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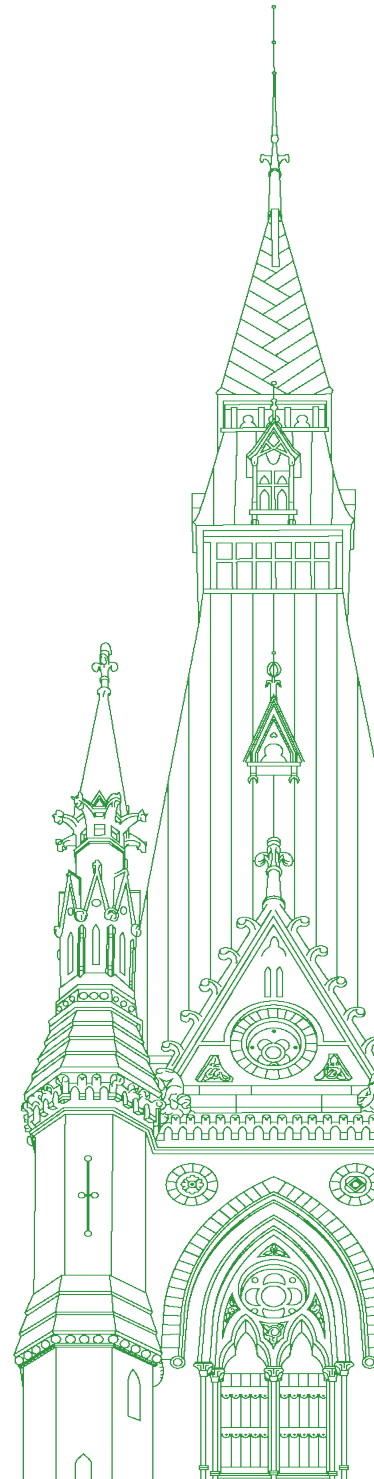
Standing Committee on Indigenous and Northern Affairs

EVIDENCE

NUMBER 064

Wednesday, May 10, 2023

Chair: Mrs. Jenica Atwin



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• (1630)

[*English*]

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

[*Translation*]

Welcome to meeting number 64 of the Standing Committee on Indigenous and Northern Affairs.

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

The proceedings will be made available on the House of Commons website. For your information, the webcast will always show the person speaking rather than the entire committee.

[*English*]

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

You may speak in the official language of your choice. Interpretation services are available for this meeting in French, English and Inuktitut. You have the choice at the bottom of your screen of floor, English or French, and I would encourage you to select that now.

If interpretation is lost, please inform me immediately, and we will ensure that interpretation is properly restored before resuming the proceedings—

The Clerk of the Committee (Vanessa Davies): Madam Chair, I'm so sorry to interrupt you. Somehow, we are in camera and we need to switch over the technology.

The Chair: Okay. We will briefly suspend.

The Clerk: Thank you.

Please proceed, Madam Chair.

The Chair: Okay.

For members participating in person, proceed as you usually would when the whole committee is meeting in person in a committee room.

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

[*Translation*]

Please address your remarks through the chair.

[*English*]

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

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

I would like to ask the committee to consider the adoption of a budget for the restitution of land studies. That will be our first item of business today. You should have all received it by email. It covers costs related to our meetings, including witness expenses, meals and telephone lines.

I would ask for your agreement now.

Some hon. members: Agreed.

The Chair: Second, there has been some interest in having an informal meeting at the offices of the Native Women's Association of Canada on June 21 to celebrate National Indigenous Peoples Day. In order to have an off-site meeting, we would have to prepare a travel budget that would cover transportation and interpretation services.

Is it the will of the committee to participate in such an event and instruct the clerk to prepare a budget?

Some hon. members: Agreed.

The Chair: Great. We will pursue that.

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

Today we welcome Dr. Ellen Gabriel, as an individual, by video conference. We may also be hearing from Dr. Hayden King, executive director of the Yellowhead Institute, who may be joining us shortly.

Dr. Gabriel, you can begin with five minutes of introduction.

Thank you.

The Clerk: Before we start, Madam Chair—I'm so sorry to interrupt—Dr. King won't be joining us. He doesn't have the proper equipment for the meeting.

The Chair: Okay. Thank you.

Dr. Gabriel, you will be the only one on the panel, but I'll be very conscious of your time and energy. I'll watch the clock carefully, and if we have to shorten things up, that's what we'll do. Certainly signal if you need a break or anything.

Would you like to proceed with your five-minute introductory comments?

• (1635)

Ms. Ellen Gabriel (Indigenous Land Defender from Kanehsatà:ke, As an Individual): I want to clarify that I am not a doctor. There is just Dr. King.

I am going to greet you in my language.

[*Witness spoke in Mohawk*]

[*English*]

I wanted to greet you in my language, because that is one of the things related to land.

I just want to alert the translators that I might be veering off-script. Thank you.

As indigenous people, we have been living on reserves. These are tiny, postage stamp-sized pieces of land the government has allowed us to live on and set aside for us, yet settlers and their governments still want to chip away at our homelands. Our traditional homelands are millions of square miles, not a few square miles. "Land back" is about restoring our indigenous laws and relationship with mother earth, ourselves and all our relations.

If I may, I will begin by talking about what is happening in my community of Kanesatake. Last week, Radio-Canada described how Kanesatake is, for all intents and purposes, a failed state. This is due to the collusion of the federal, provincial, municipal and band council governments to deny us our rights to our lands and to steal our lands and sell them. Anonymous and brave souls in the community felt the need to hide their identities to denounce the gunfire and intimidation, and the incapacity of the band council to apply the law in the face of extensive organized crime. We know there are many things involved in this case.

I want to say that Kanesatake has been abandoned by those who purport to uphold the rule of law. Whether it is on the land issue, dealing with multi-generational trauma or addressing the lawlessness in our community, the federal, provincial and municipal governments have thrown their hands up, so we live in very precarious, uncertain and unsafe communities.

The fact is that, since the government has surrendered our community to organized crime and allowed gangsters to shield themselves behind the appearance of defending indigenous sovereignty, it is our responsibility to try to create some kind of governance and cohesion, which is impossible in the current state. For most of my life, I have been fighting for our land, culture, language, self-determination and human rights.

This brings me back to land back. Land remains the foundation of indigenous languages and cultures, and it's the basis of our relationship to all our relations. It is, in essence, the pillar of our identi-

ty and governance structure. Any serious land back program determined to truly restore the dignity and health of indigenous communities must situate land returns within a broader multi-generational and intersectional approach of restoring relationships, culture and language within indigenous communities.

In 1985, when indigenous women who had lost status due to marrying non-indigenous men regained their status under the Indian Act, there was no compensation or extension of our reserve lands to accommodate the thousands of individuals who'd regained status and wanted to live back in their mothers' communities. In fact, our population, as indigenous people, is the fastest-growing, yet our land base has remained unchanged since the creation of reserves. If we contest development, we are incessantly forced into costly colonial court systems necessitating lawyers who uphold colonial laws. As land defenders, we do not have the budget to do this, so we are considered the troublemakers in our communities.

I have spent my life denouncing and fighting the Government of Canada, because it is stealing our land, but I will open my hand to anyone....

When we defend our rights, we are criminalized. Conversely, I will fiercely denounce a PR-driven approach to piecemeal token gifts that satisfy Twitter #LandBack slogans without understanding the deeper context wherein such a project would become truly transformational. The right to free, prior and informed consent is relentlessly under attack, diluted to a right to consultation in the service of those who want to profit from the theft of indigenous peoples' homelands. Let us not allow land back to follow the same path.

That this situation is difficult, complex and dark does not mean it is hopeless. Indigenous peoples have found hope in hopeless places since settlers arrived on these lands. Serious, long-term work is needed, and it can be done together.

In closing, I would like to recommend that there be an independent investigation of Canada's, Quebec's, Oka's and the Mohawk Council of Kanesatake's collusion to defraud the Kanienkehaka of Kanesatake of our homelands and human rights. I'll ask this question: Whose sovereignty are we protecting, if there is a double standard applied to the human rights of indigenous peoples and our rights to self-determination?

Skén:nen. Thank you.

The Chair: Thank you, Ms. Gabriel. It is an honour to hear from you.

We will begin our first round of questions, beginning with the Conservatives and Mr. Schmale for six minutes.

Mr. Eric Melillo (Kenora, CPC): I'm actually going to jump in—it's Mr. Melillo, Madam Chair—as long as you're all right with that.

● (1640)

The Chair: Yes, I am. Please proceed.

Mr. Eric Melillo: Even if you're not, I think I'm going to do it anyway.

Thank you very much.

Thank you to our witness Ms. Gabriel for being here.

We appreciate your testimony so far. Obviously, this is a very important conversation. I want to thank you for making some time to be a part of it here today.

A question arose locally for me.... I come from Kenora, Ontario, in the district of Kenora. There are 42 first nations within that electoral district across Treaty No. 3, Treaty No. 5 and Treaty No. 9. One of the big concerns I continually hear is how difficult it is for the nations to develop and build on their land. They are struggling to grow. They are limited, as you mentioned—I don't remember the exact terminology you used—to that small square of land.

In northern Ontario, we have no shortage of land. It's all around us, but it's quite difficult for the first nations I have the honour of representing to access that in order to expand and grow. As a result, of course, many people have to leave their communities. Sometimes, they end up in large urban centres and a completely different world that unfortunately leads to a number of other challenges—but that is an aside.

The point of the question I want to get to is this: Obviously, we're having a very broad discussion on land back, in terms of the growth of first nations and those additions to reserves. I also know that it's an incredibly long, drawn-out process. Do you have any thoughts around that, specifically? How can the government help make that a much easier process, so that first nations can have access to the land—a lot of it was traditionally theirs in the first place—in order to grow and expand?

Ms. Ellen Gabriel: That's a good question, and I think it's the \$22-trillion question.

We're talking about politicians who are concerned about their constituents' priorities, and indigenous people are not the priority in Canada. It's pretty evident. We have spoken about the return of lands, which includes national parks. I live in a community that is the oldest existing Mohawk community. It was there long before Europeans arrived. We have Oka National Park. The government has stated unambiguously that this piece of land is not part of the discussion for land back.

Our traditional homelands need to be accessible. We need to have a say over what happens on those lands, but we need to have the restoration of a community land base that provides sustainable development and sustainable economic security, and also food security—not just for us humans. We hunt deer and moose, and we fish. Where I'm from, you can't do any of that anymore because so much land has been taken for development.

If the federal government and provincial governments want to chip in together to buy back land that should never have been out of our hands, that is a reconciliation action they could do. However, we are always forced under a racist guide. Where I come from, the neighbouring municipality of Oka sees us as villains and criminals. Villains and criminals exist in and outside the community. We are trying to restore a traditional land base use and a guarantee of that. It would be something you could include in any sort of discussion, but it always goes back to colonial laws. It needs to incorporate indigenous laws and how we take care of the land.

I don't know whether that answers your question.

Mr. Eric Melillo: Certainly, I really appreciate that.

One of the things you mentioned that was particularly interesting to me was food security. I think that is something that's maybe not necessarily intuitively a part of this, but certainly, as you mentioned, it's a very important part. I know that many of the nations that fall into my district have one store they're able to shop at, and their prices are inflated. They rely on their firearms. They rely on hunting to be able to go out on the land and provide for their families.

I don't have much time left, so maybe I'll just stop my comments there.

Could you speak more to the food security aspect and how important being able to hunt on the land is?

● (1645)

Ms. Ellen Gabriel: Yes, hunting and fishing are ways, especially, as you know, with the high cost of living and because of pandemic shortages.... This is a multi-generational issue. To be able to hunt, you need to have access to the land. National parks on our traditional territory prevent us from having access to those traditional ways of life that are part of food sovereignty.

Also, within the forests and the lands are our traditional medicines that help us keep healthy mentally, spiritually and physically. Those are being destroyed by development, condos, resource development or fishing. The waters are polluted from raw sewage or whatever waste is going into those waters. Everything that could be possible in, say, a northern community is not applicable to my community. You need to be aware that it's not one-size-fits-all.

The Chair: Thank you, Mr. Melillo.

We'll now go to Mr. Battiste for the Liberal Party for six minutes.

Mr. Jaime Battiste (Sydney—Victoria, Lib.): *Kwe.*

Thank you, Ms. Gabriel, for being our first witness in what I think is an historic study on land back.

I can't help but reflect that I was 10 years old during the Oka crisis, where land was of dispute. That got national recognition.

To be a Mi'kmaq member of Parliament 33 years later asking a Haudenosaunee questions around land and restitution of land is, I think, a very great sign of the progress we have made in Canada, but there's still so much work to be done.

In starting the basis for a foundation of land back, I understand that the Royal Proclamation of 1763 forbade settlers from claiming land from the aboriginal occupants unless it had been first bought by the Crown and then sold to the settlers.

To your knowledge, in your communities and in surrounding nations, was land ever purchased or ceded to nations in the pre-Confederation treaties?

Ms. Ellen Gabriel: I should preface by saying that I'm not a treaty person. The Haudenosaunee people are not treaty people. We had treaties like the Two Row Wampum treaty, which is referenced quite often. We know the royal proclamation did not include Quebec, so that doesn't apply here.

In regard to how land is used by the Haudenosaunee people, it's the women who hold title to the land. It's this rupture of the family unit that has caused colonization to attack, not just the family unit but the land itself. We look at how the land has been destroyed and contaminated. This is what's happened to indigenous people. You could see it as a symbolic representation of what has happened to the identity of indigenous people.

The foundation for me is not colonial laws. The foundation for me is *Kaianere'kó:wa*, the Great Law of Peace. That teaches us how to work with the land, to love the land, to love our relations and to try to find peaceful ways for resolution, but the way this current system exists makes it impossible. It's impossible because not only is it costly with lawyers and a lot of people do not have the resources, but the land, which is a huge part of our identity—in fact, it's the pillar of our identity—we're losing more of that land so that future generations are not going to be able to enjoy it.

In my community, we are still fighting for those same pieces of land. Oka still claims that land. They are still playing golf on that eight-hole golf course. We have not even come close to a solution.

When I spoke to Marc Miller about the organized crime, the lack of safety and the vulnerability of people like me and others, he said that we can't do anything, but we can't not do anything. To me, this is really evidence of the lack of goodwill that is needed to talk about what it means to have land back.

• (1650)

Mr. Jaime Battiste: Ms. Gabriel, to follow up on the question that I asked, to the best of your knowledge, did your nation ever cede, surrender or sell the land that was originally bestowed upon them?

Ms. Ellen Gabriel: To my knowledge, no, none of that land was ever given away or ceded. In fact, we lost a lot of lives to that, especially after the War of 1812 when our community's population was decimated. Twice in my community, we had smallpox outbreaks, thanks to the British.

Mr. Jaime Battiste: Thank you, Ms. Gabriel.

I'm glad you brought up the indigenous knowledge and the peaceful way of resolution. Do you think that the idea of land back is something we should be fearful of in Canada?

Ms. Ellen Gabriel: I have a question for you. Why would you be fearful?

Mr. Jaime Battiste: I'm Mi'kmaq. This is for everyone else, if you could answer. Should Canadians be afraid of indigenous people looking at land?

Ms. Ellen Gabriel: It's a very complex issue to say that....

No, you shouldn't. We don't want the keys to your house, but we also want to stop the theft of our lands. If you feel that is a threat to your safety, think of how we feel when we look at all of the land that's been taken under the guise of the rule of law.

Should you be fearful? Only if you do not believe in human rights, only if you do not believe in peace and only if you believe that you are superior to indigenous peoples, just as the doctrine of discovery touted for all of the monarchs in Europe.

Mr. Jaime Battiste: Thank you very much.

The Chair: Thank you, Mr. Battiste.

[*Translation*]

I will now give the floor to Ms. Bérubé, from the Bloc Québécois.

You have six minutes, Ms. Bérubé.

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

I would like to thank Ms. Gabriel for her testimony.

As we begin this study, Ms. Gabriel, I have to say that you have broken the ice. The start of a study is always very exciting because we know we will be welcoming witnesses from all over, each of whom will provide a different point of view.

I am replacing my colleague Marilène Gill at committee today, and I am always pleased to attend.

My riding covers northern Quebec, about 800,000 square kilometres or about half of Quebec. It includes a number of Cree, Inuit and Anishinabe people, as well as various other indigenous communities. In my riding, there are problems relating to food security and the suicide rate in Eeyou Istchee, not to mention climate change, which is resulting in changes to ancestral customs and a lot of isolation.

There are also a lot of transportation problems, both on land and by air. Further, we must not forget the missing and murdered women, and that the calls to action have not yielded much progress.

Indigenous issues are particularly important to my, for the reasons I just stated. Even if there are different issues in your community, remoteness is still a heavy burden in my region, as I said. There are challenges related to construction costs, transportation and materials.

Please tell us about the problems you are experiencing right now that you did not have the opportunity to mention earlier.

[English]

Ms. Ellen Gabriel: There are several issues.

When developers come into the communities, there is an old uranium mine that was closed in 1980 that a company wants to open up. Included in the consultations are our neighbouring Québécois. What we need to really examine are the original title holders to the land, which are the women of the Haudenosaunee nations, the nations whose traditional territory this belongs to, and that free, prior and informed consent is not being practised. The governments, be they provincial or federal, just seem to go through the motions until they get the answer they're looking for.

When I think about the abandonment of the people here in my community by the federal and provincial governments and by the authorities, in regard to the organized crime here, I think about what we need to do to get their attention and say that our issues are as important as a war in Ukraine. Our issues are as important as the lawlessness in Haiti. Why isn't the government spending time trying to address the issues that it has in its own backyard?

We still have a developer who is taking land, and who sold land, knowingly, after we had spoken to him. We have no access to alternative dispute resolutions. We always have to go through the band council. The band council is a colonial-created construct. I belong with the Haudenosaunee people, which is a traditional government that predates European arrival.

In 1924, along with the potlatch ceremonies becoming illegal, traditional governments were criminalized. You passed a law in Parliament, last year, in June, to implement the UN Declaration on the Rights of Indigenous Peoples. It's not about a two-year study. It's about a law that is not being respected by provincial, municipal and federal governments, and by band councils.

Those kinds of things all go back to human rights, and we shouldn't be looking at this as an economic issue. This is an issue that spreads not just through human rights. As you mentioned, how do we get indigenous knowledge to protect the environment and to address the issues of climate change?

The UN has stated many times that it is indigenous knowledge. Therefore, why are we still disputing whether there's relevance in indigenous laws or whether we should even examine indigenous peoples' human rights? It's not just up to environmentalists. This is what essentially is at the root of many indigenous peoples' philosophies and ways of life. How do we use the land today so that seven generations from now they can still use it?

• (1655)

[Translation]

Ms. Sylvie Bérubé: You are raising some very important points. We know what is happening in Canada right now. Witnesses have given examples from other countries that the federal government could draw on.

Are you familiar with any examples of land restitution?

[English]

Ms. Ellen Gabriel: I'm sorry. I can't.

We need to think creatively when we're applying this sort of idea to Canada and the provinces. In Canada, you have federal and provincial jurisdictions, and indigenous jurisdictions have not yet been included, so how do we work through that? We need to think outside the box.

I'm sorry. I'm not sure if there are really great examples. I know the Maori in New Zealand have progressed quite extensively in regard to land back. There really aren't a lot of examples, other than centuries-old reserves set aside for indigenous peoples.

This is where I think that, if we are to resolve this issue, we need to have a true partnership. It's not just a partnership that ticks the box that we were in the same room together. We need a partnership that really understands fundamentally what indigenous law is actually about. You have to take that colonial thinking cap off and be open to the ideas that my ancestors were trying to tell your ancestors.

[Translation]

The Chair: Thank you, Ms. Bérubé.

[English]

I will now move to Ms. Idlout for six minutes.

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

First, of all thank you.

I would like to highly recommend Dr. Hayden King to be invited to the next session. I would have loved to hear what he would say. Please invite him again.

Ellen Gabriel, thank you so much for your presentation. It's very good to see you again. What you have just presented is extremely important. Unfortunately, you have had to experience very difficult situations.

I have a question for you. For the recommendation you posed earlier, could you please explain why you made that recommendation, so we can understand better how important it is?

• (1700)

Ms. Ellen Gabriel: Thank you, Lori, for this question.

It's an important question because the reason I made this recommendation is that we are not getting anywhere using Canada's so-called justice system or with Indian Affairs or the rebranded Indigenous and Northern Affairs Canada.

There is a constant deference to the band council, which has weak leadership, as you know. They have thrown up their hands and said that they're not going to do anything about organized crime. They're not going to do anything about it because it's too dangerous for them.

There are all these social issues that are happening in my community and still developers are coming in. They are taking our land. There are individual Mohawks who are just taking land without consultation and not following our own laws and our own protocols.

I have been doing this for over 30 years. I have not seen progress in any way, shape or form. The Royal Commission on Aboriginal Peoples came from that 1990 siege of our community. It's all from racist colonial laws. Canada has colluded with the seminary of Saint-Sulpice, bluebloods from France. They've colluded with the Municipality of Oka. They are colluding with the authorities and organized crime in our community—to do nothing. We are distracted by all these threats to our security, yet they still keep taking our land. They keep telling us this message that we are worthless, that we are disposable and that we have no rights to this land.

This system is not working for us. We need an independent inquiry into the involvement of the federal, provincial, municipal and band councils in the situation we find ourselves in today, where we are not safe in our own homes in our community. There's is no such thing as democracy because if you do speak out there will be retribution against you.

I want an independent inquiry investigating Canada's collusion with organize crime in creating the situation we find ourselves in today.

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

Thank you.

On the second question I have for you, I would also like to have Mike Morrice's lawyer also speak out, if you can.

The second question I have for you is on the first nations indigenous legal traditions. Should they be utilized again? Do you have a recommendation for how the indigenous legal traditions could be utilized and/or recognized within the Canadian government?

Ms. Ellen Gabriel: Yes, a long time ago in the 1990s there was something called the Manitoba justice inquiry. They talked about using indigenous laws for restorative justice.

For indigenous laws, I can only speak to the Great Law of Peace, wherein we sit in clans and we talk. We talk until we come to a consensus from all the clans about an issue that is before the people. The way the colonial laws are, you have a time frame and you have a time limit and you are not able to address these things afterwards. It's always based on the timeline of the federal government.

For indigenous peoples, we go by those 13 moons. What does each moon bring us? Today we see the flowers blooming in May.

We are supposed to be taking care of the land. We are stewards of the land. We are title holders to the land, yet how many women do we see sitting around the table when it comes to land negotia-

tions? The lawyers outnumber the indigenous people in discussions. They don't know indigenous laws. We need those elders to be there with us because we are supposed to be looking at how we're living today and our actions today. How do they help the people today, but also how do they help the people in the future?

It's not just about human beings. It's about all our relations: the fish, the water, the four-legged, the birds. Those are indigenous laws, and this is what has been under attack by development, especially resource development and condo development.

I'm rushing because I know there are other questions, but thank you. Those are really important questions.

• (1705)

The Chair: Thank you, Ms. Idlout.

We'll now proceed to our second round.

We have, I believe, Mr. Schmale, for five minutes.

Mr. Jamie Schmale (Haliburton—Kawartha Lakes—Brock, CPC): We do. Thank you very much, Chair.

Thank you, Ms. Gabriel, for being with us today on this very important topic.

Ms. Gabriel, with the expansion of the pipeline into Wet'suwet'en territory, we saw a conflict, and I know you know this well. It emerged between the hereditary leadership and the elected chiefs. Basically on one side or the other how they felt about resource development determined where people landed on that issue.

I totally recognize and agree with you that the Indian Act is paternalistic. It's archaic. It has failed indigenous people, and one day I'd actually like to see it abolished, the sooner the better.

With respect to land restitution and use, how can we be assured that, going forward, we have achieved free, prior and informed consent, especially in nations that have divided support for either model?

Ms. Ellen Gabriel: Yes, that is a really excellent question too, and it's something I've been asked often.

Let's get rid of the Indian Act and then treat us as nations. Treat us as we should be treated, having access to our traditional homelands, which are thousands of square miles for some and millions of square miles for others.

For sure, there is a divide-and-conquer strategy that has been going on for over 500 years. The government, when it suits its needs, will find indigenous peoples who are only too willing to adopt the values of a colonizer, which is that money is the most important thing. For indigenous traditional governments it is important for the people to have a quality of life. It is important for the people to have food sovereignty, to be healthy, but that also means that the land needs to be healthy.

A colonial—

Mr. Jamie Schmale: Ms. Gabriel, can I ask you on that point—

Ms. Ellen Gabriel: The band councils.....

I just want to clarify. Just let me finish this for a second.

The band council was created by the Government of Canada to usurp the traditional forms of leadership. This is who the government chooses all the time, and they say to us, as traditional people, that this is the legal authority we recognize and it is their decisions.

If you look at just my community, one-third of the people who are registered band members actually vote. We have, within that, multiple people. It's traditional versus band council, when it's really a nation. This band council system does the bidding of the colonial governments. It has taken itself out of that canoe of the Two Row Wampum and become part of the colonial government, so they should not even be consulted.

Mr. Jamie Schmale: I would maybe ask for your clarification. When they had band elections, the different bands in the Wet'suwet'en had elections and everyone who ran on a pro-resource development platform won in those band elections.

Wouldn't that be democracy in action? Wouldn't it be those individuals living on reserve, talking about economic reconciliation, who wanted jobs and opportunities for themselves?

Ms. Ellen Gabriel: Is that what's the most important thing? If you take a look at how informed they are, how informed are they? Is there any coercion that is going on? Free, prior and informed consent addresses those, and I know—because I live in communities and I've talked to other people—that there are people who will vote and there are people who will not vote, who refuse to go to these meetings, because they say if we are using the land, if we abuse the land, future generations will not be able to provide for themselves.

Resource development brings in a lot of money.

• (1710)

Mr. Jamie Schmale: In terms of the pipeline—we're talking about this situation specifically—are you saying that those who were in favour of that project were not informed, and those who were against it were the only ones who knew the full story? Is that what you're saying?

Ms. Ellen Gabriel: Not at all, sir.

Mr. Jamie Schmale: I thought I heard that.

Ms. Ellen Gabriel: No, I think what you need to understand is that, when the government says we're going to do consultation, if nobody shows up, they consider that consultation. What resource developers have done in the past is call the band office and ask for the grand chief, the "Grand Poobah", and say we want to do this, do you agree or not? It's just a telephone call sometimes. It's not just on the government's back. It's also on the developers' backs. What is happening is that there's no respect for indigenous law, which says we must fight to protect the waters, the fish, the birds, the lands, everything, so that there is going to be a sustainable way of life in the future.

As it is, the majority of water that we see is either not drinkable so we have to put it through a sewage system.... I'm not going to speak on behalf of the Wet'suwet'en, but I do know that this is not a definition of democracy. This is more a definition of good business practice than anything. Even then it is sorely lacking in good faith

and in goodwill. It is really about the money, and at the end of the day—I'm going to use a cliché—you can't eat money.

Those of us who are land defenders we are viewed as the trouble-makers. We are viewed as the unreasonable ones who don't want to progress. I'm progressing here. I'm here in front of you using Zoom. It's not that I want to live the way my ancestors lived, not at all, but I do want a safe and healthy environment for the children and youth to be able to grow up in. I don't think living beside an oil refinery, or tailing ponds because of resource extraction, is a healthy way. I don't think that attacking the salmon run is also a very smart and intelligent way of using the land.

The Chair: Thank you, Mr. Schmale.

Now I'll go to Mr. Aldag for five minutes.

Mr. John Aldag (Cloverdale—Langley City, Lib.): Thank you.

I want to thank our witness for being here and for sharing your insights and your experiences with us today. It's very important for us to hear a variety of perspectives, including yours.

From the questions we have heard already from members around the table, I think you can see how complex the ridings are that we represent. We have seen Lori, who has a territory with a specific agreement in place. We have large areas like those Mr. Melillo represents, with many indigenous communities. Then we have areas like the area I come from, which is metropolitan suburban Vancouver and B.C.'s Lower Mainland. I think it's probably closer to the situation of our witness. There there's a lot of occupied land, a lot of settled land and not many opportunities for the three land-based nations that live in the area I'm in to seek economic reconciliation and to pursue land back opportunities.

I would like to get some thoughts from our witness: In these metropolitan areas, what are the opportunities for land back? How does that work?

In particular, in your opening statement, you referenced national parks and, again, by way of context prior to my career in politics, I spent over 30 years with Parks Canada in a number of national park settings. I would say that there were some good examples and some not good examples about things like comanagement. I also served on the environment committee, where we did a study on protected spaces and made recommendations to the government on other forms of protected areas—other than national parks—things like indigenous protected conservation areas.

Right now, Parks Canada has been tasked with things like pursuing urban national parks. This is something that I'm very interested in for the area that I represent and in speaking with the three land-based nations—the Semiahmoo, the Kwantlen and the Katzie nations—about what the economic opportunities are and what the land opportunities are.

I would like to go to our witness and see what she thinks. In situations like we live in, these settled areas, sometimes the go-to is monetary compensation, but are there other means of getting land back that may not necessarily be part of an expansion of existing reserve lands or new reserve lands? Is there room for other models?

The last contextual piece I'll give is that, in the study that we did in the 42nd Parliament, there was some information that came from Australia. It talked about how the return on social investment related to protected areas far exceeded the investment that was going into social programs. It actually helped with a lot of healing that needed to happen within the aboriginal community in Australia. They saw that there was a huge return on investment for those who were managing indigenous protected areas.

I'll stop talking now. I would love to get your thoughts on how we pursue land back in these settled areas such as you and I live in. Is there any hope for things like urban indigenous protected areas, perhaps, that could be done in concert with initiatives by the federal government?

• (1715)

Ms. Ellen Gabriel: It sounds like a really complex question. I don't know if I can answer, but I will do my best.

Mr. John Aldag: There's a lot there. I apologize.

Ms. Ellen Gabriel: I live in a small community in which the population has expanded. It's an hour north of Montreal, and we get a lot of tourists who don't even know we exist here.

One of the things I think is a really tiny thing to do with regard to land back and parks is to create names and streets in indigenous languages. It's a really small thing to do. If I go to the Montreal airport, I see every kind of language up there that says "hello" or "welcome", but I don't see any indigenous languages there. It's a really small thing.

You know, it is something that is needed. For the metropolitan indigenous peoples to see that their identity is reflected back in this place, when they've had to leave their homes because they don't have the jobs.... Most people who become educated can't work in the community. It's not that they're.... They can't work for the band council unless they're a lawyer. A lot of jobs are dependent on providing services.

I think that, for the indigenous population that lives in these urban areas, it would be nice to give them a home away from home, whether that's a community centre or whether that's setting aside some land where they can see the traditional medicines and the traditional plants indigenous to that area. It's really small things.

We have been colonized for so long, and it could take another 150 years before we get to where we really want to go, but we need to discuss this amongst ourselves. I don't have all the answers and neither do you. I feel like we're always spinning our wheels in the mud and just thinking about the really tiny gestures when the public—society itself—is not educated as to the colonial history of the land they're living on or is not even aware of the genocide that took place.

We think about those young children who never came home from Indian residential schools. It shouldn't just be a day. It shouldn't just

be a month. It should be everything embedded into every aspect of Canadian society, whether it's federal, provincial or even in the community.

Mr. John Aldag: Thank you for your thoughts. I think I'm out of time, so thank you.

Ms. Ellen Gabriel: Thank you.

The Chair: Thank you, Mr. Aldag.

[*Translation*]

Ms. Bérubé, you have the floor for two and a half minutes.

Ms. Sylvie Bérubé: Thank you, Madam Chair.

In answering questions from my colleagues earlier, you talked about the importance of elders in the community.

Please tell us more about the role they play in the community.

[*English*]

Ms. Ellen Gabriel: When I say "elders", I'm not talking about people who are simply old. I am talking about those who have traditional knowledge and who have that wisdom of saying.... I hear stories from, say, an elder that go, "When I was a child, this is what we used to pick to help a stomach ache."

One of the reasons that, in the Haudenosaunee people, women are title holders to the land is that, when a man marries a woman, he goes to stay in her community and it's her land. The Indian Act undid that. The Indian Act imposed a patrilineal culture upon indigenous peoples.

It's women who give birth, and so does the earth. She provides food. She provides many things to us. The symbolism that is embedded in indigenous people is there from indigenous knowledge-keepers. A person we term an "elder" could be someone who's 30 years old or 20 years old. They could be a child. It's just that sometimes people are old souls. For us, this is our philosophy. You might think it's weird, but this is how we think. An elder is someone who understands exactly what I was talking about. This is how you respect the land. This is our relationship with the land, and we need to nurture that relationship. It's not just thank you and goodbye. It's also what you are giving back to the land. What are you giving back when you go hunting? It's customary that you provide tobacco to the deer or moose that you kill to send that spirit on its way.

There are so many things involved with being an elder, and it's not just about doing an opening prayer and then making the elder sit in the back and listen to everybody. It's about involving the elders in decision-making processes.

• (1720)

[*Translation*]

The Chair: Thank you, Ms. Bérubé.

[*English*]

We'll now go to Ms. Idlout for two and a half minutes.

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

Thank you.

I was going to table this, but I have a question instead, besides the one I tabled earlier.

I know for a fact that, in Nunavut, the Baffinland Iron Mines Corporation.... Having this understanding, I have a question for you regarding first nations who support mining activities because of the lack of employment opportunities, lack of federal government support, lack of housing and lack of support from provincial governments.

The mining companies are seeking support from the communities. Do you agree with this? I'm asking you this.

Ms. Ellen Gabriel: I'm not sure whether the translation was correct. Are you talking about whether the mining companies seeking consent within the communities are doing the right thing? I think.... Could you clarify?

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

No, I did not ask you that.

I'm asking you.... For example, you're here to speak. Do you know whether indigenous people are supporting mining activities for monetary benefits? We all know indigenous people who support mining activities. It is because there is a lack of other employment opportunities and no other sources of income or support. There is a lack of proper support from the governments, so they are seeking employment.

Do you have the same understanding? That is my question.

Ms. Ellen Gabriel: I think this is what developers and mining companies do. They know there is economic depression in a lot of the communities, whether they're remote or not—like my community. They manipulate indigenous people using the economic and job arguments. For indigenous people from that community—please excuse the expression—it's just going to be pushing wheelbarrows. We don't have the high-end jobs and we're shooting ourselves in the foot because, when the mining company is gone and they're through, they've contaminated our water and polluted our lands. What do future generations have? They have nothing but living in a polluted environment.

This is what I constantly hear.

There's a company called Niocan that wants to open up the old uranium mine. They're going to be using over two million gallons of water a day. We use aquifers. I have water from a well and that's in jeopardy, but the mining companies have more rights than we do. They have more rights than a hospital.

There is something extremely wrong with this picture. That's why I'm calling for an independent investigation into the colonial laws that allow this kind of corrupt activity that decimates the environment. Sure, we want jobs. We want to be able to buy nice things for our family, but, at the end of the day, we are jeopardizing the health and prosperity of future generations.

• (1725)

The Chair: Thank you very much, Ms. Idlout.

Our time is quite tight. We do not have time for another round.

I'd like to sincerely thank Ms. Gabriel for her testimony today.

I really appreciate what you've offered for our opening day of this incredibly important study. Thank you so much for your time and efforts.

We will briefly suspend as we set up for our second panel.

• (1725)

(Pause)

• (1730)

The Chair: We will resume.

We are now beginning our second panel with Dr. Bruce McIvor, partner, First Peoples Law, who is here in person, and Dahti Tsetso, deputy director, Indigenous Leadership Initiative, who is also here in person.

Just to let you know, there is Inuktitut, French and English interpretation. Please select your choice of language now on your console in the room. If interpretation is lost at any time, please advise me and we will stop the proceedings.

We will begin with introductory comments for five minutes each.

Ms. Tsetso, we'll begin with you. The floor is yours.

Ms. Dahti Tsetso (Deputy Director, Indigenous Leadership Initiative): Good evening.

[*Witness spoke in Dene Zhaté and provided the following text:*]

Dahti Tsetso suzhe, si Ṯcẖ Dene ot'e, Lliidlii Kue gots'eh at'e, the Indigenous Leadership Initiative gogha eghalenga.

[*Witness provided the following translation:*]

Good evening, all. My name is Dahti Tsetso. I am Ṯcẖ Dene from Fort Simpson, Northwest Territories, and I work with the Indigenous Leadership Initiative.

[*English*]

I'd like to thank you for inviting me to speak with you today. The subject of this study is an important one, and you all have a unique responsibility to advance the dialogue in a meaningful way. I very much appreciate the opportunity you are creating for indigenous voices to inform your report and the broader conversation around the restitution of lands.

For those of you who don't know, the Indigenous Leadership Initiative, or ILI, works to uplift indigenous nations and their voices to honour their responsibility to lands and waters.

From our perspective, indigenous-led conservation and stewardship can and should play a critical role in the path and dialogue towards reconciliation and the restitution of lands. One central example is indigenous protected and conserved areas or IPCAs. These are places that are identified by indigenous nations according to indigenous values and authorities.

The Indigenous Circle of Experts, in their landmark 2018 report, highlighted IPCAs as lands and waters where indigenous governments assert their rights and responsibility to protect and conserve ecosystems through indigenous laws, governance and knowledge systems. Culture and language are the heart and soul of an IPCA.

Indigenous guardians are another expression of nationhood that strengthens relationships to land and honours the sacred stewardship responsibility of indigenous peoples. Guardians are nation building and are an opportunity for Canada to work in partnership with indigenous communities across the country.

There are positive returns on the investments in indigenous-led stewardship and guardian programs. Early research in the NWT has shown that, at a minimum, for every dollar invested, there can be a 1:2.5 return on that investment with a potential to go as high as 1:4, and in fact research out of coastal B.C. showcases that this return on investment can be as high as 1:20.

The returns on investment are directly linked to the transformative potential of these programs to have positive, rippling impacts across wide-ranging socio-economic sectors of our communities, such as health, education, governance and reconciliation. I have witnessed and experienced these benefits first-hand.

Critical to moving forward is how indigenous communities are being funded to ensure their leadership in this work in a manner that ensures sustainable outcomes. The innovative financing opportunity under way in the NWT is one example of a new partnership-based tool that can offer part of the solution, but investments by the Government of Canada are essential to success. Addressing ongoing funding in a meaningful way would transform our country.

There is a growing movement of IPCAs and guardians in Canada. In fact, indigenous nations from across the country are gathered here in Ottawa this week to learn and share experiences at the First Nations National Guardians Gathering, co-hosted by ILI and the newly established national network. The energy and excitement are growing and they are evident in that room.

This energy is needed now. It's early May, and we have unprecedented wildfires raging across Alberta. It is evident that nothing less than the future of our communities, the health of our planet and the future viability of our grandchildren are at stake. We need to do better, and that starts by broadening our dialogue to find solutions that benefit all. Indigenous communities and indigenous leadership are key.

The restitution of lands and the indigenous relationship to that land through indigenous-led stewardship offer hope. Canada needs to grow investments to indigenous nations to meet our vision, because, if we value indigenous knowledge and our knowledge systems as a way to sustain the lands and waters we all depend on, then we need to resource them.

Masi.

• (1735)

The Chair: Thank you, Ms. Tsetso.

We'll now go to Dr. McIvor for five minutes.

Dr. Bruce McIvor (Partner, First Peoples Law): Thank you very much, committee, for inviting me here today.

On my flight here yesterday from Vancouver, I was listening to a podcast of somebody you might listen to: "Empire". I would recommend it. They have started a new series on slavery, and one of things they were talking about was that it's a day of reckoning in Britain. It is a day of reckoning about how the wealth and the power of Britain is built on slavery and colonization.

In some ways, I was thinking— at about 35,000 feet flying over Treaty 4, I think, at the time—about how it's a day of reckoning here in Canada. It needs to be a day of reckoning with regard to the power and wealth that this nation is built on, and it's built on indigenous lands. It's built on the wealth of indigenous lands. It's built on displacing indigenous people from their lands and taking that wealth.

I think it's important to understand that there is no lawful authority for that. Canada likes to talk of itself as a nation of the rule of law, but where is the law that says that colonizers can show up and usurp someone else's land, can take that wealth and make the decisions about that land? That is not the rule of law.

We talk about it in Canada as "assertion of Crown sovereignty". This is a favourite phrase if you do a search on CanLII for court decisions. From my view, that's a Canadian euphemism for the doctrine of discovery, the principle that colonizers can show up and take someone else's land. You've heard from those people here today, and you'll hear from more of them.

I think what needs to happen is that we need to unpack that. If we're going to talk about reconciliation, what is that about? It can't be reconciliation based on a lie. The beginning has to be truth-telling. Truth-telling is vital.

We heard last month from the Vatican, renouncing that doctrine. From my perspective, there wasn't a lot of truth-telling there. I hope that Canada can do better. I hope that Parliament can do better at having a real, open conversation about whose land it is.

How did the federal and provincial governments get the right to extract the wealth from that land? I am not just talking about non-treaty situations. I work for treaty nations all across the country in similar situations. I had the good fortune last week to be invited out to the Mi'kmaq community of Listuguj, and we talked about this: Whose land is this?

With hundreds of years of colonization, let's move on to some truth-telling. I think, to start, that means really getting at this issue. If we're going to give land back, if we're going to move in that direction, it can't be from these old styles of comprehensive claims, which is what the federal government currently has.

For indigenous people who have entered into those, I can understand why, but at the end of the day, is there really a significant difference between that and what John A. Macdonald was doing with the national policy? It's about removing indigenous people from their lands so that non-indigenous people can exploit them. That's what it's about.

We need to move in a different direction, and the direction is that we need to recognize indigenous title. You don't need to go to court for that. The courts have been saying for years that you can figure this out among yourselves. The federal government needs to move in the direction of recognizing title.

• (1740)

Then how are you going to implement that? It's not through comprehensive claims with exchanges rights. It is through actually recognizing and implementing.

Thank you for your time.

I'm sorry. I'm 10 seconds over my five minutes.

The Chair: Thank you, Dr. McIvor.

We'll now proceed to our first round of questioning beginning with the Conservatives and Mr. Vidal for six minutes.

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

Thank you to both our witnesses today for your contributions.

I'm going to start with you, Dr. McIvor.

Mr. McIvor, on your website, there's something that says that Canadians are brave enough to be confronting the reality of the country's colonial past and present, and insist that politicians replace empty promises with concrete, meaningful change. There's a realistic path forward based on respect, recognition and implementation of indigenous rights.

I think that's where you're coming from, even in your comments now. My question for you might be this: What are the next steps? What does that path forward look like? We talk a lot about trying to find outcomes. There's been a lot of spinning our wheels on a lot of this over history. What are the next steps forward in the context of making progress towards outcomes that are good for everyone?

Dr. Bruce McIvor: It's good to hear that at least one person goes to our website. Thank you for that.

I'll say two things. There are a lot of ways to deal with this, but two things come to mind for me to begin with.

I think truth-telling is important. Since the Vatican made its statement, I've been saying that there should be a national gathering on the issue of whose land it is. The doctrine of discovery, the assertion of Crown sovereignty—let's tell the truth about that, because a lot of Canadians don't understand it. They'll walk around with their certificates of indefeasible title. They'll be very excited about how their property values have increased. They don't know what that's based on. I think it should be truth-telling to start.

Second, and I've been talking to the minister's office about this, the federal government should move ahead and recognize title over

specific parcels of land. It can do that. It doesn't need a comprehensive claim. You don't need to force indigenous people into court for 10, 15 or 20 years for aboriginal title. They can reach agreement, recognizing indigenous title over land and then implement that. That is a doable thing, and we should move in that direction.

I think it would be very important. You want indigenous people from across the country, not just the T̓silhqot'in, who can stand on title lands. I think every indigenous people in Canada has a right to the same thing.

• (1745)

Mr. Gary Vidal: Thank you.

I'm going to switch gears a little bit, because I know your background as a lawyer. You were talking about looking up legal cases and whatnot.

I want to talk a little bit about the addition-to-reserve process that exists now. I know when I was first appointed as the critic for one of the files, I had a presentation or a briefing from the department. What I was astonished by was how long the expected process was for the different types of things: specific claims, etc.

On the addition-to-reserve process, if I understand it right, there are three main reasons why an addition to reserve is moved forward. There's a legal obligation, there's a community addition or growth, and there's a tribunal. There are reasons for this, but the process is taking so long. Even though the process has been changed over the last few years, it still takes such a long time.

Do you have any thoughts on how we could accelerate some of these processes? Maybe you don't agree with exactly what's already going on, but we have some processes in place. How could we accelerate those processes to accommodate some of the solutions that we need for these communities, where land is about being able to build houses and land is about being able to build an economy to provide for their communities? Land is really critical to a lot of the issues faced by the community, so how do we speed up some of these processes?

Dr. Bruce McIvor: There will be a lot more people who have better ideas on how to speed it up, but I do have a couple of thoughts on this.

First of all, how do you even get in the door on additions to reserves? It's very difficult for indigenous people across the country to make the argument to have an application for additions to reserve accepted. There is a barrier there.

Second, when we're talking about land back and land restitution, additions to reserve aren't that. That's not what land back is about, because reserves end up being reserve lands under the Indian Act. They're actually held by the King now. For most indigenous people, at least my clients, they don't see that as land back. It can be an important step, but it's not land back.

Just going to a point on a question asked before this about who gets to decide, there was a question from your colleague about the Wet'suwet'en, suggesting that this is democracy at play. No, it's not. It's not democracy at play, because who gets the right? It's the people on the Indian Act band list, not the sum total of the members of the nation.

When you're looking at band list members voting for something, you're looking at a small portion of the members of the nation. That's not democracy at play. It's important to understand that there's a wider collective, a wider nation, and they aren't the ones who are going to be taking advantage or be able to capitalize on reserve lands because those were Indian Act bands.

Thank you.

The Chair: Thank you, Mr. Vidal.

We now move to Mr. McLeod for six minutes.

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

It's our first day of the study, and I think it's certainly going to be an interesting one. I want to welcome our presenters today.

I want to ask my first question to Dahti Tsetso, from the Northwest Territories—

The Chair: There's a point of order.

[*Translation*]

Ms. Sylvie Bérubé: The sound quality is poor.

[*English*]

The Chair: Mr. McLeod, we're just worried about the sound quality. You're kind of cutting in and out a little bit.

Mr. Michael McLeod: I'm wearing the headset. Just hang on....

The Chair: It seems to be better, if you want to proceed, we'll see how it goes.

Mr. Michael McLeod: We'll try again.

I'll start by thanking the presenters.

My question is to Dahti Tsetso regarding the initiative she's involved with. She's from the Northwest Territories where I'm from also, and we have 15 negotiating tables going on right now. They're all focused on protecting a way of life for indigenous people.

Many indigenous governments have voiced concerns over land tenure or land quantum being offered by the government, whether the process is territorial or federal. The end result is going to be a small percentage that is offered through the comprehensive claims process, and indigenous governments are claiming that they'd be forced to develop them because there's no other mechanism to pay for their governance system once they're a self-governing nation.

In 100 years or so, or less, there would really be nothing left of a nation. There's no ability to reconstitute a nation if there's no land.

I'm really excited to hear about Dahti Tsetso and the initiative that she's working on. That kind of thing is outside of the box. I wanted to ask her if she could explain a little bit—

• (1750)

[*Translation*]

Ms. Sylvie Bérubé: Madam Chair, a point of order.

There is no interpretation.

The Clerk: Madam Chair, the interpreters cannot continue because Mr. McLeod has a poor connection.

[*English*]

The Chair: Okay.

We will go to Patrick Weiler for the Liberal Party. We'll give you five minutes to recoup the time.

Mr. McLeod, we'll have to come back to you.

Mr. Patrick Weiler (West Vancouver—Sunshine Coast—Sea to Sky Country, Lib.): Thank you, Madam Chair.

I want to thank the witnesses for joining us today.

I'm actually an alumni of UBC law school, but unfortunately, Dr. McIvor, I wasn't able to take your class when I graduated over a decade ago.

You mentioned some very interesting things in your opening that I want to bring up, particularly around questions about the rule of law and the need to unpack that.

I think one of the really challenging things we need to discuss as part of the study is that there are very different perspectives on what land ownership means. For many indigenous cultures, land is owned collectively. Obviously, for European countries and western countries, it's owned individually.

I was hoping you could maybe expand on how that complicates some of the discussions that we're going to have as part of the study. What are some of the ways forward we can have on that, particularly when we're thinking about things like legal pluralism?

Dr. Bruce McIvor: Thanks very much for the question. I have a couple of points on this.

One issue we have all the time in the development of aboriginal law in Canada is that the courts have said there needs to be translation. The indigenous concepts of land, property holding and how you do things need to be translated into something cognizable—for a lawyer's term—in the common law. Until it is, it can't be recognized and implemented.

When we're talking about legal pluralism, that is a fundamental problem. It's a fundamental problem that these things don't have legitimacy unless they're understandable in the Canadian common law context.

It makes me think of Edward Said's famous book on orientalism and the "other". The way the courts have worked around this is that they've looked at indigenous people and they've tried to translate them into something that non-indigenous people would understand and that fits. If we're going to move to better ways of recognizing indigenous rights, we need to accept that this is a problem. It can't be all through the eyes of the colonizers.

We need to start there and find a way forward that truly respects the fact that indigenous people on the land had, before colonizing nations showed up with their own laws, not just their own cultures and languages but their own laws over the land. Those laws themselves need to be respected.

I hope that goes to your question.

• (1755)

Mr. Patrick Weiler: Certainly.

When I articulated, practising in aboriginal law, one of the cases that had just had a judgment was the T̓silhqot̓in case.

I was hoping you could expand, please, on how that's become a shift in the way forward on settlement agreements and treaty settlements. Really, with the change in outcomes that are available in a very real way for nations, how might we be able to approach that to really move forward in the discussion we've having today?

Dr. Bruce McIvor: There's a lot to unpack there, and a lot of possibilities.

Around the 2014 T̓silhqot̓in decision, it was very important, because we finally had a court make a declaration: Yes, these are aboriginal title lands. That was an incredibly important step forward, but at the same time, where do you end up? Where are the T̓silhqot̓in now? They're negotiating. They're negotiating what that means. They're negotiating with the provincial and federal governments. They've been doing that for years.

One of the points I was making was that we shouldn't force indigenous people into the court in a similar situation. I don't think that upholds the honour of the Crown. I don't think that's the best use of time and resources. Do you really want to ensure that there's even more money paid to lawyers to do that kind of work? You don't need to fight that out in court. I think the federal government has a responsibility to step up and find a similar type of solution without putting every indigenous nation through what the T̓silhqot̓in had to go through.

The second issue there is the role of the provincial governments. The law changed around that in 2014. I think it's really important to keep in mind that under the Canadian Constitution, of course, the provincial governments in the provinces say that it's their land, that it's their Crown land. I'll have provincial governments and the federal government come to the table with my clients and say, "We're here to discuss your land claim." When they do that, I stop and say—in a respectful way, I hope—"My clients don't have a land claim. You're claiming their land. Understand that fundamental point, and then we can have a real conversation." That's who has the land claim—the provincial and federal governments.

We don't have to put everyone through the T̓silhqot̓in grinder. I think there's a better way forward on recognizing whose land it is and finding a way forward, not substituting rights, which is what the comprehensive claim policy does. Instead of substitution, how can we implement those rights?

The Chair: Thank you, Mr. Weiler.

[*Translation*]

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

Ms. Sylvie Bérubé: Thank you, Madam Chair.

I would like to thank the witnesses once again for their testimony and for the valuable information they provided earlier.

In our committee's studies, indigenous rights often come up. Regardless of the topic the committee is considering, our witnesses invariably talk about those rights. I would like to ask Mr. McIvor...

Is everything okay? Can you hear me?

• (1800)

[*English*]

The Clerk: Madam Chair, I'm not sure what's happening. It seems the interpretation has stopped.

The Chair: Okay.

We'll briefly suspend.

• (1800)

(Pause)

• (1800)

[*Translation*]

The Chair: We are back now.

Please continue, Ms. Bérubé. You may repeat your question if you wish.

Ms. Sylvie Bérubé: To begin, I would like to thank you for being here today because the information you have provided is very important. Indigenous rights are often discussed at our committee's meetings. Regardless of the topic of study, the witnesses almost invariably talk about those rights.

I would like to ask you, Mr. McIvor and Ms. Tsetso, to give us a picture of the situation. You did so earlier, Mr. McIvor, but could you summarize the history of indigenous rights and describe the current use?

What is happening with indigenous rights and what role do they play in land restitution at the Indigenous Advisory Committee?

[*English*]

Dr. Bruce McIvor: Thanks. I'm sorry for the malfunctioning there. My mom would be embarrassed. She's from an old French family that spoke French for 350 years, and I'm the first one who can't.

On this point, I think it's really important to have in mind the difference between indigenous rights and aboriginal rights.

Indigenous rights are the rights of indigenous people that they had before colonizing nations appeared on their land. They're based through their own laws. Aboriginal rights—aboriginal title being one of those—that's the construction of Canadian courts. Canadian courts have created this body of aboriginal rights under the Canadian Constitution, under section 35.

Not far from here I was walking and there's a statue of what's supposed to be an indigenous man shooting a bow and arrow at a deer, you've probably seen it. From my perspective the way the aboriginal rights have developed, it's often along those lines that Canadian courts have looked at indigenous people and have tried to figure out what's essential about them as a distinctive culture: Let's preserve that, their aboriginality, and then we'll protect that under section 35 of the Constitution.

I think there's a fundamental problem with that because it comes back to translating who indigenous people are and their rights into a form that is recognizable. We often talk about section 35 of the Constitution being an empty box. This was a concern when the Constitution was repatriated in 1982. The courts interpreted it as an empty box, and with serious concerns, but then they've been filling the box with what the Canadian courts—and most of them are non-indigenous people—have determined is what makes you essentially an indigenous person. I think that's a fundamental problem with this.

When I speak to my clients about this, we always talk about how there's a difference between indigenous rights and aboriginal rights. Aboriginal rights are constructs under Canadian law. There are a lot of problems with it. Indigenous rights are specific to indigenous nations. There's not one set of indigenous rights. There are Mi'kmaq rights, Tsih'qot'in rights, Secwépemc rights, Anishinabe rights—all the wonderful range of indigenous peoples across the country. I think going forward it's important for us all to keep being aware of those differences.

• (1805)

[Translation]

Ms. Sylvie Bérubé: Ms. Tsetso, what are your thoughts?

[English]

Ms. Dahti Tsetso: Where I'm from our elders talk about how we've been on our land since time immemorial, so it's from before memory. It's from that relationship to our land that those rights then follow. As Mr. McIvor stated, those existed well before anyone from any other land came to this land.

Before Canada existed, our peoples all had ways of governing ourselves, but also ways of interacting with other nations. There were times of conflict, times of war, and just like any other nation in the world, those helped shape the peoples that we became.

Our rights, in the words of our elders, is that we are of this land and this land is of us, and it's from that time immemorial linkage that these rights then therefore flow. I would have to concur that there's a fundamental difference in understanding between indigenous nations and our understanding of our rights, and the Canadian government's understanding of our rights. I think that's a very important consideration in the study that you're undertaking as federal representatives.

[Translation]

The Chair: Thank you, Ms. Bérubé.

[English]

Ms. Idlout, you have six minutes.

Ms. Lori Idlout: [Member spoke in Inuktitut, interpreted as follows:]

Thank you to both of you for your presentations. Your presentations are very much music to my ears.

Bruce McIvor, I have a question for you. You are exposing that, going through the courts, our rights are not supported within the court. Even if we pursue legal actions, our proceedings are categorized, and categorization is harmful. This is very obvious as an indigenous person.

I have a question for you. As members of Parliament, can we pass....? I believe so, but I have a question for you. You are legal counsel.

As indigenous peoples, if we table the indigenous legal traditions, can we use them as a tool and as ammunition to pass a law? I have that question for you.

Dr. Bruce McIvor: Thank you very much.

It's a really important question, and it's being played out in courts all across the country. As a lot of you know, there is a direction we're going in to recognize indigenous legal orders.

When I teach about this at law school or different venues, I always talk about how we're mistaught as lawyers. I know that will come as a surprise to most of you, but we're taught a lot of things that I think are wrong now. One of them that I remember from law school was that all decision-making authority and all law-making authority has to be connected somewhere to the Canadian Constitution. It has to be in either section 91 or section 92, or in either the provincial or the federal law-making authorities.

That's wrong. That's wrong in Canadian law. It's really hard speaking to government representatives who don't recognize that.

I have a file on fisheries in Atlantic Canada. I'm trying to convince federal government representatives that the Mi'kmaq have their own law-making authority, and you get a conversation of, "Wait a minute. We have to delegate them some law-making authority first." That's a fundamental misunderstanding of the law, so I think where we need to get to is government officials recognizing it and courts recognizing it.

Yes, you can rely on these legal traditions and principles. It's starting, but it's very slow and it needs to move more quickly.

• (1810)

Ms. Lori Idlout: Thank you.

I think it is possible that we parliamentarians can introduce a bill that effectively recognizes indigenous legal traditions.

What do you think would be the most effective way to ensure that, as parliamentarians....? When we're sending signals to our governments that we want to recognize indigenous legal traditions, what is the best way to do that?

Dr. Bruce McIvor: We live in a parliamentary democracy. It's parliamentary supremacy. Parliament can move ahead and do these things. It can do these things. I don't just think it can. I think there's a responsibility to go ahead.

We talk about reconciliation all the time. I know I get frustrated. Indigenous people across the country get frustrated. What are we actually doing? It's not just apologies. What are we doing? One of the most important things to do is to move away from all the decision-making authority being either in provincial or in federal government hands. We need to move away from that.

I do a lot of duty to consult work. People are surprised I'm not really a fan of it. I hope we've moved past that. I would like to see indigenous people being the ones who are doing the consultation: "We're going to make a decision. Federal and provincial governments, what do you think about it?" Then we'll go off and decide behind a closed door, because that's the way it usually works.

I definitely think there is an important role for Parliament through legislation, and they've done it in certain one-offs to create that space for indigenous decision-making in exercising laws.

The Chair: Thank you, Ms. Idlout.

We'll proceed to our second round, beginning with Mr. Zimmer for five minutes.

Mr. Bob Zimmer (Prince George—Peace River—Northern Rockies, CPC): Thank you, Madam Chair.

Thanks to our witnesses.

Ms. Tsetso, thank you for appearing. I see from your resume that you have quite a lot of knowledge. Your degree is in environmentalism and really conservation, and you reside in Fort Simpson, Northwest Territories, currently. Is that correct?

Ms. Dahti Tsetso: Yes.

Mr. Bob Zimmer: We have a common interest that way. I co-chair the parliamentary outdoor caucus, in which we endeavour to cross party lines to really represent people who fish and hunt and sport shoot and so on. One of the concerns we've been hearing from many folks across Canada is about losing access to fishing grounds and hunting grounds and things like that.

Looking at your resumé brought up a memory for me. We were recently in Cambridge Bay, where we heard from the Kitikmeot Inuit Association. They brought up concerns around 30 by 30, and the current government's coming in and saying, "We're going to close access to all of these areas, even for local Inuit peoples, for protection reasons." I thought it was an interesting twist, because here is a government that's supposed to be turning over access to first nations and Inuit populations, and here is an Inuit association coming to us and saying, "We're concerned about getting shut out of our own backyard."

Previously this government said they were going to listen to territories and governance, yet they implemented a moratorium across the entire three territories without even asking any of the territories whether or not they could do it. I think it's this kind of "Ottawa knows best for the territories", and it's being perpetuated even though it's under the guise of protection. Can you maybe speak to

that and maybe to your own knowledge about some of those concerns locally in the territories?

• (1815)

Ms. Dahti Tsetso: Yes. Thank you.

You're right. I come from a strong conservation background. I just want to maybe reorient your perspective around conservation, because while I come from a strong conservation background, it's from the perspective of indigenous communities. Our communities, when they assert conservation, don't do it from a perspective of the big "C" conservation that is likely how many people in this room understand conservation, which includes the expulsion of people from the land. If you look at the Canadian tools—territorial and federal—oftentimes they're based on that premise that for conservation that occurs to protect the land, we boot the people out. From the perspective of our communities, that's actually very much in conflict with the way we see land and the way we assert protection and stewardship responsibilities over our lands.

In our communities and in our nations, when we talk about protection, it really is about the strengthening of our relationship to our land. To strengthen our relationship to our land, we use our land, so we don't kick ourselves off the land. It's quite an interesting discussion point, because it links back to this whole notion of authorities and the assertion of rights and indigenous rights and who has the authority to make decisions over what.

In Canada, there's been a growing movement around guardians. There's been a growing movement around things like indigenous protected and conserved areas. When our communities assert our governance or our rights to protect our lands, it's not actually to kick our people off. We're not threatened by others practising harvesting-like rights. What we're trying to do is assert our decision-making authority and strengthen our relationship to the land. We do that on the basis of culture and language and way of life.

That is the perspective of conservation within our communities, and legislation and the importance of legislating a way forward to recognize the role that ICPAs could play within the Canadian landscape to fit things like 30 by 30, I think, is a really important factor and consideration to explore.

Mr. Bob Zimmer: Yes. I just want to squeeze in one more question.

The Chair: You have 15 seconds, Mr. Zimmer.

Mr. Bob Zimmer: I think that's our concern as well. The government kind of pretends to be talking with local Inuit associations about doing this, yet it's kind of implementing its own version of preservation and conservation—

[*Translation*]

Ms. Sylvie Bérubé: Madam Chair, the interpreter is saying that Mr. Zimmer is too far from the microphone.

[*English*]

Mr. Bob Zimmer: Hopefully I can get my last 20 seconds in here.

I'll quickly start again.

I guess my concern is that the government is saying it's doing conservation, but it's on its own terms. It's not really listening to local Inuit and asking how they would like to see this happen.

I'll maybe just finish with that last question.

The Chair: We'll have to proceed to the next question. You could add it to your response.

We'll have to move on to Mr. Battiste for five minutes.

Mr. Jaime Battiste: I'm going to try to step up where Michael McLeod's technology has failed him, but I am sure I won't be as eloquent as Michael.

My question is for Ms. Tsetso.

Could you describe how your program supports the wider "land back" movement?

Ms. Dahti Tsetso: Thank you.

Thank you and hello to Michael.

I work for the Indigenous Leadership Initiative and our goal is to grow guardians across the country. Our goal is to have the role of indigenous protected and conserved areas firmly embedded within the way governments across this country—and when I say "governments", I include indigenous governments in that description—are taking care of land and taking care of waters.

What I was going to say earlier, and I think it fits well with this response, is that part of the solution is, yes, legislative avenues, but it's also resourcing in order for indigenous communities to be in an empowered position to work in partnership with other levels of government. When you empower our communities to work in partnership, it's a benefit not just to our communities, but actually to all Canadians. We can't do that unless we're properly resourced.

I've heard a lot of federal leaders talking about the importance of reconciliation and their respect for indigenous peoples and our nations, but for our nations, it's not an equal playing field. In my work experience, I've been working to grow these types of programming and this type of work within the north. It's enabled me to then step into these positions with the Indigenous Leadership Initiative, but I did it often with what felt like two hands tied behind my back.

We are not properly resourced to engage in this work. If we're going to address these issues and have our nations be in empowered positions, then we need investments. The federal government needs to play a very significant role in honouring investments into programs like indigenous guardians and into the exploration and establishment of indigenous protected and conserved areas.

From my perspective, it's not just about the legislative solutions. It's also about the investments that the federal government should be making and needs to be increasing into these types of programs.

• (1820)

Mr. Jaime Battiste: Ms. Tsetso, I'm going to keep you on the hot seat on the request of Mr. McLeod.

It's great that you were talking about partnerships. I think my next question speaks to that.

How can the Government of Canada better support indigenous peoples as they expand their rights and jurisdiction over their lands and territories?

Ms. Dahti Tsetso: In some of the work that we're engaged with.... I'll harp again, but not intentionally, on the issue of resourcing.

We've seen a growing movement across this country. I mentioned earlier in my opening statement that there are guardians gathered here in Ottawa from across Canada. I hosted a panel, just before coming to this hearing, around innovative governance and financing opportunities. We have people who are working so very hard to grow their work and to grow and empower their communities to assert their stewardship responsibilities over their lands and waters, but they're having the hardest time doing that in a meaningful way without proper resourcing.

Resourcing is incredibly critical and incredibly key to empowering our communities to play in a partnership space. It's not an equitable relationship right now and that needs to change. Part of our goal as an organization is to bring forward these messages to people within positions of power who have the agency and the responsibility to affect change. There are existing avenues within the federal government right now to grow those investments over time.

From my perspective, if we're going to be talking about the restitution of lands, about respecting indigenous authorities and about indigenous rights—not aboriginal rights—we need to be putting our money where our mouths are and investing in those approaches and in those partnerships.

Mr. Jaime Battiste: Very quickly, I think I'm hearing you when you say stewardship. Would you say that the land back movement is about stewardship on the land and not about commodities to be bought and sold?

Ms. Dahti Tsetso: Yes.

Where I'm from, "land back" has a different context. Where I'm from, our leaders are people who say we never gave up the land. We're not asking for our land back because we never gave it. In the work that I've been engaged with, and in the opportunities I've had to learn from our leaders, it's all about that relationship to land. It's about asserting and growing that indigenous world view that is based off of the idea we are in relationship to our lands and water and they are in relationship to us.

My understanding of "land back" is empowering and strengthening that connection to land. It's about asserting, and being in a position to assert, decision-making authorities over our lands and waters.

• (1825)

Mr. Jaime Battiste: Thank you.

The Chair: Thank you, Mr. Battiste.

[*Translation*]

Ms. Bérubé, you have the floor for two and a half minutes.

Ms. Sylvie Bérubé: Thank you, Madam Chair.

My question is for both witnesses.

I asked a previous witness for examples of countries that use different practices from what the federal government is currently recommending for land restitution.

Can you tell us about countries whose example the federal government could follow and explain why it should do so?

[English]

Ms. Dahti Tsetso: Yes, I have one I'd like to showcase. Again, coming to the indigenous interpretation of conservation and the ways in which we assert our sacred stewardship responsibilities over lands and water, around the world, I see our story reflected in this conversation.

One international model to look at is Australia. There, the federal government makes significant investments. Again, it's coming back to that idea of investments. They also have legislated methods and approaches to recognizing the indigenous peoples of Australia and their relationship to their lands through protected areas. I've had the opportunity many times in the past to hear Australian rangers share their experiences of asserting their stewardship responsibilities in their homelands. What has been really interesting is to learn about their relationship to their own federal government.

One of the things I loved learning about, and I talked about it in my opening statement, was that return on investment. One of the things that I haven't fully touched on is the benefit that we have not only within our communities but also in the broader Canadian society when we invest in these types of approaches. It not only empowers our communities to be in better partnership positions but also heals our communities. We end up seeing a return on the benefit in terms of both the health and well-being of our communities. We are not only physically healthier but also mentally much stronger. That then has a positive, transformative ripple impact across our communities. You see it in the education system, in the health system and in the decrease and the reduction of addictions.

I've seen these benefits within my own home territory, but Australia has also seen those benefits. What's really interesting is that you have a model in Australia where the federal government makes significant federal investments into these types of programs. One of the things I really loved learning about Australia was that the growth of these programs happened under one type of federal party. Another federal party came into power, and their instinct was to reduce the funding to these types of programs. They initiated a study, and what the study found was exactly what I just testified to. The investments into this type of work grew the benefit not only to the communities but also to the country. That government did not cut funding to those programs, but they actually grew it.

I have brought that message forward in the opportunities I've had to meet with different federal representatives over time, because I think the potential exists here in Canada. We're actually catching up to that Australian model, but I would like to see us eclipse it.

The Chair: I'm so sorry, Ms. Tsetso. I have to move on to Ms. Idlout for the last question for this round for two and a half minutes.

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

Thank you to both of you for presenting. It's very important.

I will be passing on the mike to Mike for his question.

Mr. Mike Morrice (Kitchener Centre, GP): Thank you so much, Ms. Idlout. It's an honour to sit at this table next to you.

Thank you also to this committee for conducting such an important study.

Thank you, Ms. Tsetso and Mr. McIvor, for your testimony this afternoon.

I represent a community that's part of block two of the Haldimand tract. It's the traditional territory of the Anishinabe, Haudenosaunee and Neutral peoples, the 950,000 acres of land given to the Six Nations in 1784, 10 kilometres on each side of the Grand River. Today, Six Nations of the Grand River lands comprise less than 5% of what was originally granted to them in 1784.

When I speak with indigenous leaders back home, they tell me very clearly that reconciliation begins with land back. I'm keen to respond to them with the parliamentary tools available to me as an MP—for example, with respect to sharing information about parcels of land in Kitchener that are owned by the federal government.

I'd appreciate your advice—maybe starting with you, Ms. Tsetso, assuming we're short on time, if you have any advice, and if not, going to Mr. McIvor—for me, for this committee and for other parliamentarians who are in positions like mine who want to consider advocating for processes for returning federal land back to indigenous communities.

• (1830)

Ms. Dahti Tsetso: Thank you.

You know, I feel like I'm going to likely harp on the same types of messages. I've been able to connect with indigenous communities from across the country. This afternoon I heard from an indigenous leader who was from just outside Winnipeg. It's a very similar context in the sense that it's more of an urban-based reality.

For me, coming back to the whole idea of land back, it really is about that assertion of decision-making authorities over land. How is that community being supported to assert their decision-making authority over their lands? How are they being resourced to be in an empowered position to do so? From my experience, things like the guardians program give tools back to communities to be in that position, to be the eyes and ears of their own land. That then informs the resource decision-making around their territories, but it also enables them to have an empowered voice when dealing with other levels of government.

For me, for all of the communities I've engaged with, programs like guardians can empower that conversation and empower that dialogue, but for all the indigenous communities that I've ever worked with, it really comes back to the decision-making authority. How are they being empowered to be resourced to assert their decision-making within their home territory?

The Chair: Thank you very much, Mr. Morrice. Unfortunately, we are out of time.

Mr. McIvor, if you'd like to provide a written response to that answer, we'd certainly love to hear your thoughts as well.

I'd like to thank everyone for joining us today. Thank you for your testimony for this study.

Thank you for our committee members. We will adjourn.

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