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# Standing Committee on Indigenous and Northern Affairs

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Chair: Mr. Bob Bratina





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• (1110)

[*Translation*]

**The Chair (Mr. Bob Bratina (Hamilton East—Stoney Creek, Lib.)):** Welcome, everyone, to the Standing Committee on Indigenous and Northern Affairs.

[*English*]

I would like to start by acknowledging that we're meeting on the traditional territory of the Algonquin people. I'd also like to point out that we have some young ladies here who are part of the Women in House program and are shadowing members of Parliament.

Welcome to those ladies.

Also our former colleague, Mr. Romeo Saganash, has joined us today. It's good to see you again.

**Some hon. members:** Hear, hear!

**The Chair:** We have a busy schedule. We'll get under way with the first committee business, dealing with the Subcommittee on Agenda and Procedure. It met on Thursday, February 27 to discuss the future business of the committee. A copy of its report has been distributed to members for their consideration.

Is it the pleasure of the committee to concur in the second report of the subcommittee?

(Motion agreed to)

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

Pursuant to Standing Order 108(2) and the motion adopted by the committee on Thursday, February 27, the committee will now begin its study of the indigenous crisis in Quebec and Canada.

With us today, we have the Minister of Crown-Indigenous Relations and the Minister of Indigenous Services along with their respective deputy ministers. Each minister has been given up to 10 minutes to make opening statements, and then we'll proceed with questions and answers.

With us, we have the the Honourable Carolyn Bennett—

**Mr. Bob Zimmer (Prince George—Peace River—Northern Rockies, CPC):** I have a point of order.

Chair, I was asking about whether this meeting was televised and, sadly, it isn't. Given that it's such a top-of-mind issue and so important to our country, why isn't it being televised today?

**The Chair:** The answer is that the television isn't always available. It is webcast, so it's certainly available to anybody who wants

to see it. We have media present in the chamber right now. It's just one of those things where we didn't have the service available today.

**Mr. Bob Zimmer:** Okay.

**The Chair:** Mr. Schmale had asked, and we put the request in, but this is what we have.

Mr. Schmale.

**Mr. Jamie Schmale (Haliburton—Kawartha Lakes—Brock, CPC):** Also on that, Chair, given that we're running a bit behind by 10 minutes, I'd like to seek unanimous consent to extend this portion by 10 minutes.

**The Chair:** All in favour?

(Motion agreed to)

**The Chair:** Thanks, Mr. Schmale.

Minister Bennett, would you like to begin, please?

**Hon. Carolyn Bennett (Minister of Crown-Indigenous Relations):** Thank you, Mr. Chair.

It's a pleasure to be back before this committee for the first time in the new Parliament, especially with so many new faces on this truly important committee for Canada. I, too, want to begin by acknowledging that we are on the traditional unceded territory of the Algonquin people.

[*Translation*]

I am pleased to be here with my honourable colleague the Minister of Indigenous Services, Mr. Marc Miller, and our deputy ministers.

[*English*]

We understand that we've been asked to talk about the recent blockades and protests across the country, but I think I'm here mainly to talk about the complex underlying issues at their core. Our government understands that the recent rail blockades have had real impacts on Canadians, businesses and people across the country who rely on a working rail service to get to work, transport goods and keep their businesses running successfully, and also on indigenous peoples.

I think, as you know, that across all government departments, we're working around the clock to resolve this in a peaceful and lasting way. We welcomed the news last week that the remaining rail blockades had been removed and that regular rail service is resuming.

I think we understand that Canadians have been frustrated as they saw the impacts of the recent rail blockades continue, and some opposition politicians, we worry, were unfortunately focused on, as I think I said in the House of Commons, exploiting divisions within a community, which is not going to get us to lasting solutions and the kind of healing needed.

[*Translation*]

As the Prime Minister said so eloquently, Canadians expect us to work together to get through this together.

[*English*]

Marc and I are here to answer questions you may have because we believe it's really important that all of us truly understand the complexity and sensitivity of the situation and the danger of some of the inflammatory rhetoric we have heard in recent weeks.

As a physician, I am reminded that it's also the obligation of all parliamentarians to firstly do no harm. We need a lasting solution so that nations can take decisions together to achieve the certainty required for first nations, Métis and Inuit to ensure that their communities are healthy and vibrant.

[*Translation*]

The issues at the heart of this situation extend beyond a particular project, and deal with complex matters of indigenous governance, rights and title.

• (1115)

[*English*]

Over the past several weeks, my B.C. counterpart and I have been in ongoing communication with the Wet'suwet'en hereditary chiefs to try to de-escalate the situation and find a path forward to deal with these issues in a substantive way. While policing decisions are made independently and free from political influence, we were pleased that the RCMP in B.C. worked with the Wet'suwet'en to make operational changes to de-escalate the situation and make room for the in-person talks between the Wet'suwet'en hereditary chiefs and the federal and provincial governments.

We were also encouraged that Coastal GasLink independently agreed to pause work on the project during in-person discussions to help make that possible, and we were very grateful for Nathan Cullen's work in the de-escalating of the situation among all parties.

The weekend before last, when I met in Smithers with the Wet'suwet'en hereditary chiefs and the B.C. government, we had very frank and substantive discussions, guided by respect, on issues around Wet'suwet'en rights and title. We were also pleased that the members of the Wet'suwet'en Matrilineal Coalition participated in the first night of the meeting, and we were able to hear their very important perspective directly. These talks focused on two separate issues: the recognition of Wet'suwet'en indigenous rights and title throughout their territory and the issues arising out of the Coastal GasLink project. These topics were discussed separately, and with respect to rights and title, the parties focused intensely on the commitments to an expedited process to implement Wet'suwet'en rights and title.

The result of these discussions was a draft arrangement that will be reviewed by the Wet'suwet'en clan members in their clans and in their houses through the Wet'suwet'en governance protocols for ratification. I believe that over these two weeks...that they need that space to have those conversations independently of outside voices. I believe that the removal of the remaining rail blockades last week and the resumption of rail service provides the Wet'suwet'en nation with that space to have this important conversation of rights and title within their territory.

Out of respect for the process, Canada has agreed that the Wet'suwet'en Nation would have the time to consider the details of this arrangement before it was made public. If ratified, Minister Fraser and I have agreed to return to the Wet'suwet'en territory to sign it, and the parties have agreed to implement title on an expedited basis and to coordinate how we will work together. We are inspired by the courageous Wet'suwet'en people who took the recognition of their rights to the Supreme Court of Canada in the historic Delgamuukw-Gisday'wa case in 1997. We need to be clear that the court did not, at that time, grant title to their lands; it affirmed the rights of the Wet'suwet'en, but said that the question of title was to be determined at a later time and then implemented.

I believe that this arrangement with the Wet'suwet'en people will now be able to breathe life into the Delgamuukw-Gisday'wa decision so that future generations do not have to face conflicts like the one that they face today. As the late chief Wah tah Kwets said in the Delgamuukw case, "It is up to us to create a new memory in the minds of our children."

[*Translation*]

While work remains, these talks have been an important step on reconciling complex matters of rights and title.

[*English*]

From education to fisheries, to child and family services, to policing, to court systems, we have made important strides forward in the hard work of what Lee Crowchild describes as "deconstructing the effects of colonization".

[*Translation*]

Over the past five years, we have been moving away from the parameters of the Comprehensive Land Claims and Inherent Right policies.

[*English*]

Our government's approach to negotiating rights-related agreements is being developed through lessons learned from the over 150 recognition of indigenous rights and self-determination discussion tables across Canada. These negotiations involve almost one million indigenous people from 480 first nations, 44 Inuit communities and seven Métis organizations. Since 2015, we have been advancing interest-based discussions and ensuring that co-development is the core of any negotiations with indigenous groups.

In 2019, the governments of Canada and British Columbia and the First Nations Summit co-developed the recognition of reconciliation rights policy for treaty negotiations in British Columbia. This new policy eliminates the concepts that were the barriers to future treaties, agreements and other constructive arrangements, including extinguishment and cede and surrender. It demonstrates Canada's commitment to working collaboratively with indigenous and provincial partners, based on the affirmation and implementation of indigenous rights and in accordance with the principles of the UN Declaration on the Rights of Indigenous Peoples.

Together we are committed to resolving the issues we face and to implementing Wet'suwet'en rights and title. We understand that we are in a critical time together, and we are committed to building a new path together with indigenous peoples across Canada.

*Meegwetch.*

• (1120)

**The Chair:** Thank you so much, Minister.

Minister Miller, would you please go ahead?

**Hon. Marc Miller (Minister of Indigenous Services):** Thank you, Chair.

[*Translation*]

I want to start by acknowledging that we are gathered here today on the traditional and unceded territory of the Algonquin peoples.

I know that this directly impacted many of you in the room today, as it impacted the communities you represent, and the lives of your constituents.

[*English*]

The conversations that happened in Smithers with Minister Bennett are a positive and vital step, but there's no doubt that there's more work to do, work that many of you in this room know well as members of this important parliamentary committee. There's a lot of work to be done in addressing the underlying concerns of the Wet'suwet'en and the resulting solidarity actions that took place across the country.

However, I'm glad that together we can demonstrate a peaceful, achievable resolution. I believe the easy way is not always the right way. Sometimes using force is a sign of weakness. Over the past few weeks, we've seen the result of ignorance, fear and lack of understanding in vitriolic messages and comments online, through stories of individuals being targeted in public and private, and we saw that not far from here in Ottawa. An indigenous youth group had to move their planned weekly gathering due to the receipt of a death threat.

I think this shows that we have a long way to go when it comes to learning the dark parts of the history of this unreconciled country and its peoples, and truly making an effort to learn from one another and listen.

I've said this before and I'll continue to say it: When we don't have an open and honest dialogue, we simply can't move forward together.

[*Translation*]

Consistent, open and respectful dialogue is paramount to achieve peace, cooperation and prosperity in this country for all peoples.

[*English*]

It's in this spirit of peace and co-operation that I gathered with members of the Kanyen'kehá:ka along the rail tracks in Tyendinaga, as members will know. We pursued an open dialogue and made concerted efforts to move towards a peaceful resolution. Modest but important progress was made through this dialogue.

However, there was an immense amount of suspicion towards my presence—fear it was a ruse and that the police would move in. It's not every day that people are surrounded by police, and the reactions are normal. Parts of the conversation with the leadership of the community, elders and community members, including women and children, were very difficult, very painful and very personal. Upsetting stories were shared about this country's troubling treatment of indigenous peoples.

[*Translation*]

These are very serious issues which demand our attention, and have demanded it for hundreds of years, and there's no place in this discussion for rhetoric and vitriol.

The question I have found myself asking in the last few weeks is this: are we going to do things the way we have always done them, which has brought us to this point in our relationship, or do we take a new approach that engages in a true government-to-government relationship?

My greatest challenge in the past month in particular, but in the relationship in general, is trust. It prevents the best and most well-thought-out initiatives from moving forward. It is clear that our work must earn that trust over time.

[*English*]

In looking towards building a better future where we earn that trust, I believe it's important to acknowledge the past. For almost 500 years, indigenous peoples have faced discrimination in every aspect of their lives. The Crown, in part, has prevented a true equal partnership from developing with indigenous peoples, imposing instead a relationship based on colonial, paternalistic ways of thinking and doing. This approach has resulted in a legacy of devastation, pain and suffering, and it's not acceptable.

Many of us know where this has gotten us: a broken child and family system where indigenous children up to the age of 14 make up over 50% of kids in foster care even though they represent 7.7% of all Canadian children; shocking rates of suicide among indigenous youth, causing untold pain and hurt that will plague families and communities for generations to come; untenable housing situations where water that is unsafe to drink or even bathe in comes out of the taps; and communities that don't have reliable access to roads, health centres, or even schools.

● (1125)

[*Translation*]

When we formed government 4 years ago, we made many significant promises including on some of these areas I just touched upon.

We have delivered on much of that but the most important lesson we learned was that everything has to be done in true partnership. That Canada will succeed when we follow the voices of those whom we have ignored and disrespected for far too long, and those who lead communities across this country.

We know that there is no quick fix for the decades of systemic discrimination that indigenous peoples in Canada have faced. But our government is committed to putting in the time, energy and resources to right past wrongs and build a better way forward for future generations.

We do our best to undertake this work in a way that departs from much of our shared history—a history in which the inherent rights, leadership and cultural vitality have not been respected as they should have been.

[*English*]

Our approach is founded on partnership and co-development and is anchored in listening to indigenous leaders, elders, youth and community members and working to support their attainment of their goals based on their priorities.

Since 2016, we've invested \$21 billion in the priorities of indigenous partners, priorities that have been set by indigenous partners, and together we've made some progress, but we still have a long way to close the unacceptable socio-economic gap that exists between indigenous and non-indigenous peoples.

For hundreds of years, indigenous peoples have been calling on the Canadian government to recognize and affirm their jurisdiction over their own affairs, to have control and agency over their land, housing, education, governance system and child and family services. Self-determination improves the well-being and prosperity of indigenous communities, and that's something all Canadians should strive to support.

[*Translation*]

There is no question that self-determination is a better way forward.

Self-governing indigenous peoples have a proven track record of greater socio-economic success. More children are completing high school, fewer people are unemployed, and health outcomes are

much better. Indigenous-led initiatives are more successful, as we have seen time and time again.

There is a critical need to support nation and community-led success in every indigenous community in Canada, not just in education, but also in health care, water and resource management, child and family services, in short, in all sectors.

[*English*]

This is why our government continues to work on shifting policies to recognize the inherent right of self-government for first nations, Inuit and Métis. That means moving to novel models of indigenous government and supporting indigenous communities to assert their rights.

We are working to support first nations to opt out of sections of the Indian Act in areas such as land, environment, resource management and elections. As an example, we're working with indigenous institutions in first nations to develop the tools they need to drive local economic development, empower their communities and promote prosperity.

Since 2019, nine first nations have begun operating under their community-ratified land codes through the framework agreement on first nations land management and the First Nations Land Management Act. In addition, 18 first nations have joined the 264 other first nations asserting jurisdiction in the area of fiscal governance by opting into the First Nations Fiscal Management Act.

Self-determination is key to unlocking economic potential, creating opportunities for growth and closing socio-economic gaps. We know that with advancing self-determination, the potential for success is enormous—success of indigenous peoples and, frankly, all of Canada.

To get there, we need to understand that recognizing and affirming rights is a first step in finding a way forward. We need to support indigenous partners to identify our challenges and then we need to rise to those challenges. Finally, we need to recognize that the most important actions we can take are to listen to the hard truths, embrace change and welcome creative ideas. A transformation like that will take determination, persistence, patience and truth telling.

• (1130)

[*Translation*]

The work ahead of us will be difficult. As I mentioned, this path will require a lot from us. We will have to work in true partnership and listen, even when the truth will be hard to hear. We will have to continue to communicate, even when we disagree. We will need to continue to collaborate and look for creative ways to move forward, as well as new paths to healing and true understanding.

We've all seen what happens when we fail to maintain dialogue. This leads to mistrust and confusion, which can cause conflict and hinder our common journey. I want to be clear: it is up to the rights holders to determine who speaks for them about their indigenous rights and title. We will continue to work toward continuing these conversations. Despite all these challenges, I know that the hard work ahead of us is well worth the effort.

Together, we can build a better Canada, and that's what we're going to do. It will be a country in which healthy, prosperous and self-reliant indigenous nations will be key partners. We have the opportunity to learn from our shared history, to share our pain and even our joy, and to do the work that will result in a country where everyone can succeed.

I look forward to working with my colleagues on all sides to realize this essential work and enormous potential. It requires the participation of all Canadians.

I look forward to answering any questions you may have.

*Meegwetch.*

[*English*]

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

Members of the committee, we have a large number of people—the public—in the committee room. Welcome to everyone.

I'll let you know how this works. As the committee chair, I will keep the speakers to the agreed-upon procedure, which is six minutes of questioning in the first round, five minutes of questioning in the second round, then two and a half minutes. That's the way it works. If it seems like I'm cutting somebody off because the answer isn't being fulfilled, it's just the way we work. The important thing is to keep the preamble short, so that the questions can elicit the answers that will appear in our testimony.

I'll start with Mr. Schmale.

**Mr. Jamie Schmale:** Thank you very much, Mr. Chair.

Thank you, Ministers, for appearing today.

I was encouraged by your appearance, Minister Bennett, but I was disappointed by your words, especially at the beginning when you talked about creating divisions within the community. I think that was extremely unfair. I'm very disappointed by those words, but they don't surprise me given the pattern of this government, where the failures of this government are always someone else's fault, especially the opposition's.

Having said that, using your words about creating divisions within the Wet'suwet'en Nation, did you meet with the elected chiefs during your visit to British Columbia?

**Hon. Carolyn Bennett:** The matriarchs came to the meeting. I did not meet with the elected chiefs. The Delgamuukw complaint was taken by the hereditary chiefs. That is the group that believes they have governance over the whole of the territory. We met with them first.

As you know, the proposed arrangement will go back to the clans and the houses where the elected chiefs will participate. I am more than happy to meet with the elected chiefs at any time.

**Mr. Jamie Schmale:** But given that the issue of title has effects on the Coastal GasLink project, as well as the elected bodies within the nation, would it not have made sense to include those elected members at those meetings rather than create divisions within the community?

**Hon. Carolyn Bennett:** I think it was indeed the hereditary chiefs who had raised their concerns. It was the hereditary chiefs who had mounted the support from coast to coast to coast. Therefore, the resolution was going to come with the hereditary chiefs at the beginning. Then we will meet with the elected chiefs.

**Mr. Jamie Schmale:** If you're trying to get this project to go ahead, why did you not include the people who are in support of moving this project forward? Why would you only include the voices that were against it—the one side of this story?

**Hon. Carolyn Bennett:** Jamie, as I think you know, the project is a B.C. project totally. It's their processes, their permits, their way forward. My job—

**Mr. Jamie Schmale:** Did you not say, “Hey, we should probably have all voices”?

**Hon. Carolyn Bennett:** My job is to make sure that the nation comes together and heals as a whole, and the concerns of the hereditary chiefs needed to be heard.

**Mr. Jamie Schmale:** Given your comment, again, about creating divisions in the community, were all hereditary chiefs included in this meeting, including those who supported the Coastal GasLink project?

**Hon. Carolyn Bennett:** Some of the hereditary chiefs who support the project were certainly there on Thursday night. We heard from each of them individually. They were mainly members of the matrilineal coalition. Then they were able to meet with the other hereditary chiefs. There was a decision taken by the hereditary chiefs in our meeting to take the proposed arrangement back to everybody so that the whole of the nation would take this decision together.

• (1135)

**Mr. Jamie Schmale:** Again, Minister, you're blaming the opposition for this, yet you and the provincial government did not invite those who had an interest in supporting this project. Of course, when you're dealing with title, the decision of any agreement affects the project, affects everyone within the community, and yet you are saying the opposition's at fault here. But you did not include the other side of the story—the people who support it, who will benefit.

**Hon. Carolyn Bennett:** As we said, this was a B.C. project. Certainly, the B.C. government had heard from the elected chiefs—

**Mr. Jamie Schmale:** But you would have had influence. You would have had influence.

**Hon. Carolyn Bennett:** —but also, Coastal GasLink had impact benefit agreements with most of them. This was a B.C. project. My job was to carry on from what had been decided in the Delgamuukw decision so that in the future, the whole of the nation would create the kind of governance model and decision-making processes that we are now seeing in Gitanyow and Heiltsuk and Haida. When the elected chiefs and the hereditary chiefs come together in a governance model with their own laws and policies, that is the way forward and that is the only durable solution.

My appearance was not about one project. It's about the future of Canada.

**Mr. Jamie Schmale:** It is, but when you exclude the people who are in support of the project, you silence one half, or probably more, of this debate. If you're only hearing from one side against a project, when you're negotiating title, which has impacts, again, you're leaving out the other side.

But I won't dwell on that, because we have only a minute left.

**Hon. Carolyn Bennett:** Jamie, I don't think you heard me. I said the matriarchs were there. I heard from each of them on Thursday—

**Mr. Jamie Schmale:** On the third day. Why weren't they there at the beginning?

**Hon. Carolyn Bennett:** That was the beginning. They were right there, at the first—

**Mr. Jamie Schmale:** We're hearing a witness who is saying no.

**Hon. Carolyn Bennett:** I'm telling you that when I arrived—

**Mr. Jamie Schmale:** They're saying you're incorrect.

**Hon. Carolyn Bennett:** —the matriarchs were in the room.

**Mr. Jamie Schmale:** They were told to leave.

**Hon. Carolyn Bennett:** The matriarchs each spoke.

**Mr. Jamie Schmale:** They were told to leave.

**Hon. Carolyn Bennett:** Each spoke.

**Mr. Jamie Schmale:** They weren't there for the whole discussion.

**Hon. Carolyn Bennett:** It wasn't my meeting—

**Mr. Jamie Schmale:** They weren't there to discuss anything.

**Hon. Carolyn Bennett:** —but they all had a voice. The process—

**Mr. Jamie Schmale:** How do they have a voice if they're not there?

**Hon. Carolyn Bennett:** They were there, Jamie.

**Mr. Jamie Schmale:** They were there at the beginning, then they were removed—

**Hon. Carolyn Bennett:** No.

**Mr. Jamie Schmale:** —and then they were there the third day.

**Hon. Carolyn Bennett:** No, they weren't removed.

**Mr. Jamie Schmale:** But we have—

**Hon. Carolyn Bennett:** There was a half-day meeting between the hereditary chiefs and the people supporting the project for a great part of Friday.

**Mr. Jamie Schmale:** Okay.

**Hon. Carolyn Bennett:** You weren't there, Jamie, so why don't we get on with how we're going to go forward?

**Mr. Jamie Schmale:** Well, I started that, and then your divisive language at the beginning derailed me.

Having said that, when you're talking about the title—

**The Chair:** You have 10 seconds.

**Mr. Jamie Schmale:** —when you allow the communities, will you bring this before Parliament after the Wet'suwet'en people...? If they ratify this, will you bring it before Parliament before you sign the deal?

**Hon. Carolyn Bennett:** As you know, these conversations are starting to happen between the hereditary chiefs and the nation. This is an exciting time.

**Mr. Jamie Schmale:** I just need a yes or no.

**Hon. Carolyn Bennett:** Most section 35 agreements remain confidential until their ratification by the nation. That's normal in labour agreements and in section 35 agreements. Impact benefit agreements, however, remain confidential.

We are breaking new ground here, Jamie.

**The Chair:** Mr. Battiste, for six minutes.

**Mr. Jaime Battiste (Sydney—Victoria, Lib.):** Thank you, Mr. Chair and *wela'liog* to the ministers for being here.



Prior to the establishment of the Indian Act and Canada, there existed several different governing structures across Canada. We are framing this as a project dispute, but this is about reconciliation moving forward over generations. With that in mind, there are several traditional and hereditary governing structures that exist across Canada today.

Could the ministers update us on how we've engaged traditional or hereditary governments, and could you share with us what we've learned about the complexities involved in creating improved relationships with traditional structures of governance?

**Hon. Carolyn Bennett:** Two years ago I was able and honoured to be at the ceremony where the Wet'suwet'en hereditary chiefs signed an agreement with Canada on child and family services, and that work is ongoing. As you well know, Jamie, in some parts of Canada the hereditary chiefs became the elected chiefs. In other parts that governance has stayed. Marc will add a little about how the Haudenosaunee take decisions. Right now, we have signed an agreement with Heiltsuk, which includes the hereditary and elected chiefs. The Haida already have an agreement in the way they work together. With Stó:lo, even in the B.C. treaty process, those two groups are coming together. Maybe Marc will talk a bit about it.

• (1140)

**Hon. Marc Miller:** I think you are familiar, Jaime, with some of the hereditary structures that exist in Mi'kmaq communities and some of the challenges that have been faced there with respect to elected band councils and, in fact, with some of the progress that has been made. It is absolutely uneven throughout the country

I think, as Carolyn summarized, some progress has been made out west in starting to create the basis for engagement with hereditary leadership. In the country, the Indian Act-imposed band council system is viewed in many indigenous communities as colonialist and paternalistic. It has removed, and the Government of Canada has consciously contributed to remove, structures that existed well before the existence of Canada that are highly democratic in nature and have a very rich history.

As a country and as a nation that wants to move forward with what we call reconciliation, we cannot ignore those voices, conscious of the fact that at times the government, as I mentioned earlier, has been deliberate in dismantling those structures. In some cases we have had very little engagement, if any. I, myself, have been involved in opening dialogues with the Haudenosaunee Confederacy. They are modest. They tend to be not in the public sphere. But there is a lot of work to be done. There is an immense amount of complexity in that relationship because we're talking about many nations that cross the U.S. border as well. It is something that has created within certain communities, in fact, the crisis of legitimacy. This isn't to say that elected band councils are not fierce defenders of their communities. They are. It just has created a reality where there is sometimes a perceived sense of illegitimacy that has contributed to frustrate not only the relationship but the ability to work in partnership. It is something that we are realizing, probably more slowly than we should, but we are realizing it and we need to address fundamental issues that Carolyn had to face over a four-day period with respect to lands and title that had been recognized in the Delgamuukw decision. Simply saying to yourself that you're only going to engage with this particular band council because it

suits your needs is highly utilitarian in thinking and not the right way to approach things.

There are some communities that are entirely comfortable with an elected system, and there are some communities that wish to do a different job and move forward. That's why we have all those instruments that I named in my opening remarks. For some communities, that doesn't work and we have to realize that and get creative and see how we come together. This will all contribute to stability, good governance and respect for the relationship, which is perhaps the element of respect and truth that is missing. But I think it is the right way to advance the nation. It can be complicated. It can be messy. But we can't sit here and say we're going to go dictate the terms on which we engage, whether it's rights recognition frameworks or otherwise. We have to realize that in some communities and some nations there is a treaty-based relationship that communities are demanding to be respected and in others there's a much older and some others a much newer relationship.

There is an immense amount of nuance, and I think you hit the nail on the head in asking that question, Jaime, because it goes to the complex nature of that relationship and the steps we need to take to move forward.

**The Chair:** You have 40 seconds.

**Mr. Jaime Battiste:** Well, 40 seconds.... Throughout my life on reserve I have seen many different occasions when indigenous protests have caught the attention of the national media and Canada in general. I can remember Oka, Ipperwash and Idle No More. What lessons have we learned? What lessons has our government learned from those, which we're using today in terms of moving forward in our current approach?

**The Chair:** Be very brief.

**Hon. Carolyn Bennett:** I think this is why we ended up having to take the approach we did. We want durable solutions. We have learned the lessons of Oka and Ipperwash. Idle No More was a bit different because it was an educational approach, with round dances, and it was a peaceful recognition of indigenous rights. I think we know that this has got to be about agreements and settling land claims and being able to move forward in the way that our partners feel is the justice that they have not received up until now.

• (1145)

**The Chair:** Thanks, Minister.

[*Translation*]

Ms. Bérubé, you have the floor for six minutes.

**Ms. Sylvie Bérubé (Abitibi—Baie-James—Nunavik—Eeyou, BQ):** Thank you, Mr. Chair.

Minister, the Oka crisis cost the life of Corporal Marcel Lemay. It created deep wounds in Quebec society.

In his book, *The Inconvenient Indian*, Mr. Thomas King recalled that the deployment of the army at Oka had cost nearly \$200 million, while the territories claimed by the Mohawks and ceded to them in 1997 were acquired for only \$5.2 million.

The Oka crisis has also taught us that we need to talk to each other and that politicians need to take responsibility. There are several parallels between the Oka crisis and the one that is now coming to an end. What have we learned? What did we not understand? If the federal government had assumed its responsibilities, there might have been fewer crises downstream.

Why didn't the federal government act sooner to prevent this crisis?

**Hon. Marc Miller:** We are going to share our speaking time.

As you know, Ms. Bérubé, the Royal Commission on Aboriginal Peoples was a product of the Oka crisis. There were a lot of lessons to be learned as a result of this huge inquiry by the commission, lessons that were not necessarily followed, for example, with regard to land purchases. I am not telling you that this is a simplistic analysis, because it is a very profound reflection. Many of the recommendations were not followed. There have been times when the government's commitment has fallen short, admittedly, and that has happened in every respect.

The splitting of the former department into our two current departments is precisely because of the recommendations of the Royal Commission on Aboriginal Peoples, a split that did not take place at that time, but more than 20 years later. That is the same lesson we learned from the Delgamuukw decision. In the wake of the Okanagan crisis, we realized, as Quebeckers and Canadians, that there is a real tension, which has a legitimate basis that dates back long before the very creation of Canada, with respect to the participation of the armed forces. It is a scar that remains open within these communities.

We often talk about the economic repercussions that persist on the economies of Quebec and Canada, and it must be emphasized. On the other hand, the greatest impacts, proportionately, have been felt in Kahnawake and Kanosatake, an underdevelopment that has persisted and continues to this day.

We have seen the prejudice and bias that followed resurface, whether in the media or in comments posted on Facebook. These were the same comments that were made after the Oka crisis. There was the death of the corporal appointed following the intervention of the Sûreté du Québec, or SQ. There was also the death of a man who was leaving Kahnawake when a rock was thrown against his window. He had a heart attack and he died from it.

These are things we need to think about as a society. I dare to believe that there have been changes as a result of the Ipperwash crisis. In Ontario, there has been a reform of police practices and indigenous engagement within the police force, which is a response to that cultural sensitivity and the demands that have been around for a very long time. Is there more work to be done? I would say very humbly yes.

**Ms. Sylvie Bérubé:** I just want to add something.

**Hon. Carolyn Bennett:** Excuse me, Ms. Bérubé.

We thank the Bloc Québécois for adopting the United Nations Declaration on the Rights of Indigenous Peoples and for supporting it, because with the two departments, it is no longer possible for me to deal with the issues of rights and title. We know that where land claims are settled there is certainty. It's a solid foundation on which to build when we make decisions, when the indigenous people and the people with those rights are around the table.

• (1150)

**Ms. Sylvie Bérubé:** Ms. Bennett, I also wanted to tell you that the government's attitude during this crisis has been similar to someone who keeps pushing the panic button in the morning. Why did it take so long to act? I know you mentioned this earlier. There are a lot of reminders about the first injunction, the article in *The Guardian*, the failure of the talks, the first demonstrations, the first blockades, and so on.

What took you so long? It took almost 25 or 26 days to resolve the situation. The so-called indigenous crisis has become an economic crisis across Canada. Hereditary chiefs came to Canada when there was no negotiation between Parliament and the hereditary chiefs, how can you explain that?

**Hon. Carolyn Bennett:** A year ago, the Province of British Columbia appointed Mr. Murray Rankin to begin discussions on the rights and title of the Wet'suwet'en Nation. After the difficulties in December, Mr. Nathan Cullen became involved in the process of resolving the situation.

Initially, there were discussions between Minister Scott Fraser and myself. Then our government proposed a meeting with the hereditary chiefs of the Wet'suwet'en Nation.

We are committed to the process, and with patience, we will achieve a sustainable result.

[English]

**The Chair:** Sorry, it's been a minute over. We're in six-minute rounds. We now have the NDP.

Ms. Gazan, I believe you'll share with Ms. Ashton.

Please go ahead.

**Ms. Leah Gazan (Winnipeg Centre, NDP):** Thank you very much.

You have the Canadian Human Rights Tribunal that has ruled against your government for discriminating against first nations children. We are now at nine non-compliance orders. If the rule of law is about respecting the law, are you not breaking the law here? Yes or no?

**Hon. Marc Miller:** First, thank you for the question.

This is highly emotional—

**Ms. Leah Gazan:** Yes or no?

**Hon. Marc Miller:** —because we're speaking about first nations—

**Ms. Leah Gazan:** I asked a “yes or no” question.

**Hon. Marc Miller:** —children, and this government is resolutely convinced—

**Ms. Leah Gazan:** So I—

**The Chair:** Please allow him to answer the question. Please, let's cut this talking over and get a question answered, and then move on.

**Hon. Marc Miller:** What we're facing as a government is a challenge on many levels. The Prime Minister, in his mandate letter to me, has been quite clear that we will compensate first nation children for what they have suffered—

**Ms. Leah Gazan:** Um—

**Hon. Marc Miller:** —to the extent that monetary compensation can do so.

**Ms. Leah Gazan:** We'll move on to the next one.

**Hon. Marc Miller:** This is a very important issue to me, MP Gazan, so I'm glad to answer it at a later date, but it's something that requires a lot more discussion—

**Ms. Leah Gazan:** You're not answering my question. It seems that your government supports the rule of law when it suits your economic interests. I say that because many times we end up in these situations in Canada because our own laws, our court decisions, or the human rights of indigenous peoples or indigenous laws are not respected.

If upholding the rule of law means respecting law in court, we can hardly conclude that respecting the rule of law for indigenous people and their rights has occurred with this government. Do you agree?

**Hon. Marc Miller:** I think as Canadians we need to look only at the examples of Poundmaker, Big Bear, or Louis Riel to understand that sometimes invocation of the rule of law has been used against indigenous peoples to perpetrate historic injustices. That should be clear to everyone in this room and to all Canadians.

• (1155)

**Ms. Leah Gazan:** Then just let me help you here. It took you three days to come up with an agreement in principle with the hereditary chiefs. I think it's called “political will”.

I have just one last question. In light of the situation with the Wet'suwet'en, is it critical that we achieve the full adoption and implementation of the United Nations Declaration on the Rights of Indigenous Peoples? The last time your government stalled it. It's critical that we pass it. What's your timeline?

**Hon. Marc Miller:** I agree with the historic nature of UNDRIP, and I want to recognize the contribution of Romeo Saganash in putting forward that bill. It had the full support of our government, and it is something that we are resolutely committed to as a government. I commend Minister Bennett for achieving in four days what couldn't be achieved in 23 years. It's very important for everyone—

**Ms. Niki Ashton (Churchill—Keewatinook Aski, NDP):** Sorry, Minister Miller, I appreciate that we do have some serious questions here. I feel like we're getting into story time.

We're dealing with a crisis on a number of fronts. I heard about all the goodwill here, but the reality is that your party has been in power for 91 years out of the last 120. The policies of colonization and genocide have come from Liberal governments, so when I hear about no running water and a housing crisis, when I hear about the lack of adequate health care and third-world living conditions, I know these aren't by accident. They are a result of government policies that you and your colleagues have pushed over the years.

Let's connect it to a crisis we're dealing with here and right now. People are very concerned about the disproportionate impact that coronavirus is set to have on indigenous people. We have to look no further than H1N1 to know exactly how hard it hit the most vulnerable, particularly people in my part of the country. Do you know the rate at which indigenous people were hit by the H1N1 virus in northern Manitoba? I'll help you. It was six times the average rate. When it came to Nunavut, it was 45 times.

**Mr. Gary Anandasangaree (Scarborough—Rouge Park, Lib.):** I have a point of order, Mr. Chair.

**The Chair:** What's your point of order?

**Mr. Gary Anandasangaree:** With respect, both ministers will be returning here on Thursday. A lot of these questions regarding coronavirus and so on, I believe, can be directed at that point. I think they're here today, and we're here—

**Ms. Niki Ashton:** With respect, it's a matter of life and death, and let me connect it to our discussion today.

**The Chair:** I'm sorry. I'm asking for his point of order.

**Mr. Gary Anandasangaree:** Today they are here for a very specific reason.

**Ms. Niki Ashton:** I can't believe we're delaying this over questions on the coronavirus.

**Mr. Gary Anandasangaree:** I'm suggesting that relevance is an issue here, Mr. Chair. I do respectfully submit that this question could be deferred to next Thursday.

**The Chair:** Ms. Ashton, go ahead.

**Ms. Niki Ashton:** Respectfully, I'm shocked that we would ask to have this discussion delayed when we know that the government isn't taking it seriously.

Let me connect it to the Wet'suwet'en as well. Indigenous people in this country have had enough of the way in which the federal government has ignored their needs, whether it be treaty land entitlement or land claims—and I include the north of 60 agreement that your government betrayed the Dene on. They've had enough of the way in which living conditions in their region have been ignored, so I'm shocked that I would be told that I should stay silent about a crisis we're starting to live right now.

My question for the government is what are you doing to take action to make sure that first nations are supported? Perhaps you could also reflect on the fact that you're an alternate member of a committee. What signal does that show to indigenous communities when the government doesn't even take indigenous affairs ministers seriously enough to have you as a full member of a committee dealing with a nationwide and global crisis?

**The Chair:** You have 30 seconds.

**Hon. Marc Miller:** I can confirm with the member that I'm on the committee and participating fully. I'll leave it at that. We have a meeting today, and I will be updating members on the issues. I'd be prepared to update you on the issues with respect to our engagements in indigenous communities and our reaction and preparation for coronavirus, which is a very serious issue.

I would preface my following comment with the fact that I don't think that the introduction of UNDRIP and the work the government and the NDP did on it, fostered by and put forward by Romeo Saganash, is storytelling. I think it's very important. It's very important for Canadians to realize that.

With respect to coronavirus, indigenous communities are more vulnerable for a number of reasons: historic socio-economic gaps, overcrowding and lack of access to clean and safe drinking water. These are all issues that we as a government on a long-term basis—and on a short-term basis with respect to the long-term water advisories that we are committed to remove by March 2021.... There are also systemic issues with respect to cultural approaches with medical facilities and health care, and issues with access and remoteness. These are all factors that have contributed, for example, to the unacceptable rates of tuberculosis in those communities.

We have our experience from the H1N1 virus. I have a dedicated team that is working on surge capacity. I'd absolutely be more than glad to update this committee or anyone willing to engage with me on this issue. Foremost, it's to indigenous communities that we are striving to reach out to, and have already done, but we'll be increasing that capacity in the short term. Thank you.

• (1200)

**The Chair:** Thanks, Minister.

We need to move to our five-minute round.

Mr. Vidal, you have the floor.

**Mr. Gary Vidal (Desnethé—Missinippi—Churchill River, CPC):** Thank you, Mr. Chair.

Thank you, Ministers, for your time today.

I want to follow up a little bit on Mr. Schmale's comments.

Minister Bennett, title has primarily been dealt with through treaties, as you talked about. The Tsilhqot'in decision has set out the standards for proving that title exists. I think we would agree on that.

Title claims impact not only the first nations, but also affect the surrounding non-indigenous communities and overlapping first nations' claims. Treaties must be ratified by federal and provincial legislatures, and so to follow up on my colleague's question, not on-

ly do I think it's appropriate, but I think it's imperative that you bring this agreement before Parliament before you sign it.

I don't think you answered his question. Will that come before Parliament before it gets signed?

**Hon. Carolyn Bennett:** Yes, I think what I said was that section 35 agreements that Canada and indigenous groups negotiate remain confidential until after the ratification process. With the Anishinabek education agreement, it then came before Parliament. We are very aware that these kinds of agreements, particularly where title is involved, need to come to this place.

**Mr. Gary Vidal:** In all of your public responses to this so far, what I've heard is that once this agreement has gone through this two-week process, as you eloquently referred to today, you and Minister Fraser from B.C. will go back and sign it.

Therefore, where's Parliament in this process?

**Hon. Carolyn Bennett:** As with a collective bargaining agreement or the type of agreements that Canada signs, I have a mandate to be able to sign agreements. This is about an agreement to work to implement.

As you know, the Supreme Court held title and recognized hereditary leadership. It's now our job to do the hard work of being able to implement and work through those things that you are quite rightfully raising in terms of neighbours and private property, insurance and roads, and all of those things. This is a very complex matter, and that's the hard work we're looking forward to doing with the Wet'suwet'en Nation and the Province of British Columbia, but also the municipalities of Smithers and Houston.

This is important work.

**Mr. Gary Vidal:** What I'm hearing from you is that this is an agreement that we're going to keep working together, but you spoke in your comments about this being an agreement about title.

Are we talking about title, or are we just talking about agreeing to continue to work together?

**Hon. Carolyn Bennett:** This is a proposed arrangement that would allow us to move on the important work of implementing the rights and titles of the Wet'suwet'en people.

**Mr. Gary Vidal:** Thank you. I'm going to move on.

Mr. Miller, I have a question for you.

In your departmental plan, you say:

Our work supports the self-determination of Indigenous peoples so that in the future, the services we currently offer are developed, governed, and delivered by Indigenous peoples.

Resource development is a great way for indigenous communities to create their own revenue and achieve this noble goal. As my colleague asked, I ask you, why is it that your government seems to only be speaking to those who oppose the economic development?

I would preface that additionally with both Minister Bennett's visit to B.C. but also the transcript I read of your eight-hour meeting with the Tyendinaga people. Again, it seems as though we're only talking to those people who oppose the project development, yet the project development is huge for the success of these communities.

**Hon. Marc Miller:** I can't pick and choose who shows up at a barricade. I have to deal with the cards that are dealt to me and engage in that dialogue and figure out why these solidarity movements are popping up. You can only do that through conversations, some of which are difficult, and I have no choice but to respect the views that are communicated to me at that point in time. Whether I agree with them or not, it's very important to continue that dialogue and have a path and a game plan towards peaceful resolution.

Everyone wanted peaceful resolution, but that game plan and that step plan is very important, and that includes dialogue. We do engage. The whole point of my department is to close that socio-economic gap so that indigenous peoples have substantive equality with non-indigenous peoples. That, in and of itself, is a huge catalyst for economic growth. There are economic development portfolios in both my and Minister Bennett's departments.

We know that when self-determination is achieved, indigenous peoples are driving resource development in many communities. You need only look at Treaty 8. You need only look at the Cree in northern Quebec. Those projects are key to the development of our country, but that takes catching up the gap in education, health, infrastructure, emergency management, all those precursors that in fact you and I probably take for granted.

These are very important. We will engage with all actors, resource development actors included. I meet with them all the time.

• (1205)

**The Chair:** Thank you. That's five minutes.

Mr. Van Koeverden.

**Mr. Adam van Koeverden (Milton, Lib.):** Thank you, Mr. Chair.

Thank you very much to both ministers for joining us today.

Before I start, I'd like to commend you and acknowledge your commitment to developing lasting trust, to being on the front lines and meeting with people, and to listening to people and ensuring that their voices are heard, not just in the media but in Parliament as well.

Like you, I am very concerned about some of the language being used to discuss this issue. It's grown to be quite inflammatory. I think, as elected officials, parliamentarians, we have a particular responsibility to be diplomatic with respect to these important issues. On Sunday, I met with about 70 indigenous youth at the Canada We Want conference just north of Toronto. I would submit, that while it was very emotional, their language and rhetoric remained respectful, diplomatic and constructive throughout that conversation, which was supposed to be for 30 minutes but ended up being for about two and a half hours. I think that's a commitment that many of our colleagues would be well served to emulate.

Without undermining the urgency of all of the issues involved, I was hoping that you could elaborate a bit on de-escalation as a priority, reducing the temperature to ensure that there is a peaceful, effective and legal solution that will result in good outcomes. Could you also elaborate, Minister Bennett, perhaps more importantly, on the reference you made to doing no harm?

**Hon. Carolyn Bennett:** Thank you for that.

I think we are worried that situations like this just increase racism and people's ability to attack each other. That Saturday night in the hotel in Smithers, one of the elders was verbally abused. It just spoke to, really, what happens amongst neighbours, but also to the most vulnerable. To attack somebody who went to residential school, who has lived that shame of being indigenous, is unacceptable. I do worry, whether it's Senator Beyak or others across this country, that people seem to be getting away with saying things that are absolutely hurtful and harmful. It's really dangerous to the fabric of this country. We have so much to learn about thinking seven generations out; about asking, not telling, in leadership; about listening to wise women; about all of the things that were in place here before the settlers arrived. And then the Indian Act and residential schools made people feel ashamed.

I agree. It was interesting last night at the University of Toronto. I met this amazing young indigenous woman who talked to me about the Chandler-Lalonde report, about how communities that are self-governing end up with better health, education and economic outcomes. This is a scholarly and evidence-based approach now, but it is also about building this country, about nation building, from coast to coast to coast.

Thank you.

**The Chair:** You have another minute.

**Mr. Adam van Koeverden:** Thanks.

Minister Miller, you spoke about trust a lot throughout your speech today. I've recognized your hard work and commitment to having an open and honest dialogue throughout this process. I referenced your work, your commitment to language acquisition, your commitment to peace and dialogue and patience a number of times throughout my meeting on Sunday night. It was well recognized; there was a lot of nodding in the audience. These youth were very well informed.

I'd ask you to elaborate on how patience, diplomacy, a calm approach are serving the situation now. I would once again commend you for that work.

• (1210)

**Hon. Marc Miller:** Thank you.

Let me add on to what Carolyn said. My greatest concern, when I heard from the leadership in Kahnawake, was about the 200 kids who study off-reserve and how they are being targeted. Our concern in all of this is the safety of all Canadians, and particularly those most vulnerable, but when you hear stories like that, it really brings home what this means and the need to achieve a peaceful resolution.

Building trust sometimes means being vulnerable and going on a playing field that isn't yours, exposing yourself. Nine hours of transcript for a minister is a significant amount of exposure; it's minimal compared to the vulnerabilities the people who accepted to meet me face. I feel safe around police forces; they don't. That insecurity was palpable in the room on many occasions. This is systemic, ongoing and documented. It isn't something that people just throw out there; it is documented in reports.

That trust has been broken for decades, so it isn't someone like me who is going to repair it or something like this government that will repair it simply in one year, with a bunch of programs that are historic in their investment quantum. It will take a long time to repair these bonds that have been broken, and probably more mistakes will be made. It's just something we have to be relentless about. It's about building relationships. In any community, even across this committee you build relationships and that builds a modicum of trust—

**The Chair:** Thank you, Minister. That's your time.

**Hon. Marc Miller:** —and confidence. It allows you to move on. It's systemic. We can work at it as a country. I'm confident.

Thank you.

**The Chair:** Thank you.

Mr. Zimmer, you have five minutes.

**Mr. Bob Zimmer:** Thank you, Minister. I appreciate that you went out to the Wet'suwet'en community. It's my neighbour to the west of my riding.

I share the concerns of my colleague Mr. Schmale. You talked about exploiting divisions as if it were somebody else other than what you were doing. You talked about being “open and honest”, I think, Minister Miller. That's what you said; you wanted these discussions to be that way.

Are you aware of who elects the elected chiefs and council of the Wet'suwet'en community?

**Hon. Carolyn Bennett:** Am I aware...?

**Mr. Bob Zimmer:** Of who elects the elected chiefs of the Wet'suwet'en communities.

**Hon. Carolyn Bennett:** The reserve lands—

**Mr. Bob Zimmer:** Wet'suwet'en communities, yes. Correct.

**Hon. Carolyn Bennett:** The reserve population elects the chiefs, yes.

**Mr. Bob Zimmer:** Do you know that the Wet'suwet'en hereditary chiefs are part of that community?

**Hon. Carolyn Bennett:** My understanding, and from the Supreme Court decision, is that the hereditary chiefs...that there is

the conversation now about title of the whole community, not just the reserve lands.

**Mr. Bob Zimmer:** Let me just say what Gary Naziel, who is a wing chief of the Wet'suwet'en community—

**Hon. Carolyn Bennett:** Yes.

**Mr. Bob Zimmer:** —said to us. We met with him in Prince George three weeks ago now. He said that the elected chiefs are actually elected by the Wet'suwet'en hereditary chiefs as well. They are a true representative of the Wet'suwet'en community of hereditary and community members. Were you aware of that?

**Hon. Carolyn Bennett:** Absolutely, and that's why now the hereditary chiefs will go back to their clans and their houses and their elected chiefs—

**Mr. Bob Zimmer:** Next question—

**Hon. Carolyn Bennett:** No, wait a second—

**Mr. Bob Zimmer:** I have to go through these quickly, so my next question—

**Hon. Carolyn Bennett:** You did ask a question—

**The Chair:** You asked a question. I think respectfully you should let her answer.

**Mr. Bob Zimmer:** I hope you're going to give me more time, then, Chair.

**Hon. Carolyn Bennett:** I'm going to tell you that they will now go back to their clans and their houses and all members of the nation will determine and ratify this proposal.

**Mr. Bob Zimmer:** Chief Dan George, who is one of the chiefs elected by the community, has been trying to get a meeting with you, and even wanted to be part of the discussions when you just met with them a few days ago, and said they—the elected chiefs—were shut out of the meeting. Why?

**Hon. Carolyn Bennett:** Well, I am not aware of that. I'd be happy to meet with Chief Dan George any time.

**Mr. Bob Zimmer:** Okay. I'm glad you said that, because I heard it earlier. I just spoke with Chief Dan George and all the elected chiefs who are supportive of the project, and they said that they have been trying to get a meeting with you and they haven't been able to. They feel very frustrated. They want to have this...

Actually, you know, the bigger frustration for the elected chiefs and, I'd say, for the Wet'suwet'en hereditary chiefs who support the project...they want to have a community discussion about the issue.

• (1215)

**Hon. Carolyn Bennett:** Yes.

**Mr. Bob Zimmer:** When you go into the community and you pick only a very select few to talk to, just the ones who are opposed to the project.... They are very frustrated. The hereditary chiefs who support the project are very frustrated. We have one in the room with us today; Theresa Tait Day is at the back of the room.

There's a frustration that you're only wanting one result by only meeting that particular group. Even some of the ones you met are chiefs under suspect circumstances. Chief Woos is one of the examples. The ones you're meeting with have questionable circumstances, so the legitimate Wet'suwet'en chiefs who want to meet with you are questioning whether they should be at the same table, because it legitimizes somebody that maybe isn't.

To me, somebody who is the minister should know all of these concerns in the community and be very careful about who you meet with when you go into that community. If your true desire is to really bring the community together, as you've said, and not create division, not be exploiting divisions, and be open and honest, you would have everybody at the meeting. Why would you exclude from the meeting any from the community who are leaders in the community?

**Hon. Carolyn Bennett:** I think you misunderstand that there are two separate conversations. I wasn't there to talk about a pipeline. I was there to talk about rights and title. The rights and title conversation will happen in the clans and the houses, and everybody will be there to ratify it. I will go back and see if they have agreed to that. Then I will be meeting with everybody.

**Mr. Bob Zimmer:** That's even a bigger problem, then. If you're not talking about Coastal GasLink.... I talked to the elected chiefs too. They were troubled—

**An hon. member:** Mr. Chair—

**Hon. Carolyn Bennett:** Bob—

**Mr. Bob Zimmer:** Just hold on. It's my time.

**Hon. Carolyn Bennett:** Bob, it's a B.C. project, right?

**Mr. Bob Zimmer:** The problem with it, though, is that if you're going out under the circumstances where you're supposed to be bringing the blockades down and having this cessation...because it's all around the project, right? It's all around this Coastal GasLink project. If you're going to go out there and help to somehow bring peace to the situation and you're not even talking about the very issue that's got the roadblocks up, I think that's more problematic.

**The Chair:** Okay. We need a brief answer.

A brief answer, please, Minister.

**Hon. Carolyn Bennett:** The brief answer is that the rights and title.... The reason I'm there is for a durable solution, so this never happens again. The rights holders will be at the table with lots of choices at the beginning of a project. That's what Bill C-69 is about. It's what UNDRIP is—

**A voice:** Hardly.

**Hon. Carolyn Bennett:** —and it's the way we will go when we have settled the rights and title of the Wet'suwet'en people.

**The Chair:** That's the final question in this round. We've gone over the time that we agreed to. We have our next witnesses waiting.

I will thank the ministers and their staff for being with us today.

We'll just take a brief moment to allow me to get a cup of coffee and then we'll continue.

We are suspended briefly.

• (1215) \_\_\_\_\_ (Pause) \_\_\_\_\_

• (1220)

**The Chair:** Please come back to order.

We're running short on time. We've got lots of business and some very important witnesses. Once again, we will reconvene for this meeting of the indigenous and northern affairs committee.

For those who are watching by webcast, we have a guest here with us and also two guests by video conference. With the vicissitudes of technology, I think Ms. Tait Day will allow our speakers at a distance to go first.

We have John Borrows, the Canada research chair on indigenous law at the University of Victoria, and Éric Cardinal by video conference from Sept-Îles, Quebec.

Mr. Borrows, you're farthest away. Please go ahead.

**Mr. John Borrows (Canada Research Chair in Indigenous Law, University of Victoria, As an Individual):** Thank you for the opportunity to speak with you.

The issues I want to raise have to do with the application of indigenous law. I'm grateful for understanding that aboriginal title is the issue that lies at the heart of our current disputes out here in British Columbia and that the recognition of title belongs with the rights-entitled holders, who are the hereditary chiefs. What's required, of course, is the recognition of that title and then the jurisdiction to be able to implement what's involved in the content of that title.

When that jurisdiction is recognized, that includes Wet'suwet'en law and the internal dispute resolution structures that they can bring to bear to deal with the challenges they face between the elected and the hereditary councils. I'm sure you'll hear more about that as we go along.

This is to make the point that this is law, and this law is recognized in the Constitution.

The other things we need are, of course, the inter-societal recognition mechanisms, things like section 35 and the *sui generis* approach that's there; UNDRIP and the statutory action that the government can take to recognize rights and title as an economic development and sustainability issue; needing to reform the way injunctions are done; and thinking about rule of law in the broad way.

However, my main contribution is to try to bring to bear a law from the Anishinabe. I'm from Cape Croker, which is a reserve on the south shores of Georgian Bay on the Bruce Peninsula. The Wikwemkoong reserve, for instance, has a constitution, and in that constitution they talk about how their laws should be applied to deal with the questions that come before them. These laws are organized as the Seven Grandmother and Grandfather Teachings. I just want to read them to you for your consideration, so you can think about using these kinds of approaches in resolving the disputes that we're all so concerned about.

The first law is the law of respect, which is to “accept people for who they are”. It says in the constitution, “listen openly to other opinions and be sensitive towards people's feelings. Also respect all living creatures, and Mother Earth.” Imagine that law as a standard, principle, criteria, authority, precedent, tradition, guidepost and signpost for regulating our affairs and resolving our disputes.

There's humility. “Strive to become a modest person.”

There's truth. “Be a trustworthy individual. Discuss only factual information, and in turn, seek out knowledge that is accurate.”

These are constitutional principles.

There's bravery and courage. The constitution says, “Take responsibility for your mistakes, and meet unknown circumstances head on. Be a risk taker, and do not let short falls discourage you.”

There's love. “Show affection and fondness for those around you.” Imagine that being a part of the way we go about resolving our disputes, constitutionally speaking. “Allow your friends and family to know you adore them unconditionally. Most importantly, love yourself.”

There's honesty. “Be upfront about everything that you say and do. Your words and your actions should not have a hidden agenda or motive.”

Then the seventh grandfather/grandmother rule here is wisdom, which is: “Be wise and gain knowledge through life experiences. Furthermore, learn from your mistakes. Expand your wisdom to include teachings from elders and children.”

These are principles that are akin to life, liberty and security, peace, order and good government. They are, of course, general. They are aspirational, as are hopes for equality and mobility and freedom in Canada's Constitution.

What I suggest is that, as a part of the law of Canada, we draw upon these kinds of principles and make them the standards by which we conduct our business. These can be given meaning in specific terms and in statutes—as with this constitution—and in court judgments. They can also be the way we comport ourselves.

Here at the University of Victoria, we're teaching indigenous law alongside the common law. We have a “JD” and a “JID” degree—a juris doctor and juris indigenarum doctorate. Also, the students here are learning transsystemically. When I teach constitutional law, they're learning about federalism, the Charter of Rights and Freedoms and aboriginal and treaty rights, but at the same time they're also learning about Anishinabe law all along the way.

The same thing happens when they learn criminal law; they learn Cree law in relation to that. When they learn about property law, they learn about Gitksan law. Tsilhqot'in law is combined with contract law. Hul'q'umi'num or Cowichan Law is combined with tort law.

● (1225)

We are a multi-juridical country. We have many legal traditions to draw upon that can be authoritative in guiding our actions, and these principles of respect and humility, truth, bravery, love, honesty and wisdom contain guidance in the etymology of the words. For instance, the word “love”, *zaagidiwin*, comes from a river mouth. We learn about how to live in love by looking at what happens at a river mouth that is enriching the earth, and the standards by which we should live are honesty, *gwayakwaadiziwin*, which is having a clear path between us, no obstruction when we're talking with one another, or humility, *dibaadendiziwin*, which is to measure our thoughts in a precise way. The idea of respect, *manaaj'idiwin*, is to go easy on one another. The notion of wisdom is *nanagadawenda/nibwaakaawin*, which is to bend toward or study things.

These are Canadian laws. These are laws of the land, and the Wet'suwet'en have laws they could express that have similar sorts of principles attached to them. So do the Blackfoot and the Salish, the Mi'kmaq, the Inuit, the Métis and the Haida, any group you look at have these laws written and unwritten, so it is important to talk about title and jurisdiction and internal dispute resolutions and inter-societal dispute resolution mechanisms, but understand that a part of what will give those life is indigenous understanding of law.

I look forward to further questions or comments that you might have about that.

There is lots to say, but I hope I have made the point about indigenous law being a part of a resource for reasoning and action in our country.

● (1230)

**The Chair:** You did very well. Thank you.

Mr. Cardinal, would you please go ahead now.

**Mr. Éric Cardinal (As an Individual):** Thank you, Mr. Chair.

[*Translation*]

Thank you for allowing me to testify, even though I couldn't appear in person. I am currently in the community of the Uashat mak Mani-Utenam Nation on the North Shore of Quebec. Long live technology!

I'm not going to go back over the facts of the indigenous crisis. You know them well enough. As an expert in indigenous law and policy, I will focus primarily on what I understand about the causes of the crisis and what I see as lessons we can learn from it.



First of all, the crisis is the culmination of several issues related to first nations territories and political governance. There are, of course, issues specific to the Wet'suwet'en Nation and those related to the Coastal GasLink project in particular. The crisis has become so acute because the issues go well beyond hereditary chiefs' opposition to a pipeline project. Moreover, it is not by chance that the crisis has had such resonance in Quebec and that there have been such important gestures of support from first nations in Quebec, particularly from the Mohawks and Micmacs, but also from the Atikamekw, Innu, Algonquins and many others.

The situation in Quebec is very similar to that in British Columbia. These are two regions where there is no, or at least few, historic surrender treaties. So there are large areas of what are referred to as unceded indigenous territories over which first nations have rights, but rights that are not fully recognized by governments or the courts. These are what I call invisible rights: indigenous rights, indigenous title, the inherent right of self-government, the right to be consulted and accommodated, the right to fiduciary protection by the Crown, and so on.

It's not because they are invisible that they don't exist, but because they are invisible, they are often ignored. In the course I teach at the Faculty of Law of the Université de Montréal, "Canadian Law and Indigenous Peoples", I always begin my first class with a drawing of my own, which is a pictorial representation of Canadian indigenous law. Here is my drawing.

You see a rectangle that symbolizes Canadian law and a circle that identifies the normative orders of indigenous peoples. This circle overlaps in part, but not completely, with positive Canadian law: there are rights that are sometimes recognized and others that are not. That's what Mr. Borrows was talking about in terms of indigenous rights, the normative orders of indigenous peoples that existed and have continued to exist in Canada.

The chart explains what is known as legal pluralism, which is present in indigenous law in Canada, and it also explains some of the issues related to the crisis and the complexity of the solutions. Indigenous peoples, because they have not been conquered, because they have not given up their inherent rights, despite the considerable efforts made during generations of colonial policy, still possess, to different degrees, depending on the nation, parts of their legal order that existed before the creation of Canada. This is true for those who have entered into treaties and even more so for those who have not, as is the case in Quebec and British Columbia in particular.

These rights have been recognized in part by the courts, which are trying, as best they can, to reconcile the pre-existing sovereignty of indigenous nations with the current sovereignty of the Crown. However, the concepts created remain vague and imprecise. In short, they often remain invisible to the current political system. This is the fundamental problem. Faced with the difficulty of resolving problems through political means, first nations are forced to turn to the courts or blockade railroads.

You have to realize that the courts are not a panacea. It is often very long, very expensive and very risky. Even when the first nation wins its case in court, it does not necessarily represent a victo-

ry. Take the case of the Wet'suwet'en Nation, one of the two nations involved in the famous 1997 Delgamuukw decision.

The decision was heralded as a great victory for indigenous people, as the court recognized the existence and scope of indigenous title to unceded indigenous lands. However, the court refused to decide the case, inviting governments to negotiate or first nations to return to the trial court to prove title again.

You'd certainly think we wouldn't be here today if the negotiation route had worked better. We can't blame the courts. The recognition and definition of these invisible rights was left to the Supreme Court, if not clarified at the political level, as the federal government had promised to do when the Constitution was patriated in 1982 and section 35 was included, which recognizes indigenous rights without defining them.

In fact, there are several people these days who are proposing new constitutional amendments to correct this situation. There have indeed been a few so-called modern treaties that have been concluded since the Supreme Court reminded the government in 1973, in the Calder case, that indigenous rights were not inert fossils.

• (1235)

Yes, there have been some treaties, but not many. The Wet'suwet'en situation is hardly unique. There are a number of similar situations, especially in British Columbia, Quebec and the Maritimes, involving unceded traditional territories in which these invisible rights exist.

Admittedly, as things stand, treaty making is extremely difficult, if not impossible, for many nations. The current framework for negotiations is inadequate and ineffective. First, the current policy on the settlement of comprehensive claims has an enormous disadvantage: the federal government is both judge and jury. The process is also very long and fraught with pitfalls. To give you an idea of the situation, some nations have been in negotiations for over 40 years.

Meanwhile, the territories continue to be developed. The duty to negotiate and accommodate does indeed exist. The duty was established by the Supreme Court in 2004 in a case involving the Haida Nation. However, this duty is yet another vague and unclear concept that causes a great deal of frustration, among both indigenous people and proponents, by the way. They complain about being caught between a rock and a hard place.

Admittedly, the governments don't have much motivation to negotiate for the recognition of rights. We can't rely too much on pressure from the courts, contrary to what we might think. While the courts recognize indigenous rights, and despite the constitutional protection granted in 1982, they've also ensured that these rights aren't absolute and that governments could violate them. The Supreme Court established criteria to justify the infringement of rights, even formally recognized aboriginal title. This gives governments a way to keep denying these invisible rights.

While recognizing the existence of aboriginal title, the Supreme Court also gave indigenous communities the burden of proving their previous occupation of their traditional territories. This proof is extraordinarily difficult and costly to produce. Only one indigenous nation has been able to provide this type of proof. That was in 2014, and the case concluded before the Supreme Court with the confirmation of the Tsilhqot'in Nation's aboriginal title to approximately 5% of its traditional territory.

What action can be taken by first nations that have invisible rights, but that can't have these rights recognized by the courts or participate in treaty negotiations? For now, they can only require that they be consulted. Again, they're reminded that they don't have a veto. If they aren't satisfied with the consultation, they can go to court. However, if they aren't satisfied with the courts, what's left? This is our impasse.

In my view, the indigenous crisis is the direct result of the governments' failure to recognize invisible rights, which are nonetheless real, and to address the historic grievances of first nations that have never surrendered or given up their land rights.

These land claims can't be resolved until the negotiation mechanisms have been fundamentally changed. After many years of frustrating negotiation experiences, I believe that the solution to the current impasse lies in a mechanism that remains separate from governments. The issue is systemic. In other words, the current system can't resolve these issues, which are so complex that they even go beyond the capacity of governments. These types of issues can't be resolved by public servants, who must comply with policies, directives and administrative procedures. I believe that a new institution, separate from governments, should be responsible for clarifying and implementing the rights of first nations. This independent body should be composed of individuals who have the necessary expertise and legitimacy to accomplish this sensitive and very important task.

One of the first things to change is probably the vocabulary used. We don't refer to claims, a confusing term that suggests that indigenous groups want new rights. As I said, these rights are existing rights for which they're seeking formal recognition. We should instead be talking about a rights recognition policy. This solution would also be a concrete step towards implementing the United Nations Declaration on the Rights of Indigenous Peoples, which Canada officially supported.

In conclusion, I'll say a few words about the uncertainty that the crisis has caused among project proponents, particularly with regard to the authorities that have the jurisdiction to negotiate development agreements. Of course, companies and the government are turning to elected band councils. We must remember that these councils are currently trying to do everything they can with the means at their disposal to improve the lives of their communities. That said, this issue is another debate.

As I said earlier, a number of nations still have traditional authorities. In a few cases, the courts have also recognized the legitimacy of these traditional authorities, such as in the case of the Wet'suwet'en in 1997. The federal government's responsibility is useful, even fundamental, in this area. The federal government

must ensure that the process respects the rights of the indigenous group concerned.

• (1240)

Rather than encouraging the division of indigenous communities, we should be giving the communities the necessary resources to create institutions designed according to their own legal perspective. This will enable them to make legitimate decisions that are more likely to be respected by everyone.

To do this, the political route must also be taken. It's not necessary to enter into an agreement, because the right to self-government is an inherent right. However, it's more useful to enter into self-government agreements. Otherwise, situations arise such as the one involving the Mohawks of Kahnawake. They've implemented a form of de facto sovereignty over their territory. That's one reason why the blockade couldn't be cleared through a simple court injunction.

Again, the current system makes it very difficult to enter into agreements and recognize self-government.

In short, creativity and courage are now needed in order to take concrete steps towards putting words into action. Otherwise, reconciliation will remain wishful thinking. The words "nation-to-nation relationship" will become meaningless, and these types of crises will happen again.

On that positive note, thank you.

**The Chair:** Thank you. The technology worked very well.

[*English*]

Now we'll go to our guest who is here with us in committee. From the Wet'suwet'en Matrilineal Coalition, we have Theresa Tait Day, president.

Welcome.

**Ms. Theresa Tait Day:** Thank you very much.

First, I would like to thank the Algonquin for allowing us to do business on their territory. Also, thank you to the committee for having me here today.

My name is Theresa Tait Day. My hereditary name is Wi'hali'yte. I'm the fourth generation in my family to hold this name. As a hereditary sub-chief of the House Beside the Fire, Kun Beghyukh, of the Laksilyu or Small Frog Clan, I have been involved in the governance of the Wet'suwet'en for many years. I sat at the OW table.

My training comes from my grandparents, who were active in the political system for governance rights and title. They were involved in the Calder case and the Delgamuukw-Gisday'wa case, as well as the formation of the Native Brotherhood of B.C. I served as a director of native programs at the Legal Services Society for almost a decade, and I think that's where I met John Borrows a long time ago.

I am the co-founder of the Wet'suwet'en Matrilineal Coalition, with five hereditary chiefs representing the five clans. The Wet'suwet'en Matrilineal Coalition was asked by hereditary chiefs and the community at large to come up with a solution to facilitate decision-making within our nation. We have been working particularly with LNG and Coastal GasLink. Our people wanted a benefit, and they wanted to be able to make a decision on a positive note. However, we've experienced lateral violence and coercion since then by the five chiefs who claim to represent the nation.

I speak on behalf of the WMC—as a hereditary female leader—my fellow hereditary chiefs, band members, our elected band councils, and members of my house group as an appointed sub-chief and designated spokesperson.

With regard to Coastal GasLink and the protesters, our communities came to the world's attention when members of our hereditary chiefs loudly broadcasted their opposition to Coastal GasLink, despite the fact that it has strong community support. These chiefs' voices have been amplified by the skills and the resources of outside environmental activists who say that they support Wet'suwet'en, but whose primary interest is to stop the pipeline.

The protest organizers are conveniently hiding behind our blanket as indigenous people while forcing their policy goals at our expense. This compromises our nation's social well-being and our people's economic future.

They have held up the hereditary chiefs who oppose the pipeline as defenders of traditional governance, leaving the impression that the chief and council are running roughshod over the wishes of the community. It's not that simple. Hereditary chiefs in our communities do not rule alone. They make decisions collectively. They gather in community halls. In these meetings, people are allowed to speak. An effort is made to work toward consensus. At the end of the process, the community and band-elected chiefs inform the hereditary chiefs of the community's message to be shared with the public. This project has been hijacked by the five chiefs.

The hereditary chiefs are representative decision-makers. They are not autocrats. They are told by the community what the decisions are, and that's how we move forward. This is not happening. The band and the community have been left out.

Based on a survey of Witset, the largest community, first nation, in our territory, over 80% of our community say they want LNG to proceed. There is a gap between what people say and what the hereditary chiefs are claiming.

You are being told that these men speak for our nation, but they often fail to understand even the basic traditions. The improper wearing of regalia in protest offends the most progressive traditional leaders. It shows a fundamental disrespect for our customary laws. How can we be governed by these people who don't understand them?

As for the Office of the Wet'suwet'en, it is structured and controlled by its own benefactors, who draw a salary from the operations and manage spending decisions. They are not accountable to our community.

• (1245)

By negotiating directly with the office, Canada and British Columbia legitimize a group of bullies and abusers of women.

Moreover, by refusing to hear from elected councils, these governments have, without merit, prevented the most credible current voices from being heard. The Indian Act system must be reformed, but that does not invalidate the role of the elected councils. While imperfect, they continue to speak for our people until a better model is implemented. That's why I'm here today to appeal to you to create a better model for decision-making.

The women's voices have been suppressed by dissent. As female Wet'suwet'en members and community leaders, we want to be heard and involved in the decision-making. That is our way. But our voices have not been heard. Many of the male hereditary chiefs are acting out of internalized historical oppression. We face patriarchal domination. In a very sick way, the voices of the privileged and non-indigenous protesters are taking precedence over indigenous women. They assert their agenda in solidarity to avoid facing the scrutiny of their policies.

This is both about a pipeline and not about a pipeline. What is happening here determines our process as a nation. A people's wishes have not been heard. I agree with John Borrows that there are beliefs, but in our nation we have been oppressed for 150 years, and we continue to be oppressed under the current regime.

At the draft agreement consultation on February 28, a number of hereditary chiefs attended a meeting prior to the male hereditary chiefs' meeting with the province and the federal cabinet ministers. We met until it was promised that the chiefs would have a community meeting open to the public. Instead, they decided to have these small clan meetings, where 20 people or five people come and make decisions about this. This is not what a democratic system looks like.

The two major issues at hand—the Wet'suwet'en's position on Coastal GasLink, and the role of hereditary chiefs in our governance—are properly left with the Wet'suwet'en. Our communities have been working on these matters for years, and we'll resolve them in our way. As a community, we need to implement a process in which the Wet'suwet'en create a decision-making model, a process for major projects. We need a system that will allow us to work together toward economic reconciliation, job creation and the rebuilding of our nation as well. We need a new model.

The Indian Act targeted us as women, and continued violence targets us as women, both within and outside our communities. While supporting decolonization as part of reconciliation, supporters of indigenous people must also support efforts to combat sexism and the continued oppression of Indian women.

We respectfully demand accountability and procedural fairness from the hereditary chiefs representing the Office of the Wet'suwet'en. We ask the government to help us to provide the resources necessary for our nation to co-develop a path forward for economic reconciliation that is inclusive, democratic, open and fair, as you can see in your government's system. You have this system; we do not have a system of fairness.

We have a way forward. We call for a community-wide meeting and for the protesters to stop misrepresenting the Wet'suwet'en. We are ready for a new system of governance that is inclusive of our nation.

I realize that you've heard a lot of things here today. I agree with John Borrows on the principles, but those principles must be part of our nation's dialogue, and we haven't had the ability to really dialogue with our nation. We don't have a mechanism in place where everybody has a say, and when everybody knows what the topic being discussed is. It has been decided by a group of people without the community and without the nation's input.

We've come to the eleventh hour, when all of a sudden the minister has come to the table and talked to the five groups of people who have not actually had our permission to do so.

● (1250)

It's the communities that say what should happen, and hereditary chiefs do not act alone. They take direction from the membership. What we are facing, as Wet'suwet'en, is a lack of a mechanism in place whereby everybody would have a say in a democratic, open and fair way.

Currently, under the system of having clan meetings, when you have 20 people at a meeting.... Currently Likhts'amisyu is under Warner Naziel's leadership—who took the name from the rightful owner, Gloria George. He has a meeting, and 20 people say, "Yes, go ahead". These small meetings do not make a decision for our nation, so I am here to talk to Minister Bennett and ministers to try to create a mechanism where we are all informed and all involved in whatever decision has to be made with respect to our communities. Title and rights exist within Wet'suwet'en. They haven't gone away. These agreements will not change the fact that today my clan and my house can go and protest.

I think the best way forward is for the government to think of how these governance models fit in today's world. We cannot go back 100 years—and, in fact, these meetings are oppressive to our nation. We feel like we are stuck in the 1800s. We need to move forward economically. We need to have the benefits from our land. We need to be able to have equity stakes in our projects that come forward. We need to benefit from them, and we don't have a mechanism in our community to address that particular problem. Title and rights, yes, we need to address that, but we also need a mechanism to make decisions today about these projects that are coming down the pike.

**The Chair:** Thank you so much, Ms. Tait Day, and to all of our guests.

We will go to Mr. Zimmer to a six-minute round of questioning.

Please go ahead.

**Mr. Bob Zimmer:** Yes, Chief, we are more than honoured to have you sitting at the end of our table today. It was quite a while ago when we first met, and here we are again.

I just want to clarify something. You talked about the number of.... I think what we in Ottawa don't have is an eye into what the Wet'suwet'en community actually is, what it supports and what it doesn't.

From your perspective again, what would you say is the percentage of community support for the Coastal GasLink project in the Wet'suwet'en community itself?

● (1255)

**Ms. Theresa Tait Day:** Well, we have six bands, and there are two systems in place. There is the band elected system, and then we have the hereditary chief system. The bands have done their work, their due diligence. Many of them have signed on to Coastal GasLink project. They have asked their communities. Communities are working on it. Then we have the hereditary chiefs who have the agenda of title and rights. We agree with that. Title and rights must be resolved. We must get a benefit from our land from the past wrongs and we must move forward to together as a nation, as Canadian, as Wet'suwet'en people, but we must have a mechanism in place to do that.

**Mr. Bob Zimmer:** What would you say roughly is the percentage in the community, Chief?

**Ms. Theresa Tait Day:** I would say about 80% of our people, based on a survey that was done within the largest community, the Witset community. The rest of the six communities have had agreements. Well, all of the communities have agreements with Coastal GasLink, so we feel like we've been hijacked by the protestors who have own agenda on this. This was not driven by the hereditary chiefs, as I heard earlier. The protestors have their own agenda, and they have used our people to advance their agenda and really, I think, to land-lock gas and oil in this country.

**Mr. Bob Zimmer:** Chief, I have another question.

We heard from the minister. As you were in the room, you heard some of the comments and some of my questions to her, too. Honestly, I have spoken with elected chiefs and with hereditary chiefs. I think, at the end of the day, we're debating whether what is said or not is correct—from the minister. At the end of the day, we want to hear from the community what they want going forward. I think that is what the goal is, and if she is going out there to be a unifying voice to the community of Wet'suwet'en, to me it's problematic when I hear that some members.... I don't know if you were there, Chief. When these meetings happened, were you kept out of those meetings?

**Ms. Theresa Tait Day:** Yes. In fact, a few of our hereditary chiefs met with the male chiefs that morning, on February 28th, and we asked them what their intention was. They did not share that with us, and they would not share that with us. Instead, they went into saying things like, well, we've been here for a hundred years and we're doing this and that—the same old story again.

So there were no answers, and we said, okay, we don't want to embarrass the nation, so go ahead and meet with Minister Bennett on the condition that you would have a public open meeting with the nation on what your intentions were, and we never had that. Instead, they went into clan meetings as a way to control the information.

We do have clan meetings, but that's not the end-all, because our nation does not exist in a little community here and there. Our nation is everywhere, in Ottawa, Vancouver and all parts of the country, and every one of our nation members has a voice and has a say on their future, and this has not been the case. We have not had that ability.

**Mr. Bob Zimmer:** Have you seen this document that was made—again—supposedly by the Wet'suwet'en community?

**Ms. Theresa Tait Day:** No, I haven't.

**Mr. Bob Zimmer:** That was the agreement between the minister and the Wet'suwet'en. Have you seen the document?

**Ms. Theresa Tait Day:** No, I haven't seen the document. I've asked for the document and they say I have to go to a clan meeting. Well, I'm busy. I cannot attend a clan meeting. I said I can read and write, so I can look at the document, and yet I'm not able to get the document.

So I don't know, and for members who have gone to these committee meetings, I've asked about the outcome of that meeting. I don't really understand. It's the hereditary chiefs who are talking and I really don't understand what was decided. So there needs to be a process where people can understand what is being said, and there needs to be an ebb and flow. You cannot just have a meeting where people don't understand what's being said or done. So no, I haven't seen it.

**Mr. Bob Zimmer:** I saw you ask the minister directly to have a meeting with the entire community. My hope is that she honours your request, being a Wet'suwet'en chief yourself with a long history in the community as a community builder there. My hope is that she will take you up and have that collective meeting with every member of the Wet'suwet'en community, and you'd get the issues resolved. Again, we want what's best for you, Theresa.

• (1300)

**Ms. Theresa Tait Day:** I'm hoping that I could have that meeting with the minister to inform her that what has happened is really a division of our nation because the band chiefs have been left out. The rest of the communities have been left out. We cannot be dictated to by a group of five guys. We agree on the title and rights as a principle and as a way forward, but let's put that over here for work to do. We still don't have a mechanism that is involving every member of our nation, and that's what I'm concerned about.

My husband is Tahltan, and they have a mechanism in place whereby everyone has a say about a project. We're looking at an

economic project. We need to make decisive decisions, and we need a process to make those decisions.

**The Chair:** Thank you. We're right at the time.

We'll go to our next questioner, Mr. Jaime Battiste.

**Mr. Jaime Battiste:** Hello, Professor Borrows. It's good to see you, even through this angle. I've really appreciated your books and articles over the years, and I've thought they've been very insightful during my legal education.

I'm going to ask you a question that I know you could do an entire course semester on, but I'm going to ask you to do it in five minutes, and then if you would like to add written submissions on top of that for this committee, I'd appreciate that.

The heart of this matter is the Delgamuukw case in 1997, and I'd really like you to give a short description of what it was about, but given that for 23 years our courts and our negotiations have not been able to resolve matters, do you have recommendations on how the government can create a mechanism whereby we ensure inherent and treaty rights implementation moving forward, in a fair and just way?

**Mr. John Borrows:** Thanks, Jaime. It's good to see you again as well. That's a great question.

In the Delgamuukw decision, the court decided that there was title that would be recognized in a national group. The content of that title would be fee simple-like. The Tsilhqot'in case showed that there would be beneficial interest in the land that the first nation would exercise. Those activities would not be limited to traditional activities, but would include the surface and the subsurface rights.

The court also made the point that there was an inherent limit on title, that you couldn't destroy it such that future generations could not benefit from it. The Delgamuukw case set the table for the Tsilhqot'in case to recognize this broad interest in a national group, as has been described.

In terms of mechanisms for recognizing that, we don't have to go back just 23 years; we can go back 250 years. The Royal Proclamation of 1763 said that lands would be reserved for Indians until such time as there was an agreement in public to transfer or share those lands with those who would be coming to live amongst them. We have good broad notice 23 years on, 250 years on, that land remains vested with the Indians until such time as there's an agreement that says otherwise. That has not occurred within the territory.

The point, then, is to incentivize the internal dispute resolution mechanisms of the Wet'suwet'en, as Theresa was talking about, to ensure that people within that nation, by their own laws, can make decisions about how those lands can be used and occupied and be responsibly taken care of.

The notion of using indigenous law for these purposes is something that the courts have recognized in a case called *Van der Peet*. They said “a morally and politically defensible conception of aboriginal rights will incorporate both legal perspectives”, meaning the perspectives of the common law, the Constitution, as well as the perspectives of indigenous peoples.

As you create these intersocietal dispute resolution mechanisms that will incentivize the internal laws of the *Wet'suwet'en*, you can do that through UNDRIP, which would, through statute, be opportunity to create agreements—as the British Columbia legislation itself recognizes—to facilitate the implementation of those rights.

UNDRIP is an economic development instrument. Sometimes people mistakenly think that it's about blocking development. Rather, it is trying to democratically figure out what free, prior and informed consent means. It's not a veto, but it is the right to say no. If the community says no, then another process has to kick in that ensures that the honour of the Crown is taken care of if free, prior and informed consent is not reached.

The notion of the indigenous peoples' own laws that would inform the intersocietal dispute resolution mechanisms means that indigenous peoples have the right to be free, that is, to be different from other Canadians in their nations in accordance with their laws. They also have the right to be different from one another within their nations, because what law within a nation does is that it allows you to disagree agreeably. What Theresa is asking for is this idea that when people are engaged together, they could disagree agreeably.

I'm going to refer you to the *Wiikwemkoong* nation constitution in closing here. They have principles of natural justice, which mean, as follows:

that a person has the right to know the allegations being made against them, they have [a right] to defend themselves and that a fair decision will be made taking into account all of the relevant evidence put before the Justice Counsel;

Reasonable Limits not exceeding the limit prescribed by law, not excessive;

Conflict of Interest occurs when an individual organization is involved in multiple interests, one of which could possibly corrupt the motivation for an act in another.

The point I'm making here, by drawing on the seven grandmother and grandfather principles or citing the constitutional provisions around conflict of interest, reasonable limits or principles of natural justice, is that first nations can be incentivized to make decisions that have clarity attached to them.

• (1305)

There will be differences, just as Quebec is different from Alberta, and just as the federal government might have a different opinion from what's happening in the territories. You construct confederations in which you can get answers to those questions that arise from difference, but you need proper procedures and proper principles to do that, and indigenous law is a part of that network.

**The Chair:** We're at time right there. Thank you very much.

[Translation]

Ms. Bérubé, you have the floor.

**Ms. Sylvie Bérubé:** Mr. Cardinal, I want to thank you for your presentation.

Obviously, we can't change the past, but we can shape the future. We mustn't “waste” this crisis. We must understand the mistakes of the past so that we don't repeat them in the future.

Mr. Cardinal, how do you think that we can avoid “wasting” the crisis? What's causing the crisis? What could have been done to prevent it?

**Mr. Éric Cardinal:** We must indeed learn from this crisis to prevent it from happening again.

As I said earlier, if the fundamental issues surrounding the land rights and governance of first nations and nations aren't resolved, this type of crisis could happen again, although it may take other forms. The *Wet'suwet'en* Nation's situation parallels the situation in a number of other nations and in several parts of the country.

We must review how agreements for the recognition of land rights are negotiated. It makes no sense that unceded traditional territories have been the subject of territorial negotiations for 40 years without any agreement reached. The agreement on the recognition of land rights would also resolve the issue of internal political governance.

We can take the example of the James Bay Cree, who signed a modern treaty in 1975. Their political system and governance reflect the traditional normative orders that the Cree had. Think, for example, of the tallymen and the councils that may differ from band councils.

As a result, for several years now, the James Bay Cree territory has been developing in partnership and under joint management with the governments of Quebec and Canada, and with businesses. The territory has no legal uncertainties, or at least, far fewer uncertainties. It's much easier to carry out projects while respecting the rights of the Cree Nation, in this case.

• (1310)

**Ms. Sylvie Bérubé:** Mr. Cardinal, what do you think of the federal government's comprehensive land claims policy?

**Mr. Éric Cardinal:** As I said earlier, the policy is outdated. In any event, everyone acknowledges this. The current policy dates back to 1987, if I'm not mistaken. The policy is ineffective and it doesn't help achieve the objectives. Basically, the reason is that the federal government is both judge and jury, but also that the objectives aren't the same.

For the government, the objective is to ensure legal certainty, simplify rights regarding territories and freeze agreements over time. For first nations, the objective is the recognition of their rights. They no longer want their rights taken away. Instead, they want recognition. They see treaties as things that evolve and that can change over time. Already, from the start, the objectives aren't the same and are sometimes contradictory.

This process actually makes negotiations very difficult, especially when the issues are complex and the territory is urbanized. Most modern treaties are signed in northern territories, where there's less urbanization. This makes negotiations a little easier. However, negotiations are much more difficult in more urbanized territories, because the policy states that third-party interests must be taken into account, obviously.

The current system makes it impossible for this process to work. The public servants who manage programs and policies proceed according to directives and administrative procedures, whereas treaty negotiations are a political process. There must be a political discussion, but it must be conducted on a basis of equality and not in a power relationship that favours one side over the other.

That's why we need an independent mechanism. It could be both an independent political process and an independent legal process, such as a tribunal. We're thinking of the Specific Claims Tribunal. However, there could be a tribunal for the recognition of aboriginal rights, similar to the Waitangi Tribunal in New Zealand, for example.

**Ms. Sylvie Bérubé:** Given the land claims of the first nations in Quebec, do you believe that we could face crises similar to the one in British Columbia?

**Mr. Éric Cardinal:** This type of crisis is very likely to happen again, absolutely.

As I was saying, large territories are still unceded by various nations. In Quebec alone, most first nations haven't signed a treaty with the Crown, so they're still in the process of making land claims. On these territories, some projects can be contested. If there's no recognition of title, the first nations have difficulty asserting their interests and having their rights to the territory recognized. To protect their rights and their territory, they must either go to court or oppose the project on the ground.

If we don't create a framework that promotes dispute resolution and rights recognition, I'm concerned that this type of crisis will indeed happen again.

**Ms. Sylvie Bérubé:** If the barricades on the railways had been forcibly removed, as some suggested, what would have been the impact of the violence?

**The Chair:** Please keep your response short, Mr. Cardinal.

**Mr. Éric Cardinal:** In short, it would be a bad idea to involve the police or to use force on indigenous territories. It wouldn't be the solution or the way to resolve conflict because it would lead to more conflict and animosity. It would also create conflict between non-indigenous Canadians and indigenous people, which would lead to radicalization among some people and would reinforce the prejudices held by many Canadians against indigenous people. The use of force should be avoided whenever possible.

• (1315)

**Ms. Sylvie Bérubé:** Thank you.

**The Chair:** Thank you.

[English]

We will go to the New Democratic Party. Ms. Gazan, you have six minutes.

**Ms. Leah Gazan:** I will be splitting my time with Ms. Ashton.

I wanted to start with a question for you, Ms. Tait-Day. Thank you for being here today. I wanted to start by saying that as an indigenous woman, I echo your concerns that often our voices are muzzled. It's a fine time that our voices are lifted up. I wanted to honour that and honour that experience.

I know that you mentioned that the current relationship with the hereditary chiefs has had issues that reflect the patriarchy, but as you know, the Indian Act structure is also reflective of patriarchal domination. It continues to contain policies that continue to violate the human rights of indigenous women.

This is my question: In stating this, do you believe the way forward is to get rid of the Indian Act and replace it with the human rights contained in the United Nations Declaration on the Rights of Indigenous Peoples? That also includes the right to self-determination over our economic, social and cultural development.

**Ms. Theresa Tait Day:** Absolutely, I do agree with that. You have to remember that we have been living in a state of oppression for 150 years. It's going to take a long time for people to have the ability and the confidence to move out of that oppression. We haven't had that. Instead, we are being oppressed by these males who want to make decisions for the entire nation and to leave women out of that dialogue. That is not our way. They have changed the way they do it. They have actually bullied our women. They have taken the names of three of our women. They say they've taken mine, but they haven't; I am a hereditary chief. Names are passed through the family. You cannot go and take somebody else's name and call yourself a hereditary chief. That's not how it works.

The problem here is that.... What we need is something like the Cree example, where they have a governance system in place. We need a governance system that is inclusive of our nation.

**Ms. Leah Gazan:** I would agree. I would also mention that that particular system—that whole framework—is within the United Nations Declaration on the Rights of Indigenous Peoples.

**Ms. Theresa Tait Day:** Yes.

**Ms. Leah Gazan:** I say this because I find that this country has a history of colonial interference that causes conflict within communities. Do you think that the government should stop interfering with this process and allow the Wet'suwet'en peoples to make decisions on their own?

I say that because I'm wondering if this would have even been brought up as a motion about the hereditary chiefs if they were the ones supporting LNG, not the Indian Act chiefs. I see that conflict occurring. It's disturbing. I want to hear your thoughts about that.

**Ms. Theresa Tait Day:** I believe our communities and our nation need to work toward a governance model. That is true, but we're facing historical oppression. I think we need to work that out before we can even come to a decision about how we're going to manage ourselves. We cannot have these males telling us that this is the way forward. We agree on aboriginal rights and titles, but it has to be a process.

**Ms. Leah Gazan:** I totally agree. I would say the same patriarchal human rights violations need to stop against indigenous women in the Indian Act.

I'm going to pass it over to my colleague, Niki Ashton.

**Ms. Niki Ashton:** Thank you to all of the witnesses here today.

My question is for you, Dr. Borrows. Many of us have reflected on how this is a moment in history that outlines the way in which the federal government has disrespected the issues of land and title in this specific case. It also shines a light on the way in which so many rights around land and title are still unresolved.

Could you perhaps reflect on how important it is for the federal government to not just get this right, but to get it right when it comes to all first nations across this country?

I know you did speak to the importance of the UN declaration—I'm very proud to be part of a political team that has championed this—and how important it is to not water down the kind of framework that the UN declaration provides, including the importance of free, prior, and informed consent, including acknowledging the right to land and title. I'm wondering if you can speak to how important it for us to get this right and move forward.

● (1320)

**The Chair:** You have a minute or so. Thank you.

**Mr. John Borrows:** This is a groundbreaking moment. The United Nations Declaration on the Rights of Indigenous Peoples provides the principles and processes to be able to get it right. The recognition of nations can occur through the declaration in a way that would allow for communities to deal with the local and often widespread sexism and lateral violence. That would incentivize communities to take the steps they need through time to get out from under the Indian Act. It's not a threat to economic development. In fact, there will be easier ways of approaching communities if, rather than going to 634 bands, they consolidate their relationships with one another. There would be a clarity that surrounds that.

It's also the case that it's not just rights and title that can carry us forward, as the courts have identified them. We need statutory direction as well to obligate the government to live in accordance with those principles. For me, that declaration is a path forward.

I read an op-ed in The Globe and Mail yesterday from Brian Palister suggesting that the declaration could take us away from economic development. I think the reason we're in the circumstances we're in is that the current law is not working. If we were to bring forward the human rights instrument, that would be the path forward. I've been trying to explain that when indigenous peoples exercise their own laws, in the case here of the Wiikwemkoong, there are principles and processes that guide this that are respectful, humble, truthful, brave, loving, honest and wise. I appreciate those ex-

amples that come to us from coast to coast to coast when indigenous peoples can exercise their own laws.

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

Thanks to all of our very wonderful witnesses today. This was very revealing and helpful.

We have other committee business to do, we're well over time and some of us need to be in other places. We'll thank our witnesses today for joining us and we'll move on in just a moment to the remainder of the committee business.

Thank you.

● (1320)

(Pause)

● (1325)

**The Chair:** Let's get to committee business as agreed.

With adoption of the second report, we will proceed to committee business to discuss the future work of the committee on its studies.

Mr. Anandasangaree.

**Mr. Gary Anandasangaree:** Mr. Chair, I think this was a very informative discussion today. I propose that we pause this discussion and return to the study that we had agreed to, which is on nutrition in the north. I realize that the analysts have put together some witness panels, so it will be good to follow up on that and continue that work.

**The Chair:** Okay. Is there any response?

Mr. Zimmer.

**Mr. Bob Zimmer:** With respect, we have just started to see the tip of the iceberg with chiefs speaking this morning, and with only one round of questions, I had no time. I've been a former chair.

I think it warrants more witnesses, especially to hear a more fulsome conversation, being that this is—with the exception of the collapse in the markets and the rest of it—the issue of the day. People want to hear what's being done about it.

I would propose.... We talked about six meetings, but it went down to one. I think we need to do some more. I know time is short, though.

● (1330)

**The Chair:** If I could weigh in, we have put together a possible plan for food security. It may be the most critical thing for the people in distant places with regard to the current situation with coronavirus, with flights changing and so on. My suggestion is that the best thing we could do for the people whom we are concerned about is to get to the food security study, because other events will occur with regard to the other conversation. I think it's a very worthwhile conversation—I really appreciated the guests—but if you were asking me, I would want to get this.... I was the mayor of a municipality, and we got things done more quickly. I think we can do something more quickly than solving the crisis that we heard about today. That's my thought.



Does anyone else have something to say?

Yes, Pam.

**Ms. Pam Damoff (Oakville North—Burlington, Lib.):** I have a brief comment. I think you're talking about suspending the study. Is that correct? Is that what...? That would allow the Wet'suwet'en people to have the space they need to be able to do what they're doing, and then we'd come back to it when there's actually a resolution there. Then you could move on with your nutrition in the north study.

**The Chair:** The suggestion is that we move on with nutrition in the north and have a suspension of the previous one.

Who would like to speak?

Mr. Schmale.

**Mr. Jamie Schmale:** Thank you, Chair.

I do agree with Bob. I understand what Pam is saying, as well, regarding the conversation that needs to happen internally.

Having said that, we have a constituency week next week. We have the ministers this Thursday. That would give almost two weeks' space before our next meeting, which would be March 20-something.

**The Chair:** It's March 24.

**Mr. Jamie Schmale:** Recognizing what Pam has said, that does give that two-week leeway. I agree with Mr. Zimmer in terms of the amount of time we had to question. Unfortunately we just got one round, and I know things were busy and this isn't to blame anyone. I think it was a good conversation, but I think it has to continue.

Having said that, I guess it's up to our friends in the Bloc and NDP and what they want, too, so I'd like to hear from them as well.

**The Chair:** I have a speakers list, but you go ahead, please, Ms. Gazan. Then I'll get to Mr. Anandasangaree.

**Ms. Leah Gazan:** Thank you, Chair.

I wanted to mention that I agree with suspending the study for a couple of reasons. One, even the title in itself is very divisive. I think even the way that witnesses are being called forward is really counterproductive and divisive in terms of actually being able to support, first of all, if we're talking about—I know a lot of people are talking about rights—the human rights of the Wet'suwet'en people to make decisions, self-determined decisions. I think it's really critical that we suspend the study. I think we've heard enough—I've certainly heard enough today.

**The Chair:** Mr. Anandasangaree.

**Mr. Gary Anandasangaree:** I think when this study was initially proposed it was a response to what is going on, just to get an update, first and foremost, from the ministers who are involved in this, as well as some experts. They all represented themselves very well today in the expert testimony we received.

We can dissect many elements of this. I think history books will be written on what's happened in the last four to six weeks. The challenge for us in continuing this discussion in this form and in this forum is that I think it derails us from the work this committee needs to do. Issues that are brought up can be addressed through,

perhaps, the public safety or justice committee, or many other committees. For the purpose of what this committee needed to do, I think today was a very important day to highlight that. The next steps for us—I'm not suggesting that we fully stop the study, but that we pause it for a period of time until things are settled. We can definitely brainstorm what elements of this committee should study. Is it the issue of hereditary chiefs, or the overall structure of the different elements of leadership that exist, that we need to respect?

We could do other things later on, but at this point I think this particular discussion has served its purpose. Let's move on to what I think are very critical studies we agreed to going forward. That's where we're at.

• (1335)

**The Chair:** Madame Bérubé.

[*Translation*]

**Ms. Sylvie Bérubé:** I agree with Mr. Anandasangaree. We heard from witnesses. Sometimes their comments were somewhat similar, but not always. We'll be taking a break on this issue. If necessary, we'll discuss the issue again at the Standing Committee on Indigenous and Northern Affairs.

[*English*]

**The Chair:** Could we agree, then? I seem to be hearing that we can move on to our next study, notwithstanding the importance of what we had discussed in the previous go-round.

I'll suggest that at our next meeting on March 24 we begin working on the food security study.

**Mr. Jamie Schmale:** Do we need to vote to suspend the current study, or is that a decision of the chair? If not, I do have a quick motion on the food security study. I don't know if we have to finish before we start a new one.

**Mr. Gary Anandasangaree:** Perhaps I'll move a motion, Mr. Chair, seeking support from other members, asking that the study that commenced today be suspended until it's brought back.

**The Chair:** Okay, that motion is on the floor.

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

**The Chair:** We'll suspend and move on.

Now, Mr. Schmale, you have a further motion.

**Mr. Jamie Schmale:** Yes. Sorry, Chair, I know the time is tight, but I'd like to move a motion that all witness lists be presented to the committee as submitted, not just the list that was produced by the Library. I think we need clarification and more information on who was chosen and who was not. I put forward the motion that the lists of all witnesses submitted by all parties be tabled to the committee.

**Mr. Gary Anandasangaree:** Can I ask for clarification? We haven't finalized the witness list, to my understanding, right?

**Mr. Jamie Schmale:** I thought it was.

**Mr. Gary Vidal:** It's in a report.

**Mr. Jamie Schmale:** It's in the report. Was I wrong, or...?

**The Chair:** We haven't finalized it.

**Mr. Gary Anandasangaree:** My understanding is that it's a suggested list that's still subject to being finalized by us as a committee.

**Mr. Jamie Schmale:** The concern we had is that I thought it was approved, but if it hasn't been, the proposal we saw only included two of our witnesses and other parties did not have theirs finalized.

**Mr. Gary Anandasangaree:** Perhaps we can hear from the analyst.

**Ms. Marlisa Tiedemann (Committee Researcher):** For any study, the Library is going to prepare a proposed witness list, which can be used by the members as they're putting together their own witness lists. The timelines here were a little backwards in that members submitted their witness lists prior to the Library's list going out. We have not finalized anything; those are simply for your consideration.

For us to go through and slot witnesses into a work plan, we need to know if the committee wishes to have the study for six, eight or 10 meetings.

Different committees have different processes for determining how to slot witnesses into the work plan. On some committees it's strictly proportional, based on party. For that we would then go through the witness list that has been submitted by each party and slot the witnesses into the work plan.

Our understanding is that nothing has been finalized. The list that was sent by the Library of Parliament is simply a list of witnesses

the committee may wish to consider as it's putting the study together.

**Mr. Gary Anandasangaree:** Mr. Chairman, subject to my colleagues, I'm going to suggest that we have a proportional division of witnesses. That will give the analysts some guidelines. Perhaps if you can do a work plan for us with the budget that we can approve at the next meeting, it will allow us to have two or three options for the number of witnesses.

Just a clarification, Madam Clerk, is there a deadline for submissions to—

• (1340)

**Mr. Bob Zimmer:** I have a point of order.

We're way past time. If we're going to talk here it has to be brief.

We have question period literally in 15 minutes.

**Mr. Gary Anandasangaree:** My suggestion is that we leave it to the analysts to come back at the next meeting, and we'll finalize the witness list then.

**The Chair:** Okay.

The witness list is not finalized, and we'll have an opportunity to go over it.

We'll move on with food security and suspend the other one?

**Some hon. members:** Agreed.

**The Chair:** Okay.

I'll bring the gavel down.

The meeting is adjourned.







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