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

THIRD SESSION, 38TH PARLIAMENT

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- Hon. M. de Jong
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TUESDAY, NOVEMBER 27, 2007

The House met at 1:33 p.m.

[Mr. Speaker in the chair.]

Introductions by Members

Hon. M. de Jong: Mr. Speaker, he sat in this chamber for 15 years. He served as British Columbia's first Aboriginal Affairs Minister, and only moments ago he confirmed that he has no intention of returning to this place for anything other than a visit.

I am speaking, of course, of Jack Weisgerber, who today serves with distinction as the head — actually, the chair — of the B.C. Treaty Commission process. It's great to have Jack Weisgerber back in this building and in these precincts, and I hope all members will make him feel welcome.

J. Horgan: It's a pleasure today to introduce in the gallery Christine Nicholls, who goes to Pilgrim United Church with me on the West Shore here on the south Island. Joining her are her children Katherine and Duncan Silversides.

For those in the House today, Duncan is the first person in our knowledge to stand on the caucus chair in the NDP caucus room and juggle apples. Would you please make them welcome.

Introduction and First Reading of Bills

WHISTLEBLOWERS PROTECTION ACT, 2007

S. Simpson presented a bill intituled Whistleblowers Protection Act, 2007.

S. Simpson: I move a bill intituled the Whistleblowers Protection Act, 2007, and ask that it be introduced and read for a first time now.

Motion approved.

[1335]

S. Simpson: The Whistleblowers Protection Act, 2007, will facilitate the disclosure and investigation of significant and serious matters in or relating to the public service that are potentially unlawful, dangerous or injurious to the public or that demonstrate a gross mismanagement of public funds or assets or an impact on the environment. The bill will protect those persons who disclose that information from retribution.

The bill calls for a structure to be created within each ministry to facilitate those disclosures and requires an annual public reporting of all issues raised under the legislation. It empowers the Ombudsman to both provide oversight to this legislation and be a source for disclosures of complaints under the act as well. Further, the bill lays out a process to protect against malicious complaints that are not founded.

The growing secrecy of this government and its methodical and unforgiving approach to shutting down transparency have compelled the introduction of this bill. Far too often we hear in the areas of the environment, children, seniors and health care, among others, about government decisions, actions or conduct that are not in the public interest.

There are situations where government employees or employees of organizations that are contracted with government would come forward to disclose those concerns and bring them to light, but they feel intimidated or concerned about the security of their jobs, so they stay silent.

If we truly want open government, we need to remove that risk and encourage dedicated civil servants and service providers to come forward when they feel compelled to shine a light on government irregularities or unacceptable conduct. The Whistleblowers Protection Act, 2007, is intended to provide government workers and service providers that opportunity and the necessary protections to be able to come forward with confidence that they will not face retribution from the government.

I move this bill be placed on the orders of the day for second reading at the next sitting of the House after today.

Bill M233, Whistleblowers Protection Act, 2007, introduced, read a first time and ordered to be placed on orders of the day for second reading at the next sitting of the House after today.

Statements (Standing Order 25B)

AGA KHAN

J. Nuraney: On December 13 the Shia Ismaili Muslim community will be celebrating the 71st birthday of His Highness the Aga Khan. He's the 49th direct descendant from Prophet Muhammad, and he's the spiritual leader of the Shia Ismaili Muslim community, estimated to be around 15 million around the world.

The community is also celebrating the golden jubilee of him assuming the role of the imam. His Highness has phenomenal accomplishments and achievements in the past 50 years. He's the founder of the Aga Khan Foundation, which has now become one of the largest philanthropic organizations in the world.

He's also the founder of the university and medical college in Pakistan and the University of Central Asia to serve the needs of Tajikistan, Kyrgyzstan and Kazakhstan. His work around the world in health care, education and helping those less fortunate in developing countries is well known and recognized. They range from founding and operating 200 health facilities — including nine hospitals, which is considered to be the most comprehensive health care system in the developing countries — to his education programs covering a wide spectrum of activities from early childhood to degrees in medicine.

He also built and operates Aga Khan Academies to encourage local intellectual leadership, to develop drivers of society in developing countries. The Aga Khan Trust for Culture promotes excellence in Muslim architecture and the revival of traditional music.

His efforts in helping those less fortunate include rural building and planning, microfinancing and emergency relief. He has been honoured by various countries around the world and is also a Companion of the Order of Canada.

I would invite the members of the Legislature to join me in wishing His Highness a happy birthday.

SMALL-SCALE FARMING ON VANCOUVER ISLAND

D. Routley: Before I start, Mr. Speaker, I should ask you whether it's permissible to use a member's name as a noun rather than a pronoun. I want to do a Corkster, which is speaking from minimal notes, but I'll resist waving a glass of water around in the face of my....

I'm rising to talk about small-scale agriculture and Vancouver Island farms. First of all, I'd like to talk about the history of those farms. Just like the communities on Vancouver Island, they were interlopers; they were squatters. When the E&N land grant was given to Dunsmuir, communities sprouted up all along the line. Over time they occupied space they couldn't be removed from, so Mr. Dunsmuir was given land in exchange.

[1340]

That's the history of the towns on Vancouver Island and also of the farms. We have a postage-stamp set of farms on an island with postage stamp-size fields. These farms face unique challenges: the meat inspection rules, a housing market that is encroaching on their lands.

In order to deal with that, our farmers on Vancouver Island have become remarkable examples of entrepreneurialism. They have multimarketing strategies that take the hay from the field and milk the cow and make the cheese and market it in the small delis and in the restaurants.

I think it's absolutely fantastic. A wide variety of meats and vegetables are fresh in our restaurants and our stores because of the efforts of these great farmers. We have unique products like camp cranberry. We have the second-largest holly farm in North America. These are all very unique operations that deserve our protection.

Environmental considerations are a big piece of why we need to step up to support small-scale farming on Vancouver Island. The hundred-mile diet is very popular in people's minds right now, the ideas of climate change.... By supporting small farmers and small farming, small-scale production, we can do a lot to address those issues.

In ending, we all need to protect the ALR and small-scale food production in order to eat, drink and survive.

ROGERS SANTA CLAUS PARADE

L. Mayencourt: It's a pleasure to rise in the House and speak about an event that I attended this past weekend. It was the fourth annual Rogers Santa Claus Parade. It's always been something very exciting, but this year it was even better than ever before. We had about 300,000 people out there on the sidewalks watching us. It was one of those events that really brought the community together.

In fact, there were about 150 volunteers that volunteered with Rogers to make sure the parade happened. We had a lot of families and friends involved in that, and we were very, very happy to see some volunteers that had signed up on VolWeb. VolWeb is a place where you can sign up to gather points that will allow you to become a volunteer at the 2010 Olympics. There were 62 entries and about 1,800 participants inside the parade, including Santa Claus.

I was told just a few moments ago that Santa arrived from Dawson Creek, so I want to thank the member for Peace River South for sending him down.

We try and raise a lot of awareness around food banks and such during the Rogers Santa Claus Parade. We raised about 15,000 pounds of food that was delivered to the food bank. It took us about an hour and a half to unload it, actually.

We also saw some cash donations from the Vancouver firefighters. We got \$2,500, and \$7,500 from the public. Rogers also donated another \$50,000.

For those who didn't get to see the parade, you can see it on Global Television, which will be showing it twice over the next couple of weeks. For those of you that still want to make a donation to the food bank, it's really easy. All you've got to do is walk it into a Rogers Video, a Rogers Plus or a Rogers authorized dealer in the lower mainland before December 24. You'll be feeding friends in your neighbourhood, you'll be spreading good cheer, and you'll be making sure that the Santa parade has produced a really great benefit for our community.

SUPPORT FOR HUYNH FAMILY

D. Cubberley: Today I want to share a story about constituents of mine that extends far beyond Saanich South. It's a tale of tragedy and generosity that celebrates community and compassion. It's about Johnny Huynh; his wife Chinh Thi Ngo, who suffers from ALS; and their three boys — a family that found itself separated when Chinh's illness worsened en route to Vietnam to say farewell to family and friends.

Forced to leave her in a hospital she couldn't leave without complex medical supports, Johnny was left facing the daunting challenge of getting her home. The cost and obstacles were formidable. He turned first to his family and then to his community for help.

Efforts started at Northridge Elementary, the boys school. Teacher Pat Mar began fundraising, and local lawyer Sinclair Mar helped spread the word. She set up

a trust fund account at Coast Capital, helped by Alyssa Berne and her colleagues. Tracy Trinh held a fundraiser at her Shizen Japanese Restaurant. Local media became involved, bringing the situation to a regional public who responded by giving.

Northridge principal Terry Edwards was a conduit for dialogue with kids, parents, community and media, all the while helping the family cope. Debra McPherson of the BCNU involved herself and her staff, and organized logistics to help Chinh return without a hitch.

[1345]

The B.C. Ministry of Health enabled Chinh to be hospitalized upon arrival. Michele Lane of B.C. Bedline performed commendably.

People do care. They reached out because this story touched them personally. I want to thank one and all for their contribution.

Johnny tells us that on the first of each month, a \$500 voucher for groceries just shows up in his mailbox, a gesture of caring from someone whose generosity seeks no recognition at all. I know that Johnny, Chinh and the boys are grateful to everyone, but we're also grateful to them, too, for drawing out the best in us. It's in us to give. But for fortune, there go you or I.

FIFA JUNIOR WORLD CUP

H. Bloy: I rise today to inform the House how the city of Burnaby successfully hosted a world-class sporting venue this summer. More than 15,500 people were drawn to beautiful Burnaby this summer to enjoy the FIFA junior World Cup tournament at our state-of-the-art Swangard Stadium. That's according to a report prepared by the Canadian Sport Tourism Alliance, proving Burnaby to be an elite host city for such sporting events.

From July 1 to 7, Burnaby showcased some of the world's best young soccer players for locals and visitors to enjoy, as well as exposing our community as a premium host city for national events. This was a great chance to raise the profile of Burnaby as a travel destination and demonstrate how we are capable of staging such an elite event welcoming the world to our community. That's thanks to John Roca, executive director of the FIFA junior World Cup.

Hosting events such as this one brings many benefits to our local economy. The junior World Cup pumped over \$8.5 million into Burnaby's economy, and it was encouraging to see so many visitors from the United States and overseas come to our city.

In Burnaby in 2008 we'll host the World Broomball Championships. Beyond that, as we gear up to host the 2009 World Police and Fire Games, we can expect to have many economic positive spinoffs in our community and the lower mainland. That's over \$100 million into the economy, with 15,000 athletes and over 25,000 family and coaches participating.

I'm proud to say that Burnaby is a world-class city.

WILD ARC

M. Karagianis: It's my pleasure to stand in the House today and talk with members about an exceptional

story. The only wildlife rehabilitation centre in southern Vancouver Island is called Wild ARC, the wild animal rehabilitation centre operated by the B.C. Society for the Prevention of Cruelty to Animals. It's done entirely without any government funding.

Wild ARC opened about ten years ago on ten acres of rural land in Metchosin at the western end of my constituency. It was built by the Victoria SPCA to celebrate their centennial anniversary.

Every year Wild ARC treats more than 1,700 wild animals from throughout the region. Wild ARC's mission is to provide humane care to injured, orphaned, sick or distressed wildlife. Each one of the creatures that comes to Wild ARC is treated individually and assessed for eventual release back into the wild.

The centre rehabilitates raptors, mammals, amphibians, reptiles and migratory birds under permits issued by the B.C. Ministry of Environment and the Canadian Wildlife Service. In total, Wild ARC has provided care for more than 140 species of animals. The treatment the animals receive is based on the latest principles in wildlife rehabilitation and medicine.

Wild ARC also works to educate the public about wildlife, animal welfare and coexisting with nature. More than three-quarters of the wild animals treated at Wild ARC have come to the facility because of the impacts of human activity.

In the words of renowned oceanographer Jacques Cousteau: "When we return wild animals to nature, we merely return them to what is already theirs, for man cannot give wild animals freedom; they can only take it away."

I hope members will join me today in acknowledging the exceptional work of Wild ARC in my community.

Oral Questions

IMPLEMENTATION OF HUGHES REPORT RECOMMENDATIONS ON CHILD PROTECTION

C. James: After years of cuts and denial by the Premier, this government had to be dragged kicking and screaming to bring back an independent advocate for children and youth.

[1350]

Now that the representative has released her first major report, it's very clear that the Premier and this government have learned absolutely nothing. They continue to fail vulnerable children and youth. The report released yesterday is an indictment of that failure, of this minister and of this Premier.

The Premier promised action on all 62 of the Hughes recommendations. He did so with a sense of urgency. He even brought in his handpicked deputy minister. But 18 months later, those promises and commitments are gone. The minister can't get the job done.

My question is to the Minister of Children and Family Development. Can he explain why, 18 months

later, all he has to show for his efforts is an insincere draft plan that fails to protect the most vulnerable children in our province?

Hon. T. Christensen: Certainly, the government welcomes the representative's work and her report. We believe it's an important accountability measure for the public to have an opportunity to review that report. There's no question that the child and youth representative takes her role very seriously and is to be commended for that.

There's equally no question that the leadership within the Ministry of Children and Family Development, right down to the front-line employees of the Ministry of Children and Family Development, take their responsibilities very seriously to better serve children and families across this province.

I think it's a bit telling — the eagerness with which the Leader of the Opposition jumps on this report and tries to immediately politicize it, as she did yesterday before she had any opportunity to even review it.

I would remind the members opposite of one of the key things that Mr. Hughes said. He said a number of very strong things. He said: "I am proposing a new body — a Representative for Children and Youth — that will build on the strengths of its predecessors and on the lessons learned from their experience.... Further, its reporting process through the select standing committee will be designed to help depoliticize the debate around child welfare issues."

Mr. Speaker: Leader of the Opposition has a supplemental.

C. James: The minister left out one very important point, and that is that people on this side of the House actually expected the government to do something to implement the Hughes recommendations. You would never know that the minister welcomed that report, when all we saw him do yesterday was point fingers and lay blame somewhere else — everything except accepting the fact that he and the Premier and this government are the problem here.

They've failed to put vulnerable children first, and the report is very clear. It says the Premier and the minister have failed to deliver on 22 of the most important recommendations — recommendations like funding levels, staff resources, training, support for front-line workers; recommendations that are at the heart of protecting vulnerable children.

It was this Premier who promised "to put in place a comprehensive plan that deals with all 62 recommendations." But all the Premier, his handpicked deputy and the minister have delivered is a vague and inconsistent plan.

I ask again. To the Minister of Children and Family Development: enough excuses, enough finger-pointing. Why did he and the Premier break their promise to the most vulnerable children in our province and not implement the Hughes recommendations?

Hon. T. Christensen: Well, we have gone a significant way to implementing the Hughes recommendations.

By the representative's own measure, 60 percent of the recommendations are complete or certainly well in progress.

One of those recommendations was the establishment of the select standing committee. Mr. Hughes said — and this is quoted from *The Vancouver Sun*: "Also paramount in fixing the system...is to depoliticize the matter in the Legislature, where it is often the subject of fiery and sometimes personal attacks. Hughes wants the Legislature to create an 'all-party' committee on child welfare to 'encourage government and the opposition to work together to address the challenges facing the system.'"

The Select Standing Committee on Children and Youth exists. The member for Surrey-Panorama Ridge sits on that committee. The member for Esquimalt-Metchosin sits on that committee. The member for Nanaimo sits on that committee, and the member for Powell River-Sunshine Coast sits on that committee.

[1355]

They have ample opportunity at that committee to review thoroughly — and I encourage them to review thoroughly — the report of the child and youth representative. I would equally encourage them to invite the Ministry of Children and Family Development to come and provide a fulsome explanation of the work that is happening in the ministry to improve services to children and families and meet Mr. Hughes's recommendations.

Mr. Speaker: The Leader of the Opposition has a further supplemental.

C. James: I'd like to remind the minister that it took six years of this government dragging their feet, refusing to bring back an independent officer. Thank goodness we have that committee so the government can't hide the information that they aren't doing anything on behalf of children anymore.

We hear the excuses, and we hear the avoidance, but no one over there will admit that this has been a failure from the Premier's office down. Every child who falls through the cracks is a loss to all of us in British Columbia. This government and this Premier promised to make sure that they did something to avoid those cracks for children, that they actually took some action. What the report pointed out clearly yesterday is that they haven't done anything.

Mr. Speaker, I'm going to ask if anyone — if someone — on that side will stand up, will show some leadership, will take this issue seriously and will do something on behalf of the most vulnerable children in British Columbia.

Interjections.

Mr. Speaker: Members.

Hon. T. Christensen: Mr. Hughes made his recommendations 18 months ago; 60 percent of those recommendations are either complete or well in progress by the representative's measure.

The ministry believes that all of the recommendations have had substantive work undertaken on them. We welcome the opportunity to appear before the Select Standing Committee on Children and Youth to enlighten the members opposite, the members on this side and the public as a whole as to the substantive work that is going on within the Ministry of Children and Family Development.

I don't know what it is that the opposition members have against the Select Standing Committee on Children and Youth. Mr. Hughes certainly thought it would be a welcome addition to try and depoliticize this matter.

If there's one thing that I am prepared to agree with the Leader of the Opposition on, that is that we must all strive to better serve children and families right across this province.

N. Simons: Mr. Speaker, this side is very grateful for the work of the select standing committee. It's that very body that is bringing some accountability to this government, because the government fails to take it themselves.

What is clear is that after 18 months.... The representative said it was clear. These recommendations aren't that complex, yet it's 18 months, and we've got 22 that may have been accomplished. Twenty-two is not 60 percent, Minister.

Will the minister admit — does he even realize — that his failure to fulfil his promise to implement those recommendations is having a direct impact on children and families in this province?

Hon. T. Christensen: Day in and day out in this province, serving children and families on the front lines of the Ministry of Children and Family Development is the number one priority.

That's why over the course of the last two years, the last year in fact, we've added 200 front-line workers across the province to bolster staffing so that we can better serve children and families. That's why we continue to add front-line staff.

It's why we've engaged staff significantly in a discussion over the course of the last two years as to how it is that we can better serve children and families. Where are the gaps in services? What is it in the nature of the work we're doing with families that can ensure that we enable children not to be coming into care but to live safely with their families?

[1400]

I agree, as I said at the outset, that this is an important report that the child and youth representative has submitted. I believe that we can all learn from this report, but I also believe quite sincerely that the Select Standing Committee on Children and Youth should take the opportunity to review the report thoroughly and give the ministry an opportunity to respond.

Mr. Speaker: The member has a supplemental.

N. Simons: Let me first point out that there's probably no one in this House who understands the hard work of

front-line social workers, and this opposition understands that work probably better than anyone else on that side of the House. I will stand by that statement, quite frankly.

While the minister pretends that this is a report...

Interjections.

Mr. Speaker: Members.

N. Simons: ...about front-line social workers, he should know better. This is a direct indictment of his....

Interjections.

Mr. Speaker: Members.

Member, just take your seat. I can't hear you.

Interjections.

Mr. Speaker: Members.

Member, continue.

N. Simons: Nobody on this side of the House has anything to learn from this minister about protecting children in this province.

His feeble attempt and his cohorts' feeble attempts to say that we're denigrating the social workers in this province.... They are wrong. They are wrong.

What we are taking issue with is the same thing that the representative is taking issue with, and that is the lack of leadership that has been shown by this government and by this minister.

So I repeat my question to the Minister of Children and Family Development. Does he even realize that his failure in this file and the failure of his government are having a direct impact on children, on social workers and on families across this province?

Interjections.

Mr. Speaker: Members. Members.

Hon. T. Christensen: I'm not sure there was a question there, but the member has a very selective memory of his government's, the NDP government in the 1990s, handling of this ministry.

Interjections.

Mr. Speaker: Minister, just take your seat.

Continue, Minister.

Hon. T. Christensen: Mr. Speaker, let's look at the interaction of the NDP government with front-line social workers. Under the NDP, B.C. faced a severe shortage of qualified social workers. The north, the Kootenays and Surrey had vacancy rates of up to 44 percent under that NDP government, and 250 of the 300 social workers hired in 1995 to help implement the Gove inquiry recommendations had quit within two years due to work overload.

None of the 53 UBC social work graduates in 2000 applied to work for the Ministry of Children and Family Development. It's a damning example of how the NDP handled this file.

Interjections.

Mr. Speaker: Members.

M. Karagianis: Everything we have heard today from this minister is full of contradictions. He says he's committed to the Hughes recommendations. He's been bragging about the fact that only 60 percent of the recommendations have been fulfilled to this point. He's talked about depoliticizing the system, depoliticizing the issue here. Yet yesterday, by his very actions, he politicized the report by rebutting it before the committee even had a chance to read it.

Last May, on the very last day of the last sitting, in direct questions by me to the minister, the minister actually said: "All 62 of the recommendations are completed or underway."

Can the minister explain to British Columbians why all 62 recommendations were completed or underway then, and yet today he's telling us only 60 percent are underway or completed? Was the minister true then, or is he telling us the truth today?

[1405]

Hon. T. Christensen: In the spring I said that all recommendations were being implemented or certainly were underway, and the ministry believes that all recommendations are underway. That's what I said in earlier answers....

Interjections.

Mr. Speaker: Members.

Hon. T. Christensen: We accept that the child and youth representative has done her work, has measured progress. By her measure, she believes that 60 percent of the recommendations are either complete or well in progress — by her measure. I believe she's sincere in that work, and I have no disagreement with that work.

However, by the measure of the transition team made up of the Deputy Attorney General, the Deputy Solicitor General and the Deputy Minister of Children and Family Development, who issued a report in May.... They indicated that they believed that all of the recommendations were in progress, and the recommendations are in progress.

As I said, there is a disagreement. We welcome the opportunity to appear before the Select Standing Committee on Children and Youth and have a fulsome discussion about this. I don't know why it is that the members of the opposition wish to ensure that they can get headlines out of this rather than ensuring we get fulsome information so that we can improve services to children and youth.

Interjections.

Mr. Speaker: Members.
Member has a supplemental.

M. Karagianis: Certainly, the ministry has met with the Children and Youth Committee and has presented their point of view, and now we have seen what the children's representative has to say about the recommendations and the lack of progress on them.

I would actually bring to the minister's attention, for his recall, his words to me exactly, where he said, upon questioning: "We've taken the recommendations Mr. Hughes made. We have been working on implementing those over the course of the last year" — right?

He said that that week they posted to their website a report from the transition team as well as a recommendation-by-recommendation list that indicated what has been done. "It clearly indicates that all of them have either been completed or...are underway" — all of them.

The exact minister's words, and yet today certainly we see that that's not true. In fact, it was the representative who has drawn to our attention that there has been no progress on at least 22 of those recommendations.

So in further questioning to the minister, I would ask the minister...

Interjections.

Mr. Speaker: Members.

M. Karagianis: ...despite his contradictions here, despite his contradictions in referring to the children's representative's recommendations: was the minister wrong then, or is the representative wrong now?

Hon. T. Christensen: The transition team issued a summary report in the spring. The member has referred to it. The transition team stands by that.

Clearly, the representative has issued a report yesterday where, by her measure, 60 percent are either complete or well in progress. I'm actually quite interested in sitting down with the representative to determine how it is that she was specifically measuring progress on the recommendations — how it is that we can better satisfy the child and youth representative's office that progress is being made on the recommendations so that the public can have full confidence that, in fact, all of the Hughes recommendations are being implemented.

I'll reiterate. We welcome the opportunity to appear before the select standing committee so that we can take some of the political banter out of this and actually get down to determining what information is relevant.

A. Dix: The problem is not with the children's representative. The problem is with the minister, who's not getting the job done.

My question to the minister is simple....

Interjections.

Mr. Speaker: Members.

Interjections.

Mr. Speaker: Members.
Continue, Member.

A. Dix: The children's representative said clearly that the minister has made no or little progress on 22 recommendations — some of the most important recommendations in the Hughes report.

[1410]

When is the Minister of Children and Families, when is the Premier's handpicked Deputy Minister of Children and Families going to forget about the rhetoric, stop picking fights with the child representative and deliver on what they said they'd do, which is implement the Hughes report?

Hon. T. Christensen: I appreciate that the member opposite and the opposition may choose to try and gain from this report and position the minister against the representative, but nothing could be further from the truth.

I look forward to sitting down with the representative, determining where it is that the ministry can do better. I've sat down with the representative on a number of occasions through the last number of months, and we have a very strong relationship, I believe.

We are fully committed to implementing all of Mr. Hughes's recommendations. That work is underway. We will be working with the representative to ensure that we have a clear understanding of how we can satisfy her, that all of that work is underway. All of that together will provide better services to children and families across the province.

GOVERNMENT RESPONSE TO DEATH OF AMANDA ZHAO

J. Kwan: In October 2002, 21-year-old Amanda Zhao was found murdered in Burnaby. Amanda's boyfriend at the time — Ang Li, a Chinese foreign student living in Canada — was implicated in the murder but returned to China before charges could be laid.

Recently Amanda's mother wrote: "We lost our only daughter. Five years are gone, and justice still isn't served. Is this fair? Every day is a torture. There should be an end to that wait. The days of our lives are numbered, and if you don't bring justice to my daughter, we will not die in peace."

Can the Solicitor General tell Amanda's parents what he's doing to ensure that a fair process of justice will begin for the Zhao family?

Hon. J. Les: Mr. Speaker, I'll take that question on notice.

Mr. Speaker: The member for Vancouver–Mount Pleasant has a supplemental. Is it a new question?

J. Kwan: Yes, it is.

Mr. Speaker: Continue.

J. Kwan: The situation involved a young woman who was murdered here in Canadian jurisdiction....

Mr. Speaker: Member, is it a new question?

J. Kwan: Yes, it is.

Mr. Speaker: Continue, but it must be a new question.

J. Kwan: Yes, it is a new question.

In a letter from the Minister of Public Safety, Stockwell Day, he stated that law enforcement and administration of justice are provincial responsibilities. He suggested that the question around Amanda Zhao and diplomatic channels should be brought to the minister's attention.

Now that the Solicitor General is aware of his responsibility, will he commit to asking the Premier, who is in China, to use diplomatic channels to ensure that due process is administered in the murder of Amanda Zhao?

Hon. J. Les: This is a serious case. Obviously, we're interested in it. I've taken it on notice, and I'll undertake to the member to get back to her with an appropriate response.

FUNDING FOR VICTIM SERVICES

R. Fleming: Last month the Solicitor General was dead against regional policing, but last week he changed his mind.

I'm hoping that this week he'll be in favour of properly funding, finally, regional victim services, police-based victim services in this region, because it is a regional police force that coordinates seven police forces in Greater Victoria.

Greater Victoria Victim Services estimate they've lost \$642,000 since 2002, because the Solicitor General fails to comply with his own ministry's funding formula. It's literally robbing crime victims of services. Each year the program is owed \$240,000 annually, by his ministry's account, but only gets \$109,000 per year.

To the Solicitor General: when will his ministry properly fund Victoria and B.C.'s police-based victims-of-crime organizations so that victims can get proper help to cope with the traumatic and invasive impact of crime on their lives?

[1415]

Hon. J. Les: The victim services programs in my ministry are, I think, some of the most treasured programs that I have in my ministry, where we support victims through often very traumatic experiences. We have 153 victim services programs across the province — not only police-based, as the member indicates, but also community-based. We work very hard through the ministry staff — as well as through volunteers, by the way — to ensure that victim services are delivered.

The program in Victoria is in fact funded at a greater level than that which is provided to Vancouver

and to Surrey, but nonetheless, there is always the opportunity for review. In this case, we are in fact reviewing the program to see whether changes are appropriate.

BUSINESS COMPENSATION FOR
CANADA LINE CONSTRUCTION

G. Robertson: The Cambie Village Business Association issued a press release yesterday indicating that they are soon voting on a class action lawsuit on behalf of their several hundred members. We know that this government treats small business like disposable diapers. It looks like the same thing is going to happen for the taxpayers. Taxpayers will now have to eat the cost of fighting with small business owners in court because this government won't do the right thing.

Municipal leaders on the TransLink board have called on the provincial government for new policy on mitigation that includes compensation. This government has not delivered, and now you're eliminating the elected officials from this board. This government has already handpicked a new unelected board for TransLink.

Will you also be directing this new board to compensate the small businesses on Cambie Street?

Hon. K. Falcon: Mr. Speaker....

Interjections.

Mr. Speaker: Members. Members.
Minister, continue.

Hon. K. Falcon: You know, it's interesting. The NDP always say one thing when they're in government and quite another thing when they're in opposition. It's very, very interesting to me, actually, because whether it's — God forbid — the NDP in power or our government in power, government has to deal with challenges occasionally when we're investing in and building major infrastructure — in this case, through TransLink.

But that opposition appears to have a short memory. They were at one time also building a line called the Millennium line, and they were going through the exact same things.

For the member there, who takes such great interest in this, I would like to quote: "It has cost my business, my marriage, everything. We've had no car access since June last year. Don't they understand that people can't take these kinds of things very long?" That's *The Vancouver Sun*, April 20, 2001.

Member, when you were in power, you did nothing then. The reason you didn't was because you were trying to deal with investing in infrastructure and trying to do it in a way that meets the needs of the public, recognizing that it's a challenge while you do it.

Interjections.

Mr. Speaker: Members. Members, we certainly want to hear from the member for Nelson-Creston.

POPE AND TALBOT
BANKRUPTCY PROCEEDINGS

C. Evans: Hon. Speaker, last week...

Interjections.

Mr. Speaker: Members.

C. Evans: ...we discussed the fact that Pope and Talbot is the licensee in the Arrow Lakes on two million acres, TFL 23. They employ loggers in my constituency. My loggers put \$10 million worth of logs in the lake. Pope and Talbot has refused to pay their \$5 million labour bill. That means Pope and Talbot is insolvent.

Section 18.03 of Pope and Talbot's licence with the Minister of Forests speaks about insolvency. It says that if the licensee commits an act of bankruptcy, makes a general assignment of its creditors or otherwise acknowledges its insolvency, the licensee is deemed to have failed to perform an obligation under this licence.

My question to the minister is: when did the minister understand that Pope and Talbot was insolvent? And when will he advise them that he is removing their licence?

Hon. R. Coleman: This matter is actually in hearings again on Friday under CCAA. It's before the courts, and it will come through the matter. There are offers on the table being considered by the courts with regards to the future of those mills and those things in the Kootenays. I hope that somebody is successful in actually protecting the jobs and protecting the industry and the future in the Kootenays.

[1420]

Interjections.

Mr. Speaker: Members.
Member for Nelson-Creston has a supplemental.

C. Evans: My next question is to the Attorney General. This contract for TFL 23 is mirrored by hundreds of similar contracts for forest licences and TFLs all over the province.

My question to the Attorney General: if we set the precedent in the case of Pope and Talbot that the licensee becomes insolvent and we fail to inform them that they are in contravention of their licence and remove it, have we not set a precedent for every other logging company on every other acre employing loggers all over this province that they can go bankrupt and not pay British Columbians and that we won't do a thing?

Hon. R. Coleman: I actually issued a letter to the member today on a question that I took on notice last week, because he accused the government of not having any representation at the legal case. Maybe when he was there he didn't recognize the government lawyers, but there were three of them there. There were three of

them there protecting the interests of British Columbia and will continue to protect the....

Interjections.

Hon. R. Coleman: Well, look. It's before the courts. It's federal statute. We are actually going to protect the interests of British Columbia, hon. Member, and you can rant and rave all you want. We'll do it within the law.

[End of question period.]

Interjections.

Mr. Speaker: Members. Members. The second bell really ends question period.

Point of Privilege (Speaker's Ruling)

Mr. Speaker: Hon. Members, last Thursday, November 22, the Minister of Health raised a question of privilege with respect to a matter raised during oral question period on November 21. Specifically, the minister objected to the words spoken by the member for Cowichan-Ladysmith, which the minister characterized as an accusation by the member regarding the care of an individual at the Lodge on 4th in Ladysmith. The minister tabled additional information in support of his submission.

On November 26 the member for Cowichan-Ladysmith responded to the question of privilege raised by the Minister of Health and outlined the facts relating to the incident at issue from his own perspective.

The Chair has carefully examined the submission and material tendered by both the Minister of Health and the member for Cowichan-Ladysmith. The Chair concludes that there exists a clear difference of opinion between both members as to the facts relating to the incident which occurred.

Privilege exists to protect members with respect to their functioning as members of the House. The strict definition of privilege cannot be expanded to include dispute as to facts, opinions, conclusions between members. It has been a very longstanding practice of this House that a member's statement is accepted by the House in absence of indisputable evidence to the contrary.

There must be prima facie evidence that the member for Cowichan-Ladysmith deliberately misled the House. No such evidence was submitted to the Chair. In addition, the Minister of Health has not established in his submission sufficient foundation to enable the Chair to make a prima facie finding that the House was deliberately misled.

The matter raised by the Minister of Health is a matter which squarely falls into the category of a dispute as to facts and as such does not form the basis for a question of privilege. I so rule.

D. MacKay: I have a petition.

Mr. Speaker: Proceed.

Petitions

D. MacKay: I have a petition signed by people from the lower mainland and Victoria asking the province to reactivate the Select Standing Committee on Aboriginal Affairs in light of the results of the Tsawwassen and the Maa-nulth treaty.

Hon. K. Krueger: I rise to present a petition on behalf of our colleague the member for Kelowna-Lake Country, who is convalescing. It's signed by 300 of his constituents expressing their concerns with the proliferation of aggregate operations in Lake Country.

R. Cantelon: I have a petition from 24 residents of Vancouver Island who submit that there should be a law to prevent the discharge of raw sewage from vessels and pleasure craft within three nautical kilometres of the shoreline.

[1425]

G. Coons: I have a petition, 83 names collected in Haida Gwaii, that the province dedicate lot 5 at the Sangan River estuary on North Beach of Graham Island on Haida Gwaii as a public recreational use area.

Orders of the Day

Hon. M. de Jong: Just before I do that, I was asked by Joyce of the Sergeant-at-Arms office to remind all members, as the week winds down, to take any materials from your desks prior to departure before the House adjourns, because the desks are used during Christmas for Youth Parliament. Please remember to do that.

Secondly, I call continued second reading debate on Bill 39.

Second Reading of Bills

ELECTORAL BOUNDARIES COMMISSION AMENDMENT ACT, 2007 (continued)

A. Dix: It's wonderful to rise and have yet another opportunity to speak in this debate, which the Government House Leader has provided us today. I think that the enthusiasm for the debate is seen by the actions of all in this place.

We are, of course, speaking of Bill 39, the Electoral Boundaries Commission Amendment Act. We all recall the process that led us here. We as a Legislature voted unanimously, I believe, to set up this Boundaries Commission consistent with historical practice and our obligations. We did so, hon. Speaker, as you know, and the Boundaries Commission set out and did its work.

It's interesting to note because of the key issues before the Boundaries Commission, some of those key

issues being to ensure representation in all parts of British Columbia. It's a key issue to ensure fairness to communities — to in fact ensure that British Columbians are well represented, to deal with issues such as the STV question that has set up separate boundaries and to contribute in that way to the referendum we're going to be holding in 2009.

It's interesting that the government's interest in this question came so late. In fact, as you know, only two Liberal MLAs — if I may call them that, because one of them is the member for Peace River South and one is the member for Bulkley Valley–Stikine — even bothered to attend. It seems unbelievable, given the apparent interest in this debate by members on the government side, that only two government MLAs even bothered to attend the public consultations.

That compares, of course, with ten times that number of opposition members who participated, who advocated on behalf of their constituents, who advocated on behalf of their communities.

What happened, hon. Speaker? You ask that question. Well, members on the government side didn't like the result. They didn't participate in the process. They didn't care about the process. They didn't take part in the process. They didn't advocate for rural communities. They didn't advocate for urban communities. They didn't advocate on the question at all. They weren't part of the process at all.

Like all people who are caught out, the Premier — having failed the process, having not participated in the process, having not taken the process that we set up in this Legislature in any way seriously — decided to bring in this piece of legislation.

There was another opportunity. Indeed, there would have been a further process, as everybody knows. There would have been a further process to assess and contribute to the decision made by the Electoral Boundaries Commission, but the Premier didn't do that.

The Premier decided, in an unprecedented way, to intervene in the process, and that's what he did. The Premier decided to interfere with the work of the commission. It is a surprising step, it's an unfortunate step, and it's a step which I don't think is respectful of all of the hundreds of people who took part in that process.

[1430]

It's like the Premier said: "Okay, myself and my friends didn't think this process was worth anything." We know that because they didn't come and participate. They didn't think it was worth a single, solitary thing, with the exception, again, of the — shall we call them — secondary caucus of the government caucus. The member for Peace River South and the member for Bulkley Valley–Stikine participated; everyone else didn't.

So they didn't care. Then they took all of the efforts of all the people who did care. There were MLAs, but there were hundreds of ordinary citizens in communities around British Columbia who cared enough to take part, to participate, to give of themselves to that process in

the belief that the word of the government was of value.

That is the contract when you set up legislation for an independent commission. The contract is that you respect the process, and you respect the people that take part in the process. What we have, not for the first time, is an effort by the government to disrespect the process.

Imagine this. Is it possible to imagine, hon. Speaker, that the Premier of British Columbia — who stood up in this House and has said many times that he believes in the independence of the Electoral Boundaries Commission process — doesn't take part in it, allows hundreds of people to...?

The commission has spent millions of dollars — an enormous amount of work in the process — and he says: "Well, I don't think so. I'm not even going to bother to go to the commission and defend rural representation. That's not important to me."

How do we know it's not important to him? Because when something is important to him, he goes. He didn't go.

Did a single member of the cabinet...? In our system, as you know, hon. Speaker, all members of the cabinet are also Members of the Legislative Assembly and representatives of the community. The executive and the legislative branch — they represent both. Did a single, solitary member of the cabinet — one of them — go and say: "We want to fight for rural representation. We want to fight for the Kootenays. We want to fight for the Cariboo. We want to fight for the Prince George region. We want to fight for the northwest. We want to fight for Vancouver Island"? Did any of them go?

Well, sadly, the answer to that question is no. Now, in a democracy we have the right not to participate, but it's frequently said that when people don't participate in the process, they don't have a right to complain about the result. That's what is frequently said. It's important to vote. We make the case for people to vote in elections, because that gives them the right — whether their side, the side they voted for, wins or loses or finishes third or ninth or 19th. They fulfilled their duty as citizens.

What we have is a government — government MLAs and a Premier — who, in this process, a process he set up... They drafted the legislation. It came from the legislative draftsman, it came through the cabinet room, and they said a-okay. They brought it in this House, and they stood up and voted for it. And then they didn't bother to take part in that process.

The Premier didn't like the result, and he wouldn't stand up. He wouldn't join the Leader of the Opposition and others and say: "I'm going to the commission. I'm going to defend rural representation." No. He said: "I'm going to intervene. The process didn't matter, because it didn't decide what I wanted to decide. Never mind that I didn't care enough to participate. Never mind that I didn't care enough to participate on behalf of the people of Vancouver–Point Grey or people in need of representation around British Columbia. Never mind that; I'm going to decide."

[K. Whittred in the chair.]

In the words of another executive: "I am the decider." He said: "I am the decider." But in the process of electoral boundaries and election law — well established — the Premier doesn't get to be the decider. He shouldn't get to be the decider, and his interference with the commission work shows a shocking disrespect — a disrespect for the independence of process, a disrespect for the commission, a disrespect for those who went and gave briefs to the commission, a disrespect for this House and what it had passed, a disrespect for the right operation of the democratic process.

That's what this bill shows, and that's why we in this House will be voting against this bill if it comes to a vote.

[1435]

Hon. Speaker, it continues. We've had — I have to tell you, hon. Speaker — since this bill was introduced on October 24.... This bill was introduced on October 24, a month ago. It has been brought back to this House for debate three times: on November 7, November 8 and November 20. Given the importance of this issue, that's hardly any time at all. This is an effort to overturn the independent Electoral Boundaries Commission process.

Have we heard from the government in this debate? Have we heard from the government? Where have they been? In fact, we've had a little better representation from the government side in speaking to the bill, but it's been very small so far. I look forward to hearing from the Minister of Environment, hearing from the Minister of Education and hearing from the Minister of Advanced Education.

Hon. S. Bond: Check the speakers list.

A. Dix: Let me say this. The Minister of Education did speak on the bill. She and the Attorney General are the only members of cabinet to speak on the bill. We look forward to hearing from all of them.

This is an important bill. It's an important piece of legislation, and I think we and the people of British Columbia deserve to hear from people. We didn't hear from them in the process. We didn't hear from them before the Electoral Boundaries Commission. We haven't heard from them in this House, and that process is important.

Let me quote — something I rarely do — from an editorial in the *Victoria Times Colonist* — a very thoughtful editorial. What that editorial said.... It's very, very interesting what that process said. "There's nothing like time in power to convince politicians how vital they are. Back in 1996, when he was the new Liberal leader, the member for Vancouver-Point Grey campaigned on a promise to reduce the number of MLAs." He campaigned to reduce the number of MLAs, and I dare to say: how did that go? He campaigned on that promise.

It goes on to say: "Now his government has introduced legislation to overrule the independent Electoral

Boundaries Commission and" — now, this is a word that they like over there — "order it to add eight MLAs to the 79-seat Legislature." Here's what the editorial said: "This is one legislative debate worth close attention." Well, they're right.

It goes on to say: "The debate on this legislation offers the best chance to ensure that is not happening in this case." What they refer to here is about rigging riding boundaries. They say the debate in this House is important. Why do they say it's important? Because the issues are fundamental to fairness in the political process.

We as a Legislature passed legislation setting up an independent commission. The government chooses, for reasons known only to it.... Its MLAs choose not to participate in that process — with the exception, again, of the member for Peace River South and the member from Bulkley Valley.

They choose not to take part in that process. They don't give evidence. They don't lead their communities. They don't take part. They step back from that process. No member of cabinet, in their role as an MLA, takes part in that process.

We bring it to this House, an important debate, because in this debate we overrule that process. It's critical, in fact, to the process being sustained that we have a serious debate, and that the government actually sets out its intentions and what it believes, which it certainly hasn't done in this debate.

What we have here is a debate where almost no members of the executive council, with the exception of the Deputy Premier and the Attorney General, who had to speak.... You have to speak when you introduce a bill at second reading. You have to. He was obligated to speak. It would have been impossible if he hadn't spoken. The debate would never have started.

That is one more than the minimum they've come up with — one more than the minimum. I say with great respect to the Attorney General that I don't consider him to be the minimum. It's just a number, and he happened to be the guy introducing the legislation.

[1440]

Now, what is being decided here? We set up a process. The people speak. The government doesn't participate, and the government decides. Here it is — the principle of the bill. We need a lot more politicians. They've had an epiphany, hon. Speaker.

You know, we heard the Minister of Transportation — and it was high comic relief today — talk about his views before he went to office and after he went to office — high comic relief as he was explaining to people on Cambie Street how it was tough luck. It was tough luck that because of something that he believes happened in 1998, they don't get any help now.

An Hon. Member: A decade ago.

A. Dix: A decade ago, and it's tough luck. They're out of luck because they're citizens, just like the people who participated in this process are out of luck.

So what the Premier has decided because, as you can tell, he believes he is the decider.... He decides —

not the independent commission, not the Legislature, but he decides. He is the decider. He put out a press release, and he said: "What we need in this province, contrary to everything I have ever said on this process in the past — contrary to that — is a lot more politicians."

Now, hon. Speaker, I defy you.... Is there the "society for the election of more politicians?" Does that society exist? No. SEMP — I don't think it exists. No one came to the commission to say that. No one has written to the Premier, I dare say, except perhaps some Liberal MLAs over there saying that we need more politicians. Nobody wanted this except the Premier, and he is, as we've said, the decider.

Eight new MLAs. Additional MLAs mean more costs. Heck, we're going to have to expand the room. We're going to have to push out the wall, because the Premier believes we need more politicians.

Did he, in fact, achieve his goals around rural representation? We see in the bill, in fact, the dilution of rural representation.

I think it's really shocking that the Premier of B.C., who was here in this House voting for an independent commission, who has consistently said, as most of us say, that there is in fact a contract between citizen and government that this be an independent process.... The times when that independent process in recent years has been interfered with and tampered with live in infamy in the politics of this province. I'm thinking of the "Gracie's finger" incident.

The intent of independent commissions was to rid us of the very politics which the Premier is now imposing on the process. He issued a contradictory press release. He hasn't bothered to explain to this Legislature in debate why he holds that view. He's simply the decider. He comes down from the mountaintop and makes these decisions. It's wrong.

This bill, as the *Victoria Times Colonist* has clearly stated, requires a full debate, a long debate, because the people of British Columbia need an explanation from members of the government side. Why would you overturn that process? Why would you disrespect everyone who participated in that process? Why would you do such a thing?

J. Horgan: Four million bucks for the bonfire.

A. Dix: Four million dollars they wasted — gone — because the Premier, who didn't participate in the process.... Remember, hon. Speaker. I remind you that they didn't go to the hearings. They didn't respect the process. They didn't participate in the process. They were just angry about the result. So the Premier, who is the decider, got up and said: "I'm going to make the decision."

But he hasn't come to this House and said why he made that decision, why he is passing legislation that undermines and interferes with an independent commission's work, why he's decided or why he's made this extraordinary decision that it is the position of the government of British Columbia that we need more

politicians. Why has he decided that? Why, when in fact he passed legislation to allow the commission and the public to have voice on this question?

The commission and the public had voice on that question, and he didn't like what they had to say. He's the decider; he gets to choose. It's wrong. It is wrong to introduce legislation of this kind.

[1445]

The right thing to do is respect the independence of the process, respect the commissioners and do what NDP MLAs from across British Columbia did, which is fight for rural representation and respect the democratic rights of citizens.

Who participated in this process? Well, speaking eloquently for the interests of people in the Cariboo, the member for Cariboo South took part before the commission. He and the member for Cariboo North both took part in the commission's activity, and they fought and argued for the views of their region. Where was the government? They were nowhere.

The member for Surrey-Whalley and the member for Surrey-Green Timbers went before the commission. They argued for the views and the needs of their communities and for the public interest in Surrey — an area of British Columbia that has been sadly neglected by this government in terms of health care and other issues. The member for Surrey-Whalley went before the commission.

Where were the government members from Surrey? They didn't bother to show up. They didn't show up to one hearing. Then they come to this House and say: "Well, forget about the independent process. The Premier is the decider, not the independent commission, not those people. Forget about that. It was a joke. We set up the independent process, but we didn't mean it."

The next time they do that, the next time they have an independent process with lots of recommendations, and they commit to implementing all of the recommendations of the report.... Wait a second, hon. Speaker. When you start a pattern of behaviour of disrespecting independent process and disrespecting the public process, what happens? Well, we saw a bit of it today.

The government said that it was going to implement the Hughes report, and then it failed to do so. Now it says: "We were right all along."

I think what you see in this process, in this legislation, and why I think we need a full debate at second reading — why I believe that members on the government side need to be heard from — is that they weren't heard from in the first process. They didn't express their point of view, and this is a fundamental process for democracy — the setting of fair boundaries so that people get the representation they need and deserve in a democracy.

This isn't any small bill, and it's why so much effort went into the process — so much effort by the commission, by people in this House, by members of the government, by everybody — to set up an independent process.

For it to be swept away by the diktat of the Premier is, I think, a moment of disrespect. We've seen them before, but it's a new level of disrespect.

This bill simply doesn't reflect what people told the Electoral Boundaries Commission. It doesn't reflect it. It doesn't reflect the passionate words of members on the opposition side, who fought. The member for Columbia River-Revelstoke, who went to the commission and fought for his community — it doesn't reflect his views. It doesn't reflect the member for Cowichan-Ladysmith, who did the same thing.

Their views were heard by the commission. That's fair ball. We were taught, when we grow up, to play by the rules. People of B.C. played by the rules. The Premier won't play by the rules, and it's another reason why we oppose this legislation.

The final thing I'd like to say on this bill or the next-to-final thing, because what I say on legislation thankfully isn't decided by the decider yet.... What I say about this legislation is that I think we are at a crossroads in this democratic debate. It's not just the riding boundaries on first-past-the-post.

There was enormous public interest and public consultation on riding boundaries on the STV system. This is the basis of democratic debate. I don't think it's right to say you're going to do something, to break that promise and then to hide from the people when you do it. It is disrespectful to democracy. It's this kind of behaviour which the Premier has shown with this process — a process that he launched along with every member of this Legislature.

[1450]

We all voted to respect the independent traditions of the electoral boundary process. We all got together and agreed to it and spoke to it and believed in it. That's why we voted for it. Then we went a step further, and we believed in it by participating in that process because our job is to represent our constituents — not to be the representatives of the government in our constituencies, but to be representative of our constituencies here in Victoria. So member after member on this side took part in that process.

Now the disrespect rains down. We need to say no. Members on the government side need to say no. This is power-hungry behaviour, and it's wrong. It's shameful.

It's why we oppose this legislation. It's why members on the government side have an obligation to rise and defend this legislation. It's why members on the opposition side should have an absolute right to participate in this debate.

[Mr. Speaker in the chair.]

Members on the opposition side represent every constituency on the opposition side, and there should be no effort spared to ensure that every single member on the opposition side is allowed to speak in this debate. There should be no effort spared to ensure that at least some members on the government side, on an issue this fundamental, this central to the independence and

the fairness of elections, an issue such as this — that people hear from the government and people hear from their representatives.... We need to hear from both sides. This debate is just starting. People need to hear....

The issues involved in this debate are fundamental to the democratic system. We've only had three opportunities to debate it in the month since they introduced this bill. Members of the government side have yet to avail themselves, although I'm sure they will.

This bill undermines the democratic process. It requires full debate, and I ask all members of this House to rise, because they owe it to their constituents and to this province to express their views.

I urge people to vote no on this bill.

R. Austin: It's indeed a privilege for me to rise and speak against Bill 39, the Electoral Boundaries Commission Amendment Act, 2007. I do so speaking here as a rural MLA from northern B.C.

I'd like to begin by mentioning that at the beginning of this process, the member for Cariboo North and I were the first two MLAs to go and meet with the Boundaries Commission right here in the Legislature. Yes, we were in fact the guinea pigs, as they referred to us.

We went there to explain to them what our experiences are like, being an MLA from a rural part of this great province. We went there with the understanding that the members of the commission themselves probably live in an urban setting and maybe have never lived or worked in a rural part of British Columbia. We wanted them to hear firsthand, from both of us, about the experiences of trying to do this job in the best way we can from a rural setting.

Of course, both of us were very much aware of the difficult position — indeed, the difficult job — that the Boundaries Commission has to do. That is an extremely difficult task, accepting representation by population — a fundamental, democratic right of one person, one vote; everybody having the right to vote on election day — while also balancing that with a need to create effective representation in a province such as British Columbia.

That is an incredible challenge for the commission, because we have in this province a geography that is typical of many parts of Canada. We have a geography where approximately 85 percent of the population live in one small concentrated area of this province, leaving a vast area that is largely underpopulated.

As a representative of a riding from northern B.C., an area that represents 45 percent of the geography of this province but has only eight members, we wanted to tell the members of the Boundaries Commission some of the challenges that are required in creating effective representation. We all know that they would know what rep by pop was, but we wanted them to understand fully what effective representation was.

[1455]

When I first took this job, I remember meeting my colleagues for the first time and sitting down with

members who work in the lower mainland. I remember, at my first meeting at caucus, the member sitting next to me, who described that he could walk around his entire riding in an hour and a half.

Well, we had to inform this Electoral Boundaries Commission that there are parts of this province — especially in northern British Columbia, the Cariboo and the Kootenays — where you could drive for three or four hours and never get to meet your MLA, never get to speak to them firsthand.

I don't believe — and I don't think British Columbians believe — that the inability to actually sit down with their MLA and express their point of view, have a reaction, listen and go back and forth — not via e-mail, not on the phone, not on a fax, but to actually sit down with their MLA.... I think most British Columbians would appreciate that it's different in an urban setting than a rural setting.

So we went there, and we made this presentation. It was a non-partisan presentation. We fully expected that the members from the government side would go and say the same thing. As I mentioned, there are eight MLAs who live in northern British Columbia, and it was fully my expectation that the MLAs from northern B.C. who represent government areas would also go before the commission, join in that process and explain to them that the last thing we needed in British Columbia was to lose rural representation.

It's already hard enough as it is to bring the topics of rural B.C. to the agenda, to the forefront, in a province that's dominated by a large urban centre like Greater Vancouver or the lower Island. I don't want to disparage their rights to have representatives. Of course that's very, very important. I'm glad that the Malahatians are well represented by the member for Malahat-Juan de Fuca.

But for those of us who live in rural B.C.... They look at the map and see just eight constituencies in northern British Columbia having to represent that huge geographic area with all the complexities and the different communities. Then to look at the lower mainland with.... What is it — 45 MLAs in the lower mainland? I'm not sure exactly. It's a huge wad of MLAs.

If anybody wants to speak to their member, if you have somebody in the lower mainland who has an issue, not only can they go and speak with their representative but, in fact, if they get in their car or get on SkyTrain, they can probably speak to ten or 20 MLAs in the lower mainland on the very same day. That, of course, doesn't occur in my part of the world.

So we wanted to make sure that happened. I was very surprised that the government MLAs did not participate in the process, as has been mentioned already in previous speeches.

Interjections.

R. Austin: Very few MLAs spoke on behalf of their constituents. I think that is the problem here. They didn't participate in the process. Once the process fulfilled its mandate and listened to what everybody had

to say, then they came out with an initial map. Clearly, that initial map upset a lot of people, not least of whom were the Premier of this province and the cabinet and the government side.

I went to the first meeting that was held in Prince George, along with all of the members of Prince George ridings. Indeed, it was a very well-attended meeting. I went there in agreement with the people who said: "Why are we losing rural representation?"

It was wrong, and I hoped that would have been addressed if we'd carried on with the process and if the Boundaries Commission had carried on. They were in Prince George. They went, I believe, to Burns Lake. They would have been in my home community of Terrace just a couple of weeks later.

I can assure you that they would have heard the very same message in my home community of Terrace as they did in Prince George, which was: "Please don't remove representation from the rural parts of British Columbia." But then what happened? The rug got pulled immediately out from under them, and the whole process got scrapped.

[1500]

So we have an independent process set up to ensure that politicians, MLAs, don't get to go and decide boundaries or gerrymander them. They get given a mandate. They go do their work. Then when the initial map comes out: "Oh, dearie me. We don't like it. Let's scrap it." I don't think that speaks very highly of an independent process. In fact, I think that makes a complete mockery of an independent boundary commission.

Then we find in this bill that the government is going to enact the exact number of seats that are going to be in this House. What do they say they're doing when they're going to do this? They're going to fix the problem about the lack of rural representation. Quite extraordinary, when the bulk of the people on the government side who represented rural areas, with the exception of a couple, never even went before the commission to speak loudly about rural representation.

After they find out that the map doesn't suit them, they then decide that they're going to fix this problem by creating a boundary commission that has to put in 87 seats. What does that do?

I'm speaking here as somebody from a rural riding. I fought for rural representation.

What does this bill do? It weakens rural representation; that's what it does. It actually takes it and makes it an even bigger challenge. If you look at the number of rural MLAs relative to those in the urban areas under this bill, you would find that rural representation, when and if this bill is enacted, will be even worse off than it is under the current status quo, never mind under the suggestions of the Boundaries Commission.

That's why I'm speaking out against this bill — because it weakens and makes it even harder for rural British Columbians to have their particular issues brought to the forefront of the government agenda.

I think it is important to recognize some of the things that were said during the process. I listened to

one of the commissioners on radio, Stewart Ladyman, who commented that wherever the commission went around British Columbia, whether it was in the lower mainland, the north, the Cariboo or the Kootenays.... He stated very clearly that one message that was loud and clear was that British Columbians, by and large, didn't want any more politicians — okay? They didn't want any more politicians.

Yet what do we have here in Bill 39? A government deciding on its own, irrespective of this entire process, to add eight more politicians. It is absolutely perplexing. But the reason why they want to add eight more politicians, of course, is to ensure that they get the politicians put into places that they want. That is sheer political interference — nothing less.

We have heard a little bit of what people have said when they went around the province, and we've also heard what people have said in ridings such as mine. When the commission came to Terrace in their initial hearings on this subject, we met in a hotel. People from all walks of life came to the Coast hotel in Terrace, met with the commission and said, largely, some of the things that I've been speaking to here.

They were speaking from a northern perspective. They were saying: "Listen. It is very hard to get representation that is adequate, that is comparable to that of people who live in cities, so please don't take away any MLAs from northern B.C." They heard that from all walks of life. People who voted Liberal, people who voted NDP all came, and they joined in this process. It was a non-partisan process. They came with a central message. So they were also annoyed.

I'll tell you what annoyed them even more, hon. Speaker. It was the fact that they didn't get a chance to speak to the initial map and to the initial recommendations of this Boundaries Commission. They never got a chance to voice their opinions the way that the people in Prince George did. No.

Why didn't they get that chance? Because they had the rug pulled from underneath them by a government that decided: "Well, we don't need an independent commission here. We don't like what they've done. Let's just stop the whole process. Let's use the Legislature."

Surely the whole purpose of having an independent commission is so we don't have this debate here in the Legislature. That's the whole purpose of having an independent commission on something as fundamental as this. We shouldn't be here discussing this. We should never have been here discussing this.

[1505]

It should have been given to the commission. They should have done their work. They should have listened to people and had a chance to have a debate around the initial plans that they put forward.

They had an opportunity to put up to — what? — four more seats. They used two, but they had an opportunity to put up to four more seats. Guess what. If they'd had that opportunity to go around the province and listen to what people, particularly people from rural British Columbia, had to say.... I think it's fair to

say that it's people in rural British Columbia who were most upset by the initial map and by the initial suggestions of the Boundaries Commission.

There's a process in place. There's a chance to have a second sober opinion, to go and listen to what people have to say around B.C., but they were never given that chance. Here we are today having a debate in this chamber that shouldn't even be here.

I don't think British Columbians want to have politicians sitting around discussing how many MLAs, how many new politicians, are required. I think most British Columbians would regard that as somewhat self-serving. They think that this should have been done by an independent commission. Let them go and decide how many MLAs should be here in this province.

I think that what we are seeing here is a usurping of the process. It's an indictment against having an independent commission. There's no point having independent bodies anymore, quite frankly, if we're going to have a government that sets up independent commissions and then decides: "Oh, we don't like their work. Let's scrap it."

Where do we go from here? We could have had the Minister of Children and Families today standing up and saying: "Well, yeah, I know there's an independent commissioner for children and youth, but I don't like what she has to say, so let's scrap it. Let's get rid of her. Let's get rid of her commission."

No, no. You know what? We don't need any of that. That's what we don't need — independent commissions being discarded just so the Premier and his government can get their way and get a new map that perhaps they like a little bit more than the previous map that they didn't like.

Interjections.

Mr. Speaker: Members.

R. Austin: I went along with the Leader of the Opposition to Prince George to speak out against the lack of rural representation. This bill, as I've pointed out quite clearly, weakens rural representation. It weakens it. It makes the number of rural MLAs relative to the urban MLAs less than it is today. That doesn't strengthen rural representation.

I think what should have been done is that the commission should have been allowed to continue its process. It should have been allowed to go and listen to what people all around the province — in Terrace, in the Cariboo, in the Kootenays — have to say. Not the politicians, the people. They would have heard very clearly the same message that I'm giving today, the same message that the people in Prince George did have the opportunity to say.

Then that commission may have gone back and decided on its own, with its mandate: "Oh yes. We've heard, and we've listened. Then we have to go and put back some more MLAs." But that's up to the commission to decide. They had the opportunity to put up to six

people, six new MLAs. That was their decision, but they have not been allowed to make that decision.

That is a travesty, and that is what is wrong with Bill 39 and what is wrong with the whole process of bringing it back here. It shouldn't be back here. That commission should have been allowed to fulfil its mandate, but that didn't happen.

It's a sad day for democracy here in British Columbia. It's a sad day for all of those who live in rural B.C., because frankly it is a hard thing to get representation that is effective in rural B.C., with the long distances we have to travel.

The people in my riding would agree entirely with me because they know well that eight people representing all of northern B.C. is a hard enough job relative to those who live in Greater Vancouver. But having eight MLAs and another five or six in the lower mainland doesn't help make that job any easier. This bill weakens rural representation, and that's why I am adamantly opposed to it.

Interjections.

Mr. Speaker: Members.

R. Austin: Hon. Speaker, I now move adjournment of the debate and reserve my right to speak — or your right to speak; sorry.

[1510]

R. Austin moved adjournment of debate.

Motion approved.

Hon. M. de Jong: I call continued committee stage debate on Bill 45.

Committee of the Whole House

MAA-NULTH FIRST NATIONS FINAL AGREEMENT ACT (continued)

The House in Committee of the Whole (Section B) on Bill 45; K. Whittred in the chair.

The committee met at 3:12 p.m.

On section 3 (continued).

S. Fraser: In the interests of expedience.... I know we have limited time at committee stage. I've done a little bit of checking here, and I think we can move right through to the mining section, which is 4.2, "Tenured subsurface resources." I know that the member for Malahat-Juan de Fuca has a few questions around that.

J. Horgan: It's a pleasure to participate in committee stage of the Maa-nulth Final Agreement Act. I want to take the opportunity while the minister is here.... I see the Minister of Mines, so he can also weigh in, I'm

sure, if there's a whisper to be had. If the minister will indulge me, we're going to be bouncing all over the section. I think that was the practice from Tsawwassen, rather than going a section at a time. Is that what we're planning on doing? Great.

I'd like to start with section 4.2.3 with respect to "Provincial Law applies to the exploration, development," etc. Could the minister explain to me what is meant by that section and when these tenured subsurface resources are to be as if they were owned by the province? What's the intent of that section?

Hon. M. de Jong: What the section confirms is that although the Maa-nulth First Nations will have ownership of the subsurface resources on Maa-nulth First Nations lands or treaty settlement lands, the province will continue to manage tenured subsurface resources and, in so doing, will apply provincial laws to the exploration, development, extraction and production of those types of resources as if they are owned by the provincial Crown.

There's an ownership component that is addressed and a management or administrative regulatory component that's addressed.

[1515]

J. Horgan: It's that management regulatory component that I want to explore a little bit further with the minister, particularly if subsurface rights were owned outside of the Maa-nulth Nations but still within Nuu-chah-nulth territory. What responsibility or obligation would there be to the owners of those lands outside? Would they be the same as those lands inside with respect to exploration or development?

What I mean is that you're within the Nuu-chah-nulth territory. There's an obligation for accommodation and consultation outside of the treated area. What would the difference be if a mining company, for example, held subsurface rights in Nuu-chah-nulth territory outside of the bounds of the treaty versus those subsurface rights now held by the Huu-ay-aht, for example? What would the relationship be with government — the Huu-ay-aht versus a developer or a proponent who has subsurface rights outside?

So it's two parts. What's the responsibility to that company to consult with the first nations that are not part of the treaty, and what would the responsibility of the Huu-ay-aht be with respect to the regulatory aspects of the legislation or the minister's responsibility?

Hon. M. de Jong: Hopefully, I've understood the question correctly. Maybe I can answer it in two parts or three parts. I think the member's question related to a situation where, let's say, a tenure holder of subsurface rights outside of treaty settlement lands — so on a spot that is outside of the treaty settlement lands — wished to pursue the development of that tenure. What are their obligations to other first nations?

In that case, the obligation to consult, to accommodate, would be guided very much by the common law rules around that. Those obligations vis-à-vis non-parties to

this treaty are not changed. The obligations as they relate to parties of the treaty, the five first nations, are of course guided by the provisions of the agreement itself. But for first nations who are not a party to this agreement, the obligation to consult — and potentially accommodate, depending on the circumstance — would continue unabated.

J. Horgan: I appreciate that. The minister did actually get to where I wanted to be. I'm extending from his answer. This may not hold, but let's assume company A has subsurface rights in Nuu-chah-nulth territory, and they have a requirement to consult and accommodate, as the minister outlines. They also secure from the Huu-ay-aht subsurface rights within the treaty territory. At that point, there would be no obligation to consult or accommodate because that has already been done, inasmuch as the holder of those subsurface rights has transferred them, that being the Huu-ay-aht.

Is that correct, or is there an additional requirement beyond what would be expected there?

[1520]

Hon. M. de Jong: In the scenario that we're now discussing, I think the member has identified a situation in which — he mentioned the Huu-ay-aht — one of the five first nations that are party to this agreement convey to an agency, entity or company rights that they hold under this agreement, subsurface rights on treaty settlement lands.

Insofar as the relationship between that company or individual or agency and the first nation, that would presumably be guided by the contractual arrangement they strike. Because we're talking now about subsurface rights to treaty settlement lands, I wouldn't envisage any obligation on the part of that agency to consult or accommodate with other first nations, as long as we are talking about activity that is restricted to the treaty settlement lands themselves.

J. Horgan: I think that's all I need, but I was thinking of those lands that may overlap. For example, if you find an ore body within the treaty lands that extends outside of the treaty lands to other territories that are claimed by first nations, at what point does the accommodation and consultation end? It ends at the boundary of the treaty lands — okay.

I'd like to pop back up the page, still in chapter 4, to 4.1.3. I don't have my Tsawwassen bill available, but is that language similar to the language in the Tsawwassen treaty? Is it in place, as well, for the same reasons the minister gave me, in that Atomic Energy of Canada wanted to have it in there?

Hon. M. de Jong: The advice I have is that the language is the same as in the Tsawwassen, and therefore, my explanation would be the same.

J. Horgan: I am pleased that the minister didn't give me the explanation again. It was certainly an acceptable explanation when he gave it to me the first time.

Moving to section 4.2.8: "Maa-nulth First Nation Lands are treated as private lands under Provincial Law respecting Subsurface Resources for the purposes of determining access rights and compensation rights associated with any proposed entrance, occupation or use of the surface by holders of Subsurface Tenures."

Can the minister explain to me what the intent of that section is?

Hon. M. de Jong: What the specific provision is designed to do is point out, highlight and acknowledge that treaty land subject to existing tenures has been transferred from Crown ownership to first nation ownership. That's the first point. Some of the lands that are being transferred as a part of this agreement actually have some existing tenures.

[1525]

By treating the land in question as private land rather than Crown land, it imports the requirement that existing tenure holders would have to provide written notice of their intention to access what will then be treaty settlement lands — written notice before commencing any activity or operation. So it is by treating the lands as private lands that that obligation — it's my recollection as a result of some amendments that were made — now extends across the province. This imports that similar requirement to the developments of existing tenure holders, if they wish to pursue development on the treaty settlement lands.

J. Horgan: I think the minister references a bill that we passed in the spring about existing tenures and the requirement for notification in a period of time and a form for that notification.

As we read further through that section, we learn that if there are disagreements or disputes, provincial law will apply. Again, I suppose I could work it out by going through the maps, but if there's a number that staff have available of tenure holders who may be affected by this section...?

Hon. M. de Jong: I can advise the member that I'm referencing appendices E-11 through E-12 and beyond, which list the various tenures. Whether they are subsurface, guide-outfitters, water rights, traplines, the appendices list those existing tenures in the various lands.

J. Horgan: I thank the minister for getting me to the right page. As I go through appendix 11, I see water licences. I see permit to occupy Crown lands, more water licences, permit to occupy Crown lands.... What would the occupation of Crown land be, and why do I not see anything in those two pages with respect to subsurface rights?

Interjection.

J. Horgan: In 11 or 12?

Hon. M. de Jong: It's 12.

J. Horgan: Okay, 12. I thought you just said 11. I'm sorry.

With that, I believe we can close off chapter 4. If we can skip 5 and 6 and go straight to chapter 7, I can dispense with the issues that I want to discuss, and we can come back to those. Is that acceptable to the minister, if the critic is inclined to do that? I don't know if he is or not.

The Chair: That will be satisfactory. Continue, Member.

[1530]

J. Horgan: Thank you, Chair. It's with respect to section 7.8, "Use of existing gravel pits on Maa-nulth First Nation lands." The whole notion of aggregate and gravel, as the member will know from living in the valley, is a big challenge in terms of its value and importance to road construction, residential construction, commercial construction and the general economic well-being of British Columbia.

However, with gravel pits come very unhappy neighbours. I'm wondering if the process that the Minister of Mines designates for pit operators or aggregate extraction will also apply in this case on treaty lands.

Hon. M. de Jong: I thought I would begin by just putting on the record what the intention is behind the section. It is to ensure that there is an ability to access local aggregate and gravel reserves for the purpose of maintaining provincial roads in the area. This is not designed to facilitate guaranteed access in order for the Crown to step in and acquire aggregate and then transport it hundreds of kilometres away for commercial purposes. It is designed, however, to ensure that local gravel and aggregate is available to address local road needs.

Just parenthetically, depending on the first nation we're talking about, I think there is great interest as part of some general economic development initiatives to see significant improvement in some of the roads and access ways to some of the communities.

That will take time, but what this provision does, and is intended to do, is ensure that the Crown has access — but specifically for the purpose of maintaining local roads, not exporting mass quantities of aggregate outside of the area.

[S. Hammell in the chair.]

J. Horgan: So, then, in terms of aggregate as an economic development opportunity for the Maa-nulth Nations, nothing in these sections restricts that activity?

If there are no restrictions, then I go back to the initial question, which would be: provincial law that applies to the policies and procedures of the Minister of Mines would have to be followed and public meetings would have to be held by the first nation before commercial extraction for purposes other than described by the minister would apply?

Hon. M. de Jong: I'll try and break this down a bit. The decision around whether or not to authorize an aggregate operation on treaty settlement lands ultimately would rest with the Maa-nulth, with the member first nation. So they have that land use authority as it relates to treaty settlement lands.

Now, to the extent that an operation like that may have a spillover effect or spillover issues — the use of provincial roads — provincial regulation would apply. Complying with environmental standards, fisheries requirements — those standards would also apply.

[1535]

The triggering decision, if you will, though, which is whether or not to allow an aggregate operation on treaty settlement lands, would ultimately be made by the host first nation that owns the land.

J. Horgan: So the chief inspector of mines, who has authority over those issues on non-treaty lands, would not have any role or responsibility in the development of an aggregate operation on treaty lands. And, again, it would be for economic development.

You think of the Bamfield road, for example. It would be tough to haul a whole lot of aggregate out of there unless the Crown was going in to find deposits and fix the road first. Normally, in other areas of the province... I don't know what the case is with Nisga'a. I should have looked into that before I raised the question. But we didn't touch upon aggregate in any way that I can recall in discussions of Tsawwassen.

I'm wondering if this is now an opportunity for the Maa-nulth First Nations to conduct economic development on their territories without any consultation to the governing authority that others outside of the territories would have to consult, which is the chief inspector of mines.

Hon. M. de Jong: I think I might have clumsily responded to the first in these series of questions. The decision about whether or not to develop a commercial aggregate operation on treaty settlement lands... When I said it would be made by the first nation, I was intending to convey that the first nation couldn't have that decision foisted upon them. Someone can't come along and say: "Now we're opening up a commercial aggregate operation on your land." If they don't want it to happen, it isn't going to happen.

If they do, however, decide that that is something they wish to pursue, the advice I have is that the provincial legislation would continue to be applicable; the inspector of mines, I think it is, would continue to play a role; and they would be obliged to follow through on that process. There would be involvement by the inspector of mines and that department. But I say again: the decision about whether or not to pursue that kind of opportunity would first have to be made by the first nation themselves.

J. Horgan: I've just had the other minister confirm that that's the right answer, so that's the one I expected to hear. It wasn't my intent in raising the question to

suggest that it would be foisted. It was in terms of what processes apply to an economic opportunity. If I heard the minister correctly, provincial law applies as it would for other non-treaty land economic decisions with respect to that commodity.

I'd like to just touch on, before we get to water and, in particular, water licences, one more go at subsurface rights and mining activity in general on treaty lands. If I understand the minister correctly and as I've read the chapters in the act, it's my conclusion that all subsurface activity, exploration and development is at the call of the holder of those rights, which would be the Maa-nulth Nations, save and except those examples highlighted in the appendices — two mineral tenures that I can see — and that all provincial laws would apply.

[1540]

There's no special circumstance. Permitting approval, regulation and any other responsibilities of the Crown remain, and the activity is conducted as if it were a private corporation or a private landowner.

Hon. M. de Jong: I just want to make sure I'm conveying accurate information to the member, so I'll deal with the first part of his statement first.

I think the member's assertion, which I believe is correct, is that the triggering mechanism for advancing a development of the sort that the member has described is, firstly, the willingness of the host first nation to proceed. That's absent that consent in whatever form the first nation deems appropriate through their land use planning processes and permitting process. Until that happens, nothing's going to happen.

The member then asked me to confirm the second part of his statement, which I think I can, but I want to hear it again to make sure I'm providing accurate information.

J. Horgan: Perhaps I'll say it differently, and that will help. My objective here is to define, for those who would be arguing that special rights are being transmitted to the Maa-nulth Nations. It's my belief, based on what I've read and on what you've said, that the Maa-nulth will be treated as any other landowner or tenure holder and that the province is responsible for regulation to ensure safety, environmental stewardship and other issues that are paramount to the Minister of Mines.

Hon. M. de Jong: I think the only additional point I would make is, of course, that by virtue of the provisions of this agreement, the Maa-nulth First Nations acquire some law-making authorities over their own land. This is another example: subsurface rights — development of subsurface resources where, to the extent that there is any conflict between those rules and regulations and applicable federal and provincial laws, federal and provincial laws will prevail.

The other distinguishing feature, I suppose, is that again, in the case of subsurface resources where revenues or royalties are generated on treaty settlement lands, those royalties would be remitted to the Maa-nulth First Nations as opposed to the Crown.

[1545]

J. Horgan: I was almost there. My motivation here is to deflect those that would argue that special rights are being passed to the Maa-nulth Nations. For the matters of health, safety and environmental stewardship, provincial and federal laws will apply, and no standards below those will be created through Maa-nulth laws.

Hon. M. de Jong: I agree with that statement.

J. Horgan: I thank the minister for that. With that, again mindful that the critic may go back to 5 and 6, I'd like to move to chapter 8, particularly 8.6, the "Hydro power reservations" section.

In section 8.6.1 the act suggests that "In addition to the Maa-nulth First Nation water reservations established in...8.2.1," which, as I see it, is a general water reservation for other purposes. When it comes to power generation, the reservation is for "unrecorded water of the Streams specified" in the paragraph below.

Is that section there because we don't have records for the flows on those creeks, or is it there for some other purpose?

Hon. M. de Jong: The water reservations that are referred to in 8.6.1 are there — and they are time-limited, as I think the member referred to or can see from the section — ostensibly to provide the first nations involved with an opportunity to conduct some studies on whether or not a run-of-the-river type of hydro project is feasible or viable. They will have that period of time to conduct studies of the stream flows and the volumes, but they are time-limited, as set out in the section.

J. Horgan: I see that there is a time limit on those creeks that are identified, a through e. As we go into schedule 1, however, and it's by nation, there are water flow monthly percentages available, and it lists a number of creeks and rivers. In the HUU-ay-aht example, the Sarita is identified, as a monthly percentage of available flow, as 25 percent in that schedule, yet the Sarita is included in section 8.6.1.

I'm wondering, firstly, if I could get an explanation as to how the monthly available flow was determined and for what purpose.

[1550]

Hon. M. de Jong: I apologize for the delay.

I'm not sure this will answer the member's question in its entirety. The important distinction is that which exists between 8.2.1 and 8.6.1, which on the one hand refers to "a water reservation for domestic, industrial, and agricultural purposes," which is the general reservation of specified amounts of water, whereas 8.6.1 is a reservation that isn't quantified in the same way but is designed to facilitate a study to see whether or not, in addition to the other allocations and environmental requirements, it would be possible to develop hydroelectric capacity on the particular river.

So one is a specified water reservation for domestic, industrial and agricultural purposes, and the other is a

temporary reservation to allow for studies to take place around the possible development of hydroelectric capacity.

J. Horgan: Then those rivers and streams identified in 8.6.1 are the only ones that are contemplated for a potential hydro development? I know the area quite well, and there are numerous rivers, streams and creeks in there. Many of them are identified in the schedules.

But by identifying those rivers in particular... Was it a result of a request from the first nations? Was it in consultation with B.C. Hydro or other independent power producers? How did we arrive at those rivers? Was it the government, or was it the first nation that asked for these?

Hon. M. de Jong: Yes, the rivers that are identified in 8.6.1 were the product of a negotiation — largely identified by the first nations. They have expressed an interest in pursuing feasibility studies around the development of hydroelectric potential on those rivers and streams.

I don't, however, want to leave the impression that there may not be other rivers in the territory that someone, even the first nations involved, might want to investigate, because there may well be. I'm not aware of what they are.

But these were specific candidates for which there is interest in conducting studies today and, as a product of the negotiation, an agreement to provide those temporary reservations to allow those studies to go forward.

[1555]

J. Horgan: I guess why I look at 8.2.0 and 8.2.1 in particular and those purposes that are defined, and at 8.6.1 and 8.6.2, is the notion of storage of water. The schedules point out that the streams are identified as partially within the Maa-nulth territories, so the rivers and streams in question traverse other landowners' and other potential owners' water rights. The storage issue is one that could compromise other people's rights along those rivers.

Is that one of the rationales for the reservation, or is it simply because those were the best candidates? I appreciate that there could be other candidates, but those were identified during the negotiation and were given reservations because of the storage aspects, or is that just an unintended consequence?

Hon. M. de Jong: If we read the provisions in their totality.... I don't want to leave the impression that if, as a result of the studies of the unrecorded flows and volumes, decisions were made on one or any of the rivers listed in 8.6.1, there is a potential for developing hydroelectric capacity on the rivers. The member will see from 8.6.2 that if that development is to occur, it must occur in conformity with applicable federal and provincial laws.

When I hear the word "storage," I begin to think about significant impacts on other users or other land

areas. Those studies presumably would be done, but these sections do not — or section 8.6.1 does not — say that we'll do a study and, if there are sufficient volumes, a development will automatically follow. If it's going to follow, it must do so in conformity with federal and provincial laws. What 8.6.1 does say is that over a specified period of time, studies will take place and the possibility of pursuing the development of that hydroelectric capacity will be examined.

J. Horgan: In 8.6.2 it says, after federal and provincial law: "and there is sufficient Available Flow." That statement — "sufficient Available Flow" — would normally be enough to satisfy me. But living as I have for many, many years on Vancouver Island and knowing that the rains come most years — and we plan on the rains coming most years — and snowpack is what it is.... Hydro and others who plan the management of our rivers and streams for the benefit of all British Columbians and for licence holders quite often have a bad year or two, or ten. In a climate change environment, what is of sufficient available flow this year may be different ten years out.

Because of the reservations and because of the opportunities that I know the Maa-nulth want to pursue, I think I'll leave that section, unless the minister has any more comfort he can provide me that other licence holders will not be adversely affected by these reservations and that the notions of storage and sufficient available flow will be just that, assuming that other rights will not be affected.

[1600]

Hon. M. de Jong: I think the additional assurance I can give to the member relates to the fact that "available flow" is a defined term in chapter 29, and it speaks to those issues that one usually associates with the need to ensure that appropriate flow levels are maintained in a watercourse.

S. Fraser: I'll give a heads-up to the minister and his staff that we'll be moving on to forestry very soon. I just have to backtrack on a couple of questions for chapter 5 on access, a road issue.

So 5.1.1 says: "...each Maa-nulth First Nation has the same rights and obligations in respect of public access to its Maa-nulth First Nation Lands as other owners of estates in fee simple have in respect of public access to their land."

Just what rights and obligations are you referring to — liabilities? What's being referred to there?

Hon. M. de Jong: I think the key feature to these provisions is to point out that the Maa-nulth First Nations liability respecting public access on their public treaty lands is very similar to the liability of the provincial Crown for public access on vacant undeveloped Crown lands. So these sections are designed to try and convey with precision what the obligations are and the extent of the liability would be for Maa-nulth First Nations post-effective date on public treaty lands.

S. Fraser: Thanks to the minister for that.

Then, as far as responsibility and liabilities go, and its comparability to the liability of provincial government for public access, is there a requirement implied with this that the roads, as accessed, have to be up to some minimal public safety standard?

[1605]

Hon. M. de Jong: Because the member referred specifically to roadways, we were consulting the corridor-access provisions of the agreement. But the general rule that I can relay to the member as it relates to roadways is that a similar standard of care would accrue to the Maa-nulth First Nations as would accrue to the provincial Crown.

That doesn't mean every road has got to be a paved, four-lane highway. It does mean, however, that with respect to the roadways, a similar standard of reasonableness would be applied and a similar standard of care would apply to the maintenance of Maa-nulth roads as would to Crown roads.

S. Fraser: There's a problem, though. If you take the Huu-ay-aht First Nation, there is only one road in and out of there that goes to their traditional territory. It's access, though, to their traditional territory. That's the Bamfield Highway, as it's called. From Port Alberni you travel essentially through private managed forest land, but part of it is Crown. It is access to Crown, and it is also access to the Huu-ay-aht First Nation.

That road is not up to any public standard. The Minister of Transportation knows this, but it's actually to a level much lower than that. We're seeing it reflected in accidents, injuries and deaths, too. There is no requirement for the government to provide, as far as I can tell, safe access to public lands, even though the public is led to that road through signage that's from the province.

Is there a standard? I mean, is there actually, considering that the province isn't providing adequate public safe access to the Huu-ay-aht First Nation now or to the town of Bamfield or to the public lands in that region? What requirement would there be for the Huu-ay-aht First Nation or any Maa-nulth first nation to have any safe standard of road if it's not required by the province?

It says "comparable to the liability of the provincial Crown for public access to...." Well, right now the provincial Crown isn't providing safe access to Huu-ay-aht First Nation. Would there be any requirement for them to do anything with the road? Is this statement moot? Does it mean anything?

Hon. M. de Jong: Firstly, with respect to the question of liability and the Maa-nulth First Nation government, I'm going to refer the member, for possible future reference, to chapter 13 and 13.35.8, which deals with the questions of liability.

[1610]

I would also say as a general rule, however, that whilst there are certainly different roads of differing quality, the Crown does operate the roads and is expected to

maintain a certain standard of care. There are tests for liability and for reasonableness that the courts do apply against Crown-owned highways. As I say, via 13.35.8, there are tests for how liabilities and how those protections, immunities, limitations would be applied vis-à-vis the Maa-nulth First Nations and the Maa-nulth First Nations government.

S. Fraser: Thanks for that from the minister.

The Bamfield road to the Huu-ay-aht is not up to public safety standards, and it's not required to be. There is no maintenance done by the province on it to remedy that. That being said, I am going to turn this over to forestry.

B. Simpson: In chapter 9, on forest resources, 9.1.1 indicates that the Maa-nulth First Nations own the forest resources and range resources. Exactly how much land is involved, and in particular, what's the harvestable land base that's involved with this treaty?

Hon. M. de Jong: The Maa-nulth will own the forest resource on approximately 24,500 hectares. Now, I'll qualify that statement already by pointing out that there has been agreement around some park management. We can deduct those amounts.

I'm happy to do that if the member wants to pursue that. Generally speaking, we're talking about 24,500 hectares of land upon which they would have jurisdiction over the forest resource.

B. Simpson: The minister mentioned park management. Is any of this land base coming out of existing parks, protected areas or any form of set-aside or growth management zones — anything in the region that's currently designated as protected or as a park?

Hon. M. de Jong: The answer is yes. That may be something we want to pursue in more detail under the parks chapter, because there is actually a significant land exchange involving land that comes out and land that goes into the Thunderbird reserve. It may be worthwhile to pursue that when we actually get to the chapter around parks, but the answer to the member's question is yes.

[1615]

B. Simpson: Just for clarification, will the West Coast Trail be impacted at all by this? Is any of the land base coming out of that region?

Hon. M. de Jong: I'm advised no. That all remains federal Crown land.

B. Simpson: With respect to the land base, then, of the 24,500 or so hectares, is that all harvestable land base? Would that all have forest and range values on that land base?

Hon. M. de Jong: I'm advised that the analysis suggests that upwards of 60 percent of that land base is

potentially harvestable. What I can't tell the member at this point, though I will pursue, is what economic test was applied for determining harvestability. The fact that there's a tree there, I suppose, renders it harvestable.

Can it be harvested in what we would conventionally regard as an economically viable way? I'll try to ascertain whether that 60 percent takes that kind of test into account. The figure I have right now is that roughly 60 percent of the settlement lands are defined as possessing potentially harvestable timber.

B. Simpson: With respect to where this land is coming from.... We'll canvass the parks portion of it, as the minister suggests, but certain areas of this have to be coming out of existing forest licences, existing tenures. Which tenures are going to be impacted, which operating areas — either on a TSA basis or TFLs?

[1620]

Hon. M. de Jong: Some of the volume will come from B.C. Timber Sales. The majority of the lands, I'm advised, are within TFL 44, held by Western. Then Strathcona and Arrowsmith timber supply areas and TFL 54 are held, I believe, by Interfor presently. I think I mentioned at the outset that B.C. Timber Sales has some potential volumes that would be impacted there.

Those are the timber supply areas and the licensees that I am aware of at this stage for whom there may be impacts.

B. Simpson: Is TFL 57 also part of it?

Hon. M. de Jong: Not to my knowledge.

B. Simpson: Now, I assume that these areas have already been identified. So that's all mapped out. A map exists. These tenure holders are fully apprised of the potential impact of this treaty on them. Is that correct?

Hon. M. de Jong: The lines are obviously on the map as it relates to the treaty settlement areas. It's then really a question in the timber supply areas and the TFLs that we've been talking about assigning volumes.

The other thing that the member probably knows is that in advance of the effective date now, the other mechanism that has been utilized to, as it were, protect the lands for treaty settlement is the part 13 designation. If we took all the various overlays, we would also see lines on the map relating to the part 13 designation, which has been utilized to ensure that the lands are available and the forest resources are available for the settlement we're now discussing.

B. Simpson: Just for clarification, for the public record, it would be good if the minister would explain what part 13 was — I was asked the question over here, and I think others may — and how that protects the interests so that it's not, as some would couch it: "Log it while you're talking." If we could get clarification on the implications of part 13 on this.

Hon. M. de Jong: We talk about part 13. It's something that comes up with increased frequency as we move through various settlement processes. The member is correct.

What will happen is.... It's the tension between two forces. On the one hand, a negotiation is taking place, and a first nation will say: "Okay, we're at the table. We're identifying some settlement lands, but every day we talk, the resource is being reduced by licensees who are operating on the strength of authority they have from the government under a different process." That, of course, causes concern.

The other challenge that exists is that the Forest Act, which regulates the assignment of cutting rates and cutting permits and tenure rights, imposes upon officials, district managers, certain obligations that when certain requirements have been met by a licensee or a potential licensee, they must grant the permit or the licence.

[1625]

The part 13 tool was developed to provide a mechanism by which the Crown could step in through an order-in-council and say: "All right. Because these negotiations are far enough advanced and we are hopeful that we will bring resolution, we are going to take an area, apply what's called a part 13 designation and remove from forestry officials the obligation.... In fact, we'll prevent them from granting additional cutting permits and prevent licensees who may have existing permits from exercising those rights to access the resource."

It is a powerful instrument — and I think the member appreciates that — and one that is used as negotiations are advanced. It has been used, as I say, with some frequency of late. I think one of the first things I did in 2001 as Forests Minister was.... I was asked to examine some part 13s on Haida Gwaii.

They have been used elsewhere, and they were used in this instance to ensure that the forest resource that was contemplated to be part of the settlement, the resource that was there during negotiations, would still be there by the time the effective date rolled around.

B. Simpson: This is an important point because it is the signal to the licensees and the commercial interests in the area that these areas are coming under the auspices of treaty discussions and that therefore the resources have to start being protected.

When was part 13 enacted in this case? Either an approximate date or a month and year would be helpful.

Hon. M. de Jong: The most precise I can be at this point is around about the signing of the AIP. So in 2005, just over two years ago, the first part 13 designation would have been applied in the area.

[H. Bloy in the chair.]

B. Simpson: Thank you. That's helpful.

Just some other questions around this before I get into the substance of the actual clauses. With respect to

the 60 percent of the land base, has a cubic-metre determination been done? I know the minister talked about not being sure about the economic implications, but has any per-cubic-metre calculation been done? And particularly, what kinds of cubic-metre loss would there be in the two TFLs?

[1630]

Hon. M. de Jong: I think the member's question was essentially.... "Minister, you've identified 60 percent as harvestable volume. What does that translate into in terms of cubic metres?" I think that's the question. If I can't get it quickly, maybe we'll continue. I'll see if I can get it quickly.

B. Simpson: I would add that we're interested in the breakdown for the two tree farm licences in particular — if it breaks down that far.

Hon. M. de Jong: I don't have and don't seem to have much prospect in the next moment or two of providing an aggregate figure for the 24,500.

I am, however, advised and can tell the member specifically that where lands were identified through the land selection process because of their timber volumes.... We have that information — estimates around timber volumes. I can try to pull that together and provide it to the member. That information is available, particularly where lands were identified because of their timber values.

B. Simpson: I think it would be particularly helpful if we had a breakdown by forest licence or something — what the impact is on the commercial interests that are there — because we'll come to that clause a little bit later on.

One other question on this. We canvassed this around the Tsawwassen First Nation, around the ability to purchase other lands or existing lands with interest and so on. How does that work in this treaty? Do these first nations have pre-existing timber rights that now will come into this treaty? Do they have forest and range agreements that will continue to exist post-treaty? What does it look like for other existing timber agreements that the Maa-nulth First Nations have?

[1635]

Hon. M. de Jong: I was thinking of that when I went to visit the Huu-ay-aht.

I think the member's question is: do any of the bands, any of the first nations, own licence rights on what would become treaty settlement lands, for example? The answer to that is yes. That's easy, because in those cases, on effective date the first nation becomes the owner of the land. It becomes the ultimate in defined-area tenure. They become the owner of the land in fee simple.

There are some forest and range opportunity agreements, for example. I'm reminded that pursuant to the terms of this agreement, those agreements end at effective date. That is relevant. That relates.

Beyond that, for any additional tenures provided for or that may be subsequently negotiated or obtained, the Maa-nulth First Nations would hold.... Sorry, I should qualify it. Any subsequent licences, tenures that they might acquire off of treaty settlement lands, they would hold just as any other licensee in the province.

B. Simpson: Thanks for that clarification.

I'll come back to 9.7.0 with respect to, to use the term used here, extinguishing pre-existing rights for commercial holders. I've got some questions around what happens to those FRAs and FROs where the lands do overlay and they become the owner.

Interjection.

B. Simpson: Sorry. It's 9.7.1, but I'm going to come back to that.

I'll examine some questions I have around the FRA and FRO portions, because they've effectively got a commercial interest that then becomes an ownership interest at that juncture on the effective date. That's what the minister has indicated.

There are other aspects of the FRAs and FROs that are outside of the treaty lands that, if I understand the minister correctly, just continue as a contractual arrangement with the province, where they have access to those lands.

[1640]

Hon. M. de Jong: My apologies for the delay, but I do want to try and be accurate with what I'm conveying to the member, if I've left an incorrect impression.

The easy part is the treaty settlement lands. The five first nations own the forest resource on those lands. Four of the first nations have forest and range agreements. While those agreements expire at effective date, I want the member and the committee to know that what's being contemplated, which is the possibility of providing replacement licences, would not be contained in the treaty or in the discussion that has taken place with the Forests Ministry community forest pilots as well.

I'll try to get more detail for the member about the volumes involved. The first nations in those cases would hold those licences as any other licensee would, and they would not possess the jurisdiction or authority that would apply for forest lands contained within the treaty settlement lands. I hope that helps the member a little bit.

B. Simpson: You never know where you're going to go when you start into questions like this. It wasn't my intent to go down this path, but while we're there, the minister's answers have raised some interesting questions.

I take the point. An FRA or an FRO — forest and range agreement or opportunity, depending on when they got it — exists. A portion of that land base or that volume that they've got is sitting in the treaty lands. That portion of it, then, is just straight-out exchange.

They've got access to the treaty lands now as owned lands — okay?

Now, if I understand the minister correctly, because this is going to take some time to do, an early signer to an FRA or FRO.... They're going to expire around the same time anyway. A possibility exists that instead of a forest and range agreement — because as the minister knows and as we know, those are causing a little bit of grief and they're having to be worked through a process — the possibility of a community forest licence exists. Maybe each of these first nations, if they're interested, can get additional access to forest resources outside of the treaty through the possibility of a community forest licence.

[1645]

If I understand that correctly — and the minister is nodding assent — then I guess that raises one of the questions in that area. The question on Vancouver Island is: where's the volume? It's a constrained fibre basket, if you will, so where's the volume for that?

If you're going to take a portion of the land base out for treaty and then you're going to be offering a community forest licence as well, does the possibility exist that some of that volume will further be taken out of the tree farm licence and existing commercial forest licences? Is that what's being contemplated?

Hon. M. de Jong: I'm going to preface my remarks with this caution. There are some negotiations still taking place, so I don't want to adversely impact those or suggest that suddenly positions have been carved in stone.

It may help the member to have some sense of what the range is that those negotiations are in. Both the Toquaht and the Huu-ay-aht are interested in the community forest option. In the case of the Toquaht, the volume being discussed is in the range of 6,000 cubic metres. In the case of the Huu-ay-aht, again, it's in the range of 16,000 to 17,000 cubic metres.

The Ka:'yu:'k't'h'-Che:k'tles7et'h' and the Uchuckle-saht are having discussions with the Crown around a replaceable licence. In the case of the Ka:'yu:'k't'h'-Che:k'tles7et'h', it's in the range of 14,000 to 15,000 cubic metres, and in the case of the Uchucklesaht, the range is just under 5,000 cubic metres. That's the order of magnitude for those discussions.

The member is right about the challenge. That becomes even more pronounced when we talk about area-based tenures — finding suitable real estate upon which to locate those volumes. Some of that is being addressed by virtue of the takeback volumes that were dealt with here several years ago. That provides some mechanism. But I don't want to underestimate the challenges associated with locating (a) volume and (b) real estate for area-based tenures. It's tough, and it's tricky.

B. Simpson: Yeah, it is tough and tricky. As we know on Vancouver Island, getting volume even out of the existing forest and range agreements has been a real challenge.

The minister has raised the issue of moving into more volume available. Is it part of the negotiations

around the treaty? Is it a side agreement associated with the treaty — that these are going to be given? Is there an expectation by those first nations that they will, as some kind of a side agreement to the treaty process, get additional volume through either a community forest licence or through a forest and range agreement? Has that been given as an agreement to the first nations involved?

[1650]

Hon. M. de Jong: I'm cautious about — and I think I know what the member meant — side agreements. That term tends to refer to some specific side agreements that existed both in Tsawwassen and in this case. I won't use that term.

I think it's probably more accurate, however, to say that as part of the 20-percent takeback.... A specific part of that strategy was about finding a mechanism by which first nations could become more involved in forestry. This flows from that, and candidly, the notion was not to penalize first nations or to preclude first nations who were moving through the treaty discussion from participating in that exercise.

The member has identified some of the challenges associated with that reassignment of harvesting rights. On that, I'll just take a moment. I believe that taking steps to facilitate a more fulsome involvement by first nations in the coastal forest sector was and is the right thing to do, made more difficult in challenging economic times. Some success stories and also some cases where progress has not been made nearly as quickly as one hoped it would.

The first nation I know best of the five, from a forestry perspective, is the Huu-ay-aht. I have been suitably impressed by the work that they have done — everything from their harvesting activities to the sort. Interesting story — I think I conveyed it in second reading. They were experiencing difficulties in terms of the sort yard, so they went out and bought one. Now others come to them and take advantage of that infrastructure.

We didn't want to penalize the Maa-nulth for heading successfully through the treaty negotiation. We do want to facilitate greater involvement by first nations, but again, I agree wholeheartedly with the member's observation that doing so is very challenging in a part of the province where there is no surplus of harvesting rights.

B. Simpson: Thank you to the minister for that explanation. The minister has also answered one of my questions with respect to whether settling a treaty and getting ownership over the land precludes a first nation from then entering into subsequent agreements with respect to other resources.

I guess that begs the question, however: on what terms does a first nation then enter into those agreements? Forest and range agreements, forest and range opportunities were supposed to engage first nations in access to the land base, in forestry enterprises prior to treaties being settled and prior to them owning their

own land base. If we're going to do both, then I'm not sure what it is that happened with the treaty when they start owning their own land base.

It begs the question, and it's being asked by some members on this side. Do first nations then enter into discussions with the government as another community would for a community forest? Or are they still going to be allocated part of that 20-percent clawback as a first nations community, even though they have been given ownership over their own land base in a treaty negotiation?

[1655]

Hon. M. de Jong: I think one of the distinguishing features that I would want to emphasize in this exchange is that the forest and range opportunity agreements and forest and range agreements were also consultation and accommodation packages. So one of the Maa-nulth First Nations may choose to want to bid on a tenure opportunity. They'd have the opportunity to do it.

They may want to buy a tenure. One of the first nations is already exploring that. They may want to as a community. I think it was a good analogy that the member made of communities — two of them I've already referred to — exploring the community forest option. They would certainly not be precluded from doing that.

Going forward, those agreements would look like conventional community forest agreements or conventional tenures, because the accommodation and the consultation provisions are contained in the grandest form of agreement that we can think of, which is a final agreement or treaty. I think that's an important distinction to make, going forward — between the type of agreement we've had in the past versus what those tenure opportunities would look like in the future.

B. Simpson: I think it's fair that first nations that have treaty, that have ownership over the land base, that have gone through all the negotiations can come to the province as a commercial interest and use some of the cash flow from their own land base to then bid on, purchase or otherwise get other forest licences.

I guess the point I'm making, though, is that if they're also coming as first nations with allocation.... Of that 20-percent clawback, a portion was allocated for first nations. I'm presuming that some of that will have found its way into the treaty lands. I guess we'll need to get the list and the breakdown of how the volume is allocated.

If first nations then have to come to the government as a first nation to get a first nations agreement on more of the land base, doesn't that say that the land base they got in their treaty was not sufficient for them — that the forested land base and the forest activities it can do on that land base were not sufficient for the self-sufficiency which treaties were supposed to ultimately get first nations to? That's what I'm trying to understand.

If they're only going to be coming to the government as a community and in the line of applications for

community forests or if they're coming to the government as a commercial interest to buy or bid on a licence, then I think that that's fair. If they're coming to the government.... I know the minister doesn't want to use "side agreement," but an agreement in conjunction with this is that, as a first nation, we'll also give them, out of the first nations clawback allocation, more land interest.

Doesn't that say there wasn't enough land and forest resources in this for them to be self-sustaining?

[1700]

Hon. M. de Jong: I think the member has accurately differentiated, but it is the former description he has given which I think best characterizes how I contemplate this going forward. I think the distinction is a valid one, but I would describe what is being pursued here as falling within the former description as opposed to the latter.

B. Simpson: I'll go back and read what I said so that I understand the former and the latter. Point taken. We can pursue it from there.

In the Tsawwassen treaty there was the opportunity for the Tsawwassen First Nation to expand their treaty lands within their designated interest areas. In the case of the Maa-nulth First Nations, again, they have a much larger territorial interest than they have in the settlement lands that they've got here, and yet in the forestry section, I don't see the same ability to expand.

I have to admit that I haven't had a chance to go through the whole treaty. Do they also have the rights to expand their treaty lands through purchase?

Hon. M. de Jong: There are some specific references to additions to Maa-nulth First Nations land, and we touched on it very briefly when we were in chapter 2 — 2.10.1. There are a variety of different lands. They fall into different categories, and different conditions and circumstances apply. Suffice to say that the possibility of additions to treaty settlement land is also contemplated in this final agreement.

B. Simpson: So that I'm clear, one of the possibilities, if you project forward on this treaty, is the outright purchase of TFL 44, for example. Now, that's buying harvesting. It's buying timber rights; it's not buying the land rights per se. I just want to be clear, because I want to now get into the substance of this — about what ownership means and what making laws means with respect to the treaty lands.

If the Maa-nulth came together, purchased TFL 44, that would then be just a commercial transaction, and they would then be a licensee just like any other licensee? Is that correct?

Hon. M. de Jong: I don't want to convey that I think they're on the verge of concluding that transaction, but if they did, it would be on the basis that the member has described.

B. Simpson: There are some tree farm licences in and around the area in the mid-Island, and so on, that still have private lands in those tree farm licences. If the Maa-nulth chose to buy a tree farm licence with a schedule A private land component to it, which they then wished as fee simple, would that be an expansion of the treaty lands? If those were released, they would become fee simple and therefore now come under treaty lands?

Hon. M. de Jong: I'm advised no.

B. Simpson: Okay, I'll come back to the disposition of the various licences when we get to that section, in 9.7.1. I want to understand now the nature of ownership over these lands. So 9.1.1 and 9.1.2 talk about the Maa-nulth owning the forest and range resources on the first nations land. Then 9.1.2 talks about the "exclusive authority to determine, collect and administer any fees, rents," etc.

[1705]

There are existing interests, as the minister pointed out in a previous question to the member for Malahat-Juan de Fuca, such as traplines, guide-outfitters, etc. Will the Maa-nulth take over the fee-setting for those existing interests?

Well, 9.1.2 says that they have "exclusive authority to determine, collect and administer any fees, rents or other charges...relating to the harvesting of Forest Resources..." on those lands. I'm just wanting to know how far that goes, because there are other existing interests, which are resource interests, over that land base. Will the Maa-nulth be taking over the responsibility for those fees?

Hon. M. de Jong: I'm going to try and answer the question using a specific type of tenure. I think the member talked about a trapline. On effective date, the Maa-nulth will become the new landlord, if you will, for that tenure, for that licence, and it will continue in the same form as exists today.

At the time that it is due for renegotiation or renewal, the tenure holder will be negotiating with the new landlord — in that case, the Maa-nulth. The negotiation will be between them. I think, to answer the member's question, ultimately the Maa-nulth or the member first nation will ascertain what is acceptable for them in terms of the fee or licence.

B. Simpson: Thank you for that clarification. With respect to the types of fees, rents, etc., will it be...? If, for example, the Maa-nulth give out a form of a forest licence, which I guess is well within their domain to do — to put out a licence for bid, and a contractor bids on it — it says in.... What I'm trying to clarify is that 9.1.2 says "except taxes." Stumpage is effectively a form of tax. Would the Maa-nulth be able to charge a per-cubic-metre fee in lieu of what we call stumpage?

Hon. M. de Jong: I believe the answer is yes, if they proceeded in the way that the member described on treaty settlement lands.

B. Simpson: I do understand, as the minister pointed out, that I'm talking about the treaty settlement lands that the Maa-nulth now have ownership over.

What I need to be clear on, then, for 9.4.1, under "for greater certainty" — which is a phrase I quite enjoy coming across in here.... It says: "a. nothing in this Agreement confers authority on a Maa-nulth First Nation Government to make laws in respect of Timber marking and scaling; and b. Provincial Law in respect of Timber marking and scaling applies to Timber harvested on and transported off Maa-nulth First Nation Lands."

Why the constraint on the marking and scaling if the Maa-nulth First Nations have the right to make laws, as we'll see — exclusive authority over fees? Why did we have to constrain marking and scaling?

[1710]

Hon. M. de Jong: I think the answer is essentially related to the fact that the treaty settlement lands are being conveyed as fee simple lands, and the provincial Crown position was that we wanted that same standard that governs timber removed from fee simple lands to apply here.

It's a big chunk of fee simple land, but the notion of being able to source where timber comes from, identify it when it comes off of the private lands.... We wanted all of that — promoting that single standard, as it were, about identifying timber that is harvested and removed from fee simple lands — to apply here as well on Maa-nulth lands, on treaty settlement lands.

B. Simpson: I guess I would understand that if it was constrained to timber transported off, but it's my understanding that it's any timber. So if the Maa-nulth wanted to get into their own manufacturing or, you know, wood-frame homes or whatever the case may be, then the marking and scaling seems to be a moot point. If it's just going to cycle within their community, why bother going through the marking and scaling?

The fact that it says "harvested on" and "transported off," I guess, is all I'm struggling with. I could see if it was coming into the log market that you would want it scaled and marked in accordance with private land laws, but I'm assuming the Maa-nulth will also have the opportunity to generate an in-community business of some sort.

I know that in the Horsefly area and other areas in my constituency, that whole issue of marking, scaling, timber marks, grades is a pain for wood-frame home builders because it just adds additional costs to the system that are not necessary. So I'm curious about why it applies to all of the timber harvested off and why not just transported off the Maa-nulth.

[1715]

Hon. M. de Jong: I think I have the member's point. Let's just have a look at 9.4.1b. The way I read this is, to address the member's point, if the timber is harvested on the treaty settlement lands but never leaves the treaty settlement lands, I'm not sure the requirement that we've been talking about applies.

We do have to read it in its entirety. It applies where the timber has been harvested on and transported off. So if the second event doesn't occur, the way this reads to me, I don't believe that you would attract or the band or the harvester would attract the requirement set out above.

B. Simpson: Fair enough, and thank you for that clarification as to what the "and" means there.

Part of what I'm trying to understand, as I look at this whole section, is that 9.2.1 says that "Each Maa-nulth First Nation Government may make laws in respect of Forest Resources..." etc. Then 9.2.2 says: "Federal Law or Provincial Law prevails to the extent of a Conflict with Maa-nulth First Nation Law under 9.2.1."

I would like to understand, first on 9.2.1, that each Maa-nulth First Nation may make laws with respect to their own particular lands. So each of those first nations has the right to govern their lands as they see fit and make laws as they see fit. Where would we expect the possibility of a conflict to exist that then we would have to use the second clause and say: "Sorry. That doesn't work for us. Provincial and federal law applies"?

Hon. M. de Jong: I think what we're trying to convey here, first of all, is the fact that the individual first nations, subject to the constitutions that they have ratified, enjoy an individual jurisdiction. So in the drafting, the intention was not to leave the impression that the consistency that was being sought was only between the Maa-nulth as an entity and federal or provincial laws, but also in the individual sense.

The Maa-nulth First Nations law is a defined term, and we can go to the definition section. If the member is asking me to speculate about the nature or the type of law that the Uchucklesaht or any one of the bands might pass that would run afoul, I'm probably reluctant to speculate on that.

If I take a moment, I can maybe think of some examples. I don't want to curse anyone — here's what we're looking for. But the first provision makes it clear, as the member pointed out, that there is the potential, at least, for individual regimes from individual first nations, but they are all covered by the requirements of 9.2.2. They can't individually escape the provisions of 9.2.2 — not that I think anyone would want to.

I don't know if that answers the member's question about how the two sections work together.

B. Simpson: I guess I'm trying to understand the law that governs.... The minister used before the reference to private managed forest lands with respect to timber marking and so on — treating them as fee simple lands, etc.

The way that I read this, it confuses me because it says the first nations as nations have the rights to make law. Yet 9.2.2 seems to constrain that as "but the overarching laws that apply are the federal and provincial laws with respect to forest and range resources." That plays out, if you go to 9.5.4, with respect to forest

health issues. It says: "...nothing in this Agreement limits the application of Federal Law or Provincial Law in relation to the health of Forest Resources or Range Resources." There's also reference to that effect in the wildfire, etc.

[1720]

So it seems as though you have the right to make laws, but really, the laws have to align with federal and provincial laws with respect to forest and range resources. Or am I not reading that correctly?

Hon. M. de Jong: I don't think I did a good job of conveying this to the member. I think it's clear that forest resource management and how that is conducted can have implications for the broader ecosystem in a variety of ways. The member knows that.

Insofar as that is the fact, those environmental regimes.... Whilst it is true that the Maa-nulth have the jurisdiction to create forest management policies, rules, laws and regulations, they cannot do so in a way that trumps federal and provincial regulations as relates to management of the broader ecosystem and the environment.

I think the section is there to make clear that, even in exercising the power that is provided by this agreement, there are limits relating to the paramountcy of federal and provincial law as it relates to management and regulation of the overall environment.

B. Simpson: If I understand it correctly, the framework within which the Maa-nulth still have to work is the provincial and federal laws governing, as the minister says, the broader public good.

Let's take a look at provincial laws, for example. These effectively become owned lands. The minister again has used the term fee simple as the form of ownership. When this treaty references provincial laws, what is it referencing as applying to the land base? The Private Managed Forest Land Act, FRPA, the Forest Act? What's the frame of reference?

[1725]

The Private Managed Forest Land Act and the FRPA-Forest Act are two very different regimes. It's not explicit in here what would apply. That's one example of what I need some clarity on.

[K. Whittred in the chair.]

Hon. M. de Jong: We continue to compile the material for the last question.

I think I inadvertently conveyed some inaccurate information to the member several moments ago. I gave the example of the trapline renewal. I did not reference section 11.16.0, which makes it clear that in the case of a renewal or a replacement, that will, I'm advised, continue to be administered by the province.

I think the information I conveyed was something to the effect that it would be pursuant to the new landlord. That would seem to be at odds with section 11.16.0. I apologize to the member, and I will get some information relating to the last question.

The question we're now coming back to relates to the legal regime, as it relates to forestry, that would apply to the treaty settlement lands. I think the succinct answer is that as it relates to forestry regulation, what we're really dealing with here is the standard that applies to a private land owner.

Now, I'm careful. I'm not suggesting to the member that that is the private managed forest regime. It is that which would govern a private land owner in the province. Having said that, all of the other applicable federal and provincial legal regimes around fisheries, animal and wildlife regulations — and they're all, of course, contained within various chapters of this act — also apply.

[1730]

I don't want to suggest anything other than what the member, I think, already said, which is that this is being dealt with as if it's fee simple lands. It's dealt with on that basis.

B. Simpson: I want to be clear, then. There's no requirement on the part of the Maa-nulth to submit any harvesting plans, any long-term plans for the land base to the government. I would assume that that's where the "may make laws" would govern themselves so that if they want to establish some type of long-term sustainable plan, they can establish that as a regulation or a law or something within their own national government framework. Is that correct?

Hon. M. de Jong: Yes, I think that's essentially correct — again, on the treaty settlement lands.

B. Simpson: I just come back to the question that I have, then. That's all well and fine, but when we come back to 9.5.4, again, you've got this phrase: "For greater certainty, nothing in this Agreement limits the application of Federal Law or Provincial Law in relation to the health of Forest...or Range Resources." Is that just a subset of what the minister is indicating — that the federal and provincial governments have the ability to apply laws that are deemed to be in the public good?

In this case, it's invasive plants or forest pests or diseases that have the possibility of expanding beyond the treaty lands. Is that the only time that we would actually see the provincial-federal government laws apply and supersede whatever laws that the first nations are using to govern themselves?

Hon. M. de Jong: I think I essentially agree. Here are some examples. I think the member mentioned invasive plant species. That's an example. Endangered species — species at risk — would be a case where there would be an overriding jurisdiction. I think I mentioned fish habitat. Those, pursuant to this and the other provisions of the agreement, provide the ongoing authority that the federal and provincial governments feel is appropriate to address, in a macro sense, some of those broad policy concerns.

B. Simpson: With that in mind, in the land-based exercise around this in designating land areas, were

special management zones included? This, then, is where that would come into effect. There's no good in giving first nations a big chunk of land and then that land is constrained by special management zones or by endangered-species legislation, is subject to invasive plants — all kinds of things where other legislation comes into play.

[1735]

Was that taken into account as the land base was determined, as to what the potential factors are that would reduce the viability and economic viability of the land base?

Hon. M. de Jong: I think the best way I can try to answer the good question that the member has put would be to emphasize that what has been attempted here is to establish treaty settlement lands over which the Maa-nulth would exercise the broadest possible jurisdiction, in many ways being afforded constitutional guarantees and protection around that.

I would suggest that the test or the threshold would be extremely high for governments to step in and exercise an overriding power to say: "No, we're exercising our rights as a federal Crown or provincial Crown under one of these sections." I think the test becomes... It's a very strict test that would be applied after careful consideration and, I would think, after much negotiation and discussion.

The intent here is to establish lands over which the Maa-nulth will have governing authority, recognizing that there will be instances in which there is an overriding provincial or federal interest. We have tried to enumerate, through the various chapters, where those interests lie and how they are to be acted upon.

Of course, there are provisions, if a dispute were to arise, about when it is appropriate for the federal or provincial authorities to step in. The parties can resort to that as well. But I think the test is a pretty strict one, and a fairly high threshold must be met before governments would endeavour to exercise that power.

B. Simpson: Thank you for that clarification. I'll explore it just a tiny bit more when we get into the forest health and wildfire.

On section 9.3.0, the "Manufacture and export of timber resources," this is different than what was in the Tsawwassen agreement. The Tsawwassen agreement treated whatever forest lands that they have — and we saw that they didn't have much — as Crown grant lands with no restrictions on them whatsoever.

But on this one, there's a differentiation where no provincial restrictions apply to manufacturing or to the logs. It states in 9.3.2: "Logs from the Maa-nulth First Nation...may be proposed for export under Federal Law" as if they're "harvested from an Indian Reserve."

Just for edification, is that therefore a Notice 102 restriction, or are federal Indian reserves unrestricted with respect to log exports?

[1740]

Hon. M. de Jong: I think the upshot of the section is this. Subject only to receiving the federal permit —

which I don't want to suggest is an onerous requirement; I think it's more of a regulatory provision than a restriction — the Maa-nulth have the option of exporting timber harvested off of treaty settlement lands.

B. Simpson: Again, I guess I'm struggling as I go back to the "may make laws." They own land, all of that stuff. Why leave what is effectively just a notification process to the federal government as a constraint on log exports? If they are free to determine what happens on the land base, if they're free to export logs, why not just simply say they're free to export logs and use some of the language that was in the Tsawwassen, which says these are basically unencumbered lands and the logs are unencumbered from those lands?

Why just put in this...? I think it's kind of a nasty little residual of the paternalistic relationship that we have with first nations, which strikes me as being completely unnecessary. If I'm reading that wrong, what is the necessity to have that remain as some kind of bureaucratic exercise for the first nations in this case?

Hon. M. de Jong: I get the member's point. I think the bottom line on this is that the federal government wants to know what we're exporting in terms of timber. The Maa-nulth didn't voice what might have been a very legitimate point and were happy to comply.

I think both the member and I know that this requirement doesn't serve as any kind of a restriction. It is more regulatory in nature.

B. Simpson: I think it's actually more statistical control than anything else.

Moving on, then, to the forest and range health section and then to the wildfire suppression section. The thing that struck me here is... I understand that in section 9.5.0 all of those sections effectively define the relationship between forest health issues, insects, pests, diseases and various other abiotic and biotic factors on the treaty lands.

They can have an impact on the surrounding non-treaty lands, and the non-treaty lands can have an impact on the treaty lands. You now have two independent jurisdictions. So 9.5.0 is describing the relationship between these two jurisdictions with respect to forest health threats.

What I'm interested in this... I get all of the reasons why it has to be broken out the way it is, but in both cases, whether the invasive plant threat is in the treaty lands or in the non-treaty lands, the phrase is that the first nations and British Columbia will use "reasonable efforts to reach agreement on an appropriate response...."

That seems a rather nebulous and loose arrangement in what is deemed to be a threat. Is there going to be a structure to this? Is there a vehicle for having this discussion, or is it just knock on the door and say: "We need to talk about this"? What's the structure around the nature of these reasonable efforts to reach agreement?

[1745]

Hon. M. de Jong: I think this is one of those sections which, in addition to its substantive provisions, is designed to highlight the nature of the new government-to-government relationship.

The member is right. These are issues that come up from time to time, but the section makes it clear that if Canada or British Columbia are of the view that there is a threat to forest health, there is an obligation not just to act but to notify the government or the governments for the first nations that are affected and to attempt to sit down and settle upon a plan to address it.

There's still language that allows the governments to take appropriate steps, but the essence of the agreement is that the governments will sit down with one another, assess what the threat is and settle upon a plan to deal with that threat.

Madam Chair, I'm going to beg the indulgence of the committee and request a five-minute recess for a moment.

The Chair: The committee stands recessed for five minutes.

The committee recessed from 5:47 p.m. to 5:54 p.m.

[K. Whittred in the chair.]

On section 3 (*continued*).

B. Simpson: With respect to the minister's answer about this being a high-level discussion, having to sort of address the issue of nation-to-nation discussions, it's interesting in here that it's exclusively broken down that British Columbia has to have the discussion or engage in the discussion, and Canada has to have the discussion or engage in the discussion. So there's that sense of the three-way arrangement that has to be done.

[1755]

But it brings me back to the point I was trying to understand earlier on. In the case of a normal private land owner, which is what the minister has referenced — a fee simple private land owner.... If I've got a problem with invasive plants, then I use the Weed Control Act to say: "Thou shalt take care of it at your own expense." Clause 9.5.4 effectively gives that hammer to the provincial and federal governments to say at the end of the day: "You know, we've tried the nation-to-nation. It ain't working. We're not happy. The Weed Control Act says you'll do this. Get it done."

Is that not what that clause gives the provincial and federal governments the right to do?

Hon. M. de Jong: No. I'm sure the member and I are optimistic that the collaborative model will work. But the member is correct. The provisions do not mandate an agreement, and if a circumstance were to arise where the overriding concern around forest health was not resolved through those negotiations, yes, some federal and provincial powers to address that are preserved in these provisions.

B. Simpson: With respect to reaching agreement, would it be an understanding that part of the discussion around agreements would be additional resources given to the first nations to address whatever the forest health threat is on treaty lands? Is that part of the discussion? Will there be an attempt on the part of the provincial and federal governments to come together and align their interests so that they can go to the first nations government jointly? Or is the first nations government just open to the province and the federal government having differing views on what needs to be done?

The clauses separate out the British Columbia government and the government of Canada in this case. I'm just trying to understand the nature of reaching agreements. So let me be clear on it. Will there be resource discussions in this? Potentially, we see a threat. It's on treaty lands. Canada, the province and the first nations agree to some kind of treatment, and you get a one-third, one-third, one-third resourcing of whatever the treatment might be. Is that a possibility in the discussions?

Hon. M. de Jong: If I understand the question correctly, the possibility of the parties sitting down.... I'm not sure that every negotiation or every scenario would involve all three parties. But if it's two parties or three, the possibility that they would sit down and say: "Okay, here's our problem. We've identified the problem. We've identified how we want to address it, and we have come to an agreement about how to resource that action plan and who's going to contribute what...." That is all very possible.

Nothing in the provision creates an obligation on the part of any party around funding. It would be the product of a separate negotiation to address a specific issue. But all of what I have said in that scenario is very possible. As I say, not every negotiation would necessarily involve all three parties.

B. Simpson: For the most part, I would imagine that the primary party in this would be the province of British Columbia. It's mostly what will apply with forest health threats. There are very few forest health threats that Canada would have sole jurisdiction over, so they would be coming to the table as another party of interest if a federal park was involved or whatever the case may be. So I get that part of it.

[1800]

With respect to negotiations, what I'm trying to understand.... If I hold property, if I hold a ranch or whatever and I have invasive plants on that, there's a presumption I'm taking care of it. And if I'm not taking care of it and the Crown's concerned that it's now going to go into a Crown ag lease or a range lease or whatever the case may be, I'll simply be told to address it, and I'll have to address it with my own resources.

Does the "use reasonable efforts to reach agreement" preclude the possibility of additional resources being given to the first nations — cash resources or other resources — to address the issue? Does it preclude that?

Hon. M. de Jong: No, but it also doesn't guarantee it. It doesn't impose an obligation on either the federal or provincial Crown. It would very much be the product of a negotiation that developed around a specific threat or a specific set of circumstances.

B. Simpson: One question I did have as I was looking at this was with respect to forest health. One of the questions, as the minister is well aware of, is: whatever happened to forest health regulation in legislation with the change to the Forest and Range Practices Act? Where does forest health fit, and whose obligation is it, etc.?

When this treaty references federal law or provincial law in relation to the health of forest resources or range resources, again, it comes back to the question: where does that apply? Right now the Forest and Range Practices Act only applies to Crown land.

It doesn't apply to private land owners. We don't go in. We don't compensate. We don't tell private land owners that they have to deal with the mountain pine beetle in their held lands.

Where is the provincial jurisdiction, when it comes to a forest pest, to tell the first nations that if you don't get agreement, this is the law that applies to that? As I'm aware, we don't currently do that on fee simple land because it comes under the Forest and Range Practices Act. There is no other regulation that exists to apply it to private lands.

[1805]

Hon. M. de Jong: I think the essence of the member's point, that the regime that's applicable here is similar for other private land owners, is essentially correct. But at the same time decisions that are made or actions that are taken — or, conversely, not taken — that lead to circumstances which would adversely impact the environment have a spillover effect into non-treaty settlement lands. That regulatory jurisdiction or authority that accrues to either the federal or provincial Crown continues. We've talked about what some of those areas are, and there are other chapters that deal specifically with things like wildlife, fisheries, migratory birds and a whole host of things.

The essential point about the fact that we are dealing with fee simple lands here is correct, but I feel compelled to temper that by pointing out that there are a myriad of other circumstances in which the environmental jurisdiction that the province or the federal government has, as the case may be, is preserved and contained within the provisions of this agreement.

B. Simpson: I take the point that this is new territory, and there will be discussions nation to nation with the different first nations. I'm just trying to understand the context for those discussions. There may be a fundamental disagreement under the section where the first nations can make laws. There may be a fundamental disagreement about what constitutes a natural ecosystem, for example, a natural succession in that ecosystem and the role that pests and disease play in that.

As a consequence, if the Crown feels that that decision will impact on Crown land, on public assets outside the treaty land, then the default position you've got is legislation to counteract that. That's my understanding of why 9.5.4 is in there. But as the minister has admitted, with respect to pests, diseases, insects, and so on in the forest, it's not that clear where that jurisdiction lies or where that regulation lies, because for the most part the regulation applies to Crown lands, not to private lands.

I take the minister's point that it's a discussion between the nations, and it will have to be worked out. I guess the first couple of times it's going to be an interesting adventure in determining that.

Let's move on to wildfire suppression. With respect to 9.6.3, the Maa-nulth immediately upon the effective date, as I understand this clause, will pick up the responsibility for the costs set out in the suppression agreement. Now, is that one-third because the federal government will be coming to the table with one-third and the provincial government with one-third?

Hon. M. de Jong: Yes, that is the reason. It's a cost-sharing formula between the first nations, the province and the federal government.

[1810]

The other point that's relevant to this discussion, which is contained in the wildfire suppression side agreement — in this case it actually is a side agreement — is that the Maa-nulth share of that is capped for ten years at \$10,000 a year and reviewable at the conclusion of that ten-year term.

B. Simpson: Thank you, and that was my next question. On 9.6.6b., is that as a consequence of Canada only committing to the ten years? If I understand it correctly, 9.6.7 then says that a new cost-sharing arrangement will be negotiated at that time. So it's capped at that \$10,000 because that's as far as we've got the federal government commitment, if I read this correctly, at which point you go back to the drawing board and you have to have another discussion about what it's going to cost from that point forward.

Hon. M. de Jong: I think what influenced the negotiators was the fact that they were looking for a representative snapshot. I think the member knows, in the case of the vote around fire suppression funds for the province, that we operate on a rolling ten-year average. That seemed to be an appropriate standard to apply here. The member is correct. The parties then have to sit down and renegotiate it, including federal involvement.

B. Simpson: So 9.6.5 states: "British Columbia will respond to a wildfire originating on Maa-nulth First Nation Lands on the same priority basis as for provincial Crown lands and in accordance with any priorities as set by the Minister."

Now, if I understand it correctly, the Maa-nulth will be effectively contributing to the continuation of

the provincial government responding to the fire with provincial fire resources and provincial fire crews.

I guess my question, on 9.6.5, is on the priority basis. Crown land becomes a particular priority to the Crown because you gain revenue off of that land. In the case of the Maa-nulth, that revenue accrues to the first nations. What happens if there's a dispute between priorities between the Maa-nulth and the government?

Hon. M. de Jong: It's actually precisely for the reason the member has alluded to that the section is there and worded as it is. The Maa-nulth wanted some assurance, and we wanted to provide that assurance, that in the event of a wildfire situation that same priority.... The lands would be dealt with as if they continued to be part of the Crown land base.

There's another factor, I think, at play here as well — more of a practical one. It's 25,000 hectares, but if we're talking about wildfire within the treaty settlement lands, we are automatically talking about reasonable proximity to a population base. That's an additional consideration that will go into determining the priority of response.

B. Simpson: Fair enough. I won't belabour the point, because again, the Maa-nulth have agreed to this treaty. They must have had their concerns expressed. I don't particularly like the way this is written because no revenue is generated to the Crown off of those lands, and part of the priority is protecting Crown assets and Crown revenue generation. But it's fair enough, the comment about communities.

Let's move on to 9.7.0, "Timber harvesting rights existing before effective date." The clause in here says: "British Columbia will ensure that on the Effective Date any right to harvest Timber granted under Provincial Law that applies to Maa-nulth First Nation Lands ceases to be valid."

[1815]

We canvassed earlier that that involves two tree farm licences, some areas out of the timber supply area and some existing forest licences. Will the companies who have to give up these rights be compensated fairly for losing these rights as a result of the treaty?

Hon. M. de Jong: Yes, and I'm sure it will be subject to an adventurous negotiation.

B. Simpson: That's why it's important to go back, for our purposes as the official opposition — to be able to understand the nature of that compensation. As the minister is well aware, under his term as the Minister of Forests the compensation for the clawback began, and it's ended up getting compensated out at between \$25 and about \$28 a cubic metre on an average basis.

We would need to know the cubic metres involved, and that's why I was asking those questions — to understand what the nature of the compensation is. Have discussions already commenced with the companies about the nature of the compensation as a result of this occurring?

Hon. M. de Jong: Very preliminary exchanges. I don't think it's fair to characterize them as negotiations. It's anticipated that if the House sees fit to ratify this agreement this week, in the months ahead we'd be sitting down with the affected parties to have more substantive discussions.

B. Simpson: I want to be crystal-clear here. TFL 44 is the tree farm licence held by Western Forest Products. TFL 54 is held by Interfor. In the case of TFL 44, that was the TFL that was in dispute with the Weyco deal, the Weyerhaeuser deal, with respect to the removal of private lands from that. That occurred in 2004.

Would it be fair to say that the signal was given to the licensees, when part 13 was used, that these lands were now going to become subject to some kind of compensation arrangement at some point if a treaty was, in fact, negotiated? Is that a fair statement?

Hon. M. de Jong: I want to be specific about how I answer the question.

The Chair: Excuse me. I think the minister is having problems hearing, and the noise is coming from, I regret to say, the government front bench.

Proceed, Minister.

Hon. M. de Jong: Yes, potentially impacted licensees were provided with that notice. I think the member, though, asked whether that was at the time the part 13 designations were applied. I can't say with certainty that they would have been advised at that time or sometime thereafter. I'm just not certain of the date at which that information would have been passed along to them.

[1820]

Certainly, the posting of the OIC by which the part 13 designation is created would have been a signal to licensees that the areas in which they were operating were the subject of some other discussions and negotiations, and at a certain point they would have been provided with the information the member alluded to. I'm not sure the two happened at precisely the same time.

B. Simpson: With respect to the discussions with the companies involved, which agency would engage in those discussions? Which ministry or which agency would do that?

Hon. M. de Jong: The practice has been for the Ministry of Forests to conduct those discussions. That has been the practice here, and my expectation is that will continue to be the case.

B. Simpson: So if I understand it correctly, sometime around 2005 when the part 13 was applied, there would have been some kind of signal that certain areas of TFL 44, in particular, would have been.... It's my understanding from the breakdown that TFL 44 will be the largest impact from the lands going into the treaty.

There would have been a signal there that at some point the government is going to come and start entering into discussions with the licensee about compensation for taking that land back to go into the treaty. At the same time, the minister or the minister's staff are having discussions with the same company about the removal of private lands from other tree farm licences that that company has. Is that a fair comment?

Hon. M. de Jong: I want to be careful that I don't leave the impression that there have been sort of advanced discussions around compensation as it relates to tenures that may be affected by this treaty, because I'm advised that is not the case.

There certainly would have been the posting of the OIC creating the part 13, and that would have put the potentially impacted parties on notice that there were discussions taking place.

I also have not relayed to the member, and will now, the fact that the standing policy exists around the notion of compensating third parties for impacts to their interests that accrue as a result of the finalization of treaty negotiations. That, too, would have been something that would have been well known to these parties and others.

B. Simpson: Let me rephrase the question then, because I understand that substantive negotiations haven't occurred. But as the minister has indicated, the Ministry of Forests is the lead agency for these discussions.

Is it fair to say that the Minister of Forests would have been aware of the fact that while his staff is reviewing the release of private lands for Western Forest Products, his staff are also looking at the possibility of compensating the same company for treaty lands within their tree farm licence 44? That minister would know that both those things were occurring simultaneously in his ministry. Is that a fair comment?

[1825]

Hon. M. de Jong: I'm not sure it is. What the minister would have.... Well, I won't speculate about what an individual knows or doesn't know. If there are discussions taking place around compensation, that is one thing.

The filing of the part 13 OICs or notices certainly puts people on notice, including a minister, that the lands that are affected by that part 13 are being protected for a particular purpose. Now, two things happen. First of all, there is a regime that guides compensation as it relates to part 13s themselves. If negotiations mature, as they have here, to a final agreement, there is the distinct possibility.... And the member has heard me say that compensation may well be payable, subject to a negotiation that takes place.

At what point those two things converge.... That's why I was careful about endorsing unconditionally what the member has said. There can be negotiations on one front. With a major licensee, there are generally a host of negotiations taking place on a whole host of fronts.

The filing of the part 13, it is fair to say, would put everyone on notice that something is afoot in terms of wanting to protect an area for a subsequent negotiation or potential land use decision.

We're talking treaties here. Sometimes it's a land use decision of a different sort.

The Chair: Member, noting the time.

B. Simpson: Yeah, I notice the time.

I've got what I need on 9.7.0.

On 9.8.0, "Obligations existing before effective date," what's the nature of any residual obligation that may still apply?

Hon. M. de Jong: The section is specifically designed to address the possibility that there may be outstanding commitments to the province around silviculture, road decommissioning, environmental remediation. The section is designed to ensure that those obligations are met.

B. Simpson: That was one of the questions I had with respect to existing silviculture obligations, forest health obligations — whatever the licensee may have as an outstanding obligation on there.

With respect to infrastructure then, combining these two, the infrastructure that would come with that — the roads, the bridges, the culverts, etc. — will that be part of the Crown's negotiations so that those are transferred as assets, as part of the land base to the first nations?

Hon. M. de Jong: Whatever hard assets — I think the term that's used is hard assets — remain on the treaty settlement lands at effective date will effectively become owned by the Maa-nulth First Nations.

B. Simpson: With respect to that — and I guess it may not be fair to ask this to the minister, but I'll ask it and see what I get — part of the problem we have with the clawback, as the minister is probably well aware, is that negotiations around compensation seem to be happening in perpetuity.

We did the cubic metre compensation, and then we had to go through a whole range of compensation around roads. Now it appears as though we're compensating for bridges.

What surety would we have that the compensation, in this case, to the licensees involved will be a one-time compensation and that the taxpayer isn't on the hook over a five-year period, continuing to pay for something else when the licensee goes: "Hey, wait a minute. I forgot to get this valued in the appraisal"?

[1830]

Hon. M. de Jong: Really, that's a function of obtaining the appropriate releases at the time a negotiated settlement is arrived at, assuming one is. Of course, licensees have some other options if they believe they are unwilling or unable to arrive at a negotiated settlement.

If that is the case, and that's what we generally work towards, then it's a function of acquiring the appropriate releases and sign-offs at the time of executing the agreement.

B. Simpson: Again, that's all well and said, but as....

Interjection.

B. Simpson: You have one on your side that can note the hour. I'm interested in continuing my debate as long as I get away with it.

With respect to what the minister has just said, though, practice dictates to this date that we haven't been very astute in valuing all of the hard assets. So we keep coming back to the Crown, asking for more compensation. That's what the past practice has been.

Is it my understanding that it is within the minister's domain that that assessment will be done, or do I hear the minister correctly — that that will be transferred over to the Ministry of Forests to do that assessment and to close that part of this deal once we hit the effective date?

Hon. M. de Jong: Well, the hope is, of course, that this final agreement will be ratified. Then a host of other work will begin, including the type of negotiation that the member has alluded to. The practice in the past has been for the Forests Ministry, armed with the expertise to have the kinds of discussions that the member has alluded to, to take the lead in those discussions and hopefully arrive at a mutually agreeable settlement package with those licensees that are impacted.

B. Simpson: With respect to that, particularly with any existing obligations.... One of the things that we have struggled with in the clawback situation is access through. These lands will be surrounded by Crown lands. There may be some B.C. Timber Sales lands or other licences that are effectively surrounded by treaty lands.

Is part of the negotiations in 9.7 and 9.8 going to be access through for other Crown assets that end up getting isolated by treaty lands? Is that part of the discussion?

Hon. M. de Jong: I think it might be best for us to deal with some of those questions in the access provisions of the agreement.

Madam Chair, I am mindful of the hour. I was more or less under the impression that the member might be coming to a logical break, but I'm also mindful of the rules that the House operates by. I wasn't sure if he was coming to the conclusion....

B. Simpson: Noting the hour, I will rise, report progress and seek leave to sit again.

Motion approved.

The committee rose at 6:34 p.m.

The House resumed; Mr. Speaker in the chair.

Motion approved.

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

Mr. Speaker: This House stands adjourned until 1:30 tomorrow afternoon.

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

The House adjourned at 6:35 p.m.

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