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THE HONOURABLE BILL BARISOFF, SPEAKER

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LIEUTENANT-GOVERNOR
His Honour the Honourable Steven L. Point, OBC

THIRD SESSION, 38TH PARLIAMENT

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Honourable Bill Barisoff

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MONDAY, OCTOBER 29, 2007

The House met at 1:35 p.m.

[Mr. Speaker in the chair.]

Introductions by Members

S. Hammell: Members, on behalf of the Speaker, I'd like the House to welcome the members of the Canadian Association of Former Parliamentarians who have joined us in the gallery today. This association is holding its regional meeting in Victoria from October 28 to October 30. We are privileged to have them here and to have them as guests. Would the House please make them welcome.

Hon. C. Hansen: I have two introductions to make. First, I would like the House to welcome a delegation that's here from British Columbia's sister province in China, the province of Guangdong. Professor Xu is the president of the Guangzhou University of Chinese Medicine, Professor Lo is the chief of staff for the Guangdong Provincial Hospitals, and they are accompanied by Dr. Ken Fung, who is with the faculty of medicine at UBC. Would the House please make them very welcome.

Also, as part of the delegation that's here from the association of former politicians.... Sorry, former parliamentarians — and politicians, of course.... I think we all at some point in our careers get to be former parliamentarians, but you never get away from being a former politician. It goes with you for the rest of your days.

A very dear and longtime friend, Sophia Leung, is a member of that group, and I wish the House to make her welcome.

Tributes

JEAN SOUTHAM

V. Roddick: The daughter of H.R. MacMillan, Jeannie Southam carried on with her father's philanthropy and contributed hugely to this province. As former B.C. Lieutenant-Governor Garde Gardom said of her: "She knew her stuff, and she spoke her mind."

Mrs. Southam died last week, three days before her 92nd birthday. It's truly the end of an amazing era. I ask that the House join in recognizing the life and legacy of Jean Southam.

Introductions by Members

M. Karagianis: I'd like to join with the introduction that was made of all of the parliamentarians who are here, but in particular, I'd like to acknowledge a friend and mentor of mine. That is Ms. Lynn Hunter, who is here. I'd like to have the House make her especially welcome.

R. Lee: I'd like to also welcome the members of the Canadian Former Parliamentarians Association: Sophia Leung, also her son Ken Leung, member Douglas

Rowland, the hon. Sheila Finestone and many others. Would the House please make them welcome.

Statements (Standing Order 25B)

OLYMPIC TORCH RELAY IN TRI-CITIES

M. Farnworth: In 2010 British Columbia will welcome the world to the Winter Olympics, a tremendous honour for our province, and for many communities an exciting opportunity to showcase the region and the towns where they live, because part of that is the traditional Olympic torch run. It will pass through many, many communities in this province.

I want to put it on the record now that the people of the Tri-Cities are firmly working, as we speak, to ensure that that happens. Led by the chamber of commerce and many activists in our community, we are working to ensure that the Olympic torch relay comes through the Tri-Cities — that it comes through Port Coquitlam, Coquitlam, Port Moody, Belcarra and Anmore. All of us in the Tri-Cities are excited by the Olympics coming, and we want an opportunity to showcase our communities.

So I am speaking on behalf of my constituents, and we are sending a very strong message to VANOC that when the decision is made on the route of the run, the Tri-Cities expects to be on that route. There are a lot of dedicated volunteers, along with the chamber of commerce, working very hard to ensure that that happens.

So from the Tri-Cities to VANOC: make sure we're on the relay route.

[1340]

RICHMOND SOCIETY FOR COMMUNITY LIVING

J. Yap: I rise today to bring attention to a wonderful organization in my community, the Richmond Society for Community Living. Founded in 1982 by a small group of concerned parents, the society has grown to become an integral part of our community.

From its humble beginnings of ensuring that children with special needs were receiving proper after-school care, the society has expanded to serve over 800 individuals in Richmond. They now offer 13 programs that provide support, services and information to individuals with developmental disabilities and their loved ones. These programs range from respite care and family support to early learning programs and adult day programs. The society is the only organization in Richmond to provide services of this kind for every stage of a person's life.

Not content to rest on their reputation for great care, the society is continually improving their services and expanding the opportunities for growth and learning. In January 2007 the Richmond Handycrow Co-operative was incorporated as a social enterprise offering a variety of tasks such as painting, yard maintenance and housekeeping. Providing individuals with developmental disabilities the opportunity to

contribute has been very successful and has only helped to include them in the community as a whole.

This year marks the society's 25th anniversary, and I was proud to be a part of the celebration gala event this past weekend. The support and services they provide meet the highest of standards, and they have set the bar in our community for understanding and compassion. They have been truly successful in proving that inclusion of all people is not only the right thing to do but enriches the lives of everyone in the community.

I ask the House to join me in wishing board chair Tanis Reimer, executive director Janice Barr and the entire team of the Richmond Society for Community Living continued success as they continue to make Richmond a caring and inclusive community.

CITY OF TERRACE FORESTRY TASK FORCE

R. Austin: Last week West Fraser announced the indefinite closure of their sawmill in Terrace. This is a terrible blow to my community, especially since it comes on the heels of the settlement of the coastal labour dispute, because it dashed the hopes of the workers and the community that the mill would get back to normal operations and people could get back to work. Let me reinforce that this is the last major sawmilling operation in the region, and they're being closed down indefinitely.

This effectively marks the end of an era for the northwest as a forest-based economy as we've understood it for generations in this province. However, while mineral exploration, mining and transportation may become the economic drivers of the future of this region, the closure of this sawmill does not signal the definitive end of forestry as an economic force in the northwest.

I'm pleased to stand here today to inform this House of the work of a group of hard-working and dedicated volunteers who participate on the City of Terrace Forestry Task Force. The task force initially formed in 2003 and made various recommendations to both provincial and local governments. However, as the task force's most recent report points out, these recommendations were based on the premise that the community had a pulp mill and two sawmills to work with. When the pulp mill and Terrace Lumber closed down permanently, the task force reconvened and refocused its efforts based on this new reality.

As a result of this more recent work, the task force came forward with a single recommendation to council and, by way of council, to the province. They have simply and quite understandably asked that the province extend to the northwest region the same "resources and initiatives currently in place to support communities and industry impacted by the mountain pine beetle epidemic."

The task force included in this recommendation a specific request that the province fund the northwest revitalization strategy that was developed under the leadership of the Kalum forest district manager.

I want to thank the members of the task force for their commitment, dedication and foresight, and it is

my sincere hope that the province will support their efforts, especially now that the last sawmill in Terrace has been slated for closure.

ARMY, NAVY AND AIR FORCE VETERANS IN NORTH VANCOUVER

K. Whittred: It gives me pleasure to stand in the House today to give recognition to the Army, Navy and Air Force Veterans in Canada, North Vancouver branch 45. On October 14 the ANAVETS of North Vancouver celebrated their 85th anniversary year. I was honoured to be part of their special day.

[1345]

The North Vancouver branch is part of the Canadian ANAVETS, the oldest veterans organization in Canada. Although its precise year is lost in history, 1840 marks the ANAVETS official charter, given by Queen Victoria. The Army, Navy and Air Force Veterans North Vancouver branch was formed in 1922. The branch maintains strength in loyalty, and in fact, some of their oldest members received a 60-year pin at their recent celebrations.

To this day the organization continues to give back to the community. The branch offers an affordable venue to socialize for the men and women who fought for our country, and through their ANAVETS Senior Citizens Housing Society, the society operates nearly 90 units of low-cost housing for seniors in the lower Lonsdale area of North Vancouver.

The ANAVETS are a tribute to the men and women who fought for the freedoms we are privileged to enjoy today. I ask the members of the House to join me in recognizing the service given by the ANAVETS North Vancouver branch 45.

WARK STREET COMMONS COMMUNITY GARDEN

R. Fleming: Last month, on September 15, the Wark Street Commons garden celebrated their first anniversary of providing food to the Hillside-Quadra community. The community food garden, located by the Blanshard Community Centre, is situated on land donated by the city. It's tended by volunteers and offers free fresh produce to local residents.

The purpose is to provide food for all those who need it and demonstrate to community members the variety of fresh fruits and vegetables that can be grown locally here on the south Island. Although it is only one year old, there is already ample evidence the community garden is improving the health of the neighbourhood by giving low-income families in the area access to fresh food.

The Wark Street community garden also gives something to all who simply enjoy its presence in the neighbourhood. In place of a disused small parkette, which some felt was unsafe and at risk of attracting criminal activities, there is now a thriving, productive public space for community members to enjoy.

This community garden is the result of hard work by many in and around Wark Street. Since fall 2006

volunteers have been weeding, watering and planting to cultivate this little piece of land. People have donated their own herbs, seedlings, irrigation materials and artwork. The volunteer hours that go into maintaining this community garden are too many to count. The Wark Street Commons garden committee have also offered a series of workshops identifying the different plants in the community garden.

Although there had been an interest in starting the community garden in the Quadra village area for a long, long time, this project began as a university health research project on community health. I would like to thank Jackie Robson and Laura Funk, in particular, who were the coordinators of this research project and now continue as volunteers, along with many, many dedicated Hillside-Quadra community members — people like Leni Hoover, Pat Hunter, Vern Wagner and many more.

As the MLA for Victoria-Hillside, I'd like to thank the volunteers of the Wark Street Commons garden for their great work and their commitment, and congratulate them on their first successful year of many more years to come.

TERRY FOX RESEARCH INSTITUTE

L. Mayencourt: Today I want to talk about someone that we all knew very, very well, someone who inspired each and every one of us, and someone we'll always remember.

At the age of 18 Terry Fox was diagnosed with cancer and was forced to have his right leg amputated about 15 centimetres above the knee. This happened in 1977, and while Terry was in the hospital, he was so overcome with the suffering that other cancer patients were experiencing, particularly small children, that he decided to run across Canada to raise money for cancer.

He called his journey the Marathon of Hope. Canadians from every part of Canada in my generation can remember him dipping his leg into the water in Newfoundland, but we can also remember a very important day, and that was the day that his Marathon of Hope ended. I think all of us can remember seeing Terry lifted into an ambulance, and that was sort of the end of the Marathon of Hope as far as him running it.

But he ignited a passion and a desire on the part of every Canadian to do something about cancer, and so he inspired us. Over the years many, many people have helped to create the Terry Fox legacy and the Terry Fox Foundation.

This morning our Finance Minister and other officials, along with the Fox family, announced that the Terry Fox Research Institute for cancer will be located here in British Columbia, in Vancouver. Terry Fox means so much to each and every one of us. It is a great privilege for British Columbia to hold that place of honour with his family.

[1350]

Researchers from across Canada will share in this. We will have centres of excellence in Montreal, Toronto, Saskatchewan, Alberta and so on, but the work here will be creating that foundation and making sure that other people don't suffer the same kind of fate that he had.

Mr. Speaker, I know that Terry Fox is remembered very fondly by all members in this chamber and in particular by the member for Port Coquitlam-Burke Mountain. I ask you to please join me in celebrating this amazing announcement of a new research facility in Terry's honour.

Oral Questions

MANAGEMENT OF VANCOUVER CONVENTION CENTRE EXPANSION PROJECT

N. Macdonald: I'll begin with a quote. "This will be built on time and on budget. Count on it." That was the Premier, November 8, 2004, talking about the convention centre expansion project.

Interjection.

Mr. Speaker: Member.

N. Macdonald: He said it would be \$495 million. The Premier personally made that commitment, but when he made it, he knew it was inaccurate.

The Auditor General's report clearly shows the government was told in May of 2003 that the cost would be at least \$637 million, but the Premier and a succession of cabinet ministers made inaccurate statements and used them unequivocally. Those figures that were wrong — they used them again and again, guaranteed their accuracy.

To the Minister of Tourism: why did he, the Premier and an entire roomful of cabinet ministers choose to hide the true costs of the convention centre expansion project?

Hon. S. Hagen: I've said time and time again, in this House and in my estimates, that we are not happy with the cost escalations on this project. We were the ones who asked the Auditor General back in February to do a comprehensive review of this project. We take his recommendations responsibly. We take them seriously.

To that extent, we have already embarked on changes with regard to the project. Six months ago we appointed a new chair, and we started appointing new board members who brought in construction and marketing expertise to the board.

Mr. Speaker: The member has a supplemental.

N. Macdonald: If ever there was a definition of too little too late, it is that explanation given there.

The current Minister of Small Business, the current Solicitor General, the current Minister of Labour, the current Minister of Economic Development and the current Minister of Finance all have responsibility for the convention centre and its budget at some points.

Six ministers, six failures. But from the beginning what we all know is that this project was the Premier's. It was the Premier who ran the project. It was his pet project. He made the decisions that drove up costs. It

was him that drove the mismanagement. It was the Premier who had his own deputy chair on that board.

He knew what was going on, but consistently he used numbers that were inaccurate. Why did six successive ministers and the Premier choose to cover up the true costs of this boondoggle?

Hon. S. Hagen: As I've said before, we are not happy with the cost escalations on this project. The decision about how this project was to proceed was ours, and we take responsibility for that. Certainly, in hindsight, if we had a chance to do it over again, we would proceed differently.

As the Auditor General states in his report.... He talks about the pressures on the Vancouver construction market. In fact, the Auditor General likens the situation to a perfect storm. In quoting the Auditor General: "The cumulative..."

Interjections.

Mr. Speaker: Members.

Hon. S. Hagen: "...construction inflation in the...years from 2002 to 2006 was 47 percent.... The actual escalation rate caught everyone in the industry by surprise."

Mr. Speaker: The member has a further supplemental.
[1355]

N. Macdonald: All of the excuses that this minister makes about this project have been looked at by the Auditor General, and he has thrown them out piece by piece. The cause of this problem was a Premier that mis-managed the project from day one. But there are plenty of others on that side to share responsibility, and in the clearest way, they have signed off on their responsibility.

If you go back to 2003-2004, the service plan: "I am accountable for the ministry's results and the basis on which they have been reported." The same was done in 2004-2005: "I am accountable for those results as reported." In 2005-2006 — the same thing. In 2006-2007 this minister said: "I am accountable for those results as reported."

What did the Auditor General think of those results? He said that they painted an altogether too rosy picture. That is the politest way that you could possibly say it. "Too rosy a picture" means inaccurate.

To the minister: if he is accountable, there is only one way in this system that you show accountability. If you are wrong, then you are responsible and you must resign.

Hon. S. Hagen: You know, it's always interesting to me to listen to the NDP. They always want to go backwards, not forwards. Well, let's go back...

Interjections.

Mr. Speaker: Members.

Hon. S. Hagen: ...to 1995, when industry in British Columbia told the NDP government that they needed an expansion....

Interjections.

Mr. Speaker: Minister, just take your seat so we can hear.

Continue.

Hon. S. Hagen: Back in 1995 the industry in British Columbia told the NDP government they needed...

Interjections.

Mr. Speaker: Members.

Hon. S. Hagen: ...an expansion of the trade and convention centre. So the NDP government studied this until the year 2000. That's five years of studying.

Then they decided not to go ahead with it. Why? Because they couldn't get the federal government co-operation and they couldn't get the private sector to contribute any money, unlike the board of directors at VCCEP, who got over 300 million additional dollars from the federal government and the private sector.

H. Bains: Minister after minister said that they were accountable. Minister after minister hid the true cost of cost overruns from the taxpayers. Now they've been caught. The Auditor General is very clear, and this minister today apparently has accepted that he accepts the blame on behalf of the government.

Mr. Speaker, in a Canadian parliamentary system the only way the minister can be held accountable for the boondoggle that they have created here is to resign. Will he do that today?

Hon. S. Hagen: I don't know what planet this member is living on. We went public on July 11 with \$883.2 million on this project. We went public on July 11 with the new board, the new chair and the new board members. We listed them out. For this member to suggest....

Interjections.

Mr. Speaker: Members.
Minister, just take your seat.

Interjections.

Mr. Speaker: Members.
Continue, Minister.

Hon. S. Hagen: Let me remind the member opposite. It was us who invited the Auditor General to come in and review this project. We asked him to, and we've asked him to come back again in the spring with a following review.

Mr. Speaker: The member has a supplemental.
[1400]

H. Bains: Mr. Speaker, this minister cannot in one breath say that he accepts the blame for \$400 million of

taxpayers' money to be wasted and causes a billion-dollar boondoggle....

The Minister of Finance last week accepted that this was a boondoggle. Will the minister do the honourable thing and keep up with the longstanding tradition of this parliament and resign?

Interjections.

Mr. Speaker: Members. Members.

Hon. S. Hagen: I can't believe what the member opposite is talking about on this project. This project has 400 working people on that site. Does he not care about that?

On top of that, let me talk about the success of this project. So far, VCCEP has secured 77 conventions. That is up from 54, when I was doing my estimates. We have 23 new conventions. Those 77 conventions are worth \$1.6 billion in the economy.

B. Ralston: Well, there's one British Columbian who is no longer on the worksite. That's Ken Dobell. The Premier's close friend and deputy minister was removed as chair of the convention centre board but stayed on as a director. Sometime in the last six months he was removed as a board director.

Can the Minister of Tourism explain why Mr. Dobell was removed? Was he on the hunt for a fall guy?

Hon. S. Hagen: Let's talk about what that initial board accomplished under the leadership of Ken Dobell.

Interjections.

Mr. Speaker: Take your seat.
Continue, Minister.

Hon. S. Hagen: If you recall, a few minutes ago I mentioned that the reason the NDP government of the day — and thank goodness they're no longer government.... The reason that they cancelled the project after five years of studies was that they couldn't bring the feds to the table, and they couldn't bring Tourism Vancouver to the table. Well, guess what. The new board of VCCEP, back in the 2000s, actually brought over 300 million new dollars to this project from the feds and from TVan.

Mr. Speaker: Member has a supplemental.

B. Ralston: Well, the overrun is now closing in on \$400 million, so that \$300 million appears to have been eaten up already.

The minister appoints members to the board directly himself. Paul Taylor, president and CEO of ICBC, was on the board. He even chaired the project's audit committee. He was re-appointed in April 2007 to that position. But once again, since then, he became another fall guy and was removed.

These two top government officials reported directly to the minister. When is he going to accept responsibility — he or the Premier — and do the honourable thing and resign?

Hon. S. Hagen: As I said, we have taken responsibility for this, and we've done the following things. We've put a new chairman of the board in place, a person with 33 years' construction experience. We've put a new board of directors in place. We have a fixed-price contract now with the contractor, with a completion date of March 15 of '09.

Interjections.

Mr. Speaker: Members.

[1405]

R. Fleming: We know from the Auditor's report that the huge cost overruns aren't just the board's to wear. The Premier's office, Treasury Board and the minister have been involved intimately in all the key decisions. The buck does stop there.

The minister talks about replacing the board chair in the past six months, but Treasury Board of cabinet has now approved six major cost overruns since December 2003 and three occasions under this minister since March 2007. Under the budget transparency legislation, under balanced budget legislation, this minister is supposed to be accountable when things go wrong. When will the minister, when will the \$900-million man make himself accountable to this House and to the taxpayers of the province?

Interjections.

Mr. Speaker: Members.

Hon. S. Hagen: You know, talking very large numbers, let's just consider the large number that not doing this project in the '90s, like the NDP should have done, has cost the province — over \$1 billion in economic activity, because that government did not move on a project that everybody was asking for.

Mr. Speaker: Member has a supplemental.

Interjections.

Mr. Speaker: Members.

R. Fleming: Among the Auditor General's report findings is some discussion about the Vancouver Convention Centre's unique structure as a Crown agency. Among other things, it had a deputy minister on its board of directors from 2003 to mid-2006 and again later in 2006 through 2007. The Auditor states that an outcome of this arrangement "is that the minister responsible can have direct and timely access, through the reporting relationship of the deputy minister, to board discussions and decisions and to all governance and project-related material."

My question is to the minister. You and your predecessors have had every opportunity and every avenue to intervene in this project and make sure it was well managed. You didn't do it. Why, then, has this government over the past four years instead focused on keeping the true cost from the taxpayers instead of managing this project properly?

Hon. S. Hagen: As I stated previously, we have taken action. When we couldn't get a number from VCCEP, I appointed a new chair. I appointed a new board. We got the number in July. We told the public the number. The public number is \$883.2 million. That's what it will be built for, and it will be completed by March 15 of '09.

M. Farnworth: A very simple question to the minister: why did it take you so long to take action — almost to the end of the project before you took any action? Why, Minister, why?

Hon. S. Hagen: As the member well knows if he's looked at the project, this is a very complex project. We're about halfway through the project now in expenditures. It was time to make a change on the board. We knew that we needed to bring a construction person in, which is why we brought in David Podmore. David Podmore has said: "I can bring this project in at \$883.2 million and by March 15 of '09."

CHILD PROTECTION INVESTIGATIONS

N. Simons: From one example of chaos and mismanagement to another.

My question is for the Minister of Children and Family Development. Documents provided to the opposition show that as of last month, 3,264 child abuse investigations remained open for more than 90 days. That's three times what standards allow, and it's a 20-percent increase over last year. In light of this clear evidence, what is the minister going to do about this obviously worsening situation?

Hon. T. Christensen: As the member should know, the staff within the ministry take all child investigations very seriously. We respond to over 30,000 reports of a child that may be in need of protection each and every year.

[1410]

In some cases, though, investigations remain open because they are ongoing. Where any investigation is open more than 90 days, then supervisors within the local offices as well as at the regional level ensure that they are looking at those specific files to ensure that they're not remaining open unnecessarily.

Mr. Speaker: Member has a supplemental.

N. Simons: Let's be perfectly clear. This is not a question about the staff of the Ministry of Children and Family Development. This is about the management of

the ministry, and that's what's failing the people of British Columbia.

We have over 3,000 cases of child abuse investigations that have not been completed. This is not an issue of paperwork. This is an issue of the needs of children at risk needing to be met, and this minister can't answer what he's going to do. What's he going to do to ensure that the social workers in this province have the resources they need to do their job?

Hon. T. Christensen: Unlike the previous government, what this government is going to do is add resources. We're going to add human resources on the front lines, which is exactly what's been happening over the course of this last year. Over 200 social workers have been hired to enhance our ability to respond to child protection investigations.

As I indicated in my initial answer, where any investigation is open for more than 90 days, those are followed up by management within the regions to ensure that there are good reasons for those investigations remaining open. That is something that did not happen under the previous government.

A. Dix: That's simply, wholly unacceptable. Thirty days is his ministry's standard. Some 3,264 cases are over 90 days — three times worse than his standard. It got 20 percent worse in the last year. The hon. minister can't sit there and say that that is good news. It is terrible news. Every single one of those cases is a child.

I ask the minister: what's he going to do today about those 3,264 children?

Hon. T. Christensen: We're going to do what the NDP for ten years did not do. As I said....

Interjections.

Mr. Speaker: Minister, continue.

Hon. T. Christensen: The ministry has taken steps to address the number of open protection reports. As I indicated, we've hired more than 200 new front-line workers over the course of the last year. Dozens more will be added this year.

The regions are increasing the tracking of open investigations by ensuring that team leaders review all cases that don't meet the 30-day mark, and managers review all cases not meeting the 60-day mark. Designated directors in each region then review any case that is open for more than 90 days.

These are not simply cases that are sitting on a shelf not getting any review. The ministry staff are on top of those cases, and they are closing them as is warranted.

Mr. Speaker: The member has a supplemental.

A. Dix: Well, the Minister of Children and Families must be the only person in British Columbia who thinks his government's record on child protection is good. Simply put, he says that he's taking strong

action. The problem, during his strong action, got 20 percent worse.

I'm going to ask the minister — since, presumably, this action that's taken after 30, 60 and 90 days is on his direction — whether he thinks that 3,264 cases is acceptable, whether 20 percent worse is acceptable and whether this is not a reflection of a botched reorganization in his ministry.

[1415]

Hon. T. Christensen: Well, it's interesting. We're well aware of the member's penchant for revisionist history, but let's look at the numbers.

The number of open protection reports of 30 days or less is down when compared to 2001 figures. The most recent figures show that the number of open protection reports in excess of a year is down dramatically — 230 this past spring compared to 567 in February of 2001. Those in excess of two years are down even more dramatically. There were only eight in February of 2007 compared to 154 in February of 2001.

I take very seriously where investigations remain open. We have put in place measures to ensure that those investigations are being monitored. We will continue to do that, just as we will continue to add front-line staff to ensure that we can close these investigations as quickly as possible.

TREATMENT OF RESIDENT
AT RETIREMENT CONCEPTS
SENIORS FACILITY

C. Wyse: Last week the minister told this House that there have been no substantiated concerns raised with the Interior Health Authority for the last 18 months about the treatment of seniors at Retirement Concepts in Williams Lake.

On January 9 of this year — I repeat, this year — the verbal abuse of a resident of the unit for seniors with dementia was captured on voice mail. On the recording the senior is being yelled at by a staff member: "Now, you listen. I know you are on effing drugs, but hey, what am I effing doing it for? This is four effing times. Now listen to what I am saying." On January 10 of this year, the wife filed a formal complaint with the senior licensing inspector and copied Retirement Concepts and Interior Health.

How can the minister continue to say that everything is fine and that there are no serious problems at Retirement Concepts? How can he continue to ignore this situation and pretend that no problems have occurred over the last 18 months when he hears story after story of inadequate care being given to our most vulnerable seniors?

Hon. G. Abbott: Every day in this province there are literally thousands of registered nurses, licensed practical nurses and care aides who get up, go to work and provide the very best care that they can. Every day those thousands of nurses and care aides provide care to about 25,000 British Columbians who are in residential care, who need complex, 24-hour care.

Now, the member has made a charge. If the member has a charge to make, then he should make it. He should provide me...

Interjections.

Mr. Speaker: Members.

Hon. G. Abbott: ...with all of the substance around the complaint, because I can tell him, as I can tell every member of the opposition and every member of this House, that whenever a complaint or allegation is tendered about the treatment of someone in a residential care facility in this province, it is followed up with rigour and it is followed up in a comprehensive way.

Interjections.

Mr. Speaker: Members. Members.

CALL FOR AUDIT OF
TREE FARM LICENCE LAND REMOVALS

B. Simpson: Last week in an interview the Minister of Forests said that he did not believe that compensation was required for releasing private lands from tree farm licences because "the province has received substantial stumpage benefits from those private lands over the last 50 to 60 years."

Mr. Speaker, we do not receive stumpage from private land logs. The companies, in fact, get preferential property tax treatment for having those private lands in a tree farm licence. They get exclusive rights to Crown timber, which the companies continue to exercise today.

[1420]

My question to the Minister of Forests is.... Again, he only represents the benefits that the companies get. He continues to give them those benefits. The environmental law clinic last week called on the Auditor General to do a review into this case to see if, in fact, this minister protected the interests of the public. I ask the minister today to stand in this House and say that if he's right, if we did not deserve compensation, if the people did not deserve consultation, will he support that call for the Auditor General to look into these private land releases?

Hon. R. Coleman: As I said in this House before, under the Forest Act companies can apply to have it removed. It goes through a process, comes to the desk of the minister. It's examined on its merit. You take the recommendations; you make the decision. The decision has been made. It is not being changed by this minister.

Mr. Speaker: Member has a supplemental.

B. Simpson: We've heard this minister say that over and over again. However, there's been a first nations court case against the previous minister where a judge said that they were not fairly consulted, ought to

be consulted and the minister ought to know he should have consulted with them.

We have a continuation of those complaints from all the first nations involved with Western Forest Products. We have the complaints from Jordan River, Shirley and Port Alberni that they were not consulted with. They ought to be consulted with. They want to be consulted with.

Now the minister is saying: "We don't need to compensate, because I don't think we need compensation. I think they paid." Well, they didn't pay. They didn't pay, and I'm challenging the minister again. I don't care what his process was.

Mr. Speaker: Could the member put his question.

Interjections.

Mr. Speaker: Members.

B. Simpson: I don't care what his process was for making a decision. The question to the minister is: if he's so sure he did the right thing, will he call on the Auditor General to tell us whether he did or not?

Hon. R. Coleman: The Auditor General is an independent officer of this Legislature, and nobody in this Legislature tells the Auditor General what to audit and what not to audit.

Interjections.

Mr. Speaker: Members.

Hon. R. Coleman: I get the fact that the member opposite doesn't support private property rights. I get that. I get the fact that the member opposite....

Interjections.

Mr. Speaker: Take your seat.
Continue, Minister.

Hon. R. Coleman: I know the member opposite doesn't want to admit to the fact that any of these properties that have come out of the TFL get any other uses. They have to go through local zoning, and at that time there are public hearings and input from the public on the use of those lands. That's fine.

The reality is that this thing is done. It was done in January. Consultation was done with first nations. The recommendation came to the desk of the minister. It was recommended to allow this tree farm licence removal to continue, and it was done.

[End of question period.]

Tabling Documents

Hon. W. Oppal: I have the honour to present the following reports: the British Columbia Ferry Commis-

sion *Annual Report for the Fiscal Year Ending March 31, 2007*, and the British Columbia Human Rights Tribunal *Annual Report 2006-2007*.

S. Fraser: I seek leave to present a petition.

Mr. Speaker: Proceed.

Petitions

S. Fraser: I present a petition with a thousand signatures from across the province supporting legislation to protect animals, the environment and children against antifreeze poisoning.

R. Fleming: I seek leave to make an introduction.

Mr. Speaker: Proceed.

Introductions by Members

R. Fleming: We're joined today by graduate students and faculty from Portland State University, and I'd like the House to make all of our guests feel welcome.

Orders of the Day

Hon. M. de Jong: I call committee stage debate of Bill 40.

[1425]

Committee of the Whole House

TSAWWASSEN FIRST NATION FINAL AGREEMENT ACT

The House in Committee of the Whole (Section B) on Bill 40; K. Whittred in the chair.

The committee met at 2:27 p.m.

The Chair: Good afternoon, Members. Before we proceed, I have a few remarks from the Chair.

Hon. Members, today we are embarking on committee stage of Bill 40, a bill to approve and give effect to the final agreement made between the Tsawwassen First Nation and the government of Canada and the government of British Columbia.

I wish to take this opportunity, in light of the unique form of the bill, to comment on the process to be used in committee debate. This bill, like the Nisga'a bill of 1999, is intended to approve the final agreement, which is attached as a schedule, and to enact ancillary legislation to conform with various aspects of the agreement.

It is a Crown prerogative to make agreements. The role of parliament is to debate, accept, reject or amend the bill, but subject to technical amendments, it cannot amend the agreement. In the case at hand, the Chair will not accept amendments to the schedule other than purely technical amendments to ensure that the schedule contains the correct text.

The Chair will not accept amendments to sections of the bill which have the effect of amending the schedule but will accept amendments to sections of the bill that are relevant and otherwise in order.

It seems to the Chair that section 3 of the bill embodies the operative portion of the bill. It is to be remembered that the committee stage of a bill does not provide an opportunity to recanvass all the arguments which were applicable at second reading, where the principle of the bill was under debate. During committee stage, debate must be strictly confined to the section which is before the committee.

Likewise, debate on proposed amendments must be strictly relevant to the amendment as proposed. The agreement, while not amendable except as provided above, will be open to debate when the schedule is called, subject to the observations made with respect to section 3.

Hon. M. de Jong: Following from that statement, my sense of how the debate was going to proceed structurally was that there was some informal agreement that the final agreement would be the subject of focused debate, sort of chapter by chapter, when we got to section 3 of the bill. I'm getting an indication that that is the opposition critic's understanding as well. Very good.

[1430]

S. Fraser: Actually, I'm responding to the comments made by the minister. I'm just looking for clarification. So we're going to address section 1 and then section 2. At section 3, we can engage in further free-ranging conversation that will occur. Am I correct there?

Hon. M. de Jong: Right. I think that is a logical way to proceed. I'm hoping that when we get to section 3 and begin to address the schedule, which is the final agreement, we can come to some sort of organizational agreement on which chapters we're going to deal with in terms of having the appropriate expertise available and to coordinate the participation of members that may want to participate.

I think we had had some discussions about proceeding through it chapter by chapter. If we have to change some of the order of those chapters, I think that's something that the hon. member and I can work out.

S. Fraser: Again, I'd just like to confirm that that would be acceptable to this side of the House. Be mindful that it's been many years since we've had a discussion at committee stage on a treaty and that we're all going through a bit of growing pains on this. So I appreciate the minister's comments, which show some flexibility in order to make sure that the appropriate critic is present with a bit of notice.

We're still not sure exactly on the time line on this, although my last discussion with the House Leader from the opposition is that this will be a much more abbreviated committee stage than certainly we saw under Nisga'a.

Am I correct in anything or in all that I'm saying?

The Chair: More general comments, Minister?

Hon. M. de Jong: Only to introduce the officials that are here presently: ADM Mike Furey to my immediate left; Bronwen Beedle, who played a key role in terms of the negotiations of the final agreement; and Frances Statham. All of these individuals have worked diligently and with passionate commitment to see this final agreement become a reality and are here to help guide us through the discussion that is about to unfold.

On section 1.

S. Fraser: All right. Again, please be gentle with me if I'm off on the wrong step here. Section 1. Are we specifically dealing with definitions? Is that correct at this point?

Hon. M. de Jong: I think we can probably start with the preamble and then go to section 1 of the bill. The two combined address the question of some of the definitions.

Definitions in this legislation are actually dealt with slightly differently, because they incorporate the definitions as they appear within the final agreement itself. So within the final agreement, definitions for particular terms are laid out. Unless I'm mistaken, what this bill does is incorporate those definitions. The instrument by which that is done, I believe, is section 1.

The Chair: Member, perhaps I could just interject here. The preamble is normally dealt with at the end. If there is a wish to chat about it earlier, that is at your discretion. However, I will not call for it to be passed until the completion of the committee stage.

S. Fraser: I am comfortable with the preamble. If there's no statement from the minister or his staff as to justification, I have reviewed the preamble and don't require clarification at this stage. I'm glad that we're not called to vote on it by section here. That's heartening. So we can move on.

I have a couple of questions around definitions as they appear, but I believe that's coming up next.

[1435]

Sections 1 and 2 approved.

On section 3.

Hon. M. de Jong: I think it is at section 3 now where we can move to the final agreement and start to deal with some of the substantive provisions included there.

S. Fraser: Thank you again, hon. Chair, for your patience on this. We're just learning how to do this also. In section 3, I'm going to touch on the nature of the agreement.

On the issue of boundary disputes, with this treaty there have been a number of challenges, both legal and certainly verbal challenges, regarding the boundary

issue. I know we historically saw some challenges with Nisga'a. Considering that there are a number of challenges with this particular treaty, how is that to be addressed after the treaty presumably passes?

As challenges come forward potentially in court, my understanding is that, according to this, there is room for changes based on a court challenge. That's still allowed to be open. What mechanism will be used to address those from the Tsawwassen people, and what role would the province play here? As it's a tripartite agreement, how are the federal representatives engaged at that stage? I'm being hypothetical here. I don't quite understand it from reading it.

Hon. M. de Jong: The member is correct in pointing out some of the activities, some of the litigation that has evolved and emerged around this. The general answer to the question goes as follows.

There are, within the legislation and the agreement, what are termed non-derogation provisions which explicitly set out that the agreement cannot adversely impact the rights of other aboriginal peoples — other first nations. There are other provisions in the agreement that say if, subsequent to the effective date, it is determined that that has happened....

That can happen in potentially two scenarios. One, if it is determined that the agreement does that or a specific provision of the agreement does that, then changes to the agreement are contemplated. The member is correct. That would involve a discussion/negotiation amongst all three signatories to the agreement.

[1440]

Similarly, it is also conceivable that in the future a subsequent final agreement involving another first nation, if it were found to adversely impact on the aboriginal rights of the Tsawwassen First Nation.... Then there would potentially have to be changes made, and that too would engage a discussion amongst the three signatories.

The Chair: Before we proceed, I just want to be sure — because of the complexity of this debate in terms of comparison to other bills — to make it clear, including to myself, that we are discussing section 3 of the bill, which is the schedule. In the schedule there are a variety of chapters.

So, Member, as we progress through this, I will ask you whether you're still on chapter 1, whether we're now moving on to chapter 2 and so on. I hope that will be clear to all the parties.

Proceeding with chapter 1 of the schedule, Member.

S. Fraser: Thank you for that clarification, hon. Chair. The way I'm reading it, chapter 1 is all definitions. Am I correct? Have I jumped the gun already? I'm placing the question to the Chair.

The Chair: I think you can proceed, Member. Just keep me apprised, as Chair, of where you are. If we can try to keep this in the order in which it appears in the schedule, I think it will be simpler for everyone.

S. Fraser: And I agree. So I thank the Chair.

If she could indulge me for a moment. Chapter 1 is essentially definitions. We're going to go in order. That's fair enough.

Bill 41 has some amendments to definitions. Is it appropriate to touch on Bill 41? I mean, are we talking about the whole package here? There are Bills 40, 41 and 42. They're inextricably linked. If I'm dealing with definitions, for instance, out of Bill 40, out of the final agreement, are we open then on Bills 40, 41 and 42?

Hon. M. de Jong: I don't want to constrain the hon. member. I think when we get to Bill 41, that represents another opportunity to address any of the issues that might emerge.

I should say, and I've checked quickly, I'm not aware off the top of my head — nor, I think, is anyone with me — of a situation where a definition in Bill 41 purports to amend a definition in Bill 40. But I'm not going to make that unequivocally. I'm not aware of one at this point, but we will certainly have an opportunity, when we canvass Bill 41, to test that thesis.

The Chair: Just for the benefit of members, technically the bill before the committee right now is Bill 40. That, however, does not preclude the member asking general questions in pursuit of information around the bill.

D. Jarvis: I'm a little bit confused, but I think I have a rough idea. I was going to ask a question on the definition of the Pacific fishery management area, regarding the earlier definition of Canadian total allowable catch. I'm not sure whether I should be discussing any of that here at this point....

It's really not a question as to amounts or anything like that. It's how the federal government, which now, from what I understand talking to various ministries of this Legislature, have said that they are not counting.... They've run out of money, so they are not counting the fish that go up, for example, the Fraser River. How do we establish what the allowable number of fish would be if we don't know what the total will be other than a guesstimate?

[1445]

Hon. M. de Jong: I think those are questions that obviously elicit interest in many quarters. I do note that at chapter 9 in the final agreement, we get to the fisheries component to the treaty. Without trying to suggest to the member what he should or shouldn't do, it might be easier to have the conversation as part of the broader discussion around chapter 9 and the fisheries component than in isolation and abstractly. That's perhaps my suggestion.

Interjection.

S. Fraser: Thanks to the minister for that, and the member for North Vancouver-Seymour. We will be having some critics speaking to that also. It would maybe be a time to do it, economy-of scale-wise, so the right staff can be in place.

A question on procedure again. But it does raise a question that the member for North Vancouver-Seymour.... Fisheries, for instance, is not exclusively but largely a federal issue. The role is very strong there, although there's certainly a role for the province.

As this is a tripartite agreement, I am a little bit confused. Excuse my ignorance, but we don't have representation from one party of the tripartite agreement — the federal government — in this House. So as we are debating this, I'm anticipating questions will come up on fisheries issues.

Will the staff that are brought forward — and this is no disrespect to the good staff that we have working on this for the province — be able to answer certain questions? Or will they be taken on notice if it's specifically a federal responsibility, if the question is aimed that way?

Can I get some help there, just so I know? It isn't exclusively fisheries. There's the federal component of every section of this. So for my own edification, could the minister maybe give us some clarity?

Hon. M. de Jong: Two good points, actually, that he raises at this juncture in the discussion — the first being that two of the parties have a provincial presence and one a federal, national presence.

We are engaged in a ratification process that's contemplated by the final agreement that, now that the Tsawwassen First Nation has adopted the agreement, would see that ratified by this chamber. There is a subsequent proceeding in Ottawa that needs to take place.

Just as there are features to Bill 40 that are unique to the provincial legislation, there will be features to the federal bill that are unique to it, insofar as there are aspects of this final agreement that impact exclusively on some of the federal constitutional authorities. That's the first thing. The member is correct to point that out.

With respect to the second issue, notwithstanding the fact that the fisheries components of this engage most directly the federal government, we are a signatory to it. Therefore, I think it's fair to say that we accept the obligation to have a sufficient appreciation and understanding of those provisions to warrant us agreeing to them and to allow for questions from the member or his colleagues or other members of the House, and to provide answers to the best of our ability and demonstrate why it is that we are satisfied the fishery has been dealt with in a fair, equitable manner.

S. Fraser: Thanks to the minister for that.

Just for clarity then, the section I'm looking at is chapter 2. I don't have any debate of merit to deal with the definitions at this point. I don't see any other members standing up. So just for the minister and his staff's clarity, I'm looking at chapter 2. I've moved beyond the definitions, and we're into "General provisions" as such. That's how I proposed my first question — going right to that. So I apologize for not giving clarity as to where I was.

[1450]

In keeping with the first question that I had — and I thank the minister for the answer — regarding the

challenges potentially on the borders issue, and with understanding of the answer to the question.... I guess the next question is....

There are substantial challenges at this point — whether they are legal or not or whether they become legal in the future — from certain other first nations involved either proximally or around other issues with resource use maybe up the Fraser. What resources, if any, are made available post-treaty to address those?

I guess there are sort of three parts to that. The Tsawwassen have some resources, my understanding is, which they receive through this treaty. That's fair enough. That's one piece. But do other nations? Are they responsible solely for the capacity to challenge historic uses to establish those? Is that all their responsibility, whether they're in the treaty process or outside of the treaty process?

Hon. M. de Jong: Thanks again to the member for the question. It's a good question because it touches on an aspect of this that captures, really, the entire agreement and what is taking place here. That is the establishment of a relationship — a new relationship, as it were — that is very much governed by the provisions of the agreement.

There will be ongoing interaction at a different level between the Tsawwassen First Nation, the parties to this agreement — Canada and British Columbia — but also other communities, whether they are the community of Delta, the regional government or other first nations. That won't change.

The obligations that exist for the Crown in the right of the province of British Columbia or the Crown in the right of Canada to consult and, where it's appropriate, to accommodate other first nations' interests.... Those continue. Nothing here in any way diminishes that.

In some cases some of those obligations will now be shared with the Tsawwassen First Nation itself and its government. That is something I think they're well equipped for and that the Chief accepts as a responsibility they will have post-effective date.

I think the other component to this, though — if I understood the member's question correctly.... What resources exist for other first nations? I should say that we're not funding legal challenges. If someone were to do an analysis, as some have, and have concerns they feel obliged to pursue through the courts, they have made those decisions. We don't provide a funding allocation or an invitation for other groups or first nations to do that. We believe, as we have said, that the agreement is sound in that respect.

The point, which is an important one, that the member has raised is that there will need to be ongoing dialogue. There will need to be an ongoing relationship, and we will have, post-effective date, a new partner at the table in that respect, which is the Tsawwassen First Nation and its government.

S. Fraser: Thanks to the minister for that. I appreciate his comments.

I guess I'll be more specific. On the opening day of our return, there was substantial protest from nations from across the province that came here because they had issues. They were critical of the new relationship that the minister refers to and their ability to be heard on some of these issues.

I don't see a mechanism for that, and I understand that the province — and the feds, I'm sure — will not fund court challenges of other nations. I understand that role.

One of the things of the new relationship is to get beyond litigation. So I guess it's in conflict resolution around this treaty, in this section, in "General Provisions" and "Nature of Agreement."

[1455]

We have a motion on the order paper suggesting that the government empower the parliamentary Standing Committee on Aboriginal Affairs to try to address, among other things, these kinds of issues. It's a way of getting around litigation, which I don't think any of us wish to see. We're hoping — and the new relationship refers to that specifically — that we're trying to get beyond an age of litigation on these issues.

I haven't got a response yet on that motion to empower the standing committee, which met, I think, 27 times during the Nisga'a process. The minister would know that better than me, because he was involved in the standing committee. He sat on the standing committee. I guess what I'm looking for is advice here.

There is a mechanism in place in this Legislature for, among other things, addressing boundary issues and preventing — hopefully, averting — a litigation situation from other nations that would maybe challenge the boundaries and other sections of this treaty. I'd like to know if the minister is considering that committee. And if not, what other mechanisms might be in place to avoid wholesale litigation challenges of this treaty?

Hon. M. de Jong: Thanks to the member for raising the issue.

The member is correct. I was part of a process, a select standing committee that met fairly extensively around the Nisga'a treaty, in particular the agreement and the agreement-in-principle. My recollection is that that did not, in and of itself, prevent some similar litigation that emerged around the overlap.

It's a vexing problem, and I think it's fair to say that we are all still learning about some of the steps we can take. I actually have a suggestion, or something that I'm at least turning my mind to, that I'd be curious to know the member's reaction to.

Some of this has emerged, I'm told, from nothing more complicated than a series of maps being transferred around. People look at them and go: "Whoa, where are those lines on the map coming from?" and "That's our traditional territory," and "Why is someone else claiming an interest of any sort in our traditional territory?" So some of this very much relates to communication.

I think there may be a role for the Treaty Commission here, in terms of facilitating discussions amongst the parties who have an interest in a particular final

agreement and perhaps even to formalize some kind of dispute resolution process. What that all looks like and how it all plays out, I can't pretend to offer the details to the member now.

It has come up here in Tsawwassen. It was an issue in Lheidli T'enneh, a final agreement that was not ratified by the first nation, but I think the member knows that it also emerged as an issue there. It went away when the ratification didn't proceed, but my guess is that it would not have gone away as readily if the treaty had been ratified.

Involving the Treaty Commission in a more extensive and direct way is something that I'm thinking may have merit and is something we're exploring. I'm interested to know what the member thinks.

S. Fraser: Thanks to the minister for that. Addressing his statement about the Treaty Commission, we do support an expanded role for the Treaty Commission certainly in dealing with conflict resolution and the boundaries issues.

It's very difficult. There are many first nations, as the minister knows, in the province that do have potentially conflicting boundaries in any treaty that's being addressed. We know that is a problem. It is with Tsawwassen. It was with Nisga'a. It's more extensive here, and there's reason to expect that it's not going to lessen in other treaties. So we endorse that — the Treaty Commission's role expanded.

[1500]

The resources and the capacity in many nations are stretched very thin, as the minister well knows, and their ability to legitimately challenge boundaries as written through treaties or to challenge through litigation afterwards.... Those resources are often not there, and the capacities within the nations themselves are often not there, so having the commission involved is important. But I think that's a separate issue.

The standing committee involves both sides of this House, and as we need to debate and ratify these things, the level of understanding that's provided to all members and to communities, first nations and non-first nations, through the process of the standing committee is a valuable one in the province. It's one that I know the minister, in his previous role as critic in the opposition, took advantage of — and I mean that in a good way.

Certainly, he was able to voice his opinions. That, I think, made for more fulsome discussion, and it led to all points of view being able to be brought to the table, not just from members of this House but from communities. I see that as not exclusive to.... I'm not saying that the commission won't still have that expanded role, but there is a role that could help mitigate some of the protests that we saw on the lawn here two weeks ago now.

We endorse from this side of the House, from the opposition. We have no problem. We encourage the expanded role of the commission. But along with that, the standing committee has a role. It's acknowledged here at the beginning of every session by the Premier, but it has not been empowered.

I'm asking the minister, based on that.... Of course, we have a motion asking for that empowerment, because in the spring we, and I as critic, saw a need. I saw a number of issues bubbling to the surface throughout the province around this treaty, around the Lheidli T'enneh and potentially around the Maa-nulth.

Does the minister not see a role there to help address many of these issues around the very nature of the agreement and where that leads?

Hon. M. de Jong: Well, potentially, but I want to share candidly with the member my thoughts around the subject.

Some of the criticisms, critiques we heard from a variety of sources around the final agreement that we're discussing here went to the core of the treaty process. Some people are opposed to negotiating treaties. I'm not certain how to reconcile that kind of opposition — when we are trying to advance a final agreement that is in a form that someone fundamentally opposes.

There are other questions around mandate from those who are involved in the treaty process. The member is correct. We hear criticisms from many quarters about the nature of the mandates that come to the table. I suppose that's a natural component of any negotiation.

It's a good opportunity for me to say this on the record as well. Sometimes the people that bear the brunt of that criticism are the people that represent the Crown, the province of B.C., as chief negotiators. But in fairness to them, they get their mandate from the government — ultimately from the executive council, and they are bound by that.

The criticism — and I've said this to first nations as well.... To the extent that there is criticism around what those mandates are, it is more appropriately directed at the people who generate or provide those mandates to the negotiators.

I think it's fair to say we haven't been shy about drawing on the expertise of members via the committee process. In fact, I think the number of committees that have been utilized over the past few years has been unprecedented.

[1505]

Is there a role to involve an all-party committee around certain aspects of the discussion that is taking place, the new relationship? Potentially, but I don't think it's the best place to try and resolve overlap disputes. I'll tell the member that candidly. I think the dynamic at play on a committee like that.... Overlap disputes generally involve first nations who are asserting competing interests.

Someone would have to spend some time convincing me how an all-party committee represents a forum that would be of assistance in resolving those kinds of specific claims and disputes. I can see a role for the Treaty Commission there.

To the other extent, I wouldn't rule out some role as we move forward for the all-party committee, but the member will have to do some work convincing me that overlap disputes would be appropriately referred to an all-party committee.

S. Fraser: I have a member from the government side that wants to ask questions. I'm going to allow that in a moment, but I just want to touch on this.

I don't know that an all-party committee would solve the boundaries issues, but what I do know is that we on this side have.... You've mentioned there's one party that doesn't believe in the treaty process. The Union of B.C. Indian Chiefs is an integral part of the leadership council — one-third of the leadership council. Their concerns are valid. They have signed on to the unity protocol. That sum total of first nations in B.C. is substantial, and they have criticisms.

Those within the treaty process, as it exists, and those outside of the treaty process, as you point out — the Union of B.C. Indian Chiefs, I think you were referring to — have valid concerns that need to be addressed, that aren't being addressed.

If we are to incorporate, for instance, the needs of those two groups that are working together to some extent, in the interests of reconciliation, and maybe make amendments, address the concerns that are seen as lackings within the current treaty process.... That's the opportunity to bring members like the Union of B.C. Indian Chiefs into the negotiations for reconciliation — maybe through the treaty process. I'm an optimist.

That is not happening now. Since I see that as a role, potentially, for the committee.... I see that as a role for government, but I don't see the government addressing that issue through the treaty process, through this process. I see it dividing more, with other nations — not with the Tsawwassen. I understand that.

My hope is that boundary issues.... Well, if that's all handled by the Treaty Commission, that's great. That's one piece of this. But some of what I've seen as fundamental flaws in the treaty process are preventing a great number of first nations in this province from reconciliation.

I'm hoping that as we see court decisions happen.... There is certainly a sentiment out there that those be incorporated, that those basic changes in case law, for one, be helped to amend and grow a treaty process that will involve all — all three parts of the leadership council, including the Union of B.C. Indian Chiefs. That is my hope.

If the government would take that on, on their own, great. Seeing that void, which I see as a void.... I do not believe that's being addressed through the treaty process that we're standing here today discussing. I believe that we're going to see great discontent increasing in the province. We're going to see treaties coming forward here and there, and the process is going to get stalled because there's going to be great numbers of first nations that are left out of that process. They will feel they have no ability to get into the process because there's no willingness to address some of the critical issues or what are seen as failings in the treaty process.

With that gratuitous statement, I'm going to move on. I will cede this next question to the government member who sits behind me.

[1510]

D. MacKay: The debate in the committee stage of Bill 40 that we're into today is obviously going to be somewhat complicated. It's a very complex issue. It took 17 years to get us here today, and there's probably going to be some questions asked out of sync with what the preamble to the committee stage of the bill alluded to. Having said that, I'm going to try to stay on track as best I can, and I will ask the Chair's forgiveness if I happen to wander and get ahead of myself.

I wanted to touch very briefly on the overlap issues and the fact that the minister, I believe, made the statement that we don't fund native bands for overlap issues. I don't disagree with that. However, it's my understanding that the federal government and, to a small degree, the provincial government provide funding to the native bands as they're in the treaty process to work through the process.

Given the fact that there are eight bands who are also claiming territory that is included in the Tsawwassen band, given the fact that there are eight other bands out there that claim the same territory, I would suspect that one or two of those bands, if not all eight of them, as they get into the treaty process, are going to be coming to government, going to the negotiators and talking about the overlap issues.

Some of the funding that has been provided as they move down that road is, in fact, going to be used to try to deal with the overlap issues. I wonder if the minister would care to comment on that.

Hon. M. de Jong: Certainly, part of what the member has alluded to or speculated about is potentially true. As parties become parties, as first nations become involved or are involved in the Treaty Commission process, they are provided with funding and repayable loans to help finance the expertise they require to assist them whilst in that process. Some of that funding, I am advised, can be utilized to address issues that arise with alleged overlapping claims. To that extent, the member is correct.

It is in all of our interests to try and do everything possible to avoid these kinds of disagreements from evolving to a point where litigation is necessary, because for those that are involved in the treaty process, my sense is that those resources are better spent on other issues.

I can say this in a personal way. As we moved through the ratification process in Prince George with the Lheidli T'enneh and into Tsawwassen and now the Maa-nulth, we certainly learned some things. I wish I could follow that up with a statement that says "and therefore, we've learned so much that these issues have disappeared." They haven't, but I think we've learned a great deal about how to try and deal in advance of final agreements being finalized.

It hasn't made it go away, and the member's right. When they don't go away, when they aren't dealt with conclusively, it means further resources are spent. Some of those resources, for people involved in the Treaty Commission, come via the Treaty Commission itself.

B. Lekstrom: Certainly, it's my pleasure to be able to enter into this discussion today, committee stage and on chapter 2.

I have a question on section 11 that refers to the full and final settlement. It reads: "This Agreement constitutes the full and final settlement in respect of the aboriginal rights, including aboriginal title, in Canada of Tsawwassen First Nation."

When I read through the document, I ran across a couple of sections further on, so bear with me. I'm going to relate to those, which would be chapter 4, section 42, which states: "If, within 50 years after the Effective Date, Tsawwassen First Nation owns any parcel of Specified Lands in fee simple, that parcel of Specified Lands will become Tsawwassen Lands after completion of the process set out in clauses 43 and 44." Then we go over, and it talks about that process.

[1515]

Similarly, it would be chapter 4, section 47: "After the 50-year period referred to in clause 42" — which I just read — "Canada will consider a request from Tsawwassen First Nation to add land, including any parcel of the Specified Lands, to Tsawwassen Lands."

I'm confused. I guess maybe I'm wondering if my definition of "full and final settlement" as we sign this is different than 50 years in the future. Could I get some explanation on that, please?

Hon. M. de Jong: I think it is important, as the member has done, to both look at the specific provision and then recognize that the agreement touches on a range of issues.

The certainty model that is contained in section 11, as it were, is designed, in effect, to make clear that this is not a case of coming back later and seeking further benefits or further accommodation but that some of the benefits or the provisions that are contained within the agreement crystallize at a later date.

For example, there are ongoing obligations by the federal government to provide moneys, and the member has pointed to one in terms of land. So there are some options that exist.

There's an ongoing relationship created. For example, in some of the chapters there is an ongoing obligation on the part of the provincial Crown to consult around changes to legislation that might impact on the Tsawwassen or on Tsawwassen lands.

The agreement is designed to be a full and final settlement, but that doesn't mean that there isn't an ongoing relationship. It doesn't mean that in certain cases — the member has referred to what are called, I think, specified lands within the agreement — there aren't some options created around whether or not and how those specified lands are incorporated into treaty settlement lands.

The member has, I think, astutely observed this. Not everything crystallizes or occurs on the effective date. There are some things that happen, or could happen later, but those things are defined, and they are defined conclusively and exhaustively in the agreement that we are discussing.

B. Lekstrom: Just so that I'm clear on this, then. I think that for most British Columbians, if they were to pick it up and read section 11, interpretation of this "full and final" would be: "This is it." What I think I'm hearing, and I believe this is correct, is that it refers — under chapter 4, sections 47 and 42 — to 50 years hence — that this full and final settlement document actually is an active document up until that time. Would that be a reasonable assumption?

Hon. M. de Jong: Yes and, in some cases, beyond it, insofar as defining what the rights, responsibilities, obligations might be. But yes, I agree with the essence of what the member has said.

D. Jarvis: To follow up on that last question, Minister, I was of the understanding that this sort of... Well, it's an expression of me-too clauses, and I was informed that they only pertain to the taxation part. But I noticed in section 49 of section 2(a) it says that in the event of any agreement within sections 25 and 35 of the constitution, "Canada or British Columbia, as the case may be, will provide Tsawwassen First Nation with additional or replacement rights or other appropriate remedies."

[1520]

Is that what you would interpret as a me-too clause — that if another treaty comes down the line, like, next week and if it had something different, we'd have to top up the present bill that we're discussing?

Hon. M. de Jong: I think the member is referring to section 49, but I want to be clear that I know what he's referring to.

D. Jarvis: Yes, 49 and 49.a, Madam Chair.

Hon. M. de Jong: Section 49 relates specifically to the situation that I speculated about a few moments ago where, following a determination that other aboriginal rights had been adversely impacted or as a result of a subsequent final agreement, it was determined that Tsawwassen First Nation rights — as defined by this treaty — had been adversely impacted. It provides both the obligation and the mechanism by which that is addressed.

So it would be incorrect to describe this as a me-too provision. It would be correct to say that the sections in their entirety contemplate the possibility of finding that aboriginal rights have been impacted and that the agreement would need to be adjusted to address that.

S. Fraser: I guess I have a process question at this point. Obviously, there are a number of government members that also have substantial lines of questioning on Bill 40, as they have every right to have.

As a critic that's never been involved in this process before, I am concerned. What's our time line here? If we're jumping from chapter to chapter now.... I mean, I have a hard time keeping track of this anyway, but we're going to run out of time. We won't be able to fully address this treaty. Are there any suggestions? Is

there any process that maybe the Clerk can help us with to make sure that doesn't happen?

Hon. M. de Jong: We're in chapter 2, and I appreciate what the member is addressing. I want the critic, members of the opposition and other members to have the time they need to canvass the issues.

We're into our first leg of this debate. We won't do it now, but following the conclusion of proceedings this afternoon, we can speak amongst ourselves or those with questions and highlight where we think those questions are so that as the critic, the member, has some understanding of where those interjections might take place and proceed on that basis.

I think it's helpful for everyone if we can maintain the order of at least the chapters, or we'll be bouncing all over the place, and that won't help anyone. I'll endeavour to help in any way I can. By the way, I accept the proposition that the critic has a primary responsibility on the part of the opposition and needs to be accorded the time necessary to fulfil that role.

[1525]

C. Evans: I just want to belabour the point here. We jumped to chapter 6 a second ago and then back. That's great with me. It actually fits with the way I think better than progression.

I just want a commitment from the Chair, the Clerk, the minister — whoever it is. We're going to go through this. We're not having votes section by section, is my understanding. Ergo, if a member walks in this room, wants to go back to section 2 and we're in section 20, nobody stops that person. Is that correct?

The Chair: That is correct, Member. As has been pointed out several times, we're all sort of treading new ground here, and I am endeavouring to keep the debate focused. We are presently on chapter 2, which is section 3 of the bill. There is a long way to go. But the whole schedule is subject to discussion, and it will be appropriate at some point, if you've left something out, to come back to that discussion.

B. Lekstrom: Following through on chapter 2, moving to sections 26, 27 and 28 combined, just for clarification I again ask the minister.... I read section 26. It says: "Any Tsawwassen Law that is inconsistent with this Agreement is of no force or effect to the extent of the inconsistency." That makes extreme sense.

Reading the next one, it says: "This Agreement prevails to the extent of an inconsistency with a Federal or Provincial Law." I note that throughout this agreement we have different sections that talk about that specifically, where Tsawwassen law would supersede provincial or federal, and vice versa. Under section 27, chapter 2, why would this be...? Is it all-inclusive, and would it override future comments on the issue of whose law takes priority?

Hon. M. de Jong: Again, good question. What these sections combined do is confirm that the agreement is paramount insofar as other provincial and federal laws

— the contents of the agreement. But within the agreement it sets out, in the event of conflicting laws in various areas, which laws are paramount. So the agreement takes precedence, and then within the agreement it lays out which laws are paramount in various areas.

S. Fraser: An umbrella question, I guess, before proceeding any further section by section, for my own edification. Recently there was the UN declaration on the rights of indigenous people, and it directly, I think, refers to treaty.

As we're debating a treaty now, the Tsawwassen treaty, I note that there was no position taken by government on the UN declaration, which I think was pretty fundamental to treaty.

[1530]

I've got to ask the question, because it's been asked to me by first nations. Was the silence on the part of government around the UN declaration not supporting, just silent on, the UN declaration on the rights of indigenous people? Were there provisions in that UN declaration that would either have offended this treaty or caused a problem for future treaty negotiations?

Hon. M. de Jong: The most direct answer I can give is that I'm not aware of any analysis. I certainly didn't ask for any as between the proposed UN declaration and this treaty. So I can offer the member very little there.

I think I told the member at one point or made a comment somewhere that I was disappointed that the federal officials responsible for transacting business at the UN on behalf of our country weren't able to arrive at language they deemed appropriate. But I think that is a matter best canvassed with federal officials.

[S. Hammell in the chair.]

S. Fraser: I won't follow that line of questioning any further, although I'm not happy with the answer given by the minister.

On constitutional issues. It's section 8, and also dealing with modifications, on the next page are sections 13, 14 and, to some extent, 15.

What happens in a constitutional challenge? I'm just wondering. I don't see in this agreement a mechanism for dealing with that. If there's a constitutional challenge — and you'll have to excuse my ignorance here — that is successful in court to this or other treaties, would there...? I see there being two ways of dealing with that. If that challenge was successful, either the fundamentals of the treaty itself — or of a treaty, not necessarily this one — could be challenged or the constitution could be challenged for amendment, which is less likely, I assume. It's a federal issue.

Is there anything to deal with that? There is potential for constitutional challenges, as the minister knows, in these questions.

Hon. M. de Jong: Well, I can advise the member that a process by which a party would notify the mem-

bers of its intention to raise a constitutional issue is laid out in the agreement and in some of the provisions within the chapter. I think I need more information from the member, though, about the nature of the constitutional challenge he contemplates.

D. MacKay: Madam Chair, on the process for this committee debate. I'm wondering.... I know the previous Chair allowed us some movement within chapter 2, but I'm wondering if we couldn't speed this up a bit if the Chair was to go through section by section in each of the chapters. We're going to be bouncing from the last section in chapter 2 back to the first chapter, and I just thought it might move things along quicker if we were to go through section by section, chapter by chapter.

We're in chapter 2 now, and the member for Alberni-Qualicum has been talking about chapters 8 through 15. If we could continue on with that, I just thought it might move things through a little faster.

The Chair: Members, to facilitate, we will move from chapter to chapter. Right now we're on chapter 2.

[1535]

G. Gentner: I'll jump over to section 47, therefore. I have many other questions on other sections, but this is still within the chapter.

Under section 47, "Other aboriginal people," the discussion was brought earlier relative to some of the protests out on the front lawns and some of the concerns of other first nation peoples. I have a concern as well, and I just want to read to you a statement made by Boas. He was one of the first anthropologists who recorded history in the province.

This quote is something from 1887. "In the spring all the tribes of the Cowichan dialects and the Squamish go to the Fraser River to catch salmon. Only the Nanoose have the right to use the passage between Gabriola and Valdes Island for this journey. The remaining tribes who live on Vancouver Island own the passage between Valdes and Galiano Island."

My question, therefore, is: how did we ascertain that the TFN's traditional treaty is so inclusive of the Gulf Islands?

Hon. M. de Jong: I'm not going to go through the B.C. Treaty Commission process by which parties register their statements of intent and their assertion of traditional territories. But I will say — and I touched on this earlier in the debate — that as I understand it, the discussion and debate that is taking place relates to provisions of the treaty that provide certain rights to the Tsawwassen in certain areas, but they are not exclusive rights. That is, they do not exclude others from exercising whatever rights they may have.

G. Gentner: I don't mean to belabour the point. I'm just trying to be informed so I understand the process.

The Treaty Commission has suggested that the area that encompasses the Gulf Islands is the traditional

territory of the TFN. Can the minister describe to me whether that's based on territories that belong primarily to its residents? Or is it based on shared territories? Is it based on the hunting, gathering and reef net locations? Or does it also include that, based on the dialect that is spoken in the area?

Hon. M. de Jong: Thanks to the member for the question. Much of that determination work that the member refers to is in fact conducted by the B.C. Treaty Commission. It is important work and instructs much of the negotiation and discussion that follows from that.

I need to emphasize again that where a question has arisen, as it has here, nothing in the provisions we are discussing, either in this chapter or elsewhere in this final agreement, can adversely impact on the rights of other first nations aboriginal peoples. To the extent that a body other than this will make a final determination, that protection is set out distinctly and specifically within the provisions of this agreement.

G. Gentner: Thanks to the minister for that answer. Can the minister explain why there is such consternation among many of the bands who are suggesting that this is their traditional territory, if he is suggesting that they will not be adversely impacted by the boundaries that are in question?

Hon. M. de Jong: No, I can't. I am tempted to leave my answer there, but I don't want it to seem like a flip answer. [1540]

I take very seriously the concerns that have been expressed. As I said earlier in this debate, it remains our stated objective to move through ratification of treaties by having successfully, along with the other partners, had all of these issues resolved. But I wouldn't presume to speak on behalf of the people who have given expression to a concern. They have given expression to that concern in a variety of ways, including the filing of court documents, which have been referred to earlier.

G. Gentner: I look at some discussion.... There was some history that was recorded, of course, years ago with the Semiahmoo. There was a belief that there was a cross-cultural pollination, if you will, across the Georgia Strait culturally and that there was a practice of sharing. There was really no joint ownership or jurisdiction over these territories. Would the minister concur?

Hon. M. de Jong: Thanks to the member for the question. I am not an anthropological expert. I'm not in a position to offer a definitive opinion on that.

B. Lekstrom: Moving along, under chapter 2, sections 35, 36 and 37, "Other rights, benefits and programs." It reads: "Tsawwassen Members who are Canadian citizens or permanent residents of Canada continue to be entitled to all the rights and benefits of other Canadian citizens or permanent residents of Canada applicable to them from time to time" — which is fine.

When I go down and read 36 and then 37, it reads:

"Tsawwassen Members are eligible to participate in programs established by Canada or British Columbia and to receive public services from Canada or British Columbia, in accordance with general criteria established for those programs or public services from time to time, to the extent that the Tsawwassen First Nation has not assumed responsibility for those programs or public services under a Fiscal Financing Agreement or other funding agreement."

My question would be.... I'm trying to interpret this and how it could have some, I guess, applicable meaning on the ground.

If, for instance, the Tsawwassen First Nation implemented a K-to-12 system, which they have the ability to do under this treaty, if a member chooses to send their child to a K-to-12 school outside of the Tsawwassen First Nation, how does the financing work there? It's my understanding that if they assume the responsibility to provide K-to-12, they'll recover the necessary funds to run that jurisdiction.

What happens if a Tsawwassen First Nation family decides to send their child somewhere else? Are they still eligible to do that, or do they have to look to some taxation issue there?

Hon. M. de Jong: The best advice I have at this point is that in the scenario described by the member, where the Tsawwassen First Nation has established a K-to-12 system, they — any family, parents — are, first of all, entitled to make any choices and send their child, alternatively, to other schools.

If they have established the kind of program that the member has alluded to, I believe that the provisions of the agreement and the agreements that are contemplated at this point would impose an obligation on the Tsawwassen First Nation to send funding to follow that student who has exercised that choice. [1545]

B. Lekstrom: A quick follow-up, then. I used the K-to-12 as an example. There is other law-making authority, in the jurisdiction under this treaty, for the Tsawwassen government to assume different responsibilities. Would it be true, then, as was indicated by the minister on other issues that are laid out in this treaty, that funding would follow if there was a choice made to not participate in the program provided by the Tsawwassen First Nation?

Hon. M. de Jong: I'm going to be reluctant to make a blanket statement because I'm cautioned that, depending on the specific program or service we're talking about, there may be some specific and unique provisions.

I think, though, that the point I also want to emphasize about section 37 is that it does preclude members of the Tsawwassen First Nation from receiving the same benefit program twice — the concern around, say, a double-dip, once through a government-funded but Tsawwassen First Nation-administered program and then directly from Canada or British Columbia. The provisions are designed to provide some options but also some protections against being double funded.

D. MacKay: The interpretation that I get from reading sections 36 and 37 would suggest that the existing programs that are in place today for aboriginal people who live on reserves.... Sections 36 and 37 provide for those allowances — health care, education, housing — and other benefits that they presently receive to continue after the treaty is ratified or passed through this Legislature.

That's my understanding of it, and I wonder if I could get some clarification on that.

Hon. M. de Jong: I think I understand the member's question and can say that programs of general application can continue to apply, but I re-emphasize the caveat I attached a moment ago as contained in section 37, which precludes the opportunity to double-dip or collect the same benefit from two different sources.

S. Fraser: I'm going to move ahead to the section "Other aboriginal people." It starts at section 47 and continues onto the next page, ending with "Information and privacy." The sections basically deal with the section 35 constitutional rights from 1982 and challenges that could happen from other first nations.

I haven't been able to find anything in this document that would deal with challenges from, say, non-first nations. Am I just missing that? The section 35 issue is covered off for first nations obviously because it's related to section 35 specifically about rights of first nations.

[1550]

But what if there was a non-first nations challenge — I'll give you a hypothetical — on the agricultural land reserve from a group that might have felt that they had land expropriated at a time. Say that challenge went through. The challenges around aboriginal people in section 35 are clearly delineated here, but is there anything similar that I'm missing in this section or in chapter 2 that would address the issues around a challenge from non-aboriginal communities?

Hon. M. de Jong: The section does contemplate the possibility of a challenge to a provision not from one of the parties. I'm looking at sections 42 and 43, which in part answer that question.

S. Fraser: Maybe I've just misinterpreted the legalese on section 42, but in sections 47 through 49 there is remedy provided, the way I read this, to the Tsawwassen people jointly from Canada and/or British Columbia in the case that.... It says here in 49.a: "Canada or British Columbia, as the case may be, will provide Tsawwassen First Nation with additional or replacement rights or other appropriate remedies."

In the case of, I guess, a successful challenge from another first nation, and this is in keeping with the protection of the section 35 rights.... If a challenge occurred that somehow pulls something out of this treaty from another source, is that actually addressed through section 42? Am I just reading it wrong?

Is the minister saying that the same situation is addressed with a non-first nation challenge? Is that covered off in section 42?

Hon. M. de Jong: I wanted to make sure that I properly canvass the scenario that the member alluded to. I get the distinction between a successful challenge emerging in the circumstances contemplated in section 49 versus a third party-generated.

I'm advised that, at the end of the day, the commitment to address whatever impact that scenario might have on the final agreement is contained within the agreement in one case in section 49. But I am referred to, and refer the member to, section 42.a as that area where the parties are committed to addressing the impact of the kind of challenge that he has described.

S. Fraser: Thanks to the minister for that. Section 42 just seems less than definitive. It's almost as though that would be a policy, not a hard-and-fast rule. "Make best efforts" seems less than certain.

[1555]

With that, I'll move to another section here next to it that I find particularly challenging. I don't want to use "challenging" too many times, because the statement is very simple: "No Party will challenge, or support a challenge to, the validity of this Agreement or any provision of this Agreement." No party, from the definitions, is the parties being the province, Canada and the Tsawwassen First Nation. Am I right that the interpretation of parties is that? Fundamentally, the parties referred to here — no party — are the three parties involved in the treaty. Is that correct, first of all?

Hon. M. de Jong: Yes.

S. Fraser: Here's where my challenge is around this statement. If no party will challenge or support a challenge to the validity of this agreement or any other provisions of this agreement and if we have subsequent treaties, which we are all hoping to see, and we actually get through a reconciliation process in a timely and expedited manner based on the history here...? Hopefully, we'll get that way.

There are almost always challenges between nations — for instance, boundary issues — that by some interpretations of first nations should have been addressed before leaving stage 4 of the treaty process. There is an interpretation — and I've got the paperwork here from the commission — that suggests boundary issues should actually be reconciled prior to moving to stage 5.

They're not, so I assume there's a reason for that — why we can get from level 4 to level 5 without having addressed the boundary issues. I would like to know that reason just for the record, because the question's been put to me by first nations who believe that there is an obligation, that it's in writing where it says you should not move to level 5 without those issues happening.

If the parties, in this case I'll say the province since I'm talking to the province, cannot support a challenge and we're going into a process where we're going to

have multiple treaties potentially at a table — level 5, for instance — where the boundaries issues haven't been addressed and potentially affecting this treaty.... If treaties were proximal to here — or in Maa-nulth, Nuu-chah-nulth territories that are now coming forward that are challengeable with the Maa-nulth treaties mapping — are you allowed as a party to address...?

If you can't challenge the treaty as it stands, say, on the boundary issue, then are you automatically working against a nation that's involved in a future treaty process that might conflict with this treaty? Are you not penning yourself in?

I may have the interpretation of this wrong, but if we're allowing the treaty process to proceed right to stage 5 without addressing the boundaries issues and the parties cannot challenge this ever, when this treaty comes in, aren't other nations then prevented from having any support from the government to reconcile through the treaty process? A question; I hope it's not too confusing.

[1600]

Hon. M. de Jong: I don't have any hesitation in agreeing with the hon. member that it is far preferable that any questions around competing boundaries or overlap disputes be resolved as early in the process as possible. Certainly, I will also agree with the proposition that it is preferable that they be resolved prior to parties embarking upon ratification. They weren't, in this case, to the satisfaction of some parties, who are now identified and who have, in a couple of cases, brought the matter before the courts.

The parties to this agreement have made the decision to proceed, I suppose much as the parties to the Nisga'a agreement almost a decade ago said, "Yes, we acknowledge that there is some dissatisfaction" — that eventually manifested itself into court action — "but we want to get on with this."

By signing on or recommending this final agreement to this chamber, we are obviously signalling that we believe the matter has been resolved fairly and equitably and not to the detriment of any other first nations.

I know that the member was relating an interpretation, and perhaps it's not one that he shares. That's not clear to me. But I don't think I agree with that interpretation that says the parties are boxing themselves in. I think to the extent that other groups or first nations take issue with the other provisions, they are free to pursue that.

What this section says is that as a signatory, one of three signatories to this agreement, we and Canada and the Tsawwassen First Nation will not be providing support to a party that is seeking to challenge the validity of this agreement.

C. Evans: I really would like to follow up on this line of questioning. One of the underlying foundations, I thought, of how we function here is that no government can preclude the options of a future government — first nations government, federal government and the provincial government. Every political party or individual has the right to run for office, state what

they believe, attempt to get a mandate for that and then carry it out if they win.

You can imagine easily a time when, right or wrong, some very sensible person or nutbar in one of those three governments will receive a mandate to challenge a provision of the treaty. It's almost impossible that it will not happen. I can't imagine a treaty between two countries in Europe that nobody ever challenges.

Maybe the minister could say what this provision really means for future governments. And if it is broken, what is the price to be paid by the government who at some point in future supports or assists a challenge to a provision of the treaty?

Hon. M. de Jong: Thanks to the member for raising the question. I'll try to do this in three parts in terms of addressing the issues that he raises.

The provision clearly represents an assurance the parties are giving to one another that they will not bring or support any court proceedings that challenge the validity of this Tsawwassen First Nation final agreement.

The section does more than that. If one of the parties to this agreement were to challenge the validity of the agreement at some point in the future, undoubtedly this section would be pled by one or both of the other parties as a bar to that challenge to the validity of the agreement. So it does purport, in that sense, to bind the parties now and in the future.

In that way it acts as a formal assurance amongst the three parties that not only is, in our case, the Crown in the right of the province of British Columbia today signing on and embracing this agreement as valid and appropriate but that future governments will have to contend with a provision that says that.

[1605]

If the member is correct and someone were to come along and purport — either the Tsawwassen or British Columbia or Canada.... The other parties would most certainly point to section 43 and say: "You are precluded from doing so. You have signed on to say that you would not do that."

S. Fraser: Just going back a step, I'm looking for clarification from the minister. Section 4 to section 5, boundary issues. I've seen documentation from the Tseshaht First Nation near Port Alberni, central Island, and I've seen documentation from members of the unity protocol that states in writing that boundary issues must be addressed prior to moving to stage 5. At least they have an interpretation of that. And I've seen documents from the Treaty Commission that seem to verify that.

Can the minister comment about whether or not that's a hard-and-fast rule? If it isn't, how come I've seen documentation from the Treaty Commission and from these nations that states these issues should be addressed — that they felt there was some obligation on behalf of the commission and the government to address the boundary issues prior to moving to stage 5?

Hon. M. de Jong: Two things come to mind in response to the member's line of questioning. It is fair to

say that at its inception back in the early 1990s, there was very much a sense that — and I believe this was enshrined in some of the principles that led to the creation of the Treaty Commission and the work that it would do — primary responsibility for the resolution of overlap claims would rest with the first nations.

Now, we have to be realistic about the fact that that was a principle that was embraced prior to some additional litigation which has created some obligations for the Crown. Those are obligations that we take seriously and seek to discharge.

Again, let me say that I'm not quarrelling with the assertion that we are better off, all of us, if we can find a means to resolve these disputing claims as early in the process as possible. I think we've learned some things about how we can better do that. That's my answer to this stage.

D. MacKay: I'd like to take the minister back to sections 36 and 37. I know he gave me an answer that talked about double-dipping.

The question that I'm trying to get an answer to is pretty straightforward. The question is: are the aboriginal people living on the Tsawwassen treaty lands, settlement lands, entitled to receive the benefits that they receive today, in spite of the treaty?

If we're talking about the delivery of health care.... I can understand the double-dipping on health care. If health care is going to be provided by the federal government, why would the Tsawwassen government provide health care for them, if it's being paid for by the taxpayers of Canada? It's going to be a big draw on their tax revenue.

Are the natives living on the reserve today entitled to the benefits and privileges they have today, before this treaty is approved by the province and the federal government?

[1610]

Hon. M. de Jong: Two things. There's no doubt as, in this case, the Tsawwassen decide to embark upon the delivery of certain services, that they will sign some fiscal financing arrangements with the federal government. They will not be disadvantaged by virtue of the ratification of this treaty in terms of accessing services that they enjoy, nor — and I think this is important — in the future. As programs of general application become available, as a community they will not be precluded from applying to participate in those programs, but they will be limited in the sense that they won't be able to access funding twice where it is being provided by government.

I don't know if that helps the member with the issue he's raised, but that is the transition that is at play with this agreement.

D. MacKay: I think perhaps I'll save that question for clarification when we get into the taxation side with the exemptions that are provided and the provisions provided in the taxation chapter in this treaty.

I'd like to now move to section 66 on page 33, dealing with official languages, where it says: "For greater

certainty, the Parties acknowledge that the *Official Languages Act* applies to this Agreement, including the execution of this Agreement." I'm assuming they're talking about the federal Official Languages Act, which to my recollection is French and English.

That then begs the question, and I think this is probably an appropriate time to go into the appendix.... Appendix O-4 on page 307 talks about the list of geographic features to be named with Tsawwassen names. Now, how do those two marry up? If one is the official languages and it's acknowledged in the treaty, how is it that we're allowing the Tsawwassen first language to be placed on places such as the Pattullo Bridge, Burns Bog, New Westminster, Roberts Bank, Beach Grove, English Bluff and Lulu Island at Gravesend Reach?

I can't quite get those two together, and I wonder if the minister could clarify that for me.

Hon. M. de Jong: We will get to the provisions in the agreement that the member refers to. I should say, though, for accuracy, that the particular section the member refers to is included as a requirement of ensuring that pursuant to the Official Languages Act, this agreement is translated and available in both official languages. That is the sole reason for the presence of section 66.

S. Fraser: I'm not sure where to ask this question. I believe that general provisions is probably still the most appropriate. Along with the agreement, are there side agreements concurrent that were negotiated that are not showing up in the treaty, in Bill 40, which is what we're addressing now?

Hon. M. de Jong: What I'll endeavour to do is provide the member with an exhaustive list of those agreements. I tabled three of the actual agreements two weeks ago, the member may recall, but I'll provide the hon. member with a list of those agreements in their totality.

[1615]

S. Fraser: Just to finish that.... I appreciate that from the minister, and I've received those. I guess what I want to know is: if issues are dealt with, seemingly as part of the negotiation process here — certainly, concurrent with the negotiation process that's led us to this final agreement with Tsawwassen — and there are initiatives, if that's the right word, that are not covered under treaty, that are not part of the treaty, is there the threat of a lesser level of protection for the Tsawwassen people?

There are a lot of protections built into the treaty. So when you're putting things beside the treaty that maybe look good but aren't protected by the treaty, is that deemed to be appropriate? Is there consideration for protections built into that?

Hon. M. de Jong: To the member: he is quite correct. They certainly enjoy a different constitutional status, so one could use the word "protection." But there's no doubt that the agreements that do not form a formal part of the treaty certainly attract a different constitutional status than those provisions which are

within the treaty. The parties, through the process of negotiation, have agreed to do that.

It does mean that some of the agreements are open for renewal and renegotiation sooner. As well, there's no doubt as the member said, that they do enjoy a different status and, generally speaking, are revisited more frequently than the provisions within the treaty itself.

B. Ralston: I want to turn to section 11, "Full and Final Settlement." As the minister will be aware, one of the objections that some aboriginal groups — I'm thinking of Mr. Morales in particular — have to conclusion of treaties is that they are full and final settlements.

This clause here in the treaty crystallizes all aboriginal rights including title, and there is not a possibility to augment or supplement those rights by any subsequent treaty or agreement outside this document. Is that correct?

Hon. M. de Jong: I think I understand what the member is driving at. By and large, I think he's correct. I think that in fairness, though, you have to read it in conjunction with section 12 and the rights modification provisions of the agreement. But if I heard the member correctly, it is certainly part and parcel of the certainty model, if you will, that has been employed to assign an element of finality to the agreement.

B. Ralston: How might section 12 operate in the way that the minister has talked about to, if you will, modify section 11?

Hon. M. de Jong: I'm sorry if I gave a confusing answer. When I used the term "modification," I was not intending to refer to the relationship between sections 11 and 12. They do, however, operate in concert to reinforce a rights modification model that is employed in this treaty.

[1620]

S. Fraser: Just taking a step back to the line of questioning around the side agreements and concurrent agreements with the Tsawwassen treaty. I understand the minister's answer.

I guess where I'm going with that is: will those agreements come before this House for debate? Have they been signed off, independent of this process? What would occur with those agreements should this treaty fail either here or at the federal level, which we know won't happen, and how would we ever have a chance to discuss all of those issues?

Hon. M. de Jong: The agreements that fall into the category that I believe we are addressing today would be the taxation treatment agreement, which was tabled in the House; the real property tax coordination agreement, which was tabled in the House; and the harvest agreement, which was also tabled in the House. Beyond that, there's an own-source revenue agreement, a fiscal financing agreement and some fish operating guidelines.

The own-source revenue agreement and the fiscal financing agreement are posted on the website. I

believe the fish operating guidelines are as well, but I'll have to check on that. They are all referred to in various stages within the agreement. To the extent that the member has questions that arise from them, I'm happy to try and answer them as they come up and are referred to in the body of the agreement.

S. Fraser: I shall finish with this line of questioning, but just the context. Section 28 says "entire agreement."

"This Agreement is the entire agreement among the Parties in respect of the subject matter of this Agreement and, except as set out in this Agreement, there is no representation, warranty, collateral agreement, condition, right or obligation affecting this Agreement."

How do we reconcile these other agreements with Bill 40 or with this agreement, in light of that statement? I suspect I'm just confused by the legalese nature of this statement. That's section 68. Can somebody explain that for me in layman's terms so that I can reconcile how this all works?

Hon. M. de Jong: It's not a foolish question, and it goes to the heart of some constitutional idiosyncrasies. The member actually put his finger on it a moment ago. The provisions contained within this agreement attract and enjoy a certain constitutional status emanating from section 35.

Some of the provisions of the other agreements, the substantive provisions, do not. They are contemplated in some cases within the agreement, but that is the significant difference. We'll probably get into that in more detail.

[1625]

For example, we talk about the harvest agreement for fish and the difference between the constitutionality of ceremonial food fish and a commercial harvest entitlement contained within the harvest agreement and the different status that those entitlements enjoy, again, because of our unique constitutional makeup in this country.

S. Fraser: Thanks to the minister for that. Suffice to say, we're going to be talking about fisheries and such as we get further into this. I'm assuming, though, that every one of these side agreements is in keeping with existing case law — whether it's Sparrow or it's Delgamuukw — and that they will be consistent with the spirit and intent of those court decisions and also, obviously, section 35 of the constitution. Am I safe in assuming that?

Hon. M. de Jong: They are certainly the products of the negotiation between the parties. I'm reliably informed that the fish guidelines, as well, do exist on the website and are there for perusal.

S. Fraser: All right. I'll check that out. I'm not sure I'm entirely happy with that answer.

On chapter 2, on general provisions, as critic I have no further questions. So I'll leave that. I'll just let the House know that, in case other members have further questions on section 2.

G. Gentner: I was looking at the international legal obligations, 30 to 34. I know that the language is primarily geared between Canada and the first nation. However, to give you an example, today we heard that the Premier was in Portugal looking at some protocols relative to climate change. There is a new trend where the province is actually doing intergovernmental protocols outside the purview of the nationhood, so to speak.

One example is the international protocols — Ramsar, the migratory bird implications. That's certainly going to impact the mudflats of Boundary Bay and Roberts Bank.

For example, there may be some agreement relative to or with Washington State, where there's got to be some consensual buy-in from the first nation. Where, in this part of the general provisions, can I find that?

Hon. M. de Jong: Sorry, I missed the essence of the question.

G. Gentner: Again, I'm looking at the section on international legal obligations. I'm wondering where, in the general provisions, there is similar language regarding arrangements or protocols signed between the province and/or, for example, Washington State that doesn't involve the government of Canada.

Where, in the context of this legislation, does the Tsawwassen First Nation have to fit in with those agreements outside the province?

Hon. M. de Jong: I'm obliged to the member. I better understand his question.

Within the agreement, he's correct. The provision here deals specifically with Canada fulfilling its constitutional duty in terms of the international relations and the obligation to consult with the Tsawwassen where the fulfilment of those obligations may adversely impact the Tsawwassen or a Tsawwassen law or other provision.

There are similar provisions throughout the agreement that accrue to the Crown in the right of British Columbia with respect to laws and obligations we create and the obligation to consult with first nations where, for example, British Columbia purports to enact laws that would similarly impact on the Tsawwassen.

[1630]

That can happen in a variety of ways. It can happen in circumstances, for example, where the Tsawwassen may have obligations to meet or beat certain provisions of provincial law. The obligation to consult is laid out. It exists in a variety of ways and in a variety of sections throughout the agreement.

G. Gentner: Could the minister provide me with the basic footprint where these sections occur in the treaty, so that I can flag them when we come to them?

Hon. M. de Jong: For the moment I think I'm going to refer the member to chapter 16, the "Governance" chapter, which lays out certain obligations on the Crown. Section 29 is a good example of such an obligation.

The Chair: Any more questions on chapter 2?

M. Sather: I'm just following up on what the minister was saying in response to the last question about the fulfilment of international obligations. I'm thinking, for example, of the migratory bird convention.

When it says in section 32(b) that, "Tsawwassen First Nation will remedy the Tsawwassen Law or other exercise of power to the extent necessary to enable Canada to perform the International Legal Obligation," in what way would they remedy their law in order to allow that to occur? What exactly does that mean — that they would remedy their law?

Hon. M. de Jong: In its purest form, it would involve an amendment to the law or regulation.

[K. Whittred in the chair.]

The Chair: Thank you, Members. I understand we're ready to move on to chapter 3. We've been at this for two hours. Would the members appreciate a three-minute recess at this point?

Interjections.

The Chair: All right. Recess at the call of the Chair.

The committee recessed from 4:33 p.m. to 4:41 p.m.

[K. Whittred in the chair.]

On section 3 (*continued*).

The Chair: Members, I call the committee to order on Bill 40. We're now discussing chapter 3 of the schedule.

S. Fraser: Just a question of clarification. Were we not to vote on the chapters as we...?

The Chair: No, Member. The reason is that we normally vote on each section of a bill. This entire schedule that we're discussing now is section 3 of the bill. So when it's completed, we will then vote on section 3. I hope that clarifies it.

S. Fraser: Thank you for that clarification.

Chapter 3, as the minister knows, is probably the most controversial of all chapters in this. I jest here, but I don't mean to make light of chapter 3.

I am going to make an assumption here, and I'd like to be corrected. This is a transition. This has no long-term effect. We're seeing the Tsawwassen First Nation, through this treaty, being able to get out from under the yoke of the Indian Act, if that's the appropriate term. I note it is probably the only race-based piece of legislation left in the world. So I applaud the Tsawwassen First Nation for this big step in this treaty.

Can somebody give me, in one minute, the *Cole's Notes* version of this and the ramifications thereof?

Hon. M. de Jong: Maybe I can offer this on the record as a basis of explanation for chapter 3. What chapter 3 ensures is that after the effective date, most provisions of the Indian Act will cease to apply to the Tsawwassen. The specific purpose of the transition chapter is to identify and describe the provisions of the Indian Act — the few that will continue to apply after the effective date. The Indian Act, of course, is a federal statute, so this generates a bunch of work for the federal parliament to do in terms of transitional amendments.

There are probably four key areas that I would draw to the hon. member's and the House's attention. The Indian Act will continue to apply to the property and estate of Tsawwassen members who died, whether testate or intestate, before the effective date. There's a logic there that the members will appreciate.

The Indian Act will continue to apply to the property and estate of a "mentally incompetent Indian" — that is a term from the act — and infant children of the Tsawwassen members until the minister's responsibilities have been discharged. That is contained within these provisions.

[1645]

Laws or bylaws of the former Tsawwassen First Nation band that were in effect on former Tsawwassen reserve lands prior to the effective date will continue in effect for a period of 30 days after the effective date. Thereafter, it will be for the Tsawwassen First Nation government to take over.

On effective date all of the rights, titles, interest, assets, obligations and liabilities of the Tsawwassen First Nation Band under the Indian Act will be assumed by the Tsawwassen First Nation as defined in this agreement.

Those are the four areas, broadly speaking, dealt with in this transition section.

S. Fraser: I thank the minister for that. I read that, but I just...

The clarification I'm looking for is that we're talking about 30 days. This is a transition chapter. I find the vestiges of the Indian Act quite offensive. I find that the terms used in here, "mentally incompetent Indian," as I'm sure the minister does too... I find the Indian Act somewhat offensive in its own right.

But this is a temporary transition necessary for the individuals in that transition, and then at the end of this, the Tsawwassen people are given their... I mean, as it's laid out here, their role will be clearly laid out. If that's correct — I'm seeing nods — I don't believe there are any further questions on this. We can move on to maybe more substantive chapters.

The Chair: On chapter 4, then — moving on. I'm sorry. Minister.

Hon. M. de Jong: I should just put on the record that that is correct.

C. Evans: I have a series of questions related to the Agricultural Land Commission part of this. My

questions derive not only from the bill but also from the consequential amendments to the bill.

Maybe you could clarify for me, Chair, what I'm allowed to ask questions about as we proceed here. Can I ask questions about the consequential amendments?

Hon. M. de Jong: Hon. Chair, I don't mean to preclude what the Chair's opinion of this might be. I know the member has an intense interest in this. He articulated that in his second reading debate.

I wonder if I might suggest the following. The chapter we're on talks about some of the mechanical issues around which land, post-effective date, would be in. Or an application might be made to remove lands. They are sort of largely mechanical in process.

There is a section, section 9 of the bill, which addresses specifically the issue that the member addressed in his second reading remarks, which was the decision to remove a portion of the lands contained within treaty settlement lands. It would seem to me logical that we can have the discussion around the broad issue — all of the issues here in chapter 4. The member will get a chance to ask some questions around the consequential amendments as well.

Candidly, I'm trying to avoid a situation where we canvass the same issue twice. I think there was some expectation on the opposition benches that we would deal with the ALR in its entirety here in chapter 4, and I'm fine with that. I'm fine with that as well.

[1650]

C. Evans: I'm getting advice that I don't quite understand. I think we're going to try to do it in section 3 — all the questions — and I think that what the minister said is if there's something we don't get on the record, we can maybe come back to it in section 9.

Unless that's wrong, under section 3, I would like to ask some questions starting with the land that is removed from the agricultural land reserve by virtue of the act. Is it, in quantum, the same amount of land that is required under contract to be leased to the BCR?

Hon. M. de Jong: I apologize to the member. I was momentarily distracted. I think, though, he referred to a lease between the Tsawwassen First Nation and some other entity. He should probably tell me more about that, because I'm not aware of the lease he's referring to.

C. Evans: Sure. Backing up, is it correct that under section 3 of this treaty bill, we are removing some land from the agricultural land reserve? And if so, how much?

Hon. M. de Jong: I'm going to answer the question this way. It is certainly true that the final agreement that is before the House contemplates the removal of 207 hectares from the provincial agricultural land reserve. The formal instrument by which that happens is actually section 9 of the bill, but the agreement is negotiated and proceeds on the strength of that assumption — that 207 hectares will be legislatively removed from the land reserve.

C. Evans: Do the 207 hectares correspond in quantum, in size, to the lease that the Tsawwassen have agreed to with B.C. Rail Co.?

Hon. M. de Jong: I'm not aware of the arrangement, or purported arrangement, that the member is referring to. I do know, however, that pursuant to the terms of this agreement, the Tsawwassen will be in a position to conduct negotiations and make decisions about how they will purport to deal with the lands and manage the lands.

C. Evans: I assume either that the minister wasn't in the room when I was giving my second reading speech or that I was wrong or something, because I thought all that was on the record. Be that as it may, if the quantum of land to be removed from the reserve does not correspond with land that is intended to be leased for industrial purposes, then will the minister explain how 207 hectares was decided upon?

Hon. M. de Jong: It was very much the product of a negotiation. As the member can appreciate, there was a discussion around the overall quantum of land that would form the basis for the agreement. There were discussions around where that land would come from, given the restrictions that existed around the availability of Crown land.

[1655]

The Tsawwassen made clear that they had certain objectives they were seeking to satisfy around residential, commercial and other uses of the land. The most accurate thing I could say to the member is that it was the product of the overall negotiation back and forth to determine what quantum....

I think the member also knows there would have been discussions not just about the quantum but about its availability for certain uses, and that would have engaged the negotiators in a discussion around the instrument by which land or the time at which land might be removed from the ALR.

There were some options there, as well, around whether the Tsawwassen would be asked to go to the Agricultural Land Commission and make application. That was not their preferred choice, I can assure the member, and I think he knows that.

The decision was made, firstly, to settle on the quantum and then on the instrument by which it would happen. That instrument is revealed in the legislation before us.

C. Evans: During the discussions about the amount of land that was to be removed from the ALR, I'm guessing there was probably extensive research done about the difference in value of agricultural land and land outside the ALR in the area of Tsawwassen. Will the minister tell us what that difference was at the time of the negotiations, or is today?

Hon. M. de Jong: First of all, I'll be the last person to dispute any assertion that land outside of the ALR in

that part of the country is likely to be worth more than that which is contained within the ALR and subject to its restrictions. I should say, however, to the hon. member that the discussions, I am reminded, very much focused on the question of providing a suitable land base to the Tsawwassen First Nation to facilitate the interests they had in achieving a degree of economic self-sufficiency. That was very much a guiding theme in the discussions.

I should also point the member to some of the other provisions that exist within this chapter and a few others that provide the Tsawwassen with a mechanism by which they can impose a series of restrictions on the uses for which the land is used, including use restrictions for agricultural purposes. They have some mechanisms built into this agreement, as well, that my guess is they fully intend to utilize.

[1700]

C. Evans: I take from the minister's answer that he either doesn't know or isn't willing to say. I'm going to put on the record that I'm guessing the difference between the agricultural land and land outside the ALR in the area of Delta or generally in the lower Fraser Valley is 4 to 1. If agricultural land is worth 30,000 bucks a hectare, land outside would be four times that, or approximately \$120,000 a hectare.

I would like to know if the minister disputes the 4-to-1 ratio that I think is normal for that part of the territory.

Hon. M. de Jong: I'm not going to dispute it. I'm not going to embrace it either. I think, in fairness, it probably ultimately depends on what use land is put to. So, depending on where we are in the lower mainland, if an application is made, the ultimate value of that land can very much be influenced by the ultimate use or zoning that it would enjoy.

I'm not disputing the proposition, however, that the value tends to go up.

C. Evans: When I was a little boy, my dad told me: "If you go into business, Cork, and you want to make money, the easiest and fastest and best way to make money is to either add sugar or change zoning." We're not adding sugar here. We're changing zoning and radically changing the value of the property. I want to get to what part that played in the negotiations.

Did the minister do an appraisal during the negotiation process of the value of that land inside the ALR and outside the ALR? Will he present the information here?

Hon. M. de Jong: I think I heard the member right. The question was: to what extent were the decisions around this driven by values and valuations? I think the most accurate answer is: very little. There was a challenge here around providing a land base to the Tsawwassen First Nation. Very little Crown land.... The member knows all of the background. He's intimately familiar with it.

There was a desire on the part of the Tsawwassen and a willingness on the part of the provincial

government to facilitate some of their aspirations by freeing up some of the land that was there constrained by limitations remaining within the ALR. That truly was the impetus and then the product of negotiation related to the quantum of land that was deemed appropriate to accomplish those purposes.

C. Evans: I don't know if it's parliamentary, hon. Chair, for me to say, "I don't believe you," but through the Chair to the Minister: I don't believe you. I cannot believe that the government of British Columbia negotiated for 14 years a whole bunch of territory — some of the most valuable land in Canada — and never did an evaluation and didn't think about what it was worth. They had the possibility of taking it out of the ALR and quadrupling its value.

[1705]

I think there's a bunch of people from the Tsawwassen, and they're sitting there negotiating as hard as they can. They wanted a certain deal for their members. What's the easiest way to make a deal — pay cash or simply change the value of the land?

If changing the value of the land by taking it out of the ALR is a legitimate way to proceed, then we've got to ask questions about Smithers, Kelowna, Creston, Penticton and all the places where all these members live, because they're all in negotiations. If we can just change the value of the land — then whoop, Bob's your uncle and you've got a treaty — the land reserve is toast.

But way worse.... If the minister's right and we actually didn't bother to do an evaluation, then we're just basically negotiating with our eyes shut and saying: "Oh well, we'll just help you guys get a community to live in, and never mind what it's worth." I don't believe it.

Let me ask a different question. If we didn't do an evaluation of the value of the land in Delta, and this is the first urban treaty, and this is the first treaty through the B.C. land commission, is it his expectation that we will now proceed through the province, settle treaties everywhere and not do appraisals of the value of the land that first nations ask for?

Hon. M. de Jong: No. It is actually my expectation that we will examine each unique situation and address those unique circumstances. In a situation — if there is one, and I'm not sure there is — where the only available Crown land is entirely caught up within the ALR, we will make an appropriate decision at that time.

The member suggests, in part, that this is the first time this has come up. It's not. This was dealt with in the Lheidli T'enneh treaty. It didn't come to this House because it wasn't ratified by the first nation.

I have not doubted, nor do I dispute, the genuineness of the passion the member feels for the agricultural land reserve. I hope he won't doubt, however, the fact that the decision to do this, to remove 207 hectares, was predicated on the notion, the belief, that this community, like every other community in the province, deserves an opportunity to make some decisions for itself and to have a minor amount of land available for development, be it housing, be it residential, be it

commercial — be it, I suppose, industrial. That was the driving force behind the decision that....

Look, I've been doing this long enough to know it wasn't going to be without controversy. If the member can't accept that or the member is of the view that that was unwise or the member — who, I think, probably knows a little better than this — is unprepared or unwilling to accept that this was a pretty unique circumstance faced by the Tsawwassen First Nation, that somehow this is camouflage for some intent to head out into the far reaches of the province with a hidden agenda.... Then, I'm sorry. I'm sorry, because he's wrong.

I think it's unfortunate that he would try to argue that what has been done here is a lead-up to something like that. It's not. I've tried to explain as best I can the rationale that we followed for the decision and why I think it is an appropriate and fair decision.

C. Evans: The member does understand that we had to resolve this issue for the betterment of the people involved. The member just doesn't believe that an institution as wise as the British Columbia government negotiates in the absence of an assessment of value.

If the Tsawwassen had said, "No, we don't want land; we want cash," how much would the minister have given them as cash in order to not settle it with land? Did you do that analysis?

[1710]

Hon. M. de Jong: Well, they didn't say that. This member, I would hope, wouldn't need to hear from me the importance that first nations have historically attached to land and their ties to the land. It is perhaps convenient....

Interjection.

Hon. M. de Jong: I know there is one member in the chamber that is actually interested, as am I, in having this discussion, because I think it's an important one.

They didn't say that. They had an absolute and intrinsic interest in the land, and we sought to address that through the negotiation that unfolded in a fair, equitable and responsible way.

C. Evans: The government has a majority, and the majority of folks in my party are going to vote for this bill. The bill's going to pass, and some day 30 years from now, somebody's going to be trying to figure out what the things were that people considered when they were negotiating the first modern treaty. There's a bunch of stuff I think I want on the record that we considered, and one of them is the value of the land. I don't want people to think that we just willy-nilly gave it away.

Hon. Chair, as you know because I tried to explain it all in my second-reading speech, this is expropriated land. The Crown didn't own it. We expropriated this land from private owners. Way bigger deal than that, they built the dike. They reclaimed the land and then farmed the land, and we expropriated it. I'm not blaming anybody for that. I'm the guy who said to the

families who did that work: "You can't have it back because we need it to settle treaty."

But if it's okay this first time to expropriate land from people who own it fee simple, take it unto the bosom of the Crown and then say, "Oh well, these people have a right to a deal, so we'll take 207 hectares out of the ALR and then give it to them without an evaluation," then we can do it in Kamloops — eh? Let's see. We've got to settle treaty in Kamloops, and there are some ranches there. We can expropriate the ranches, take it to the Crown and then say: "Well, these folks have a right to economic development, so we'll take that part out of the ALR."

It wasn't okay for the previous owner, that rancher. I go around, and I tell those ranchers: "You can't do that." I defend the politics of "you can't do that." So, also, do members on both sides. They're good people here. If it's okay in Kamloops, and it was okay in Delta, then we're going to go to.... Let's go to Creston. We have to settle land claims in Creston.

The whole valley was developed by farmers. It's diked. The flats are all diked. Way before mining or logging made money in the Creston Valley, agriculture did. There were remittance men and people from Europe. They all came over, they built dikes, and they reclaimed the valley bottom. If it's okay to take expropriated land and use it to settle treaty and take it out of the ALR at the same time, then all those farmlands on the flats or the cherry orchards in the town, we could....

When we negotiate with first nations, there's a quantum of cash that's required to make up for historic wrongs, and a quantum of land. But if you can say, "Okay, but on the land, we will quadruple its value," that reduces the amount of cash. The Crown now has a vested interest to let land out of the ALR, because it reduces the cash component of the settlement, doesn't it? Or are you suggesting that the people who negotiate for first nations are so inept at negotiating that it hasn't ever occurred to them? I just don't think so.

[1715]

I've met those people. They're accountants and lawyers and consultants. Everybody that ever was a deputy for me is now consulting for first nations, negotiating with the government — right? So you know that they understand the Crown's negotiating position. And if taking land out of the ALR.... I think industrial land in the Delta area is worth 800,000 bucks a hectare, maybe a million.

Since this treaty began to be negotiated in this room, the value of agricultural land in Delta has doubled. Why is that? Because there's beginning to be speculation about where we're going here, but even at double its value I don't think it's gotten past \$100,000 a hectare. That's a factor of eight times.

Why am I berating this valuation question? It's because I know the minister knows. He might want to talk to me as if it was a moral question and we're all doing the right thing here. We are doing the right thing, but you do the right thing with a little bit of arithmetic, and when you're finished and you pass it, you set a precedent.

I have a question. Are there any treaty negotiations going on in the East Kootenay at this time?

Hon. M. de Jong: I should say that I'm not persuaded by the member's submission around the situation that has taken place here and the other examples he has provided to the House. He bandies the term "expropriation" around fairly loosely, and he would know that the Tsawwassen First Nation has a unique and more than passing acquaintance with the term expropriation. It is one that has been utilized frequently in their area with the development of industrial infrastructure that we all use and rely upon.

What of that precedent? Where else in the province do we find a community where the only available Crown land in the logical territory of the first nation is ALR land?

The member wants to evoke this spectre that what is being established here is a precedent from which negotiators will fan out and utilize this as an instrument to carry negotiations in a certain direction. If I tell the member that isn't so, he's already made clear that he either doesn't, or doesn't wish to, believe me. I mean, that is his right, but I am endeavouring to re-emphasize the point that this was a very unique circumstance.

I guess the situation in Prince George was unique to that extent as well, given the lands that were selected. Some of them were federal lands, agricultural lands that comprised that proposed settlement, which didn't advance. But we're talking about this agreement, so I'm reluctant to get sidetracked into discussions elsewhere.

This is not the beachhead that the member is trying to describe for going forth to eviscerate the ALR. That is simply not true. That wouldn't be right, nor would it have been right, as some have suggested, to transfer land to the Tsawwassen First Nation on a set of certain assumptions and then say to them: "Well, now, you head off to the ALC, the Agricultural Land Commission, and make application." That wouldn't have been fair to them, and it wouldn't have been fair to the Agricultural Land Commission, who are charged with a different mandate, and that is to protect farmland.

[1720]

I'm sorry that the member doesn't believe me when I tell him what drove the discussions, what drove the negotiation with the Tsawwassen First Nation, what their objectives were and how we negotiated to try and meet some of those objectives. And I'm sorry he doesn't believe me when I point out to the House that this is not intended to be anything other than a unique response to a unique set of circumstances in a unique part of the province.

The Chair: Member, on chapter 4 of the schedule, please.

C. Evans: Sure. Your implication, hon. Chair, is that my question about the East Kootenay didn't apply to chapter 4? Sure it does. In the East Kootenay, which I understand a little bit, there is the need to settle some treaties, and it's surrounded by ranchland. That's what it is.

I understand that the minister is a kind, loving, intelligent...

An Hon. Member: Benevolent.

C. Evans: ...benevolent person correcting history — a good guy here. I have no aspersions on the minister.

I'm just here to say that out there in the province there's a whole bunch of real estate developers and less wonderful, benevolent people than the minister. It is the minister's job, the Crown's job, to guess what will be the interests of the other people participating when we negotiate.

What we're doing here at Tsawwassen, the minister suggests, is negotiating without an evaluation. I asked him: "Do we have an appraisal?" No appraisal. "Did we figure out what its value is as agricultural land and as industrial land?" I submitted 8 to 1. No answer.

The minister comes back at me and says: "The member shouldn't imagine that this is some kind of trick." I don't. I think the minister's just doing a great job. The thing is that he's not operating in fairyland. He's operating in British Columbia where there's a real economic value placed on land.

We're saying here that it's okay to expropriate and settle treaty. Actually, in making that leap, maybe I'm being unfair.

Let me ask a question about chapter 4. It appears to me that the land we're using to settle treaty and removing from the Land Commission in chapter 4 is previously expropriated, private land. Will the minister put on the record some commitment that we will not use expropriated land to resolve treaties in the future?

Hon. M. de Jong: Well, I think the member and I regard this matter from a fundamentally different perspective, because — and if I'm mistaken, then I'm sure the member will correct me — the notion is implicit that this land was expropriated from owners for the purpose of settling aboriginal claims. The member, I think, knows that wasn't the case.

Now, he has reminded the House in the past that he was the member, at a certain point in history, that was obliged to say to some people, some previous owners, "This Crown land" — it having been expropriated some time previously for a particular purpose — "is now the subject of discussions relating to a different use and a different function, and that is the resolution of unresolved aboriginal land claims." That is a different scenario than I think the one the member is trying to suggest here — that the Crown is getting ready to move out in the course of negotiations to expropriate land for the purpose of settling claims. There is no such strategy.

The preference will always be, as it has been, to conduct an inventory of available Crown land and utilize that asset as the basis for a settlement. It's what brought the province to the table in the first place. The member knows his history well. Years ago the province wouldn't come to the table. It was quite a step forward at the time. I think it was the government of Premier Vander Zalm who actually made that leap and said:

"No. We'll come to the table. We recognize, finally, there's a role to play." Then the government that the member was a part of under Premier Harcourt formalized that discussion. Those are two very different scenarios.

To suggest that somehow this is the beginning of a concerted strategy on the part of the province to go out and identify private lands that will be expropriated for use in treaty negotiations simply isn't the case. This does not signal that. That was not the situation here.

[1725]

Although, having said that, I am certain that there are some individuals on what I think is referred to as the Brunswick lands whose families have a long history there, who look at this and are disappointed. They probably harken back to the day they might have had a conversation with that minister and were told: "No, the Crown in the right of the province of British Columbia is holding on to this Crown land for certain purposes."

I don't know that the member and I are going to agree, but again, I want to make clear on the record that this does not represent the adoption of some new policy going forth that says, "identify private agricultural lands that the province is going to expropriate and then remove from the ALR as a means of satisfying treaty obligations," because that's not so.

C. Evans: Specific to chapter 4, speaking of the Tsawwassen lands, the minister missed one step. I agree with his history lesson, but the land was expropriated essentially to create backup industrial land and storage and transportation capacity for the port.

What the minister is saying is: "Well, this is the right thing to do. We're settling treaty. This is all about settling treaty." We didn't expropriate land to settle treaty. We expropriated it to develop it for the port.

It's meet and right that we should do it to settle treaty, because it's moral. But what in fact is happening — never mind the high philosophy that we're proposing in here — is that 207 hectares are being removed from the agricultural land reserve. We're going to pave a bunch and put containers from China on it — aren't we?

What's happening is that we didn't expropriate to settle treaty. We expropriated to do industrial development, and that's exactly what we're doing, only we're doing it now under the guise of treaty.

I don't think there are some conscious villains running around the province saying: "Oh, let's expropriate that ranch and that cherry orchard." I'm saying that if it's okay in Tsawwassen, it's going to be seen as okay in Smithers and Kamloops, all through the Chilcotin, the entire southern Okanagan.

We grow food there, and the people I represent have been bypassing wealth since 1974, giving up.... My neighbours, including myself.... My land was captured. I owned it fee simple, outside the ALR. We captured it. Can't give any land to your kids. They can get married if they want, but you can't give any land to the new family.

That's okay. We defend that. But now we've found a way to take it out that's legitimate. We just use it for

treaty. Then what really happens? We pave it for exactly the industrial development that W.A.C. Bennett had in mind.

If we can do that in Delta, well, it seems to me that we're going to find ourselves a whole bunch of developable land all along Okanagan Lake — aren't we? I can see the golf courses sprouting like spring dandelions around Kamloops and Cranbrook. Ranchland all around, beautiful benches. The only reason it's not crowded is because it's ALR.

I asked a question. I said to the minister: would the minister commit that we would not in the future expropriate land? He gave me a moral answer. I believe him, because I believe he's a wonderful person.

I want a commitment that this is an anomaly. "This is only happening because of what happened in W.A.C. Bennett's time, way back in 1958. We didn't mean it, and we will never do it in future." I would like a commitment that we will not use expropriated land to solve a treaty in future.

Hon. M. de Jong: I think the member knows that there is a longstanding policy in place that the Crown doesn't seek to satisfy obligations and treaties through the use of expropriated private land. That policy is unchanged. The member should, and I hope will, take some comfort from that.

[1730]

I need to address one other aspect of what the member has said. I don't in any way question the passion and, again, the genuineness of his commitment and interest in this matter. But there is one thing that the member has said — and I think he said it in second reading. It raised my ire a bit then, as it did just a few moments ago. It is this lingering notion I have when the member says, as he did a few moments ago, that it is a fait accompli that this land will be used for a certain purpose. That is awfully presumptuous.

The member doesn't know that. Maybe history proves him right. Maybe it proves him partially right. But the point is that the Tsawwassen, under the terms of this agreement, will make those decisions. Maybe the member knows something I don't. Maybe the member is aware of some secret protocol between the Tsawwassen First Nation and someone. I'm not aware of that. I don't think it exists. But they will make that decision.

It must gall certain people to hear others in this place stand up and suggest that it is a fait accompli or that somehow they are going to be dictated by other interests or that others will determine what is going to happen to this land without any regard to the Tsawwassen First Nation decision-making process.

They have a community. Everything I've learned about how the Tsawwassen First Nation makes decisions is that it's a pretty inclusive process. Any decisions they make involving the relatively small land base that is available to them — just over 700 hectares in total — I suspect are going to engage pretty widespread interest and involvement within their community.

Maybe the member is right. Maybe they've made up their mind. Maybe they've got an agreement in mind for just the purpose that the member is suggesting. I don't think so, and I certainly don't know. What I know and suspect is that they will approach this question carefully, recognizing that, like most communities but particularly them, it is a finite asset that they have acquired — the land base — and that they will have to be answerable for the decisions they make to future generations within their community.

Now I'm going to stop, because that's beginning to sound a little too much like a lecture. I didn't mean it to. I wanted to get it off my chest, though, because it is something that occurs to me every time I have heard someone say in here that it is a fait accompli — that these decisions have been made and are going to be thrust upon the Tsawwassen and that there's really nothing more to be said about that.

I don't think that's true, and I think it is unfair to suggest that is so and not to recognize that it is the Tsawwassen First Nation that will make those decisions.

[S. Hammell in the chair.]

C. Evans: Okay. I withdraw any assumption that I know what the future will hold. However, I do not withdraw any of the assertions I made at second reading, which were that in 2001 there was an agreement-in-principle offered that turned land over to the Tsawwassen and left it inside the agricultural land reserve and, second, that there is a lease, which has been talked about in the newspaper, being proposed by B.C. Rail with terms by the Vancouver Port Authority.

That's public record. All of that has changed since 2001, and now I am in the Legislature voting to take 207 hectares out of the ALR. I have no right to presume that I know what will happen to those 207 hectares. However, I have read in the newspaper what it says is likely to happen, and I am attempting, on behalf of the people of British Columbia, to ascertain whether it is likely to happen and whether the government valued it.

The minister is suggesting to me, in the interest of being a good person — or moral or something — that I shouldn't make presumptions when we are essentially doing a business contract, nation to nation, and it has a valuation. He can't say what the valuation is, and he wants me to think that we should not have done that consideration as we negotiated. I'm wondering what kind of negotiation that is.

[1735]

Hon. Chair, I'm thrilled. The minister just put it on the record. I'm going to repeat it, because I'm really happy. He reiterated that there is public policy in British Columbia that we will not expropriate land to do treaty. He didn't say it would never happen, but he said it is government policy not to use expropriation to resolve treaty land. It is government policy to use Crown land to resolve treaty land.

I appreciate that, and getting that on the record is important because it should make some people in my territory and all over the province have some comfort

that they won't lose the ranch. But the other half of it is still true. Whether you expropriate or use Crown resources, if you take land out of the ALR as a way to resolve treaty, you change its valuation, and you provide for folks negotiating treaty an opportunity that is not available to their neighbours.

Asking people to live in peace and harmony and to love each other and resolve historical wrongs, starting by saying that the rules for one group of folks and another group of folks will be different — that's a tough start.

I disagree completely with the minister's assertion that it would not be right to ask first nations people to go through the Land Commission process. In 2001, as the minister knows, the first first-nations person had actually been appointed to the Land Commission. The Land Commission had been instructed to add to their mandate the capacity to negotiate with first nations post-treaty. The preparations were being laid for the Land Commission to grapple with and facilitate the development of community land inside the land reserve post-treaty.

Before I continue, hon. Chair, I want to give the minister a chance to refute what I just said. Is anything I just said not true?

Hon. M. de Jong: Sorry; the member asked a specific question. He'll have to summarize again so that I can properly answer the question.

C. Evans: The minister had made an assertion that it would be unfair to ask first nations people to go through the Agricultural Land Commission in order to develop community on ALR land, the implication being that while that is a reasonable law for existing owners of farmland, it is not a reasonable process for first nations.

Then I said that in the year 2001 and for the previous, say, five years before that, that for the first time since its creation in the '70s the Land Commission had first nations representation and that the Land Commission had been instructed to add to their mandate to prepare for the ability to consider community development proposals by first nations post-treaty.

Then before I went on, I said: will the minister say if anything I just said is untrue?

Hon. M. de Jong: I'll try to respond to the statements in their totality.

This agreement contemplates the Tsawwassen First Nation applying to the Agricultural Land Commission, and those provisions are set out specifically here. Beyond the 207 hectares which are the subject of this conversation the Tsawwassen First Nation has the option, if it wishes, to seek the removal of additional lands, but they must do so via the usual processes. I can refer the member to those sections of the bill and of the agreement that confirm that fact.

[1740]

When I said that I thought it would be unfair in these circumstances, I was referring to the following unique set of circumstances. I try to imagine the

Tsawwassen First Nation sitting there on their small reserve in the lower mainland surrounded by communities, all situate on prime agricultural land.

The member talks about the decisions we made to place land in the ALR, which I think is broadly supported by many British Columbians, except that we made it after taking a heck of a lot of agricultural land and developing it in our communities. You drive down the street now towards Tsawwassen or towards the ferry, and you drive past prime agricultural land. That's the land you see. But you drive by a McDonald's and a city hall and a gas station, and that's all on prime agricultural land. We don't think about that, because somewhere along the line we decided that was okay.

The Tsawwassen sit down at the negotiation, and they say: "We want a little bit of an opportunity to develop something where we are. You're offering us land, all of which is within the ALR. So what do we do?"

As the member says, and I don't believe he did this for any nefarious purposes: "You're creating a different standard or trying to apply a different standard."

I think the Tsawwassen say: "How about applying the same standard, which is that every one of the communities you guys live in had the opportunity to develop somewhere? You've made some land use decisions. You made them in 1973. We didn't have a role in that. Now you want us, if we follow the logic through, to be bound by that in our community, unlike every other community in the province."

I do think that's unfair. I think it's not only unfair; I think it is illogical to ask a party to sign a deal that is conditional. That is what an agreement that required them to go to the ALC would have been, because their ability to begin the conversation with their community about what they were going to do with land.... They wouldn't have an answer. Their answer would have had to have been: "Well, I guess we'll find out. We'll see." I don't think they would have accepted that kind of an arrangement, but it is also, to my mind, fundamentally illogical.

Hon. Chair, I don't know if I've even properly addressed the assertion that the member made in his remarks. He was looking for some confirmation or clarification from me. I don't know that I've properly given it, but that is the essence of my thoughts.

The member says he doesn't agree with me in my characterization of a certain scenario being unfair or a certain course of action that he would have prepared being unfair, but I stand by those remarks. I think they would have been unfair. I think they would have been unrealistic.

I would not know how to answer a member of the Tsawwassen First Nation who said to me: "You come on down to our reserve and look around you. Let's go for a drive, and let's look at all the developed agricultural land around our community. It's all great agricultural land. Where the McDonald's is, where the gas station is, where the city hall is, where the arena is — it's all great agricultural land.

"You don't want me to have any of that same opportunity. You want us to be restricted by a decision

you guys made in 1973 to use this land purely for agricultural purposes. I think that's unfair."

[1745]

C. Evans: This is way, way, worse than I thought it was. I came in here thinking that folks were trying to make a treaty. But I just heard the minister make an argument, essentially, for resolving the Kelowna land claims, if they get negotiated someday, with agricultural land, because I can't see how the minister would be able to drive around....

The minister couldn't figure out how he would drive around Delta and say to a member of Tsawwassen: "Oh well, we got to build these towns, but you can't. Ergo, you can have some farmland and build a town." It's the same argument in Kelowna.

The minister said that he thought it was relatively immoral. He actually couldn't understand how I could imagine imposing on people a decision we made in 1973, after we built cities long before. How about Abbotsford? How about Saanich? How about Penticton?

If what the minister just put on the record is the logic for this treaty, then can you think of one place in the province where that same moral negotiating position or argument isn't an excellent argument for taking land out of the ALR, changing the value times eight and calling that a deal?

I don't think we're debating a law anymore. I think we're debating a huge precedent in every single one of your constituencies, unless you happen to live in Kitsilano or something. Maybe they'll give away a golf course there for the same deal.

I've heard the minister's arguments before, and I could make them, especially with a little practice at rhetorical device. They're perfectly logical.

It's the same argument that says China and India can build all the coal plants they want because, after all, it's the North American, western nations that wrecked the atmosphere, and they have the right. They're coming in late, so let them crank it up for 200 years. If that's our argument, then it is totally hypocritical to say we're going to have an ALR and food production.

You can't have two principles at the same time. If we're now going to resolve 400 years of immoral behaviour with the settlement of treaties and we're going to do it on agricultural land because you can't impose that land use restriction on people who predate it, then it's over. The most honest thing to do would be to say, "Okay, take it out for everybody," and then let's do land claims.

Go back now to the arithmetic, to the fact that the minister asserts he had no assessed valuation. If you don't do that, if you don't take it all out, then developable land is a highly valued commodity, eh? The law of supply and demand. If you leave most of the land in and you take some of the land out, it's going to be worth a whole whack of a lot of money.

If I was the Minister of Aboriginal Relations and less moral than the present gentleman, I might say: "Hey, this is a cheap way to settle treaties. We just leave all the rest of the land in, take some out. It'll

multiply its value times eight, and we can use the agricultural land reserve as a land bank to resolve treaties."

I've watched TransLink do it to build roads, so I know it can be done. They're using the agricultural land reserve to bulldoze people's farms because it's the cheapest land there is, and then once they get the road through it, they can develop both sides and make a whack of money. Wal-Mart comes along, and Bob's your uncle.

Ports. We can use the agricultural land reserve to expand the port. We can, essentially, use it as the land bank for whatever the Crown has to settle or for whatever their development objective is, and we'll use the moral argument that the minister just used on me: "Member, you cannot impose a 1973 land use agreement on people whose issue predates that."

What is the principle, then? They're all nodding their heads. I wish you could put on the record the agreement that the government members are essentially putting to the argument. I think they think it's wise economics and moral at the same time, and the only place where it's hypocritical is any place anybody wants to grow anything.

Hon. Chair, the minister was kind enough to give me a commitment in terms of public policy, in terms of expropriation.

[1750]

Interjection.

The Chair: Order.

C. Evans: You can let him rip; I'll just wait. I've had chickens, so I know what it sounds like.

Hon. Chair, the minister was kind enough to give me a commitment that it would not be public policy in British Columbia to use expropriated land to resolve treaty. I wonder if the minister would like to articulate, in light of what he just said about the rights of first nations people to not have land use legislation of 1973 imposed upon them.... I'm wondering if the minister would like to put what is, in fact, public policy in British Columbia in terms of the agricultural land reserve and its sanctity or lack thereof in the settlement of future treaties.

Hon. M. de Jong: Look, if the member really believes everything he has just said and has drawn the conclusions from the remarks I just made, drawn the conclusions that he purports to have drawn, then I have probably resolved one dilemma for him, and that is if he genuinely believes that, then I presume he'll vote against the bill.

He has painted a picture that is inaccurate, and he may genuinely believe the veracity of the picture he has painted, but he knows very well that in making my remarks just a few moments ago, I prefaced them with the words: "I can imagine what a member of the Tsawwassen First Nation might think." Now he stands up, and he's very eloquent, and he takes that and re-configures it.

The good thing is that he doesn't actually have to rely on my word, because in the time between this bill being tabled and the discussion we're having now, another five first nations ratified a treaty. He can test his hypothesis, in a couple of cases there, fairly directly.

The member wants to ignore, in painting this picture of ALR Armageddon, one fundamental fact, which is that in the case of the Tsawwassen, remarkably and uniquely, the only Crown land available was in the ALR.

I can stand here for the next hour and repeat that fact, and it will have no effect on the member, who is intent upon wanting to convey to people that somehow this represents the end of ALR civilization as we know it. It just isn't so. He can look, and he can look. He doesn't have to look any further than the subsequent agreements that have been ratified and that I hope will come to this House inside of a couple of weeks for discussion.

It seems to me that if the member's theory is correct, we'd be dealing with precisely the same question, but we're not. Why aren't we? Because there was a wide range of options available. There was Crown land, most of which, to be fair, wasn't within the ALR. That's the land selection that was made. I mean, the member seems to conveniently ignore the fact that of the land being handed over, the majority is remaining within the ALR.

[1755]

I always enjoy exchanges in this chamber with the hon. member. But to take a statement I made when trying to imagine, as I said at the outset, the perspective or the view of a member of the Tsawwassen nation and to somehow reconfigure that and pretend that somehow I've just written a manifesto for a new government approach to the ALR or ALC is, I think, stretching things. It is inaccurate. It is unfair. I regret that the discussion, which I think otherwise is very important and legitimate to have, has descended to that level.

I repeat what I said earlier. I repeat my point about the policy of this government. I think it was the policy of the previous administration, but I can't attest to that. We intend to proceed on the strength of that policy. The member has an opportunity to test the degree to which we have done that, when we discuss treaties involving five additional first nations in just a few weeks.

C. Evans: In the interest of being a good person, I'll ask one more question and then go for a walk, and I'll be cheerful when I come back. I want to essentially repeat the question I just tried to ask. I don't wish to outline Armageddon. I don't wish to outline some fanciful bad future that doesn't exist, which is why I said, "Would the minister like to tell us what the government's policy is on removal of land from the ALR in order to settle treaties," precisely as he did a half-hour ago on the subject of expropriation of land.

The argument that the minister just made is: "Look, Member, Tsawwassen is an anomaly. It's a little tiny group of people surrounded by agricultural land, and it could never happen again, or it's unnecessary that it would happen again." I have a whole bunch of arguments on why I think some people, perhaps not this

minister, but maybe a railroad or a port authority or board of trade.... I think there are a lot of people who might have other objectives in this deal than simply providing resolution of historical wrongs. I believe the minister is arguing that the government's position is: "It was an anomaly. We had to do it to resolve historical wrongs."

Now, the way to give everybody in the province, through that guy up there, a commitment that it's an anomaly is for the minister to say: "It is the position, the policy, of the government that we will not use agricultural land reserve land to resolve treaty, and where we do, we will allow the Land Commission to go through its process — just like for everybody else — on whether or not land is removed or developed."

Will the minister tell us whether or not it is the policy of the government to use ALR land to resolve treaty and the removal of the ALR land to resolve treaty in other future treaties?

Hon. M. de Jong: I don't have any hesitation in assuring the member that the government's preference remains one of not satisfying the requirements of treaty negotiations by removing land from the ALR. That is reflective of the policy that we take into negotiations. It has been, and it will continue to be so.

As is partially reflected in this treaty, where there are circumstances in which agricultural lands end up being part of the mix, the proposition that the member has advanced — that it is appropriate in circumstances for a first nation recipient of those lands to be subject to the same provisions of the ALR as others — is one that I also agree with and is reflected in the policy and is actually reflected partially, at least, in the treaty that is before the House today.

[1800]

B. Lekstrom: A question on chapter 4, under "Lands," starting with section 1. I'm going to tie a couple of sections together in this chapter in trying to get, I guess, some answers that I would certainly need to know.

Section 1 talks about: "Tsawwassen Lands consist of those lands set out in Appendix C-4 including, subject to clause 96, the Former Tsawwassen Reserve" — and it says — "and all Subsurface Resources on or beneath the surface of Tsawwassen Lands," which to me is quite clear. It means they now will own subsurface rights, unlike other British Columbians in our province.

When I slide over under section 20, it says: "If, after the Effective Date, Tsawwassen First Nation acquires land for which the estate in fee simple includes ownership of Subsurface Resources, Tsawwassen First Nation will own the Subsurface Resources on those Other Tsawwassen Lands."

My question to the minister would be: should they in the future purchase Crown lands and the Crown holds subsurface rights, would those rights then transfer to the Tsawwassen First Nation?

Hon. M. de Jong: We may need to do this in two or three parts. The answer to the general proposition or

the scenario that I think the member has advanced, whereby post-effective date the Tsawwassen First Nation were to identify a piece of land anywhere in British Columbia and seek to purchase it, whether it's Crown land or fee simple private land, they would not, as a matter of course, acquire the undersurface rights.

There are some specified lands that are identified in this agreement that I'm not sure the same proposition holds true for. In general, they would be bound by the same set of laws and would not additionally acquire those undersurface rights.

B. Lekstrom: Following through on that, section 20, though — unless I'm reading something different or there's a different legal interpretation — reads: "If, after the Effective Date, Tsawwassen First Nation acquires land for which the estate in fee simple includes ownership of Subsurface Resources" — it says acquires land, so I'm taking that as anywhere in the province of British Columbia — "Tsawwassen First Nation will own the Subsurface Resources on those Other Tsawwassen Lands."

My interpretation of this clause as a stand-alone and even when I read it with the others is that, for example, there's a sale of Crown land — for instance, I'll use the Peace area. That piece of property is then sold. The owner, who rightfully at the sale is, I guess, the Crown, owns the subsurface rights. There are no individuals in this province, or there may be one or two left from just postwar era, that would control subsurface rights. The only ones that would have subsurface rights are the Crown.

Am I correct in saying that if we sell a piece of Crown property or the Tsawwassen band buys a piece of Crown property, they would receive subsurface rights with that?

[1805]

Hon. M. de Jong: So two scenarios, and hopefully I'm covering off what the member has asked. If at some post-effective date time the Tsawwassen identify a piece of land.... And I am now excluding any of the specified lands referred to in the agreement, so we'll take the example from the hon. member about a portion of land in the Peace somewhere. If that land is owned by a private third party and it's a willing buyer, willing seller, and that owner owns the undersurface rights, then he or she would have the opportunity to convey that to the Tsawwassen First Nation, and they would acquire it as part of the fee simple.

If, however, they identified a piece of Crown land, generally speaking on transfers the Crown does not transfer subsurface rights. Therefore, it's unlikely that they would acquire that during the course of a usual purchase and sale. The automatic transfer of subsurface rights in that kind of a scenario is not contemplated by these provisions.

B. Lekstrom: Following up. I understand what you're saying. Again, I'm not a lawyer, but I can certainly read this, and my interpretation is that if the Tsawwassen.... You know, I do have to get this clear. If

the "Tsawwassen First Nation acquires land for which the estate in fee simple includes ownership of Subsurface Resources...."

I guess maybe this is where I need clarification. If they acquire land from the Crown, the Crown right now, unless I'm mistaken, includes ownership of subsurface resources. They acquire that piece of property. It goes on to say that "Tsawwassen First Nation" — not can or shall — "will own the Subsurface Resources on those Other Tsawwassen Lands."

So I need to have that certainly answered for me so that I'm clear. When I read it, it says they will own the subsurface rights, and the willing seller, in this case being the Crown, is transferring those subsurface rights as well then. Is that correct?

Hon. M. de Jong: I think the answer lies in this distinction. Section 20, I am advised, does not speak to the kind of transfer that the member is referring to. It speaks to the example I gave earlier where the Tsawwassen First Nation identifies some land owned by a private third party and that private third party owns an estate in fee simple that includes the undersurface rights. Then, in that scenario, the purchaser, as it were — the Tsawwassen First Nation — would acquire those subsurface rights.

This doesn't really speak to the second example that the member has referred to, which is a purchase of Crown land by the Tsawwassen from the Crown. In those circumstances, I am further advised, the standard practice is not to transfer the subsurface rights as part of the sale of the surface rights, and nothing in this agreement would require the Crown to do so.

B. Lekstrom: Understanding that what the minister has just said, in chapter 4 under "Other Tsawwassen Lands...." Going back to the definition, could you point out for me, then, the difference between purchasing a piece of Crown land, as the Tsawwassen government or corporation may do.... I just haven't been able to read in this document — and I've gone through it a number of times — your explanation for that. I haven't been able to meld those two.

I see this as the ability for the Tsawwassen government to be able to purchase a piece of property in British Columbia. I fully understand that if they purchase it from me and I held a piece of property that I had the subsurface rights to as the seller, they would take that package. I understand that.

[1810]

But I don't see where this exempts the Tsawwassen government from purchasing a piece of Crown land that says the Crown will decide whether we transfer subsurface or not, because it says that the "Tsawwassen First Nation will own the Subsurface Resources..." So I'm confused there. I need some clarification.

Hon. M. de Jong: Here is, I think, the important distinction in the example I talked about a few moments ago with the member — the private sale situation. If the member is the Tsawwassen First

Nation and I'm the private third party that owns land, I choose what I want to sell. I don't have to sell the undersurface right.

If I've got the estate in fee simple, chances are I might want to do that, and you, as purchaser, may want to do that. But as the Crown, the same holds true. There is nothing in this agreement that compels the Crown, in a subsequent transaction with the Tsawwassen First Nation, to include undersurface rights.

The practice is quite the opposite. It is to sell an estate in fee simple, including the surface rights and, from any purchaser, to withhold the subsurface rights. So that same option for the Crown will exist with respect to a purchase of land by the Tsawwassen First Nation.

By the way, I want to emphasize, as well, that in the examples we've been using, the Tsawwassen First Nation would own those lands in fee simple, and they would not comprise part of the treaty settlement lands automatically and all that that implies. So the same option remains for the Crown, and nothing in this agreement, I'm advised, restricts the Crown's ability to exercise that standard approach.

B. Lekstrom: Well, that does give me some comfort. What I think I've heard you say is that if the Tsawwassen First Nation government — you know, it might be next year, or it may be ten years from now — embarks on a land purchase.... I'll use the Peace River area. They purchase a piece of Crown land. I'm going to interpret that when the Crown sells that, we will make sure that subsurface does not go to the Tsawwassen First Nation but remains with the Crown. I hope I'm correct in that, and I would seek clarification from the minister.

Hon. M. de Jong: I was trying to verify some information and repeat the assertion I made a moment ago about how nowhere in this agreement is an obligation imposed on the Crown, in the examples we've raised, to transfer to the Tsawwassen First Nation undersurface rights. Although I suppose that can be the subject of a negotiation at any point, there's nothing that obligates it. I think the member asked a slightly different question, and I've forgotten what it is.

B. Lekstrom: The question, after hearing the explanation — and it made it somewhat clearer — was: would it be fair, then, for me to interpret the minister's comments that, should the Tsawwassen First Nation government in the future purchase a piece of Crown land, the Crown would not transfer subsurface rights?

[1815]

Hon. M. de Jong: That is generally the case today. I'm reluctant to offer a blanket assurance, and I'm also careful to remind the member that we are talking about lands outside of those referred to in the deal and some of the specified lands, for which there might be slightly different conditions. But on balance, that is the approach that's taken now.

I am cautious not to prejudice any specific negotiation that might take place in the future, but the policy

right now on sales of Crown land is to withhold undersurface rights.

B. Lekstrom: Carrying on with the issue of subsurface resources under the management and administration, again I'm going to look for some clarification. It starts in section 22, where it says: "As owners of the Subsurface Resources on or under Tsawwassen Lands, and where Tsawwassen First Nation owns Subsurface Resources on or under Other Tsawwassen Lands" — and that goes back to the question of other Tsawwassen lands — "in accordance with clause 20" — it refers back to that — "Tsawwassen First Nation may set fees, rents, royalties or charges other than taxes, related to the exploration, development, extraction or production of those Subsurface Resources." Very similar to what the Crown does today — okay? We have that authority.

When I go down to section 23, it says: "Clause 22 does not limit British Columbia from determining, collecting and receiving administrative fees, charges or other payments, relating to the exploration, development, extraction or production of Subsurface Resources from Tsawwassen Lands or Other Tsawwassen Lands, as applicable." Those two, unless I'm reading them wrong, seem to be in contravention of each other.

I read the first one as saying that the Tsawwassen government will own the subsurface rights. They will set fees, rents and royalties. Then I read section 23, which says that British Columbia is not limited to setting those. So I'm asking, I guess, for clarification in trying to bring those two together.

Hon. M. de Jong: Yeah, on the surface of it, there is an apparent contradiction. But it's on the surface — pardon the pun.

Below the surface it is rationalized in the following way. The section provides to the Tsawwassen First Nation the ability to collect royalties. I'm told that, to use an example in the mining sector, there are other potentially applicable provincial fees — exploration or inspection fees that the provincial Crown wanted to preserve the right to levy on lands. That gives rise to paragraph 23, which preserves the option of continuing to levy those kinds of charges, as opposed to royalties.

B. Lekstrom: In looking at this, and I'll give you an example.... For instance, a piece of property is put out by the Crown right now for a lease sale. It's bought up by a company. It doesn't mean they buy the land, but they have the right to explore on that. The reason I'm asking the question is because.... I understand what you've just said, but can you give me an example?

[1820]

In clause 23 it talks about "receiving administrative fees, charges or other payments" — which is pretty broad — "relating to the exploration, development, extraction or production of Subsurface Resources." I'm not sure how those would be different than what the Tsawwassen First Nation can set on "fees, rents, royalties or charges," and it actually goes "related to the exploration, development, extraction..."

So I'm still confused on the two. Hopefully, it isn't that the Tsawwassen First Nation could impose a royalty on it, and the province could. I don't think that would be in anybody's best interest.

Hon. M. de Jong: I think the key point here is that neither party acquires, pursuant to these provisions, exclusive jurisdiction in this matter. I had a list provided to me of the kinds of things that the provincial Crown would continue to enjoy — options around reclamation permits, various regulatory fees. Charges, I am advised, is a word generally used and synonymous with taxes.

The point the member raises, and I think it's a good one, is — and I can't say off the top of my head in what specific way this might be relevant to Tsawwassen subsurface lands — that if that kind of development is going to occur, it is going to require a degree of coordination between the two parties to ensure that anyone else involved isn't subjected to duplicating fees or charges of this sort. But the section is designed, perhaps in a way that is less clear to those of us who don't draft such documents, to ensure there is a clear delineation between the kinds of fees the province can charge versus the kinds of fees and charges that the Tsawwassen First Nation can charge.

B. Lekstrom: A follow-up question. Noting what you've said, Minister, and I see that in 25.a, b, c and d, which can relate to what we've talked about here.... I certainly do share a significant amount of concern about the issue of subsurface resources being part of this. I've expressed that on numerous occasions.

I can tell you that in the Peace area, where agricultural is our backbone and our history, we don't have the ability to hold subsurface rights. It's recognized. We are challenged many times.

I certainly have had a great deal of interaction with the oil and gas companies in our region. I think they do a very good job in negotiating with our landowners. But really, based on the lease itself and where the road will go in order to get to that lease, and once compensation is paid — traditionally, it's not a great deal of

compensation — the farmer and the oil and gas company work together.

Once that gas or oil starts flowing, the farmer doesn't realize the benefit as far as any royalties or anything like that. We're handing something away here to one segment of the population that another segment doesn't get, and I fundamentally disagree with that.

[1825]

A question I would have, when I look at the issue under subsurface resources, whether it be section 1, 20, 22 or 23: have we as a Crown done any seismic work or any investigative work on the subsurface and what may be there on what we're signing off on this treaty? Is there a value in dollars?

Hon. M. de Jong: I am advised that over the 700-some-odd hectares that comprise the treaty settlement lands, there has been no valuation done of subsurface values.

The Chair: Noting the hour, Member.

B. Lekstrom: Certainly. I have more questions. I'm sure other members do. But noting the hour, I move that the committee rise, report progress and ask leave to sit again.

Motion approved.

The committee rose at 6:26 p.m.

The House resumed; Mr. Speaker in the chair.

Committee of the Whole (Section B), having reported progress, was granted leave to sit again.

Hon. M. de Jong moved adjournment of the House.

Motion approved.

Mr. Speaker: This House stands adjourned until 10 a.m. tomorrow.

The House adjourned at 6:27 p.m.

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