in ways that are outside of the economic impact benefit agreements.

Mr. Bob Zimmer: Just to expand on that a bit more, Manny, you talked about the Shuswap nation benefiting directly from that. My experience in some of the first nations, such as Blueberry River and Doig River, up in my neck of the woods, has been that they always have to go on bended knee to the ministry and ask for certain key parts of infrastructure, whether that be water, sewer or any facilities that we just expect to have in communities. You shouldn't have to make special requests for something so simple.

My understanding is that this enables first nations communities to sort of take the bull by the horns and really take control of their own destiny. Can you explain what it would look like in practice? I know you have many trees around the Shuswap area and a lot of forests, but what would that look like in practice if this were to be a reality?

• (1610)

Mr. Clarence T. (Manny) Jules: Just to reinforce the notion, a lot of this really solidified after Russia invaded Ukraine. What I realized at that point in time was that Canada needed energy and food certainty, and the only way to accomplish that would be to deal directly with first nations that are impacted.

When you're dealing with Doig River and Blueberry River, a lot of that is going to be the Site C dam and other energy extractions. By participating fully, you'll not only participate as entrepreneurs but also as governments. As a government, you're going to be able to utilize those revenues and build better infrastructure that lasts longer, using our own jurisdiction to be able to have our people stand up on their own.

Mr. Bob Zimmer: Getting into the details a bit, with first nation community X, or even your own community, if this first nations resource charge were to be implemented, what would that practice look like?

Mr. Clarence T. (Manny) Jules: We've suggested that the federal government vacate federal corporate tax room, so that first nations would be able to benefit from that. That would go directly to first nations.

We're also looking at—

Mr. Bob Zimmer: That's essentially a revenue stream.

Mr. Clarence T. (Manny) Jules: That's exactly right. We would be looking at the interface with provincial governments, and they would, hopefully, be doing the same thing. The discussions we're having right now with the Province of Manitoba are about providing a registry for mining, etc. That would also benefit first nations, because they would be able to partake in the development rights from the ground level, if you will.

Mr. Bob Zimmer: From your perspective, Manny, and from your experience with first nation communities in B.C.... Obviously, you've come up with the idea, so you see that it's necessary. Maybe give an example of where you've seen some communities that lack revenue and resources.

Mr. Clarence T. (Manny) Jules: The obvious community that's always talked about is Attawapiskat. It's a remote community. It had an agreement with De Beers mining for diamonds, but couldn't fulfill all of the jobs that were available. A lot of that was because they just didn't have the expertise locally and they didn't have all of

the wherewithal to be able to take full advantage of the opportunities. You see that repeated right across the country.

One thing we did in Kamloops with the Kamloops division of the Shuswap was to look at a development called New Gold. We became a partner in the development. We share in some of the provincial tax revenues. Some individual members have become millionaires as a result of providing services not only to the mining corporation but also to the communities. There are ways that you can actually begin to deal with the issues.

A lot of it was because of legislation that I referred to, dating from 1927, which legislated us out of the economy.

What we have to turn our attention to and what your committee has to look at are ways and means of getting rid of those legislative barriers so that first nations can fully participate in the Canadian economy.

Mr. Bob Zimmer: I see Chief Louie and other examples. This formalizes what they've already been doing, to a certain extent, by applying resource revenue to their communities.

Mr. Clarence T. (Manny) Jules: That's true.

One litmus test that I always look at is this: Can you take this to the bank? Impact benefit agreements are finite. They can come and go, depending on the negotiations.

If you get federal tax room, you can go to the bank with it. You can use the First Nations Finance Authority. It actually puts a lot of the discussions that the Canadian, provincial and territorial governments have had with first nations into practice.

The Chair: Thank you, Mr. Zimmer.

We'll now move to Mr. McLeod for six minutes.

Mr. Michael McLeod (Northwest Territories, Lib.): Thank you, Madam Chair.

Thank you to Manny for coming back to present again.

Welcome to Shannon Cumming from the Northwest Territories.

I listened with interest to your presentation, Shannon. I think you covered all the bases, except I didn't hear you talk about some of the concerns I hear from other indigenous governments about the lack of availability of federal negotiators. They point to this as one of the major reasons the negotiations on land claims and self-government have taken so long. It's because there were so many cuts, historically, to the Department of Indian Affairs.

In some cases, we're down to maybe a day and a half of actual negotiations. The negotiators would travel from Ottawa and get as far as Yellowknife in one day. Then maybe they would get to the regional centre the next day and start negotiating on Wednesday. By Thursday at noon they're starting to pack up and head back south.

I want to ask if you could talk a little bit about whether that's an issue with the NWT Métis Nation.

• (1615)

Mr. Shannon Cumming: Thank you to the member from the NWT for that question.

It's true that there are issues with availability of federal negotiators or even territorial negotiators. We've observed, for example, speaking about the GNWT, that there's been quite a bit of churn within their system. Negotiators go off the file. These are tremendously complex files, as the member knows. These agreements are 30 to 40 full chapters. The implementation agreements run past 400 pages. These are incredibly complex treaties that have been negotiated. For a new negotiator to come on to the file and come up to speed takes a long time. Over the many years of our process, we have seen the challenges when new negotiators come on to the file.

Secondly, to the other point the member made, they don't have the number of days to really make progress at a table. In our view, in one and a half days you're really just getting started. Ideally, given the distances, most negotiations should have three good days of actual negotiations. They shouldn't start with half a day and then have a day in the middle. It doesn't create the winning conditions that you need to close these deals.

While we appreciate the hard work that's been done [*Technical difficulty—Editor*] to bring these treaties to the finish line, we really think it would be beneficial if there were more dedication by governments to ensure that they have the resources—the human resources and the time resources—to fully engage at these tables to deal with these fundamental issues.

Thanks again for the question.

Mr. Michael McLeod: Thank you for that, Shannon.

The NWT has 15 tables where discussions and negotiations are going on. I hear a lot from the different indigenous governments, including the Métis nation president—

Mr. Jamie Schmale (Haliburton—Kawartha Lakes—Brock, CPC): I have a point of order, Madam Chair.

The Chair: I'm sorry, Mr. McLeod. We have a point of order.

Mr. Jamie Schmale: I think we can hear the bells ringing. Maybe we can get unanimous consent to carry on a little longer, so we can keep the questions going.

The Chair: Sure.

Do we have unanimous consent to go 10 minutes into the bells?

Mr. Jamie Schmale: I'm good with 20 minutes into the bells.

The Chair: Is that okay?

Some hon. members: Agreed.

The Chair: Thank you. We will proceed.

I'm sorry, Mr. McLeod.

Mr. Michael McLeod: Okay. Thank you, Madam Chair.

I'll go back to my question for Shannon.

I've heard a lot from your president Garry Bailey on different issues. He has come out with a number of suggestions over the year.

You have your time here in front of the committee. I want to know this: Could you run through some of the suggestions you think the Government of Canada can follow to make the negotiation process more efficient and effective?

Mr. Shannon Cumming: Thank you.

I appreciate that the member was interrupted by ringing bells. I think, last time, his line fell out, so he's a real trooper to hang in that way.

Thanks for the question.

We had a hard look at what it would take to create conditions for success. One thing that became very clear was this: There was a minister's special representative in the mid-aughts—or around 2014 or 2015—who made a report. One thing the minister's special representative recommended, and we agree fully with it, was this: Some of the old mandates, which have been around since the 1970s and 1980s, are very outdated. They are so far in the past as to be very unhelpful in getting things to the finish line. Therefore, more flexibility in mandates for government negotiators would be helpful.

If you look at the agreements throughout the Mackenzie Valley, up and down the valley, from the Inuvialuit, the Gwich'in and the Sahtu, and now to the Dehcho, the Tlicho and us in the South Slave, every agreement has always changed a bit from the one prior to it. Yes, they're similar, but in each case the negotiators found some way to put certain benefits into each of these agreements that help drive their communities forward.

For the Tlicho Agreement, north of Great Slave Lake, one of the big things they were able to successfully negotiate was a strategic economic development investment fund. It had never been done in an agreement north of 60, but the Tlicho made it happen. It was only around \$5 million, which is not a huge chunk of change given the hundreds of millions of dollars on the table, but it was key to bringing that agreement to the finish line.

What would be helpful is, when a negotiating party gets close to the finish line.... It's like being 95% up Mount Everest. You've come so far and it's been a hard pull, but you're up in the death zone. You can only be up there so long. You have to hit the summit and get down safely, or you're going to die up there.

What we've learned, especially watching some of the previous large processes like the Tlicho Agreement, is this: If the minister's office and the federal system, in particular, have their full attention on this file, it's going to get completed. You absolutely need a signal from the system that this government intends to conclude its business and get this file to the finish line. We've seen this for every successful agreement north of 60. We would love to see it for ours.

Thanks to the member for the question.

• (1620)

The Chair: Thank you, Mr. McLeod.

[Translation]

Welcome to the committee, Mr. Savard-Tremblay. You have the floor for six minutes.

Mr. Simon-Pierre Savard-Tremblay (Saint-Hyacinthe—Bagot, BQ): Thank you, Madam Chair.

I thank the committee for having me. I'm replacing my colleague Ms. Marilène Gill, who can't be with us because of the terrible forest fires currently ravaging her region. Our thoughts are with her.

It's still a pleasure to be here today, being a member of a First Nation myself, the Huron-Wendat Nation. This is the first time I've sat on this committee, and I thank the witnesses for their enlightening testimony.

With regard to the issue of land restitution, which we are studying today, several avenues for solutions and improvements are open to us.

To the witnesses, I'd like to talk about the expression "economic reconciliation". From my understanding of this concept, which can refer to land management, it is inherent to cultural reconciliation, and these two ideas go together. Indeed, the testimony we heard leads us to believe that territory, identity, culture and language are all intertwined and interrelated.

Can you give us some concrete examples of what land restitution, Indigenous community management and economic reconciliation contribute to other areas, such as a community's culture? In other words, how is it possible to bring together both economic and social well-being?

[English]

Mr. Clarence T. (Manny) Jules: There are quite a number of examples right across the country.

When we talk about economic reconciliation as it applies to lands, one of the examples I gave was in the city of Winnipeg with the Kapyong properties. That development alone will translate to literally billions of dollars for the regional economy. The development at Tsuut'ina by Calgary is, again, a billion-dollar development, because first nations have not only the land but also the jurisdiction over those lands.

Another example is close to downtown Vancouver with the Squamish first nation. They're doing a multitower residential development. Again, it's over a billion dollars. You have that kind of scale of potential right across the country.

Of course, on the lower end of the spectrum, you have communities that really are.... Some by the city of Merritt have lost virtually all of their land as a result of flooding and forest fires. It's a matter of rebuilding those properties and giving them the tools that are necessary to redevelop their lands without complete dependence on the federal and provincial governments.

Of course, I believe in interdependence, but what we need with first nation governments is for them to have their own sources of revenues and their own jurisdictions over their lands. In order to facilitate that, we have to be able to have our own land title system.

Under the present system under the Canadian Constitution right now, "Indian reserve" means whose title "is vested in His Majesty for the use and benefit of a band" of Indians. That's antiquated. That's from the 19th century. What we have to do is put that in our colonial past and look forward to a future where first nations have the jurisdiction and the land title that our ancestors have always talked about.

• (1625)

The Chair: Go ahead, Mr. Cumming.

Mr. Shannon Cumming: Thank you to the member for that question.

Looking at the examples in the Northwest Territories, one of the things that comes to mind is that what's been negotiated in the agreements up there is resource royalty sharing. The government shares revenues from resources with the indigenous governments in the regions, and that's been a really successful way to generate revenue for indigenous governments that are emerging—some of them with settled treaties and some, like ours, that have not yet finalized their treaties.

It's a really good example, albeit a bit of a small one, of economic reconciliation in action. There's no issue of title to the land, because it may even be something as broad as a generalized interest in the resource royalties, so while a negotiating party may have its own lands to deal with, it also has the possibility of generating revenues from the resources that are being developed up and down the Mackenzie Valley. Whether you're in the Mackenzie Delta, halfway down the Mackenzie River or, like us, in the very southern part of the NWT, there's an opportunity to benefit from mineral resource development, and everybody shares in that.

[Translation]

Mr. Simon-Pierre Savard-Tremblay: Mr. Jules, can you talk a little about what's happening in the United States? You mentioned an aboriginal trust. Can you elaborate a little on that?

[English]

Mr. Clarence T. (Manny) Jules: I think that's something we have to seriously consider—some of the supplies to environmental groups purchasing properties on behalf of indigenous tribes in the United States, or renters who want to turn over some of their former lands to tribal lands.

What I envision in the trust would be a federally legislated model that individuals would be able to get a tax credit for making contributions to. It would allow individuals to turn over their lands and properties to individual first nations. In lots of cases there are lots of hard feelings between the neighbours, and that would help alleviate that by creating an atmosphere of goodwill and co-operation.

One that I'm most familiar with is the land board out of Minneapolis and St. Paul. They help facilitate lots of tribal groups to purchase lands back and to negotiate all of the ins and outs, because it is pretty complex when you're dealing with an individual who has one set of appraisals and another set of expectations. How do you bring the partners to the table to have an agreement that everyone would be able to live with in the future?

What I actually envision is a piece of legislation, which the federal government would pass, that would work responsibly with first nations here in this country. Of course, part of that would be looking at the examples in the United States. That's the primary area I would look to, to help reconstitute lands that were ultimately taken away from us. In some cases, it's having willing partners and willing sellers.

• (1630)

[Translation]

The Chair: Thank you, Mr. Savard-Tremblay.

[English]

Madam Idlout, you have six minutes.

Ms. Lori Idlout (Nunavut, NDP): [*Member spoke in Inuktitut, interpreted as follows:*]

Thank you, Madam Chair.

I'm also very happy to see you again, Manny. It's a pleasure to be meeting with you virtually, as well as Shannon.

Regarding land back, the subject of land back is very important, as we all know. Mining companies are seeking to profit on indigenous lands. Being indigenous people, our lands have been stolen from us, and we need to reconstitute our lands back.

I have a question. The duty to consult is too weak, in my opinion. There has to be a better approach to strengthen the consultation processes, as well as the rights. Do you agree with me that the free entry system has to change within indigenous jurisdictions, and for us to be informed immediately, not after?

Manny, I'd like you to go first, and then Shannon.

Mr. Clarence T. (Manny) Jules: I think this is a very critical question.

One of the things I dealt with when I was chief—and this was an issue that was handed down to me from former chiefs.... We called this land that was taken away from us “the hole in the middle of the table”. That land was taken away from us by the provincial government in the 1800s. We ended up purchasing that property when I was chief in the 1990s, so it took virtually 100 years to resolve it.

One of the arguments that the federal and provincial governments put forward was that, because they gave us gifts, that was adequate consultation and the Indians were happy, which meant we had given up the land. In our community, we know and understand fully what surrender means, and obviously, we didn't surrender those lands nor those interests.

Some of the things that are critically important when we start to deal with the whole question of land back are not only the comprehensive claims processes but also the specific claims processes and expediting those processes. A lot of those lands were taken away from us under circumstances that, ultimately, were suspect because they were predicated on the fact that we couldn't raise money to defend ourselves and that we couldn't have the legal advisers at our disposal to defend our rights. These are issues that I think are separate and apart from a lot of the specific claims and, therefore, comprehensive claims issues we face across the country.

When we talk about the notion that there should be a higher standard of consultations, that's absolutely right, because first nations had these rights taken away from them by none other than Duncan Campbell Scott in 1927. He was the Department of Indian Affairs agent at that time. He worked for 50 years under that department and had 15 hours of presentations to a committee just like this, where my leaders had 15 minutes. Under any circumstances, that's wrong.

The Chair: Go ahead, Mr. Cumming.

Mr. Shannon Cumming: Thank you, Madam Chair.

The member raises a really important consideration for any indigenous government that's either negotiating or implementing a modern-day treaty. One of the limitations around the duty to consult is that, at the end of the day, the government still may make a decision that's contrary to the interests of the indigenous government. Despite their having laid out their case eloquently, emphatically and respectfully, the decision is still taken to proceed, and that, in our view, falls a little bit short of the whole notion in the UN declaration about the idea of “free, prior and informed consent”.

To me, that seems like a further step down the road to reconciliation than just that bare duty to consult that's shaped by common law, which, at the end of the day, may leave the indigenous government in a situation where it didn't agree strongly with the decision that was taken and felt like it had no recourse. I don't think that is conducive to reconciliation.

One thing that is another complicating factor is that, if you have a huge mineral development—for example, a large mine—it's going to be very difficult to claw the land back. That land is.... The interest in land has been granted, and the government is reluctant to change that at all.

• (1635)

[*Translation*]

Mr. Simon-Pierre Savard-Tremblay: Madam Chair, there is a problem with the interpretation.

The Chair: Thank you very much.

[*English*]

We're having a technical issue, Mr. Cumming, if you could hold on a minute.

Okay. Thank you for your patience, Mr. Cumming. It's a matter of your Internet quality, I guess. You can continue to answer the question, and if it doesn't work, we'll have to get you to provide a written response, if that's okay.

Please continue.

Mr. Shannon Cumming: Thank you, Madam Chair.

The Internet quality is fairly tricky in the north at the best of times, and I don't think the forest fires are helping. We will endeavour to provide further written submissions, not just on this particular matter but generally on some of our suggestions, to help address some of the issues around getting land back.

I was talking about free, prior and informed consent. The only other point I want to make, if I can be heard, is that there may be creative solutions to deal with a situation in which a mining company has a huge development and it's too late to claw the land back. There may not be enough benefits through something like an impact and benefit agreement, but the negotiating party would not be well disposed to saying, "We're going to settle this agreement and we'll just let that one slide by." There may be some off-ramps the government can consider to deal with the issues around resource royalties, for example, or employment provisions separately from the treaty negotiations or treaty implementation.

If there's a way to deal with some of these outside of the treaty process, then the treaty process itself should not be used as a means to extinguish any of those rights that still exist on behalf of indigenous governments with respect to lands and resources. All we're suggesting is that there may be creative ways to allow these issues to be resolved, not necessarily through the treaty process but through something different, and those will achieve the economic reconciliation.

Thanks.

The Chair: Thank you very much.

It actually worked out quite well. I think we still have interpretation.

We are going to have to suspend. We have a vote in the House.

Thank you so much for your testimony, Mr. Cumming and Mr. Jules. It's always a pleasure to see you. We very much appreciate your testimony.

Thank you very much. We will suspend.

[*Proceedings continue in camera*]

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