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(Entered Confederation July 20, 1871)

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

**THIRD SESSION, 38TH PARLIAMENT**

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Afternoon Sitting

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WEDNESDAY, NOVEMBER 28, 2007

The House met at 1:33 p.m.

[Mr. Speaker in the chair.]

Prayers.

### Introductions by Members

**Hon. M. Coell:** Today in the members' gallery I would like to acknowledge some special visitors from the Republic of Serbia. Please join me in welcoming the hon. Milica Cubrilo, Minister for Diaspora. She is accompanied by Dragana Petrovic, her chief of cabinet; and Peter Vladikovic, the honorary consul of Serbia in Vancouver.

The minister is in British Columbia to attend the Serbian FilmFest taking place in Vancouver this week, as well as travelling across Canada and meeting with members of legislatures here and across the country. We hope that her stay in British Columbia is good and that she enjoys our beautiful province. We would, hopefully, have the House please make her welcome.

**Hon. C. Richmond:** We had a marvellous event out behind the Legislature today, where we unveiled a van for the wheelchair athletes of the province. Some of them are joining us in the House today. I'm also pleased to say that the Minister for ActNow and I had the pleasure of enjoying a wheelchair rugby game with them and nearly got whiplash for it.

[1335]

I would like to introduce Richard Peter. He's a member of the national wheelchair basketball team. He's a two-time Paralympic gold medallist and a two-time world champion.

Garett Hickling is a member of the provincial and national wheelchair rugby team. Kathy Newman is the executive director of the B.C. Wheelchair Sports Association. Lia Threlfall is a board member of B.C. Wheelchair Sports Association.

These people are in the House with us today, and I would also like to welcome two guests watching the proceedings via TV in a private room in the Legislature: Teri Thorson, one of our Paralympic athletes who represented us well in Athens, as well as Carrie Linegar, the managing director of the B.C. Wheelchair Basketball Society. Please make them all welcome.

**D. Chudnovsky:** Mr. Speaker, you'll be well aware, from other introductions that I've made in this House, that there are two outstanding secondary schools in the constituency of Vancouver-Kensington. We have students from one of them here today. I'd like to ask colleagues to welcome the teacher, Ms. Langton, and the students from John Oliver Secondary School.

**J. Yap:** It's my pleasure to introduce to the House two good friends and constituents who are visiting Victoria for a little family visit and a visit to the capital

city. John and Angela Taggart, longtime residents of Richmond, in my constituency of Richmond-Steveston, are longtime community activists and volunteers. Would the House please make them feel most welcome.

**Hon. G. Hogg:** Most of us know that true heroes are not found in the sports arenas, the boardrooms or even the legislatures across this land.

**Hon. K. Krueger:** Say it's not so.

**Hon. G. Hogg:** I think it's so.

Rather, they're often found doing some of the challenging, sometimes tedious, often repetitive tasks all over this province and particularly in this building.

One such hero has worked in this building since 1993, and her last day will be December 24. Her great-grandfather, as her biography states, was a freeborn black of a black mother. He and his wife came to Victoria from San Francisco on July 1, 1858, in response to Sir James Douglas's call for colonists. They were among the very first black families to come to British Columbia. And his great-granddaughter also makes the world's very best rum balls.

Please join me in extending our gratitude and our best wishes in her retirement to Marcia Bestwick.

**D. Routley:** I want to ask the House to help me welcome guests who didn't quite make it here today. The Royal Navy veterans society of my riding were planning to visit the House today but, because of the impending bad weather, decided it was best not to come.

I want to welcome them to come again and celebrate their great achievements, great contributions, and I thank them, because my mother-in-law enjoyed their grand ball very much and the parlour games and all that. They're fantastic people. Please help me thank them.

### Statements (Standing Order 25B)

MABEL JEAN RAWLINS-BRANNAN

**C. James:** Today I rise to acknowledge the work of an individual who has contributed incredibly to the Greater Victoria community. Mabel Jean Rawlins-Brannan, after 14 years, is leaving her position as executive director of the Community Social Planning Council of Greater Victoria.

Mabel Jean has dedicated the past four decades to work in the not-for-profit sector, both locally and internationally, but it's through her work at Community Council that I and many in my community know her best.

I had the privilege of sitting on the Community Social Planning Council when Mabel Jean joined the organization. It was a time of challenge for the council as it explored its changing role in our community. Mabel Jean brought her extraordinary skills not only to the council but, in fact, to the Greater Victoria community.

She created opportunities for people to come together and learn from each other as they built a strong community.

[1340]

Her vision and leadership brought together diverse interest groups and sectors to address social issues in B.C.'s capital region such as poverty, the health of the downtown, food security, housing affordability and, most recently, the comprehensive quality-of-life challenge. Mabel Jean built links and brought her passion and respect for communities. For that, our communities are better places for all.

Please help me thank Mabel Jean and wish her well as she moves into this next phase of her life.

#### EMPLOYMENT OF DISABLED PERSONS

**D. Hayer:** Next Monday we celebrate International Day of Disabled Persons. This year's theme is "Decent work for persons with disabilities." Yet throughout the world, very few persons with disabilities are gainfully employed. This government is changing that in British Columbia.

We have the 10 by 10 Challenge, in which communities across the province have been challenged to increase employment of people with disabilities by 10 percent by 2010. So far, 46 communities, including Surrey, are actively participating.

There are currently 300,000 working-age people with disabilities in British Columbia, many of whom want to work. They have the motivation, dedication and ability to be a valuable member of our workforce. Some 34,000 have college diplomas, 30,000 have trade certificates and 28,000 have university degrees.

To assist these residents, our government annually invests \$20 million in the revamped employment program for persons with disabilities that is available to all British Columbians with a disability. There is \$2 million in the Measuring Up accessibility and inclusion fund created to support 2010 Legacies Now and to help communities make public spaces more accessible.

In September \$580,000 was invested and distributed to the city of Surrey and 29 other communities across B.C. Plus, there is a \$1.14 million accessible tourism initiative to assist in making our province the most disabled-friendly destination in the world.

Every member of this House should take a moment on December 3 to reflect on the role of people with disabilities and the contribution they can make to our workforce and our society if given the opportunity that is provided to every other person. Every member of this House should encourage all organizations and businesses within their constituencies and communities to hire more people with disabilities.

#### ELECTIONS IN UKRAINE

**M. Farnworth:** Earlier this year I had the opportunity to be an election observer with the OSCE for the elections in Ukraine. It was a fascinating experience to

be from a country where many people take democracy for granted, to be in an emerging democracy to see how they do things. That's what I want to briefly tell the House today.

I was sent to a community called Sumy, which has another name now here in this province. But unlike the *Vancouver Sun*.... I can assure the *Vancouver Sun* that Sumy is not a little town. It is a community of some 300,000 people. The area surrounding it is agricultural, with lots of small villages.

The thing that struck me was the enthusiasm with which people participated in the electoral process. Turnouts of 80 to 85 percent were not uncommon. I want to mention a couple of places in particular — small villages, quite isolated and quite poor in terms of what we know, what we would expect, but very rich in community spirit, very rich in the agricultural products which they produce and which Ukraine is so famous for.

Anyway, the two communities are Golovawivka, which was a community of about 700 people, and a small place called Novi Virki. I'm mentioning them because when I was in Ukraine, I said I would raise them in this House. If you do a Google search on both these places, you won't find anything, so this will put them on the map.

In particular, I want to say a special thank-you to the people from Golovawivka because at the end of the count, this small community brought forward roasted chickens; hams; pickles; vegetables; perogies, or varenky, as they call them; homemade vodka — everything produced in that village by those people.

[1345]

They fed us foreigners — strangers who didn't speak the same language — and they showed tremendous hospitality. It was really heartwarming that even though we couldn't speak the same language, we all understood the same thing. We were all there to celebrate democracy.

#### WHITE RIBBON CAMPAIGN

**J. Yap:** Mr. Speaker, I stand here today with a white ribbon on my lapel to bring attention to an extremely important campaign. The white ribbon campaign is a worldwide initiative, driven by men, to put an end to the verbal, emotional and physical abuse against women.

It started in 1991 in reaction to the December 6 massacre of 14 women at École Polytechnique in Montreal. The white ribbon campaign has grown from a Canadian grassroots effort of visionary men to a worldwide endeavour to raise awareness and end all violence against women.

The campaign now runs in over 50 countries and is observed in Canada from November 25, the international day for the eradication of violence against women, to December 6, Canada's National Day of Remembrance and Action on Violence Against Women. Wearing a white ribbon during these weeks is a man's pledge to never commit, condone or remain silent about violence against women and girls.

The campaign aims to challenge everyone to speak out against violence, to educate men and boys as well as women on how to stop violence, and to raise public awareness. The white ribbon campaign works closely with women's organizations to help, aid and improve the situation of all women and girls.

For the first time in my community of Richmond, the Richmond RCMP and Chimo Crisis Services, a Richmond-based non-profit organization, have come together to launch the inaugural white ribbon campaign in our city. By opting to bring the white ribbon campaign to Richmond, Chimo has demonstrated a continued dedication to end all violence against women.

Please join me in thanking all organizations who have supported the white ribbon campaign in an effort to make the world a safer place for ourselves, our mothers, our wives, our sisters, our daughters and all members of the community.

BARBARA KOHNE

**J. Horgan:** We all have land use or development issues in our constituencies that pit neighbours against each other. No better historic example exists in my riding than the proposed Silver Spray development in East Sooke.

The proposal came forward in the last decade, but the legal fallout from allegations of defamation have only recently concluded, and the results of the action are still being felt today. No more so than for Barbara Kohne and her husband Horst.

Barbara is a mother of three who, before her retirement in 1991, worked hard, paid taxes and saved to put her children through university. She volunteered in the community. She tried to be active in a positive way for the betterment of East Sooke and the entire region. In fact, she served all British Columbians on the Citizens' Assembly on Electoral Reform.

All of us in this chamber have people like Barbara in our constituencies, who give back to the community — people who put their own interests to one side to help their neighbours and those they know and those they do not.

We all assume that we have freedom to express our views, to associate with others and to speak out on issues of public concern in our community. Strategic Lawsuits Against Public Participation, or SLAPP suits, are one way for developers and others with legal teams and deep pockets to attempt to obtain silence in a community.

In the Silver Spray case, the courts found in favour of the plaintiff. The facts are the facts. However, after eight years, 22 costly court appearances and a 52-day trial, the punitive consequences have had a heavy toll on Barbara.

For a quiet pensioner who worked hard all her life to do the right thing for her family and her community, the judgment seems harsh and beyond reasonable. The penalty she has had to pay after associating with neighbours and doing what she thought was right, in my opinion, is completely disproportionate to the action she took.

## WHISTLER ARTS COUNCIL

**J. McIntyre:** I rise to pay tribute to the Whistler Arts Council in honour of their 25th anniversary. Whistler Arts Council was established in 1982 with a mandate to build and integrate the arts into the fabric of Whistler. Over the years, they've made a major contribution to Whistler's attraction.

Some of you may have attended some of these terrific annual events, and if not, I encourage you to. There's ArtWalk; Whistler Children's Art Festival; the summer workshops on the lake; ARTrageous; Bizarre Bazaar, which just happened for the 19th year last weekend; Celebration 2010; and of course the Whistler Film Festival that's coming up this week, which is culminating in an awards breakfast on Sunday, December 2 where I will be bringing greetings from the province.

[1350]

I had the honour of attending an event a few weeks ago in honour of the 25th anniversary that was billed as a storytelling event. It was entertaining to hear from a variety of some of the founding families and to hear the stories from Whistler's early days.

We were regaled with tales from such prominent Whistlerites as Isabelle and Don MacLauren, Peter Alder, Hugh Smythe, Florence Petersen and artist Vincent Massey, who all gave us a glimpse of what life was like in this mountain town before the highway was ever paved.

One of the Whistler Arts Council's recent achievements that's near and dear to me is obtaining the funding for a regional economic impact study of arts, culture and heritage in the Sea to Sky corridor from Arts Now, from the Squamish-Lillooet regional district and from the resort municipality of Whistler.

This study will gather some baseline data on the scope and economic benefits of the existing cultural activities, as well as develop strategies for future growth. It will enhance partnerships between the regional arts, culture and heritage organizations, and build bridges between the cultural sector, the business community and local government.

It will also help support the development of a Sea to Sky cultural alliance, a concept which received support from well over a hundred cultural and community leaders, including their local MLA, at a formative meeting in Squamish in November '06.

## Oral Questions

### UTILIZATION OF MRI MACHINE AT ST. PAUL'S HOSPITAL

**C. James:** On May 11, 2005, St. Paul's Hospital announced the purchase of a new MRI machine. Using money donated from community groups and local businesses, the specialized machinery was to be used for non-emergency MRIs on limbs.

It was designed to be a cheaper and more effective way to reduce St. Paul's long wait-list for MRIs. The new MRI was the first of its kind in B.C. At the time,

the leader of the radiology clinical services said: "This new equipment allows us to do more scans for less money."

But now that MRI is sitting idle because the government refuses to fund it. So my question is to the Minister of Health. Can he explain why a MRI machine bought two years ago is sitting idle while patients suffer in pain?

**Hon. G. Abbott:** The short answer to the question is: because a superior machine has come on line, which is being used for that purpose now.

I am glad to advise the member, as well, that we've got great news here. Since we took office, we have now added ten MRI machines. When we took office, there were nine MRIs across the province. Today there are 19 MRIs across the province.

When we took office, there were just over 40,000 MRI scans done annually in British Columbia. That number is double today — to over 80,000 MRI scans.

Interjections.

**Mr. Speaker:** Members.

Leader of the Opposition has a supplemental.

**C. James:** The minister forgets one thing. There's an MRI machine sitting at St. Paul's, bought in 2005, that could be used right now to deal with the wait-lists. There are patients right now who are sitting on wait-lists, not able to get an MRI, and a machine that was bought in 2005 that's not being used.

Every year hospitals get a budget for MRI scans. And if they go over budget — tough luck — patients don't get their scans. It's a manufactured crisis by this government, one that is making patients wait months and months.

Interjections.

**Mr. Speaker:** Members.

**C. James:** Mr. Speaker, those who can't afford to wait end up having to pay out of pocket for medically necessary care.

If the minister really cares about services, if he really wants to deal with wait-lists and patients who are struggling and waiting, he could actually stand up right now, put an end to that wait-list and give the money to St. Paul's to get that MRI working.

[1355]

**Hon. G. Abbott:** More evidence of the awesome research machine, obviously, over on the NDP side.

Interjections.

**Hon. G. Abbott:** Yeah, you should clap. You should clap for sure.

The machine to which the member refers is an extremity machine which looks at broken joints, that

sort of thing. As I advised the member in my previous answer, it has been replaced by a better piece of technology.

MRI scans at St. Paul's Hospital are way up. We have increased by 41 percent the number of MRI scans, just over the last four years alone.

Interjections.

**Mr. Speaker:** Members. Members.

Leader of the Opposition has a further supplemental.

**C. James:** I'd like the Minister of Health to take a minute, then, and phone Jane Griffiths from the Sunshine Coast, who after months and months and months of knee pain was told she'd have to wait a year to be able to get an MRI scan. One year — when a machine that is still usable isn't being used because this government refuses to fund it.

She was told there was another option, though. She was told that she could go to a private clinic and that she could pay out of pocket. Because she was struggling and suffering, she paid the \$475 to a private operator and was told that she actually needed surgery.

This minister's refusal to fund that MRI machine sitting idle at St. Paul's means that people like Jane Griffiths are forced into the private system. It's a crisis that's created by this government with their policy that actually caps funding for MRIs, a crisis for this government which is quite willing to take \$400 million on a cost overrun on the convention centre and put it to that but refuses to help patients who are waiting in pain.

My question is to the Minister of Health. How many people like Jane Griffiths could he actually help with the \$400 million that he threw at the convention centre and won't give to patients in British Columbia?

**Hon. G. Abbott:** Sometimes it seems like such a long wait until one gets an opportunity to answer. I am pleased to advise that the....

Interjections.

**Mr. Speaker:** Members.

**Hon. G. Abbott:** I'm pleased to advise that the extremities scanner, which has been referenced in the previous two questions, is not sitting idle. It is being used less because there is a superior machine now, which is doing the same job much more effectively.

I'm also delighted to tell the member that when we had the former NDP government in office — and this is just an example — on Vancouver Island people were waiting up to eleven months for an MRI. Today that wait is 12.4 weeks. We have made tremendous progress with respect to MRI scans. We are investing over 50 percent more in health care than was the case when we took office in the province of British Columbia.

**A. Dix:** Charitable donations were sought and made to pay for this MRI, and it's been left to sit idle. People are waiting for MRIs.

You know, the Minister of Health may not care about the people who are waiting on long wait-lists for MRIs...

Interjections.

**Mr. Speaker:** Members.

**A. Dix:** ...in British Columbia, but we care about it. It's medically necessary care. The "minister of extra billing" may not care about it, but we care about it.

Those people who are waiting on those wait-lists don't care about the minister's partisan bluster. They want access to an MRI machine. There's one sitting idle. There are ones that are being rationed at Lions Gate, at University Hospital, at Vancouver General Hospital. That's the policy of the minister. It's not for any other reason. It's because he's rationing care.

[1400]

What does he have to say to those people waiting right now — on wait times for MRIs? The Minister of Health, when he has to wait ten seconds for a question, is angry. They have to wait month after month after month because he's letting them down in the public health care system.

**Hon. G. Abbott:** Here's what I have to say to those people. That is: thank God that crew was thrown out of office in 2001. Since 2001 the population of British Columbia has grown by perhaps 5 or 6 percent. The number of MRI scans that we are doing in this province has doubled since 2001.

According to this member, apparently the NDP back in the day had absolutely no budget constraints. Yet for some reason which escapes me, they were only able to do about 40,000 MRI scans back in 2001. Today, Mr. Speaker, 80,000 MRIs, twice as many machines, shorter wait times and expedited access to surgeries — a great improvement over the record of that dismal government in that dismal decade of the 1990s.

Interjections.

**Mr. Speaker:** Members.  
Take your seat.

Interjections.

**Mr. Speaker:** Members. Listen to the question, and listen to the answer.

Member has a supplemental.

**A. Dix:** The minister makes the decision. People are on wait-lists for MRIs. He doesn't know how many because he doesn't keep those statistics. People are on wait-lists for MRIs. They're suffering, in pain. I'm sure they're fascinated by the laughter and the bluster from the Minister of Health.

Hon. Speaker, in Victoria in September they cut the hours used by the public MRI machines. We have the

machines; we have the staff. This minister was responsible for cutting the hours. There are people waiting in pain for those MRIs.

In Kelowna, Jared Tarswell — you could talk to him. He would have had a six-month wait for an MRI. He went across the street and had to pay. He's a student at UBC Kelowna. He had to do it because the minister won't fund MRIs.

We have this charade....

Interjection.

**A. Dix:** Well, the minister says....

Interjections.

**Mr. Speaker:** Members. Members.

Interjections.

**Mr. Speaker:** Members, listen to the question, please.  
Continue, Member.

**A. Dix:** The Minister of Health apparently simply doesn't care about those people who are waiting on that wait-list for MRIs. He could solve that problem today. He could put those MRI machines in operation today. He could run them and get rid of that wait-list today. He refuses to do it. Why not?

**Hon. G. Abbott:** I know that this member and this former government like to live in a fantasy world of their own concoction — a kind of Alice-in-Wonderland world that they concoct around themselves where there's absolutely no limit on resources, where they can do whatever they want. But it's sadly at odds to their record when they were in government — only 40,000 MRI scans in the last year of their government.

We've doubled that. That's action over rhetoric. We hear every day a whole lot of empty rhetoric from that member, that opposition leader, that former government.

More MRI scans, more MRI machines, shorter wait times, greater access to surgeries — it's a far better health care system than we ever had in the 1990s.

[1405]

#### RESOURCES FOR FIRST NATIONS CHILDREN AND FAMILIES

**N. Simons:** For three years the first nations in the Hazelton area have been pleading for resources to address the tragedy of suicide in their communities. But instead of spending money on front-line services as Hughes said they should do, the Minister of Children and Families' priorities have been focused on fancy renovations, reorganization and spin.

When will the minister provide first nations with the resources they need so that more aboriginal families in the north don't have to experience the tragic loss of a family member?

**Hon. T. Christensen:** The member raises a very serious issue for all of us. Certainly, my thoughts and my prayers go out, as I'm sure do all members', to those who have lost a loved one to the tragedy of suicide.

The fact is that we are working with aboriginal communities in the north. We've been working with community leaders in response to recent events in Hazelton, but we have also been making other efforts within the context of the child and youth mental health plan over the last couple of years.

The child and youth mental health team in Hazelton has increased from one and a half people to three people in the last two years as part of the overall child and youth mental health plan. A fourth person is being added.

We have convened in this last year a meeting of first nations chiefs and other aboriginal stakeholders from across the province specifically to discuss the tragedy and the challenges of aboriginal youth suicide. We are certainly committed to working with aboriginal communities, with service providers and with all British Columbians so that we can reverse what is a tragic trend that all of us must work sincerely to try and address.

**Mr. Speaker:** The member has a supplemental.

**N. Simons:** Mr. Speaker, it's those very first nations agencies that are saying that the problem is not being addressed by this minister.

At least 59 people have attempted suicide in the Hazeltons since June 1, and 70 percent of those were women under the age of 21.

Ted Hughes said that regionalization had to be done right, but the right people, the first-nations-delegated agencies, have yet to be included. This is directly related to the failure of this government to implement the Hughes recommendations. This minister has the wrong priorities, and his regionalization strategy has been an abject failure. He is responsible for not implementing some of the most important recommendations of the Hughes report.

I'll ask my question again. Will the minister stop running from the facts and provide first nations communities, on an urgent basis, with the resources they need to deal with this ongoing tragedy of despair and suicide?

**Hon. T. Christensen:** This government has doubled the resources to child and youth mental health in this province over the course of the last five years. Part of that is a \$10 million aboriginal child and youth mental health plan that is currently being implemented. There is a request for proposals in the north, specific to that aboriginal child and youth mental health plan so that we can make the necessary progress in addressing instances of aboriginal suicide and attempted suicide among youth.

We are working closely with the community in Hazelton. Additional resources have been put in place to help with assessing adolescents that may be at risk of suicide and providing additional support to the community with the staff that have been adjusted and moved from other resources across the north.

We are committed to working with communities in the north and communities across the province to

address these challenges. Certainly, if the member has suggestions that he would like to relate to me, I'm happy to take those, because my interest is ensuring that we are working with people so that we can reverse what has unfortunately been a long-term and tragic trend with respect to aboriginal youth suicide.

#### IMPLEMENTATION OF HUGHES REPORT RECOMMENDATIONS ON CHILD PROTECTION

**M. Karagianis:** Not only is the minister not implementing all of the Hughes recommendations, he has the wrong priorities. Instead of delivering resources to front-line services, as the previous member has outlined and as Hughes recommended, this government is squandering resources on fancy boardroom renovations.

[1410]

The leadership in this ministry is in question, hon. Speaker. So I would ask directly through to the minister: when will the minister get his priorities straight and promise to implement all of the Hughes recommendations — all 62?

**Hon. T. Christensen:** As I indicated yesterday, this government is committed to implementing each and every one of Mr. Hughes's recommendations. We are moving forward with the implementation of those recommendations within the context of improving front-line services to children and families across the province.

The member suggests that the priorities are wrong. Well, let's look at the increases in resources: \$73.2 million over this current three-year cycle for children at risk; increasing supports to families, supports to caregivers, supports to children in care; \$69 million over three years to expand regional child welfare and family support services; more than \$85 million for child and youth mental health services, which are part of the child and youth mental health plan.

We've increased the number of children that are being served, to assist them with their mental health issues, by 9,000. That's almost double in the last five years as part of that plan. We've added \$31 million over three years to raise monthly payments and other supports for foster parents — again, something that was specifically identified by Mr. Hughes.

We are focusing our efforts on adding those front-line resources at the same time that we are focusing our efforts on ensuring that all of Mr. Hughes's recommendations will be implemented.

**Mr. Speaker:** The member has a supplemental.

**M. Karagianis:** The question is very simple. If you are going to implement all of these recommendations, when? What is the time line for implementing all 62 of these recommendations? Give us the time line.

**Hon. T. Christensen:** Mr. Hughes made his recommendations 18 months ago. In 18 months, 60 percent of those

recommendations are either complete or well in progress. The remainder of those recommendations — work is underway.

Mr. Hughes himself recognized that in some cases, there are recommendations that will take a number of years to fully implement. It will be a number of years before we have a fully implemented alternative governance system in terms of services to aboriginal people.

We are going to work diligently. We are going to work closely with the Representative for Children and Youth to ensure that she has a full appreciation of the work that is underway, and we are going to ensure that we are on a positive path of improving services to children and youth right across the province.

**L. Krog:** The minister invokes the name of Ted Hughes in this House, and I'm glad he did, because everyone who has been elected to this assembly in the last 20 years and everyone who has worked in the public service for the last 20 years respects Ted Hughes. Every member of this assembly not only endorsed but completely endorsed the recommendations of Mr. Hughes.

Recommendations, however, without implementation do nothing for vulnerable children today. This government has had a year and a half to implement those recommendations. It's very simple. What is the actual time line that this minister can tell this House today, which is actually going to deal with Mr. Hughes's recommendations?

**Hon. T. Christensen:** We are moving forward with each and every one of Mr. Hughes's recommendations. I certainly expect that over the course of the next year, the vast majority will be implemented or certainly very well underway.

I look forward to working with the Representative for Children and Youth. The ministry looks forward to having an opportunity to work with the Select Standing Committee on Children and Youth to ensure that we are fulfilling the promise provided by Mr. Hughes's recommendations.

This is the government that retained Mr. Hughes, that provided him a mandate, that appreciated the work he did and that indicated, upon receiving his recommendations, that we were committed to implementing them. We are going to implement the recommendations.

[1415]

#### GOVERNMENT CHILD CARE BOOKLET

**C. Trevena:** My question is for the Minister of State for Childcare. Her ministry has distributed a shiny booklet for those interested in starting a child care centre, and there are a number of recommended links in it. I'd like to ask whether the minister could tell the House why one of those links is to a private company that runs prison systems in the United States.

**Hon. L. Reid:** I am certainly delighted to talk about child care in British Columbia and to talk about the dollars that are available to build child care.

The member opposite may be aware that there is currently a capital round underway for \$12.5 million. We trust that that dollar value will bring to this province the additional seats that the member continues to ask for.

It has been fascinating to me, though.... On November 19, when the critic talked about spaces, her actual words were: "Instead of cutting space...."

Interjections.

**Mr. Speaker:** Members.

**Hon. L. Reid:** I'm happy to repeat it, because it's fascinating. The critic, on November 19: "Instead of cutting space, instead of bricks and mortar...." So what do we have here? We have build or don't build. Perhaps build. Which is it, Member?

This is a province that's interested in creating child care space in British Columbia, and we indeed believe that individuals can bring some expertise to the field.

**Mr. Speaker:** The member has a supplemental.

**C. Trevena:** I did ask the Minister of State for Childcare why, in a booklet put out by her ministry which is paid for by taxpayers' dollars, there is a link to a U.S. company that runs prison systems running corporate child care in Richmond.

I wondered if the minister could explain why that link is there and tell the House whether it has any significance that the company has given large donations to the B.C. Liberals and is headed by a former head of the B.C. Liberals.

**Hon. L. Reid:** Again, a quote from the critic opposite: "A vision for child care...."

Interjections.

**Mr. Speaker:** Members.

**Hon. L. Reid:** "A vision for child care must include parents and all children and should include a diversity of provider." What we have before us today is an employer in the province who, frankly, values his employees to the extent....

Interjections.

**Mr. Speaker:** Minister, just take your seat for a second.

Minister, continue.

**Hon. L. Reid:** Again, I'm happy to put on the record the quote, on behalf of the critic: "A vision of child care must include parents and children and should include a diversity of provider."

Frankly, we have many employers in British Columbia today who have stepped up to the plate because they understand that when an economy is growing to the

extent this economy is, they indeed could provide child care to their employees. That, in fact, is the recruitment and retention strategy in British Columbia.

We have individuals who today are providing child care for their employees and need to be celebrated for that.

Interjections.

**Mr. Speaker:** Members, do we want to continue?

**M. Farnworth:** The question is really clear. Can she tell why the only link on a taxpayer-funded document is to a U.S. site, a prison site, that builds prisons and has donated more than \$15,000 to the B.C. Liberal Party? Can she tell us the answer to that? Or is this an example of her new approach to child care, which is: "Are there no prisons? Are there no workhouses?"

Interjections.

**Mr. Speaker:** Members.

**Hon. L. Reid:** I believe there are many links on that document. Many are within the Ministry of Children and Family Development, and many will continue to offer to those who would participate with the province in building child care very useful information.

[1420]

I believe I've answered the question. It is indeed employer-based child care. We have many responsible employers in British Columbia who continue to offer child care for their employees, because they do believe that it's important to recruit and retain staff. Offering child care is one of the ways in which they do that.

Interjections.

**Mr. Speaker:** Members. Members.  
Member has a supplemental.

**M. Farnworth:** The question is really quite simple. Why is the only link to a child care provider on a publicly paid-for booklet a donor who contributed \$15,000 to the B.C. Liberal Party? Why is that the only link for a child care provider — and is a U.S. private prison provider?

Interjections.

**Mr. Speaker:** Members. Members.

**Hon. L. Reid:** I'm happy to repeat the answer to the question. The individual....

Interjections.

**Mr. Speaker:** Continue, Minister.

**Hon. L. Reid:** We have employers in British Columbia who have taken the unique step of being responsible

for the child care needs of their employees. That is an important contribution to child care in the province of British Columbia.

In fact, there is investment in the province of British Columbia that relates to child care. In 2001 the child care budget in this province was \$212 million.

Interjections.

**Mr. Speaker:** Members.

**Hon. L. Reid:** This year it will exceed \$287 million worth of spending. That is an enormous contribution. It's important that we continue to build child care space in the province of British Columbia, and we as a government are doing exactly that.

Interjections.

**Mr. Speaker:** Members.

[End of question period.]

### Petitions

**D. MacKay:** Mr. Speaker, I have a petition here from concerned citizens throughout the lower mainland asking the province to reactivate the Select Standing Committee on Aboriginal Affairs, in light of the key issues arising out of the Tsawwassen and the Maa-nulth treaties.

**Hon. C. Richmond:** I have a petition from the Royal Canadian Legion, branch 52 in Kamloops, regarding their authorized designated smoking area.

### Orders of the Day

**Hon. M. de Jong:** I call continued second reading debate on Bill 39, Electoral Boundaries Commission Amendment Act.

### Second Reading of Bills

#### ELECTORAL BOUNDARIES COMMISSION AMENDMENT ACT, 2007 (continued)

**Hon. M. de Jong:** With respect to the debate on Bill 39, I must say to the House that I have listened to the debate with interest. I have heard all manner of accusations and theories from the opposition benches. I'll come to that in a moment, although I won't spend a huge amount of time on trying to discern the basis for those accusations.

What does seem clear is that the opposition, based on everything I've heard in the course of the debate, is intent on preventing a vote from occurring on Bill 39 in the ordinary course of business.

[1425]

Now, I should say this. Oppositions, in fulfilling their duties and their obligations, are certainly entitled

to use the procedural rules of the House as a means of achieving a particular objective. To a certain extent, I think that is a legitimate means by which the opposition fulfils its duties in this chamber.

Those tactics usually mean that the opposition is opposed to a particular initiative of the government. I say "usually" because I don't actually automatically make the assumption that because the opposition has spoken in the way it has on the bill... I don't automatically come to the conclusion that, were a vote to occur, the opposition would be opposed.

The opposition has spoken in many cases very critically on the ten bills that have come before the House in this sitting and so far — with, I believe, one or two bills remaining — have in fact voted in favour of every one of those bills. So it doesn't automatically follow in my mind that the vote will match the commentary.

What does seem clear is that if there is to be a vote in the present circumstances on Bill 39, the opposition seems intent on forcing the government to impose some form of closure pursuant to the standing orders.

I want to say this clearly for all members. The government will not impose closure on this bill.

Bill 39, to my mind, is a unique kind of bill. I thought, actually, with the limited time available in this sitting, the members might have some interest....

Interjections.

**Hon. M. de Jong:** It is unique, I believe, because it is a bill that provides — or purports to provide — authority to an independent commission to assist with the task of reconfiguring the electoral map. It goes to the heart of the electoral process in British Columbia.

I believe, and the government believes, that the commission we ask to do that work deserves to know that the will of parliament has been freely expressed. It would be improper to impose closure knowing that the mandate that derives out of that is one that the commission would be moving forward with in pursuit of the fulfilment of its duties.

I actually do draw a distinction between that type of bill, which goes to the heart of our electoral process, and a bill that has been on the order paper for seven months and that other considerations seem to be at play. I do make that distinction.

I will just take a moment to remind the House, if I can, about what the original intention was here. We passed in this House an original bill that gave rise.... And there was a statutory obligation to do that.

The original intention was to try and strike a balance, to give to the commission the tools necessary to, on the one hand, ensure that there would be sufficient protection for rural representation — I see members sitting in this chamber for whom I know that is important not just conceptually but individually in terms of the communities they represent — and on the other hand, ensure that the tools were there to provide for equitable representation in areas of the province that are growing very quickly. That was the balance we tried to strike.

Unless I'm mistaken, we did that with near, if not unanimous, support. The tools we gave to the commission included a provision whereby they could increase the number of MLAs who sit in this chamber by up to six. That's what we did. We voted — I think, very nearly all of us in this chamber — in favour of that.

The commission took that mandate — where we emphasized, in the debate, the importance that we attached to protecting rural representation — and began their work. And it's tough work. They travelled to many communities, they heard submissions, and they came up with a report.

In the best way they could, they said: "Here is the result of our work. Here's how we think we can achieve that balance, but we are constrained by the tools you have given us. We are constrained by the mandate. We are constrained by the common law not just in this province but in this country."

In their report they said — and this is the quote:

"Our interpretation of our mandate leads us to conclude that no region of the province has an automatic entitlement to 'very special circumstances' status for some or all of its electoral districts. Neither do we believe that it would be appropriate for us to begin with a presumption that each region of the province should be guaranteed its current level of representation.

"The Legislative Assembly could have made that our mandate, but it did not. Rather, we are governed by the overriding constitutional and legal requirement to strive for relative parity of voting power among electoral districts and to deviate from parity only to the extent necessary to ensure effective representation."

They applied the law as they saw fit. They commented on what they saw as — these are my words, not theirs — limitations in the mandate. If we made a mistake, that is where we made the mistake. We apparently did not provide them with the mandate that they have since told us they required to achieve the objective we set for them. The commission said that six new seats were not enough to address that. We all voted for six new seats.

Interjections.

**Hon. M. de Jong:** The member says that we all voted for "up to." The members are correct. The members are absolutely correct. We said "up to" six new seats. The commission, in applying the mandate we gave them, in having due consideration for the legal constraints by which they are bound, couldn't get there — couldn't get to where they thought they needed to go. That is reflected in the report.

When the report was tabled, I think it's fair to say that members on both sides of the House expressed their disappointment and said: "This doesn't cut it, especially in terms of rural representation."

So the government, on the basis of what the commission said, had a decision to make about whether or not to attempt to alter the mandate that we as an assembly gave them. We said, amongst other things, that representation in three regions — regions defined by the commission,

not by the government.... Representation in those three regions could not be reduced.

On the basis of the advice we had received, we said: "We understand that the commission believes it needs additional room and flexibility to do that." We said, "You have two additional seats" — and, yes, made it mandatory in the legislation on the basis that, as our understanding of the report, the commission couldn't accomplish its objective with six.

I suppose you could go to seven, but that would have meant an even number of seats in the House, so the next number is eight. That's what the bill does.

[1435]

I have heard all of the assertions about attempts to manipulate and gerrymander. I'm sure that when they leave this place, unless some means is found to address this, I will continue to hear that. That was not the intention. That is not the intention.

It is to try and work within the bounds of the law and the constitution of the country and to provide a commission that we create in this chamber to find that appropriate balance.

In a moment I'm going to move adjournment of this debate, and we'll move on to some other business. If I hear from the opposition — if I hear from the opposition leader, which would be the general course of events — that they are prepared to move to a vote on this matter, then we'll recall it.

But the clock is ticking. Under the rules of this House, second reading debate must be concluded by today. We would then have a very short period of time tomorrow to deal with legislation in committee. So I make that offer during the course of this debate.

If we don't do that, we should all be aware of the consequences. Unless the bill is recalled later today and a vote takes place on second reading — and again I emphasize, a vote that will not be imposed by government.... It will happen because the members on both sides of the House decide there should be a vote.

If that does not happen, the bill will die. If the bill dies, members from this House — and I do say with a bias, particularly members of the opposition — will have to explain why rural communities in British Columbia have been put at risk in terms of the representation. If one thinks about how this will probably ultimately play out....

I will say this. The government has made clear that it will not support a proposal that would see a reduction in rural representation.

The more likely result, although I don't want to anticipate how the commission will ultimately complete its work, although I am guided by what the commission has said in their interim report.... I think it is fair to be guided by what they have said.

Then I suppose members of the opposition can explain to fast-growing communities — regions of the province like Surrey, like the Okanagan — why those areas of the province don't have the representation to which they are entitled by virtue of their growth.

As the clock winds down on this session, that is the challenge before us. As I say, if I am alerted by the opposition of a genuine desire to move to a vote, then we will do so.

With that, I do move adjournment of the debate on this bill.

Hon. M. de Jong moved adjournment of debate.

[1440]

Motion approved on the following division:

YEAS — 39

Falcon	Reid	Coell
Ilich	Chong	Christensen
Les	Richmond	Bell
Krueger	Roddick	Hayer
Jarvis	Whittred	Cantelon
Thorpe	Hagen	Oppal
de Jong	Taylor	Bond
Hansen	Abbott	Penner
Neufeld	Coleman	Hogg
Sultan	Bennett	Lekstrom
Mayencourt	Polak	Hawes
Yap	Bloy	MacKay
Black	McIntyre	Rustad

NAYS — 28

S. Simpson	Fleming	Farnworth
James	Kwan	Ralston
B. Simpson	Cubberley	Hammell
Coons	Thorne	Simons
Gentner	Routley	Fraser
Horgan	Lali	Dix
Trevena	Karagianis	Evans
Krog	Chudnovsky	Chouhan
Wyse	Sather	Macdonald
	Conroy	

**Hon. M. de Jong:** I call committee stage debate on Bill 46, First Nations Education Act.

[1445]

### Committee of the Whole House

#### FIRST NATIONS EDUCATION ACT

The House in Committee of the Whole (Section B) on Bill 46; S. Hammell in the chair.

The committee met at 2:48 p.m.

On section 1.

**S. Fraser:** I do not plan on taking very long with this. As the opposition has indicated, we will be supporting

this bill, and we are happy with the details of this. In the interests of expedience, we plan on being fairly quick on this.

I guess I need a little bit of assistance here. I have some fairly high-level questions about implementation of the bill. I guess I look for your guidance, the guidance of the minister here, as to how best to proceed. It's not really by section. If you could help me here, I will try to be as effective as possible in as short a time as possible.

**The Chair:** Member, questions of a general nature can be asked on section 1.

**S. Fraser:** With Bill 46, this is a bill that will be melding with the federal Bill C-34. I'm just not sure how that happens. Can the minister just explain to me what mechanisms are in place to bring the federal and provincial legislation together?

[1450]

**Hon. S. Bond:** First of all, I want to take this opportunity to introduce to the House the staff that I have with me today. They have done a tremendous job in working through this issue, as has the entire team that has brought the First Nations Education Act to the Legislature.

I'm delighted to have with me Peter Owen, who is the assistant deputy minister of governance and accountability; Dave Duerksen, the director of governance and legislation; and Trish Rosborough, the director of aboriginal education. I can assure the members they work very hard every day to make sure that work like this is successful, and they've done a tremendous job. I appreciate them being here.

In terms of the question of the member opposite about how Bill C-34 and this piece of legislation mesh. In fact, in order to give jurisdiction to first nations on first nations land, that is a requirement of the federal government. They actually have to bring that power into existence. Bill C-34, which was passed in the federal House, actually gives jurisdiction to first nations on first nations land in terms of education.

This piece of legislation recognizes that jurisdiction. So all of the work that's been done is based on the agreement that was signed by the three parties, but Bill C-34 actually creates the jurisdictional responsibility. Our bill recognizes that.

**S. Fraser:** Thanks to the minister for that.

Am I correct? This is almost enabling legislation for, I understood, the federal role on reserve in Canada and under the constitution. This is, hopefully, the last essential piece of the puzzle to actually enable the federal legislation so that this can happen.

Am I accurate there, at least in a ballpark way?

**Hon. S. Bond:** Essentially, the member opposite has it correct. However, there are some additional pieces to it which, for example, allow independent schools or boards of education to enter into agreements with the first nations education authority.

There are some pieces of this legislation which permit other actions to take place, but generally speaking, both pieces of legislation in both Houses actually are enabling legislation to the agreement that was signed by all three parties.

**S. Fraser:** That cleared that up for me.

The time lines on this. This is going to take a while to implement. We have estimates on that. I've heard a few. If you could just, for the record, let me know what the time lines are. Or if there's a series of events that might take place over that period of time, if we could see how that's going to play out.

**Hon. S. Bond:** I just wanted to confirm with my staff, but we understand that Bill C-34 has now been brought into force by the federal government, so that's great news.

Our job now is to, hopefully, see this bill through the House and then bring, by way of regulation, this bill into force. Once that is done, all of the technical legalities, so to speak, are taken care of, and we can actually begin the implementation process. I think the member opposite would absolutely agree that it's been a long time coming, and the sooner we can get on with it, the better it would be.

[1455]

In fact, on Friday of last week I met with Regional Chief Shawn Atleo and also Tyrone McNeil of FNEESC to talk about how we can, once this legislation moves forward, begin the implementation process.

The first step, as the member opposite would know, is encouraging and working with first nations to actually have them choose whether or not they become participating first nations. Of course, that's the first step, and it has to be done with the federal government. They have to identify themselves as wanting to be participating first nations.

We're eager to get on with that. Once the bill moves through the House, we then bring it into force, as the federal government has done, and then we'll begin the task of actually bringing this to life.

**S. Fraser:** I understand the challenges of this, and I appreciate that. How will the money flow for these resources that go with this? The minister has pointed out that we still have to establish who will be participating. How will that happen? Is there a time line? Is there a budget already set for an unknown entity, really, at this point?

**Hon. S. Bond:** Because the First Nations Education Act relates to governance — or the jurisdiction is first nations land.... These are band schools. Band schools are funded by the federal government. As we understand it, the negotiations between the First Nations Education Steering Committee, or FNEESC, and the federal government are ongoing in terms of the funding that will take place and transfer. But it is a federal responsibility because these schools, of course, are on first nations land.

**S. Fraser:** Just a question around.... It just came to me now. We're dealing with another bill — actually we will be later today, very soon — as we get to the committee stage of the Maa-nulth treaty. Will this mechanism, this opportunity...? Will everything be the same for those nations that have already achieved treaty? Is there any effect it might have post-treaty?

**Hon. S. Bond:** In fact, there is not a direct linkage between treaty first nations and this particular process. Once you have settled a treaty, you already have the ability to create laws over education in your particular treaty area. So they would not be participating first nations in this process.

Certainly, there could be a collaborative approach, but they already have the jurisdictional responsibility through that treaty process. There is not a direct link between the two.

**S. Fraser:** Okay, I understand that from reviewing both the Tsawwassen and the Maa-nulth — reviewing, living, breathing — treaties for the last month. But there are resources that go along with this bill — not with the bill directly. But obviously there's funding, finally, and a mechanism for dealing with non-first nations students in first nations schools. Currently, there is no mechanism that I'm aware of for funding that.

There are some changes that are coming about with this bill. Presumably, those same issues could exist in first nations that have already achieved treaty. Is that an oversight? Has that been anticipated?

[1500]

**Hon. S. Bond:** I think it is safe to say to the member opposite that there is no direct link between the two, and that federal dollars will be negotiated between FNESC and the federal government in terms of funding band schools. There is no direct reference to tuition or those kinds of things in this piece of legislation. The negotiations for funding occur directly between FNESC and the federal government.

In terms of treaty, those particular treaty nations have negotiated a particular financial package. They also have jurisdiction in terms of law-making within their own territory. So there is not a direct link between the two, and in fact they are quite separate. A treaty first nation cannot be a participating first nation under this process.

**S. Fraser:** Thanks to the minister for clearing that up. I did touch on an issue around the funding for....

I've been to the Kamloops band, and they've got a school on reserve. This is not a unique situation, so I'm just using it as an example. Currently, there's no mechanism for them to receive funding for students that are non-first nations attending those schools. The reality is that that happens, and I know the minister is aware of that.

There's a cost associated with that. They're not able to achieve any kind of mitigation or payment for that

through the system as it stands. My understanding is that after we get through this, there will be mechanisms in place to do that.

I'm seeing a nod. So I'll just give you.... Touch on that.

**Hon. S. Bond:** Two things that I should add to the previous answer, because I was thinking about this. First of all, there are cases where band schools do receive provincial funding, and that is if they become independent schools. We have a number of first nations schools that are actually independent schools and would receive funding at either 50 percent or 35 percent, depending on which of the independent school categories they're approved under. That is a situation that exists today, so I wanted to be clear about that.

In addition to that, not reflected in the bill but reflected in the agreement that was signed was the potential that if a first nation becomes a participating first nation and non-aboriginal children choose to attend that school as their school of choice — the member opposite is correct — funding would then follow that student to the particular participating first nation.

Absolutely correct in how it was presented by the member opposite, not coming from this bill — because again, we discussed what the bill actually is doing — but coming from the original agreement that was signed between the three levels of government. That's the difference with that — but absolutely correct in the way the member presented it.

**S. Fraser:** I'm going to follow up with another question on that.

Before I lose my train of thought, you mentioned that there is funding available for independent schools if they have that status. If there's funding available for independent schools, are there any that have chosen not to be independent? What would be the deterrent?

There's obviously an incentive to being an independent school, if you get funding. Why would a first nation not choose that status, or are there any examples when they don't?

**Hon. S. Bond:** Actually, there are a large number. I'm trying to think, and I'll have Dave or Trish.... Trish probably knows the exact number of band schools there are in the province, but there is a much smaller number of those that choose to be independent schools. There is some thinking behind that. Much of it is to do with what the expectations and regulations are when you become an independent school in order to receive funding.

[1505]

For example, you must use provincial curriculum and have certified teachers that are certified in a particular way. That is why this act is so exciting for them, because it really legitimizes and gives them jurisdiction and education-making law over their own schools. Many schools choose not to pursue the independent school path partly because there is a set of expectations that come with that, including using curriculum that is provincial

curriculum and all of the regulations that go with achieving that independent school status.

**S. Fraser:** Thanks to the minister for that. There are, give or take, 200 different first nations in B.C. that are recognized. I don't know how many schools are associated with that. That would be an interesting question. But thanks for the answer.

Going back.... With the agreement signed with FNEESC, there will be the mechanism for funding to flow in a situation where it doesn't flow right now. It's arguably a hardship, and it's causing some problems resource-wise for the existing schools that are not receiving that funding.

Considering the time line on this whole Bill 46, it's still a long way away before we're going to see this actually hit the ground. I'm sure the minister has heard and is aware that that funding is needed now. I mean, it's needed yesterday. The problem exists now where resources are being stretched thinner than they should be because that funding isn't made available.

Is there any way that can be expedited, somehow made a priority, so it can predate as quickly as possible the actual time line for this bill?

**Hon. S. Bond:** I just want to give the member some context here. There are approximately 6,100 students attending 130 on-reserve schools in British Columbia; 22 of those schools are classified as independent schools.

Where provincial responsibility for funding lies is when they're attached to an independent school. Schools who chose to be independent schools — funding is flowing to them at the appropriate levels.

I'm certain that from FNEESC's perspective, the negotiations will go very quickly. They will want to be aggressive. The vast majority of funding for students on reserve comes from the federal government, and that negotiation is underway.

**S. Fraser:** Thanks to the minister for that. I want to thank the staff for working on this and thank the minister for her work on this and thank Nathan and Tyrone and all the people that have worked on this on behalf of first nations and FNEESC.

Anything you can do to get that funding to the schools that are not getting it now, in an expedited manner, will be of great assistance to the students and to those communities. I just wanted to get that on the record, and I know the minister is nodding her head. She understands it is important. So I thank you, and I'm done. Let's move this forward quickly.

Sections 1 to 19 inclusive approved.

Preamble approved.

Title approved.

**Hon. S. Bond:** Thank you very much to the member opposite for his support and passion through this

process. It's been appreciated. I think FNEESC and others will be very happy today with the place we find ourselves.

With that, Madam Chair, I move the committee rise and report the bill complete without amendment.

Motion approved.

The committee rose at 3:10 p.m.

The House resumed; Mr. Speaker in the chair. [1515]

### Report and Third Reading of Bills

#### FIRST NATIONS EDUCATION ACT

Bill 46, First Nations Education Act, reported complete without amendment, read a third time unanimously on a division [See *Votes and Proceedings*] and passed.

**Hon. M. de Jong:** I call continued committee stage debate on Bill 45. [1520]

#### 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; S. Hammell in the chair.

The committee met at 3:21 p.m.

On section 3 (continued).

**G. Gentner:** Just a few questions relative to chapter 10, if we may. Our fisheries critic has been moved on to some other good work today, and he sort of passed me some notes. With the assistance of my colleagues, we can raise them with the minister.

We'll go step by step, if we can. We're looking at 10.1.4 of chapter 10. My question to the minister is: with these plants and fish under the fishing right, how will this be monitored?

**Hon. M. de Jong:** Primary responsibility would continue to rest with the federal Department of Fisheries.

**G. Gentner:** What role will the province be playing in any of this?

**Hon. M. de Jong:** There will be, as was the case in Tsawwassen, a fisheries committee. I expect the province's participation in that committee will be guided, to a certain extent, by the fact that, provincially, the primary responsibility is for a freshwater fishery.

**G. Gentner:** A freshwater fishery would also include the sockeye beyond the tidal area of, for example, the Fraser. Would the province not have some responsibility?

[1525]

**Hon. M. de Jong:** The intention of the final agreement is not to purport to amend the constitutional authorities that are divided between the province and the federal officials. I know that at times, for me at least, that can be a vexing, confusing delineation to make. But the intention of the agreement is not to alter that and would be for the respective jurisdictions to continue to fulfil their constitutional authority.

**G. Gentner:** I take it from the minister, therefore, that we are seeing little activity post-treaty involvement relative to fisheries from, obviously, the B.C. Treaty Commission, the Ministry of Aboriginal Relations itself and the Minister of Agriculture and Lands. Is that not correct?

**Hon. M. de Jong:** Unless the member wants to tell me more, I'm not sure I can anticipate what an ongoing role for the Treaty Commission would be. If the member has a specific question about that or a set of assumptions that might prompt me to come to a different conclusion.... At the moment I don't see much of an ongoing role by the Treaty Commission post-effective date.

The provincial ministry will continue to play the role and fulfil the constitutional obligations in the area that it fulfils now.

**G. Gentner:** One of the examples I use was the involvement of the Ministry of Agriculture and Lands in the containment of fish. It seems to be the jurisdiction of the province relative to fin culture. What role can the minister foresee that ministry playing post-treaty?

**Hon. M. de Jong:** Should the Maa-Nulth First Nations choose to pursue tenure opportunities in aquaculture, their relationship and point of contact with the provincial government would remain as it is now — primarily with the Ministry of Agriculture and Lands, with involvement by the Ministry of Environment.

**G. Gentner:** Just moving to 10.1.5. I'll read it out: The first nation "right to Trade and Barter in accordance with 10.1.4 may be exercised by a Maa-nulth-aht of that Maa-nulth First Nation except as otherwise provided in...First Nation Law of the applicable...Nation Government made under 10.1.41c."

Can the minister explain that to me? I, and some of our other members, am trying to get my head around this. Explain to me what that really means.

[1530]

**Hon. M. de Jong:** It is a mechanism by which there is self-regulation, so it's probably best to read the sections in reverse. So 10.1.41 provides a law-making authority to the Maa-nulth First Nations government. Any law

that they chose to enact would have to be consistent with the constitutions that have been ratified by the various Maa-nulth First Nations, but it does afford them the opportunity to regulate the trade and barter rights that are confirmed by this final agreement amongst their own members.

**G. Gentner:** Moving right along to 10.1.7, subsection a., b. and c., is this for food that has ceremonial purposes only?

**Hon. M. de Jong:** Subsection which?

**G. Gentner:** The sections, Minister, under 10.1.7. I'm trying to get a general feel of whether or not this is to be used for ceremonial purposes only, or beyond ceremonial.

**Hon. M. de Jong:** Why don't I start here. The purpose of the section is to confirm that the Maa-nulth First Nations fishing right, which I believe is a defined term under the final agreement, exists within a defined area only. This section also says that the Maa-nulth can harvest fish outside of that area as long as they harvest in accordance with provincial and federal laws, which would require the licensing that is referred to and contemplated in the section. So it is those two issues that are dealt with in 10.1.7.

**G. Gentner:** Maybe the minister can kindly direct me to where, in this chapter, there is mention or reference to ceremonial purposes.

[1535]

**Hon. M. de Jong:** I'd refer the member to the first section, 10.1.1, which refers to domestic fishing and domestic purposes. The member will note that those are defined terms, which are dealt with in the definitions section.

**G. Gentner:** Section 10.1.8, the Minister. Can the minister define what "Minister" means? Is it referring to federal, provincial or both?

**Hon. M. de Jong:** Again, "Minister" is a defined term in the final agreement. "Minister," which is a word that shows up here with a capital M throughout the final agreement, is defined as: "...the federal or provincial Minister having responsibility, from time to time, for the exercise of powers in relation to the matter in question, and any person with authority to act" for the minister "in respect to the matter in question."

In this section, in most cases this will refer to the federal Minister of Fisheries and Oceans. It could, in certain circumstances, also refer to the provincial Minister of Environment or provincial fisheries minister to the extent that they retain authority over freshwater fish, aquatic land, steelhead, that sort of thing.

**G. Gentner:** Section 10.1.8, therefore, also means the authority of the Minister of Agriculture and Lands relative to aquaculture. Is that not correct?

**Hon. M. de Jong:** Yes.

**G. Gentner:** Therefore, the province does have or retain enormous authority, knowing where, of course, we are going in the province regarding the privatized fish — or, as we call it, aquaculture. We know that we're going more and more in that way, it seems to me. Therefore, we have on record now the view that the province certainly has a major authority to do with managing the conservation of fish.

The next section, 10.1.9, says: "Fish and Aquatic Plants harvested under a...Fishing Right cannot be sold." Does that mean bartering? What's defined by "sold"?

**Hon. M. de Jong:** Sort of flipping this on its head, the phrase "trade and barter" is a defined term. "Sale" is not. But "trade and barter" is defined as specifically not including sale.

What this is designed to reinforce is the notion that there's no treaty right to sell fish or aquatic plants. Commercial fishing arrangements have been addressed in the harvest agreement, and the member knows that, but that doesn't form part of this final agreement.

**G. Gentner:** I'm still having a problem with this because of where we're going with farmed fish. Obviously, that is a private endeavour, and we may see a contract down the road signed by the first nation and a private company.

Where does that fit relative to this notion of fish that may not or cannot be sold?

[1540]

**Hon. M. de Jong:** I wonder if the disconnect here is that.... If I listen to the member, he seems, perhaps, to be suggesting that if the right is not specifically provided for in this agreement, it can't happen. That's not the case. Under a separate aquaculture tenure, that right can exist. It would be regulated by that tenure just as it would be for any other similar tenure holder.

**G. Gentner:** So this section here, 10.1.9, is specifically about commercial fisheries and the fisheries for domestic use.

**Hon. M. de Jong:** This section is intended to confirm that to the extent that one of the Maa-nulth First Nations has the right to sell fish, that authority will come from another source and will not be constitutionalized within the final agreement.

**G. Gentner:** That authority, therefore, would be the federal government?

**Hon. M. de Jong:** Well, partly, but not, as the member has astutely pointed out, in the case of aquaculture, in which case that authority derives from the province.

**G. Gentner:** So we're establishing here the role the province is going to play in this important treaty and the leadership that it must take throughout the whole

fishery debate — not just commercial but, of course, the finfish or farm-fish industry. I'm glad we've been able to establish that.

Moving to 10.1.10, the next section: "British Columbia may authorize uses of or Dispose of provincial Crown land...." Can the minister give us an example, first of all, of why this is here and give an example relative to the fisheries — a circumstance where he may see this happening.

[1545]

**Hon. M. de Jong:** This section, included as a means of protecting the provincial Crown interest, is intended to ensure that in exercising the rights that are provided for in this chapter in the final agreement, the rights that the Crown and the right that the province of B.C. continues to hold over Crown land and for authorized uses of that Crown land, fishing rights can't be exercised in a way that frustrates the rights the Crown has to those lands or to the authorized uses on those lands.

**G. Gentner:** I get that part. However, the dispositions cannot be denied to the first nation — the reasonable opportunity. Can the minister explain to us what that means — "the reasonable opportunity to harvest Fish and Aquatic Plants"?

**Hon. M. de Jong:** Which subsection?

**G. Gentner:** It's 10.1.10.

**Hon. M. de Jong:** Probably best described as the balance section.

I hope this helps the member. The notion here is that on the one hand, fishing rights can't be exercised in a way that frustrates the ability that the Crown has to make use of the land, including disposing of the land in ways that it is authorized to do so. Conversely, the Crown can't exercise those rights for authorized uses or, ultimately, disposition in a way that frustrates the ability that the Maa-nulth First Nations have to exercise their fisheries rights.

The example that Chief Negotiator Lofthouse provided to me was, for example, a decision by the Crown to sever or cut off an access road to a fishing ground, which would be a step that would ultimately frustrate the ability to exercise a right contained within this agreement.

**G. Gentner:** The minister gives an example of a stream or road to an area where there is anticipated fish. Does that also apply to an agreement between the first nation and a private fish farm operator who may need access to an area vis-à-vis through Crown land?

**Hon. M. de Jong:** I'm going to suggest to the member that the more appropriate authority for the response to that kind of a scenario is contained within the access chapter of the agreement.

**G. Gentner:** Of course, my apologies to the minister. I wasn't here. My understanding is that we've dealt with that section — access.

Interjection.

**G. Gentner:** Well, it brings to mind, therefore, again to the minister.... Why I'm raising it is because we are moving in a certain direction regarding privatized fish, albeit we have to think about where we could be in 20 or 30 years from now.

[1550]

The first nations certainly may — although at this time, it doesn't appear they will — entertain a view of fish farming. The minister gave an example of access regarding the ability to find fish through Crown land, and yet he's unwilling to give me an example of a similar access. He refers me to the access part of the treaty, and yet he just earlier talked about an example.

I don't know. Maybe you'll indulge me, Minister. Hopefully, you can answer the question regarding access through Crown land in order to facilitate a fish farm.

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

The provision we're dealing with here is obviously a general provision that is designed to ensure that in exercising its rights — legitimate rights and constitutional rights and responsibilities — one party doesn't frustrate the other unreasonably — in that second party exercising their rights under the terms of this agreement or constitutionally.

If the member is asking me to point out or confirm whether or not there are specific provisions in the agreement that would guarantee access to an aquaculture site, I can't do that, because I don't believe such provisions exist. There are general access provisions that conceivably could have some application, but I can't point the member to a specific section of the agreement that says in these circumstances, access will be guaranteed or governs the means by which access would be provided to an aquaculture site.

**G. Gentner:** Thank you to the minister for clarifying that. If the first nation enters into an agreement with a private fish farm contract and that is agreeable to the province through the Ministries of, let's say, Environment and, of course, of Agriculture and Lands, then the chances are that access would probably be granted — if I have it correct.

The next section is 10.1.11. I just want to know: if there's disagreement on this inability of access, what type of arbitration is awarded? How does that come about? Is there a committee that's going to deal with it?

[1555]

**Hon. M. de Jong:** Here's how this kind of a provision would work. Of course, the provisions are built around the hope and belief that, in situations like this, the parties can sit down and hash out an agreement that works for all of the parties that are involved. In any event where that doesn't happen — in the type of scenario contemplated in this section — one of the parties, or both or three, has the option of triggering the dispute resolution provisions, which would settle the question

of process around how the substantive dispute would be settled.

The parties would say: "Well, we can't figure out how to get to a solution here. We can't actually even agree on how to engage to begin the process of finding a solution. Let's refer that question, and let's trigger the dispute resolution provisions of the agreement and arrive by that at a process by which we could tackle the substantive issue."

Again, obviously the parties would be interested in avoiding that level of formality, but the provisions are there where it becomes necessary, if it does become necessary. In that case, any one of the parties would have the option of availing themselves of those dispute resolution provisions of the agreement.

[K. Whittred in the chair.]

**G. Gentner:** There are other issues relative to what the minister said that sort of spur other questions, but maybe we can return to it before we leave this chapter. So 10.1.17: "Nothing in this Agreement alters Federal Law or Provincial Law in respect of property in Fish or Aquatic Plants."

Now, I just want to be clear. This is going to be a general question, but we have to understand exactly what that means. In many ways we're entering new ground here, and this could very well be the template. Could the minister briefly lay out the provincial and federal roles regarding jurisdiction of fish and aquatic plants. I just want to know for sure what this section refers to.

**Hon. M. de Jong:** Thanks to the member. I understand his question. I actually understand the relevance of the member's question, and I'm sure the member will be suspicious that I'm trying to avoid a comprehensive answer. The difficulty is that the answer is comprehensive enough to take us through the next three days of discussion.

[1600]

It's actually a combination of things that determine jurisdiction: obviously, the Constitution Act — you start there — and the legislation that has been born out of that in the two jurisdictions, and then volumes of common-law jurisprudence that have arisen interpreting the constitution in that legislation. I'm not going to attempt to summarize what that volume of material represents.

I can tell the member this. The section is there to confirm that the final agreement deals with the rights of each Maa-nulth First Nation to harvest fish and aquatic plants, but it's specifically designed to ensure and confirm that the final agreement does not provide the Maa-nulth First Nations with any ownership or property interest in fish or aquatic plants. That's the legal significance of the text and why it is included within the agreement.

**G. Gentner:** Therefore, following sort of a logical process here and how this works, if the Maa-nulth do

not have any ownership of fish, they are not responsible for the maintenance of the stocks under this agreement.

**Hon. M. de Jong:** There clearly are a variety of provisions here that emphasize the stewardship role that the Maa-nulth are going to play, their interest in playing that role and their responsibilities in that respect in terms of the joint committees.

I think the member's question was: does the agreement or this provision in the agreement impose any constitutional responsibility for fish or constitutional responsibility — I should use that word carefully — for the maintenance of fish and habitat? The answer is no, that responsibility continues to be retained and remains with the federal minister or, in situations where there is a provincial authority, with the provincial minister.

**G. Gentner:** Moving to 10.1.19, the allocations. Looking at the schedules earlier, I want to go quickly to the ocean chinook allocations. I think it's about 1,800 pieces plus 1.78 percent of the total allowable catch, or TAC. How does the minister know of the state of the health of all of the chinook stocks to give a fixed number?

**Hon. M. de Jong:** Three parts, I think, to my answer on this one. First of all, all of the allocations that we are going to talk about are, of course, subject to conservation. In a worst-case scenario where the fish isn't there, those allocations are impacted.

[1605]

Secondly, I will acknowledge that we are largely relying upon the expertise contained within the federal Department of Fisheries in arriving at some of these numbers, which in many cases are based upon studies of historic harvest levels. I don't want to pretend that I either have the expertise or am in a position to authoritatively speak to the science and methodology that was employed in arriving at these numbers. But I'll end where I began, with the observation that they are subject to conservation.

**G. Gentner:** I suppose what rolls off that question.... If there was a ministry that was going to take responsibility and show some leadership relative to depletion of stocks within the province, which ministry would take on that role? Would it be the Ministry of Environment, or would it be the Ministry of Agriculture and Lands?

**Hon. M. de Jong:** The provincial Ministry of Environment has worked and continues to work closely with the federal Department of Fisheries and Oceans. Again, I will say that in pursuit of that collaboration and working relationship it is the federal Department of Fisheries that is in possession of the data and the historic information that gives rise to, and ultimately does make, the decision around these oceangoing fish.

There is a working relationship, and that will continue to be the case. But insofar as these allocations are concerned, the government of British Columbia has

relied, in large measure, on the expertise contained within the federal Department of Fisheries.

**G. Gentner:** The agreement is premised, therefore, on the success of a fishery that's stewarded through the federal government. Obviously, the minister and his government must have a lot of trust in the federal government to fulfil that stewardship, because they have entered into this agreement.

Therefore, my question is.... Let's look, for example, at the crashing chinook stocks on the Cowichan River. Can the minister be sure that this treaty will not impact chinook populations that are in trouble?

[1610]

**Hon. M. de Jong:** A couple of things. The member prefaced his remarks with an observation around the question of trust, and I want to take a moment to address that.

We certainly try to work collaboratively and cooperatively with other levels of government — in this case, the federal government — and there are issues that come along from time to time that sometimes challenge us to find solutions. It is actually about more than trust. It also reflects a recognition of the constitutional reality that we have in this country.

We could spend a delightful afternoon, I think, talking about the wisdom of a constitutional structuring of fisheries management in this country, and one day perhaps we'll do that. But we are bound by the constitutional reality with which we presently live. That brings us together, and we try to work with that as best we can.

I wanted to ask the member.... I thought his question related to potential impacts of the treaty on the fishery. I think he was a little more specific than that, and I have forgotten how so, but could he assist me a little bit with what he means by that and what aspect? There's going to be an impact, because they're going to catch fish, or they're entitled to catch fish. I'm sure that the member, though, has a more specific interest or issue that he wishes to canvass.

**G. Gentner:** The chinook stock along the west coast is a very valuable resource, and anybody who has fished off Bamfield and Ucluelet knows that that resource has been dwindling. I welcome this agreement, because it certainly gives the first nations peoples a rightful fishery, which they have enjoyed and should continue to enjoy.

We talked briefly regarding the need to be somewhat prudent and very thoughtful on how that fishery is managed in order that all first nations and also, in particular, the commercial fishery, what will be left of it.... But I'm thinking more or less, of course, of the recreational fishery.

It's a major industry. It is something this province is obviously very much in tune with. It is part of our ecotourism. It is part of a huge industry up and down the coast, and it brings people here. Even when we have times of economic despair and trouble, it is a magnet to bring many people to the west coast.

I'm intrigued with this, because I want to know what the recreation allocation is for non-west coast chinooks in this overall allocation that we find in this treaty.

[1615]

**Hon. M. de Jong:** I think the member's question is about the relationship between the fish allocations that exist pursuant to this agreement and possibly the harvest agreement. I will ask the member to clarify. Is it the treaty allocation or the harvest agreement allocation — or maybe both? Although, of course, they are dealt with very differently. The allocations that take place on an annualized basis with respect to the commercial fishery.... The member's right. It's a valuable activity, and lots of communities and small businesses and the province itself enjoy benefits associated with the commercial fishery.

But is the question about how allocations under either the treaty or the harvest agreement impact on the federal allocation to the sport fishery? Is that the essence of the question?

**G. Gentner:** Regarding the comparative to the harvest agreement and the overall strategy that will hopefully retain a very viable sport fishery, I'm intrigued to know what type of recreational allocation for non-west coast chinooks will be left to keep the sport fishery viable.

**Hon. M. de Jong:** I think it's fair to say, without purporting to be an expert, that we recognize the value of the sport fishery and believe that the federal Department of Fisheries similarly recognizes the value and benefits associated with that sport fishery. Further, we are proceeding on the strength of the belief that the allocations that are contained here do not preclude the continuation of the sport fishery — that they can live side by side.

It is true that insofar as the final agreement is concerned, there is a priority granted to that fish, and it would be fair for the member to present his analysis recognizing that fact — that insofar as the allocation contained within the final agreement, it would enjoy a priority over a sport fishery allocation.

**G. Gentner:** I'll move off spring salmon, probably one of the most exciting fish you can land as a sport fisher. It certainly is a marvel in the fishery community for those who travel a great distance to come here. Hopefully, our communities in Bamfield and, of course, in other areas of the west coast will be sustained with this working relationship between all three parties, not only between the first nations and the federal government but the invaluable interests and concern the province must contain and sustain.

Just before I move to sockeye salmon, I'll quickly look at the coho, if I can, that's described in schedule 3. The coho allocation is split into ocean and terminal. Ocean stocks are of the non-Vancouver Island origin, and the terminal are stocks originating in Barkley Sound. We're looking at.... I think ocean coho is about 7,000 fish, and terminal is about 1,200 pieces, when stocks are critical; to 3,600, when stocks are abundant.

[1620]

Can the minister explain...? Obviously, there's been some discussion here, if you know anything about coho, with the Ministry of Environment and, of course, with the Ministry of Agriculture and Lands specifically, because the coho is one species that seems to be infected by the sea lice from fish farms. How did the minister reach these allocations?

**Hon. M. de Jong:** I think it's important to point out that through the course of these negotiations, as I said earlier, on this part of the agreement the Department of Fisheries and Oceans took the lead. We sought assurance that the allocations being proposed out of that negotiation were sustainable, based on the best evidence that was available, and we relied upon the Department of Fisheries and Oceans to present that evidence.

The numbers, in addition to having been influenced by notions of sustainability and conservation, are also the product of a negotiation with the Maa-nulth First Nations. In reaching them, the Department of Fisheries and Oceans would have had access, obviously, to their data bank — historic fish counts, harvest data — and would also, as they do on an ongoing basis, have taken into account issues around disease control and disease management.

I will not pretend to be able to explain to the hon. member how some of those formulas work and are applied on a modelling basis, but I did receive assurance that they were employed. They will continue to be employed, going further, recognizing the very fact that the member has referred to, which is that fish stocks and particularly certain species of fish stocks are fragile. They're much more fragile, perhaps, than we once thought, and if we are going to ensure that there is a sustainable fishery, we are going to have to be responsible. "We" means all of us — feds, province, first nations, sport fishers, everyone involved — being responsible and realistic about the allocations that occur.

**G. Gentner:** I don't want to spend too much time on coho, but the minister probably knows better than I that, from a sport fishery perspective, the coho are important because they sort of stretch out the ecotourist season. The coho run quite a bit later. They can run all the way into October. For small communities, that does bring a little extra change to the local economy.

The nutrients that flow from rivers. That type of riparian habitat, which is not monitored by the federal government, is important and does come under the Ministry of Environment.

The minister mentioned the business of needed access to data banks and harvest data. My question is: what role will the first nations play in the continued collection of that data? What agency will be responsible for monitoring that?

[1625]

**Hon. M. de Jong:** There will, of course, be a role. I'm going to refer the member to section 10.4 in the chapter. Rather than my reading out all of the various

provisions about how that involvement will occur, there may be specific things that the member wants to explore.

**G. Gentner:** I'm just standing here to give a heads-up to the ever-effervescent member for Yale-Lillooet, who wants to talk a little bit about sockeye, because his community is very much impacted by it.

**H. Lali:** Before I ask the question, as this is my first opportunity to do so on the treaty — I didn't have a chance to talk in second reading — I want to put on the record that I support the Maa-nulth treaty and, obviously, will be supporting it when voting time comes.

Having put that on the record, I want to read from page 95 of Bill 45's schedule, the first nations final agreement act, that's there. Under schedule 5, "Sockeye Salmon Allocation," number 1 in this schedule: "Fraser River Sockeye Salmon Canadian Total Allowable Catch' means the amount established by the Minister that is calculated to be available for the harvest in Canadian waters by aboriginal, commercial and recreational fisheries of sockeye salmon that originate in the Fraser River watershed."

I'd just like to ask the minister: under this treaty, are the Maa-nulth entitled to a portion of the Fraser River sockeye run?

**Hon. M. de Jong:** The answer is yes to that question.

**H. Lali:** Then further, under 2, same schedule, on page 96, it says: "Each year, the Maa-nulth Fish Allocation for sockeye salmon is...b. an amount of Fraser River sockeye salmon equal to 0.13366% of the Fraser River Sockeye Salmon Canadian Total Allowable Catch."

Could the minister explain how that figure was derived?

[1630]

**Hon. M. de Jong:** The process that was undertaken was not dissimilar to the one the member and I discussed when we were talking about the Tsawwassen treaty.

It is, first of all, a function of a negotiation, a negotiation that's largely led by the federal Department of Fisheries and Oceans. But it is guided by, as I mentioned to the member's colleague, an overriding concern around conservation sustainability — allocations are, of course, subject to that — and also built around a belief in the need to ensure that, going forward, formulas are being applied and quantum are being established that are sustainable, recognizing that the fish in the Fraser watershed are also relied upon by others in a variety of different ways and in different communities.

Taking into account those needs, those interests and those entitlements and the recognition that they extend right through the Fraser watershed.... They were all factored into the discussion in the negotiation. Ultimately the parties, including the province, which is signing off

on this provision, have concluded that this represents a fair, equitable, sustainable allocation that will ensure a sustainable Fraser fishery.

**H. Lali:** If I understand it correctly, the minister said that in terms of establishing this formula, if I may call it that, it was different from how it was done with the Tsawwassen treaty. I guess the minister read my mind in that I would be making some sort of a connection there.

He used the terminology that the process was different because it was done through negotiation. Am I to understand correctly that aside from a couple of the criteria the minister mentioned — obviously, sustainability of the resource is paramount, as we all understand — that really there was no concrete set of criteria by which it was established what the formula would be? Rather, it was through negotiations.

If I understand correctly, the Maa-nulth had a certain figure or an idea in their mind that they came to the table with to negotiate, and it was through back-and-forth that they were able to come up with some sort of a figure that they could agree on. That figure was not based on any kind of justifiable criteria — on numbers of the population or the amount of fish that would be coming back. Rather, it was something that was a negotiating tactic.

**Hon. M. de Jong:** I'm sorry. I want to stop for a moment and clarify. I think the member, just a moment ago.... The fault may be mine, if I didn't speak clearly. What I intended to convey in the earlier response was that the process was similar.

I seem to have left the member with the impression that the process that was employed here was somehow different from that employed in the case of the Tsawwassen. That is not the case. The approach was similar to what was employed in the case of the Tsawwassen.

**H. Lali:** Then could the minister perhaps explain to me what that entails under schedule 5, section 2.b.? Whereas for some of the other categories there are specific numbers that are put in place, here you have a percentage figure.

Could the minister give me some sort of an idea, based on whatever the overall catch might be for the entire Fraser system? That 0.13366 percent represents a certain amount of fish. Could the minister please give me some examples?

[1635]

**Hon. M. de Jong:** I didn't mean to avoid the member's earlier submission. I wanted to clarify what I thought was a misunderstanding between him and me. The earlier submission seemed to be a suggestion that these allocations and this specific allocation for the Maa-nulth are drawn up in a vacuum. That's just not the case.

It's also not fair to suggest that this was merely a case of one party saying, "We want something," and another party saying: "Well, bring your number, and

we'll bring our number, and we'll work our way to the middle."

In fact, the parties were satisfied that there is an historical link here, that the draw on the Fraser salmon was built around historical links between the Maa-nulth, their communities and that run. What follows, then, is a discussion built around the numbers of people involved, conservation requirements, and so on and so forth. There's a combination of factors that go in. It's based on an initial acceptance of the proposition that there is a link between the run and the Maa-nulth First Nations.

**The Chair:** Members, may I remind you that the people who are carrying on the debate are having difficulty hearing. Could you please keep your voices extremely low if you must converse.

**H. Lali:** I'm just going to move on to section 3, and I'll read from here. It says, "Where a Maa-nulth First Nation harvests sockeye salmon under its Maa-nulth First Nation Fishing Right at a time and in a location where a harvest of," and then: "b. Fraser River Sockeye Salmon is authorized by the Minister, those sockeye salmon are counted as Fraser River Sockeye Salmon."

Could the minister sort of explain to me what that section means? If he could clarify that for me.

**Hon. M. de Jong:** I'm not an expert, but I do know this: identifying salmon and sourcing them is far from a precise or exact science. There is, apparently, some means by which that can be done genetically. That can be very expensive, and doing it for every single salmon caught is not realistic. When there are openings and locations are identified, the experts, the biologists, have a sense of when the runs are coming through particular areas.

[1640]

For the purpose of accounting for fish and assigning them to the various allocations, certain assumptions are made. This section speaks to those assumptions. A fish caught at this place at this particular time during the course of a particular opening is deemed to have.... That count is assigned to a particular allocation.

Is it 100-percent accurate? I suspect not, but it's the mechanism that is used, has been used, continues to be used for an accounting of what is caught, of what is caught by whom, and for the assignment against which particular fishery or allocation.

**H. Lali:** Let's assume, just for discussion, that the annual allowable catch for the Fraser River sockeye salmon is 500,000, and what the Maa-nulth catch as part of their 0.13366 percent comes off of that 500,000, and what is remaining is then available for other first nations; for the commercial or sports fishery; and for folks that are from the mouth of the Fraser River to its origin, including its tributary.

Is that what is intended here — that that comes off, and the remainder is then available for whoever falls in line after that? What you've got is.... The Maa-nulth are

basically out there on the west coast of Vancouver Island having the first impact with the fish coming from the Pacific Ocean going past the Island on their way up into the mouth of the Fraser.

Obviously, they're at the first point of being able to catch, before other categories have a chance to get at it.

**Hon. M. de Jong:** I think I understand the essence of the member's question and concern. We canvassed some of this in terms of the Maa-nulth and the fact that there are others who rely upon the salmon who are right along the Fraser watershed, right up through where the member lives and into the Cariboo-Chilcotin and on past Prince George.

[1645]

The first thing I want to say is that we're not talking here about a priority fishery. It is guided by available fish stocks. I think the point that the member makes — that officials who are managing this will have to be cognizant of; and I agree with the member — is that, to the extent that decisions are made to adjust amounts based on one's knowledge of the returning fish run, one must be careful about not bestowing a de facto advantage on those located closer to where the earliest fish counts take place. I think there's recognition of that fact. That's why it's built around historical data. There's an ongoing vigilance that's going to have to be applied.

There is, again, a recognition that this is a resource we need to share, that needs to be available to first nations and needs to be sustainable. Even in the case of aboriginal entitlement, if we overstep the bounds of what is sustainable in conservation, the equation is going to get awfully small in future years.

I think I understand the member's point and can say that there is recognition of that fact. By virtue of their location, those who make decisions about adjusting allocation amounts, as is contemplated under this agreement, will also need to take that into account and, I'm satisfied, are aware of that fact.

**H. Lali:** I take that to mean yes, so that a certain portion of the annual catch is apportioned to aboriginal fishery. Maa-nulth being at the front end there, whatever they catch actually would come off that total. That would then be available to those that are upstream or upriver or up-coast, I guess — the first point of Vancouver Island, of intersection for the route of the returning Fraser River sockeye salmon.

Here's where the problem lies. In the Tsawwassen treaty, I pointed out that we've got, I think, almost six dozen separate aboriginal bands from the mouth of the Fraser to the origin within the watershed. Any aboriginal fishery that exists for sockeye salmon on the Fraser would be shared amongst all of those almost six dozen Indian bands, in terms of the aboriginal portion of it.

But now we learn that the Maa-nulth would get a share of that returning Fraser River sockeye salmon before the nearly six dozen first nations on the Fraser River system get a chance to get at their share, to be able to catch that fish. There may be others. As other

treaties on Vancouver Island or within the Georgia Basin get consummated before the Fraser River and upriver treaties get consummated, that number will ultimately decrease in terms of the availability of fish under the aboriginal fishery for the nearly six dozen Indian bands on the Fraser River system.

Am I correct?

[1650]

**Hon. M. de Jong:** I think the assertion is that the resource is being shared, and that sharing of the resource amongst those who are sharing that resource.... The allocation received by one impacts others. I think that's true. We can apply that as we move up the river. We talked about the Maa-nulth. We talk about other bands past which that run takes place, their entitlement impacts on that. We move into Tsawwassen, up through New Westminster and Langley, Kwantlen and through the Stó:lô bands. The member talks about the number of bands involved, the other people with an interest, be they sport fishers, commercial fisheries — the fact that we are sharing this resource. It does all have an impact.

That's why I think the continued oversight of the federal minister, the federal Department of Fisheries, is important, because there will be important and frequently, I'm sure, difficult and equally, I'm sure, unpopular decisions to be made about that allocation based on fish counts, based on anticipated runs. I don't think that's going to change.

I think what we're trying to do through agreements like this is bring greater clarity to what those entitlements are, what those allocations are going to be, how they are going to be guided by conservation and how they are going to be influenced by the fact that the resource needs to be shared. No one gets everything they want to the disadvantage of other groups — other first nations, other interested parties.

**H. Lali:** I don't disagree with the minister in terms of the sharing of the resource. I fully anticipate that and agree that the resource has to be shared. Where the issue comes into light is that there was an assumption — I guess wrongly, on my part — that the nearly six dozen bands on the Fraser River system would be the ones who would be sharing that Fraser River sockeye salmon allocation for the aboriginal fishery. I guess I was mistaken, because other folks in the Georgia basin would also be sharing in that as well. All of a sudden the nearly six dozen becomes nearly eight dozen or nine dozen bands.

The problem will become this. There isn't enough resource available. Unless we start getting historically high levels of Fraser River sockeye salmon coming back and it grows so that everybody gets a chance to share in it, there isn't going to be enough to go around for all of the bands upriver in the Fraser watershed. That's my concern.

As I pointed out to the minister during the Tsawwassen treaty debate, in my constituency there are 27 Indian bands that are on the Fraser River system alone. The way it looks.... I'm looking at some of these numbers

and the numbers for Tsawwassen. If you've got nearly six dozen Indian bands in the Fraser watershed and then you've got, perhaps, two or three dozen or more within the Georgia basin who will also be sharing the Fraser River sockeye salmon run for the aboriginal fishery, then we're not going to have enough fish to go around, especially for those first nations who are not at the front of the lineup for consummating treaties.

[1655]

In other words, just to give an example, in my constituency of 27 first nations, if about a dozen of them have settled and then it follows the same situation with others in the Fraser watershed, the fish would probably run out before they get a chance to actually work out their treaties and negotiate. This is what it looks like.

Was the thought ever given that there would be some major problems in the future for those bands that haven't consummated their treaties but others have, and the fish allocation has run out for the Fraser River sockeye salmon in terms of the allocation for the aboriginal fishery there?

**Hon. M. de Jong:** The answer is yes. It has, I think, been prominent in the thinking of those who we charge with the task of developing the analysis and modelling to ensure that the allocations we discuss and confirm in documents like this are sustainable, not just in terms of the signatories to these agreements but also when extrapolated and applied across a broader section of society and other groups.

I don't want to, for the moment, suggest to the member that he shouldn't be alive to this issue. I think it is responsible to be alive to the issue. I think it probably extends beyond just the part of the province that the member represents. I think it's an issue we have to be alive to generally in terms of sustainable fisheries and allocations, although I understand the specific interest he has vis-à-vis the first nations in the area of the province that he represents. I think that it's fair ball for him to articulate that concern and that interest.

In addition to pointing out the work that has been done, the specific attention that has been paid to the issue he has raised, I would add one other thing. As I have been listening to the member, it appears to me that part of his concern relates to an impression he may have — maybe not — that this is going to represent a new draw on the Fraser River fishery, the Fraser River sockeye.

In fact, the Maa-nulth have been harvesting at these levels for some time. There is a historical link with the Fraser River sockeye fishery. This defines it with greater precision, but it would be incorrect to suggest that this represents — not that the member did; I am garnering that impression — a new draw on that fishery. There has been a historical connection between the Maa-nulth First Nations and the Fraser River runs. This seeks to define it with greater clarity and lay that out within the documents.

I don't know if that affords the member any further level of comfort, and I don't mean to diminish the appropriateness of his raising the matter as a concern.

**H. Lali:** I think the minister does correctly recognize that there will be a problem in terms of the latecomers for negotiating treaties as time passes on. I think the minister would probably then recognize why that would pose a problem for not just myself, like I'm using, or whoever happens to be the MLA for Yale-Lillooet.

It's just that because I'm the representative, I'm going to use that as a test case, but there are so many other representatives.... From the point of the mouth of the Fraser River to Hope, basically, where my constituency begins, there are dozens of MLAs who are in a similar position as myself, and then, of course, upriver from my constituency.

[1700]

I think the minister must recognize the problem that I would face for — forget just the MLAs — aboriginal people who are going to be latecomers for signing on to treaties. There is a problem there, and I think the minister recognizes that. The minister also stated.... When I asked the question if thought was not given to this, he said: "Yes, thought was given to the fact that we may run out of fish by the time all the treaties are consummated."

If the thought was given — and I know I asked a similar question on the Tsawwassen treaty — then was there any thought given that these numbers that are now being written down as part of treaty-making for the Tsawwassen, the Maa-nulth and others that will come by are reviewable sometime in the future, depending on what kind of fish runs we're going to have for Fraser River sockeye salmon?

Let's say only a third to a half of the treaties are settled, but the remaining first nations have not settled their treaties with the provincial and federal government, and they've got no fish. They have had a historical right to harvest fish on the Fraser River system, but there are no more fish because they've all been allocated to those treaties that have been consummated prior to theirs being consummated. That's the problem. Are these numbers then reviewable? Are these numbers then renegotiable so that everybody...?

The minister talked about sharing, and I agree with him in terms of sharing the resource so that the latecomer first nations, who will consummate their treaties sometime in the future, are going to get their fair share of the access to the aboriginal fishery on the Fraser River system.

That's the question. Are these numbers then reviewable at a future date so that everybody can benefit?

**Hon. M. de Jong:** In general, they are. They are, of course, subject to conservation.

I do want to point the member to section 10.1.22, and I'll read this into the record.

"In any year where the Minister determines, in respect of a species or stock of Fish or Aquatic Plants for which there is a Maa-nulth Fish Allocation that: a. is a fixed amount; or b. has a minimum amount, that the quantity of a species or stock of Fish or Aquatic Plant that is available for harvest is not sufficient to meet all quantities

anticipated for allocations from the species or stock to the Maa-nulth First Nations and other aboriginal groups...."

I emphasize the phrase "and other aboriginal groups." It says here specifically that the minister may reduce the Maa-nulth allocation"

That's just one example of how the agreement specifically contemplates the interest and entitlement of other first nations. That's in the agreement.

Of course, all of this is subject to conservation and to other general provisions in the agreement that state that the aboriginal rights of other first nations cannot be adversely impacted. One such specific provision is contained here, and I referred to 10.1.22. That's in the schedule.

Hon. Chair, I'm going to ask that the committee take a brief five-minute recess.

**The Chair:** At the call of the Chair, I call a five-minute recess. Actually, let's make it seven minutes. We will reconvene at ten minutes after five.

The committee recessed from 5:04 p.m. to 5:15 p.m.

[K. Whittred in the chair.]

On section 3 (*continued*).

**The Chair:** On Bill 45, section 3, and we are discussing the schedule, section 10.

**G. Gentner:** Under section 10.1.21, it references the part about nothing in this agreement creating a responsibility on the part of any party to remediate contamination. Does that imply that there's no possible action to any party that is contaminating?

**Hon. M. de Jong:** The member correctly referred to 2.90 as well. So 2.90 says that here is where obligations do exist and how those obligations are to be met in dealing with remediation of contamination; 10.1.21 says that nothing in this chapter creates obligations that go above and beyond that. That's why the section exists and is located in the chapter.

**G. Gentner:** Remediation of contamination created by an agreement between a first nation and a fish farm — who is responsible?

**Hon. M. de Jong:** To the extent that there are issues around that, they are and will continue to be governed by the existing laws. Nothing in the treaty alters the responsibility for remediation that is provided for through either a tenure instrument or existing environmental or fisheries law.

[1720]

**G. Gentner:** Moving along to the next section, 10.1.22. The minister referred to it when he addressed a question from the member for Yale-Lillooet. It says here that "the Minister will take into account any written

recommendations from the Joint Fisheries Committee...." Which minister does this refer to?

**Hon. M. de Jong:** Again drawing on the definition of "minister" that I referred to earlier, generally speaking, this would be the federal minister, but it is conceivable that at times it would refer to both the federal minister and the responsible provincial minister.

**G. Gentner:** The minister "will take into account any written recommendations from the Joint Fisheries Committee...." Who will sit on this joint fisheries committee?

**Hon. M. de Jong:** The composition of the fisheries committee is contemplated as set out in 10.4.3 and 10.4.4. I think those are the two most relevant sections in the chapter.

**G. Gentner:** Sections 10.4.1, 10.4.2, 10.4.6, 10.4.8, 10.4.14, 10.4.16, 10.4.17, 10.4.18, 10.4.20, 10.4.21, 10.4.22, 10.4.23 and 10.4.26 all make reference to it. There's no mention of British Columbia being included in those sections. Therefore, British Columbia has no seat at the table of the joint fisheries committee.

**Hon. M. de Jong:** No, I think I disagree with the member's interpretation of the provisions. The provisions are designed to provide options, depending on the circumstances, for provincial involvement.

What the section is also designed to do is.... Where that option is exercised to facilitate involvement by the provincial government, the various sections the member referred to are deemed to be read in a way that contemplates that provincial involvement.

**G. Gentner:** Will British Columbia sit at the joint fisheries committee?

[1725]

**Hon. M. de Jong:** Yes, we will be a member of the joint fisheries committee, but I want to be completely forthright with the member through this debate. It doesn't automatically follow that we will participate in every single discussion on every single issue that is brought to the table. But we will be a member, and where we see issues of import for which we have an interest, we will preserve our ability to be involved in those discussions on that committee.

**G. Gentner:** Can the minister show me where in the treaty it says that the province will be a member of that committee?

**Hon. M. de Jong:** No, because the member just asked the question about 10.4.4, where it says that the province may. The member has asked: does the province intend to be a member? I've answered yes, and I've tried honestly to point out that we will involve ourselves as a member of that committee on issues where we believe it is necessary and appropriate to do so.

**G. Gentner:** Okay, so the treaty states that the province may participate, and the minister has given us assurances that it will become a member, if I have this correct. The minister has also suggested that they may participate on issues that they deem imperative or important.

Can the minister tell the House how it will be decided? What is important? What isn't? If they don't participate, there could be an issue that arises in the committee framework, and the province isn't there. So how will the province ascertain whether or not it should be involved in the committee?

**Hon. M. de Jong:** Firstly, we will ensure that we monitor all of the matters that come before the committee. We will be cognizant of our legal obligations. We will be cognizant of our constitutional obligations. In addition to that, we will be cognizant and act upon our desire to protect the interests of British Columbia as they relate to discussions that may occur from time to time.

**G. Gentner:** In order for the province to deem what is important and not at this committee, I guess we have to return to what the minister will tell us. The difference, the delineation between the jurisdictions of federal versus provincial relative to the management of fish....

I'd like to know.... Can the minister tell me...? Is it not true that the province's responsibilities are that regarding those organisms that are attached to the ocean bottom...?

[1730]

[H. Bloy in the chair.]

**Hon. M. de Jong:** Thanks to the member for his question, which has resulted in my being treated to a fascinating discussion around some of the legal histories involving constitutional arguments for who has authority for aquatic species that are attached to the subsurface.

I don't think I'm able to resolve that argument conclusively here. I can tell the member that where the province does have clear constitutional authority, we will endeavour, by our participation in the committee and through other avenues, to ensure that the interests of British Columbians are protected in discharging that duty.

**G. Gentner:** Well, can the minister explain to the House — if the minister therefore believes that the government is to be a valuable participant in the process — why this government will not be a full participant in the joint fisheries committee?

**Hon. M. de Jong:** I have, again, tried to be forthright with the member in acknowledging my view that there may be occasions when issues are brought to the joint fisheries committee that exclusively engage the constitutional and legal requirements and interests of

the first nation and the federal government. In those cases, I didn't want to leave the member with the impression that the province would sit there and pretend to be an active participant.

In other circumstances there will be situations, I'm sure, where the province will want to be fully engaged.

Fisheries — many components of the fishery — continue to be primarily a federal responsibility. It is, I would suggest, honest and reasonable for me to suggest that there may be situations in which the federal government will be involved more directly with the first nation as opposed to a fully tripartite-type discussion, but it'll depend on the issue.

That's why I began my answer by pointing out and emphasizing that the provincial government would be a member of the joint fisheries committee.

**G. Gentner:** Can the minister explain why it is that B.C. will be a full member of the Tsawwassen fisheries committee and not a full-time member of this joint fisheries committee as set out in the treaty?

[1735]

**Hon. M. de Jong:** The source of that difference can be traced back to the AIP, where the parties thought about how these objectives could best be achieved. That difference that the member has correctly identified dates from the actual agreement-in-principle.

**G. Gentner:** I know there's a difference on the dates, but the minister has yet to respond and tell me why the province would be involved more in the Tsawwassen treaty relative to fisheries as opposed to the Maa-nulth treaty.

**Hon. M. de Jong:** I don't think there will be any practical difference whatsoever. In both cases, the province will be a member, and in both cases, the province will involve itself as is appropriate, recognizing the constitutional and legal authorities and obligations that exist. So whilst the member is correct in that the wording in this final agreement is different, the practical effect of that, I'm going to suggest, will not be very different.

**G. Gentner:** I disagree with the minister. There are two separate things here. This treaty says British Columbia "may" appoint a member. That's very different than what we saw with the Tsawwassen, where it will be a full participant.

Perhaps it's simply an oversight. But I would like to ask the minister: why is it that in 10.4.3 it states: "Canada and the Maa-nulth First Nations will establish the Joint Fisheries Committee on the Effective Date. Canada and each Maa-nulth First Nation will appoint one member to the Joint Fisheries Committee"? There's nothing in that clause that says that British Columbia will. Can he respond?

**Hon. M. de Jong:** I've actually got the Tsawwassen final agreement here, and the member.... First of all, I

have acknowledged a difference in the language, and the member seems to suggest that I am not doing that. I am.

But in the Tsawwassen First Nation agreement, which the member canvassed in detail under chapter 9, sections 71 and 72, essentially the same provision applies: "71. Canada may choose not to attend Joint Fisheries Committee meetings," and "72. British Columbia may choose not to attend Joint Fisheries Committee meetings...."

I have said to the member that the practical effect of this, and what is intended in both the Tsawwassen agreement and the agreement here, is that Canada and the province be members but that they participate in ways that make sense and are reflective of their interest. So I don't see the practical difference that the member is suggesting is catastrophic.

**G. Gentner:** Well, I'm glad the minister pointed out the difference — that the Tsawwassen First Nation treaty said the province "may attend" as opposed to this, which says "may appoint." The assumption is the TFN will have representation from the province.

Regardless of the reassurances of the minister, it still is an arbitrary decision. It could be a whimsical decision at that — that any government at any time may decide not to attend or to appoint a member. That, therefore, I believe, abdicates the responsibility of the province, which has a vested interest in the fisheries.

So my question is: can the minister explain to the House what the cost implications are if the province was to fully attend and be fully appointed to this committee?

[1740]

**Hon. M. de Jong:** I think my comments stand for themselves. In both instances what has been created here is a joint fisheries management committee that the parties will participate in but have reserved the option to recognize that there will be issues from time to time that directly involve two of the three parties, and they have created a structure that recognizes that.

The member, apparently, is offended by that notion. That's fine. I'm not. I'm suggesting that there are practical reasons for that to occur. The member disagrees, and that's fine.

**G. Gentner:** Well, I think the problem here is that the minister and his government are afraid of the costs of managing the fishery and are afraid that getting involved will accrue a cost relative to the survival of the fishery itself. I wish the minister could be forthright and admit it. Maybe that's a problem the government's having with this whole concept of being a full participant at the table.

I want to pursue it a little further. If the minister decides to go to the table, what obligations are there and what responsibilities will be forwarded to the province regarding the management of fish on the west coast?

**Hon. M. de Jong:** The member will have to be far more specific about the circumstances in which he describes the province's participation.

**G. Gentner:** Future treaties will be coming down the pipe. We've now seen a precedent here where on one side the TFN has a representative on the fisheries committee, whereas here we have an example where we have a province that may appoint, but they may not appoint. So my question is.... Let's say a five-year plan. Does the province have any inkling as to what the costs will be to manage the fisheries, since it is a full partner on these joint fisheries committees?

**Hon. M. de Jong:** No, actually, in fairness, that wasn't the member's question. The member asked a question about how these provisions alter the provincial government's legal responsibilities, and I asked him to clarify under what circumstances and in what kind of a scenario he was asking me to answer that question.

**G. Gentner:** Okay. Let's go back to the last question I asked. What is the five-year plan this government has? Since it's going to be participating in this joint fisheries committee — albeit some will be full participation; some will be part-time — what are the cost implications to the province relative to the management of the fisheries as brought forward through these treaties?

**Hon. M. de Jong:** Well, I'll try to answer both questions at the same time. Nothing in this agreement alters the constitutional obligations or responsibilities or legal obligations or responsibilities that govern the province insofar as its involvement with the fishery is concerned.

**G. Gentner:** Under section 10.1.31, "a base period is a period of ten calendar years immediately preceding the date of the proposal made in accordance with 10.1.25 or such other period agreed to by the Parties." Do we have the data that goes back ten years?

[1745]

**Hon. M. de Jong:** A couple of things. First of all, with respect to the saltwater fishery, the repository of that data is, of course, the federal Department of Fisheries. The provincial government would be the source for the freshwater fishery.

The other important point here, of course, is that this is an ongoing process, because it is ten years preceding the date of a decision. So today, or at effective date, which would be the preceding ten years and then every year thereafter, it would be a slightly different period.

But for the saltwater fishery, the source or the repository of that information would be the federal Department of Fisheries.

**G. Gentner:** What role, what oversight, will the joint fisheries committee have on this?

**Hon. M. de Jong:** They will certainly have access to the information. I expect, depending on the discussion they're having, that some of that information would be very relevant to the discussion. So it's appropriate, in my view, that they would have access to it.

**G. Gentner:** Okay. So it's a case in point. The minister has suggested that the province may participate and will choose when to participate. Will it participate regarding the joint fisheries committee's discussion on the data that's being processed? Will it be part of that process, or will it just choose not to attend?

**Hon. M. de Jong:** I'm sorry, I don't quite understand what the member means by "data processed." The collection of the information would remain within the ambit of the Department of Fisheries. The collation of the data in the way that the Fisheries Department does so — the committee would certainly have access to it and could utilize it for the purpose of the discussions that they may have on a whole host of issues.

**G. Gentner:** Will the provincial Ministry of Environment have access to that data?

**Hon. M. de Jong:** They do now and will continue to have access to it.

**G. Gentner:** In section 10.1.32, "Where all members of the Joint Fisheries Committee agree, the Joint Fisheries Committee may recommend to the Parties," does that imply...? Is that agreement based on the participation of British Columbia?

[1750]

**Hon. M. de Jong:** The answer is yes, I believe.

**G. Gentner:** It refers to the recommendation, the matter described in 10.1.26, which talks about measures necessary to conservation. I would assume, therefore, and correct me if I'm wrong, that the province will be committed with the joint fisheries committee relative to these matters described regarding conservation under 10.1.26?

**Hon. M. de Jong:** As we've already established, to the extent that any one of the parties wishes to avail themselves of the provisions of section 10.1.32, they will require the consent of all of the members of the joint fisheries committee.

**G. Gentner:** Well, "parties that wishes to avail" does not necessarily mean the province will be one of those parties. Is that correct?

**Hon. M. de Jong:** I have no idea what the member just said.

**G. Gentner:** Let me point out that the minister had said it's up to "parties that wish to avail" relative to the participation of the joint fisheries committee. I just asked the minister whether B.C. will be a party to that.

**Hon. M. de Jong:** I was not meaning to be vague or imprecise. I think the wording in the section is fairly self-explanatory.

To the extent that any single party wishes to avail themselves — that is: invoke, take advantage of, act

upon — of the provisions of section 10.1.32 of the agreement, which provides for recommendations around studies being conducted, it will require the consent and support of all of the members of the joint fisheries committee. We have established earlier in this discussion that B.C. will be a member of the joint fisheries committee. It would seem to me that that is all fairly clear.

**G. Gentner:** The province may decide to be a part of it, according to this treaty, and it can pick and choose when or if it wants to be part of the party that will talk about the needed conservation in order to keep the stocks alive in this province.

It's an important feature, because conservation does mean provincial responsibility in areas that are not in open water. There are certainly areas in riverbeds and streams, and we also have provincial legislation regarding riparian habitat and streamside protection.

Moving to 10.1.41, the first nation may make laws for — it lists a, b and c.... My question is: if there is a disagreement, who arbitrates kinship ties between the parties? And what is the test?

**Hon. M. de Jong:** Those questions are dealt with under the eligibility and enrolment provisions of the agreement.

**G. Gentner:** Will the joint fisheries committee play any part in this arbitration?

**Hon. M. de Jong:** I am advised, none.

[1755]

**G. Gentner:** Excuse me, I didn't hear the answer.

**Hon. M. de Jong:** I am advised that the joint fisheries committee would play no role.

**G. Gentner:** Well, could the minister explain to me how this arbitration process will kick in, and who will be involved? Will the province be actually involved in this?

**Hon. M. de Jong:** All of these are very precise terms, and some of them defined terms. I thought I heard the member talk about arbitration proceedings. Can he specify, with a little more detail, the circumstances that he is referring to and what manner of arbitration he is referring to?

**G. Gentner:** Let's suppose that there is a dispute amongst the documentation of vessels, and there is a dispute against various — who has rights and who doesn't have rights.... Is this a dispute that's strictly decided through the first nations government, or do the province and the government of Canada play a role in which?

**Hon. M. de Jong:** If I've misunderstood the question, I apologize in advance. The section should not be read as suggesting that the Maa-nulth can avoid the rather onerous provisions that exist around enrolment simply

by utilizing these provisions that apply to designation of individuals or vessels for harvesting purposes. That would not be an accurate reading of the agreement in its entirety. I hope I have not misunderstood the question.

**G. Gentner:** On 10.1.46. I'm trying to get closer to the end. I know there are some members here who have other questions. It talks about the first nations people not requiring a provincial fishing licence. If they do not need a provincial licence, how will the province monitor the catch?

**Hon. M. de Jong:** I think the answer turns in part upon the defined term contained within the section, which is Maa-nulth First Nation fishing right. Can the member provide me with a little more detail about his inquiry into the management of the Maa-nulth First Nation fishing right, which is a very specific right?

[1800]

**G. Gentner:** I'm the one asking questions here, hon. Chair. There's very little time left, so I'm just going to waive 10.1.46.

And 10.1.48 seems a little contradictory to me. Maybe the minister can help me out with this: "Subject to 10.1.50, each year the Maa-nulth First Nations may identify, by written notice to the Minister, individuals who are family members of a Maa-nulth-aht, but who are not a Maa-nulth-aht themselves, who have been designated in accordance with 10.1.47." Can the minister comment? I'm having a hard time. It seems contradictory here.

**Hon. K. Falcon:** I seek leave to make an introduction.

**The Chair:** Proceed.

### Introductions by Members

**Hon. K. Falcon:** I'd like to recognize some friends we have up in the gallery here with us this evening. I'd like to particularly recognize Mr. Kevin Boyce, the president and CEO of Molson. That's a favourite beverage in this place, I'm sure.

He's joined by his colleagues Scott Ewart, Ferg Devons and Brian Cox. Brian Cox, you may recall, used to work in this House, and I do believe this is the first time we've ever seen him this late in the Legislature. I want to welcome all of them here with us this evening.

**C. Evans:** I just would like to ask the Chair: is it not usually customary to ask us if we would give leave so that we can all give leave? Or did you just assume that...?

**The Chair:** It's a decision of the Chair.

**C. Evans:** Ah. Well, we would like to give leave. It really is our pleasure.

### Debate Continued

**Hon. M. de Jong:** The language may be a little clumsy. The intention and what it actually does is to verify the opportunity that a Maa-nulth member has to take the fishery entitlement provided under this final agreement and designate someone other than themselves to act on that entitlement on their behalf. This is the authority for that ability.

**G. Gentner:** And the designate does not have to be a person? It could be a company?

[1805]

**Hon. M. de Jong:** Well, the section does speak specifically to a family member. So unless someone is calling a corporation brother, sister, mother, father, cousin.... This is the authority by which a member of the Maa-nulth First Nation for any number of reasons, be they health or otherwise, can say: "Look, I have an entitlement under this agreement. I am designating a member of my family to act on my behalf to ensure that I receive the benefit of that entitlement." That's why it specifies a family member.

I can also say that this is a provision that was particularly important to members of the Maa-nulth, for whom this type of designation is, I think, deeply embedded in their history and culture.

**G. Gentner:** I have three questions. One, hopefully, is just a yes or no. Section 10.2.3. Can the minister tell us, yes or no, is this not a re-opener clause, the ability to renegotiate? Yes or no?

**Hon. M. de Jong:** I'll keep my answer brief, but I will be precise, because the matter, as the member knows, is the subject of litigation, or at least pertains to some ongoing litigation.

The section does this. If the highest court that considers the case of the Ahousaht et al. litigation rules that any of the plaintiffs in that litigation have the right to fish commercially for a species described in the Maa-nulth harvest agreement, Canada and British Columbia agree by virtue of this provision to amend the final agreement by moving the obligation to issue commercial licences for those species from the Maa-nulth harvest agreement into the final agreement.

**G. Gentner:** I'll leave that one alone. It certainly raises a lot of other questions.

Two more left. "Aquaculture Tenures", 10.2.7: "On the Effective Date the Minister will designate, under section 17 (1) of the *Land Act*, for the applicable Maa-nulth First Nation, those lands described as 'Designated Shellfish Aquaculture Site — Reserve File Number' in the applicable Appendix O for a term of 25 years, for the purpose of providing that Maa-nulth First Nation with an opportunity to apply for shellfish aquaculture tenures."

Are these shellfish aquaculture tenures just strictly with that of the Maa-nulth, or could it include a partnership with a finfish company?

**Hon. M. de Jong:** I thought I heard the member refer to finfish aquaculture. In this case, I believe we are dealing with shellfish.

[1810]

**G. Gentner:** Okay. I'll rephrase it. Could the shellfish aquaculture tenures include a partnership with a first nation and that of a shellfish company?

**Hon. M. de Jong:** Yes.

**G. Gentner:** One last question on the joint fisheries committee, 10.4.1. "The Joint Fisheries Committee operates to facilitate, in accordance with this Agreement" — I'm glad that the minister has qualified the fact that the province will be part of this committee — "the co-operative planning and management of: a. the exercise of...First Nation Fishing Right; b. activities of the...First Nations related to stock assessment, Enhancement Initiatives, Stewardship Activities and Fish habitat; c. activities of the Maa-nulth First Nations related to fisheries monitoring and enforcement."

Where is the money going to go for all this stewardship activity? Will it be in part from the province, from the government of Canada or strictly from the first nation?

**Hon. M. de Jong:** There is, as part of this overall final agreement, specific funding that will flow from the federal government to the Maa-nulth First Nations to cover the implementation of the fisheries planning strategy. Beyond that, the parties will be responsible for covering the costs that accrue to them via their legal and constitutional obligations.

**D. MacKay:** I'll direct the staff to appendix Q-3 on page 484. Appendix Q-3 is a map of the Roosevelt elk harvest area, and on that map it includes the Maa-nulth wildlife harvest area.

My question has to do with the Brooks Peninsula Park, which is contained within that harvest area. As I understand it, that protected area is open today for hunting, for everybody. My question to the minister: because it is now part of the Maa-nulth wildlife harvest area, and the fact that it is now part of a wildlife harvest area in a treaty, does it exclude anybody else from hunting in that particular area in that park?

**Hon. M. de Jong:** The answer is no. It does not. The rights granted here are what are termed non-exclusive rights.

**D. MacKay:** The wildlife harvest area on appendix Q-3. Does this include deer and other designated species, as may be determined later on?

[1815]

Is this the area that is restricted to the harvest of wildlife by the Maa-nulth people? Are they allowed to hunt elsewhere or just within this harvest area?

**Hon. M. de Jong:** I think the member's question was — and the member can correct me: within the wildlife

management area, are the Maa-nulth peoples restricted to hunting within the wildlife management areas? I don't know if the member mentioned a specific species, but: are they restricted to hunting within the wildlife management areas, or are they able to hunt outside of the wildlife areas as well? Was that the question?

The rights that accrue as a result of this final agreement pertain to the wildlife management area. But it is true, as we discussed in the Tsawwassen treaty, that outside of those areas, the Maa-nulth are able to obtain the licensing from other relevant authorities and conduct hunting there. They would be subject to the licensing requirements that exist in those areas — non-treaty settlement land areas and non-wildlife management area lands.

**D. MacKay:** Thank you for that answer. I would now like to go to chapter 11.17.1, which deals with guiding. I have a bit of a problem with the language used, particularly in 11.17.2 where it says: "The applicable Maa-nulth First Nation will allow reasonable access on its Maa-nulth First Nation Public Lands for the purpose of carrying out guiding activities to any person who holds a guide outfitter certificate...."

I have to wonder why the negotiators used the term "reasonable access." Reasonable access, to me, does not allow unfettered access to an area that they've previously had access to. I wondered why the negotiators would have used that particular language, given the fact that when you go back to the chapter that deals with the access to interest and estates in fee simple lands, it states simply: "The applicable Maa-nulth First Nation will allow reasonable access at least as favourable as that which exists immediately before the Effective Date...."

Why do we have those two terms? We're giving favourable access which existed before the treaty is signed off for some people; yet on the guide-outfitters, we're just saying that you have reasonable access. I wonder if the minister could explain that to me.

**Hon. M. de Jong:** There are volumes of jurisprudence around the interpretation and application of the principle of the reasonable man and the test of reasonableness, so it is a term, as the member points out, that is ultimately open to interpretation. But there are lots of tests that have been applied around how that might be done.

[1820]

I think it's fair to say that in the discussions that took place with the guide-outfitters, there were strong submissions made for language that would have equated with unfettered access. The reality is that the reasonable access that is being provided here to ensure that guide-outfitters continue to be able to do their work is measured against the other provisions of the treaty. But it is clearly laid out here that the intention is to ensure that guide-outfitters who fall into the category, and who have the licences or other permits contemplated here, are able to exercise the rights in a reasonable way that those licences and permits provide to them.

But I acknowledge what I think the member's point is — that for people who hold these permits, they are

seeking the strongest language possible. I believe and the government believes that their interests are met through the term "reasonable access."

**D. MacKay:** I accept that explanation, but I have to disagree, given the fact that we have two definitions of reasonable access. One's through government employees: RCMP, B.C. Hydro, utilities. They have reasonable access, which exists immediately before the effective date.

But now we have a tenure holder who is allowed reasonable access only, and there's no dispute mechanism in there to allow if the Maa-nulth people decide they don't want a tenure holder coming onto their property to do what they are licensed to do by the province. There's no dispute mechanism there for them to address that situation.

I'm not suggesting for a moment that we make any amendments, because they're not permitted here. I would suggest in the future, when we do have tenure holders or licence holders, that the language include that part of it, which I've just said would allow reasonable access at least as favourable as that which exists immediately before the effective date. It would remove that ambiguity that's there right now for guide-outfitters.

That's a suggestion from me. I don't suspect it will receive much consideration from the negotiators in future treaties, but I'd just like to put it out there for some consideration.

Since this is my first opportunity to speak to the Maa-nulth treaty, Mr. Chair, I would just like to take a moment here and express my concerns.

I spent considerable time reviewing the treaty. We seem to be creating two laws for people that are going to live in this province. Whether we provide sustenance for our families, whether we provide jobs for people, we're creating two laws for people in this province, based on race — strictly based on race. I can't support that.

With that, I will yield the floor.

**S. Fraser:** We're on chapter 11. I'm ready to go to chapter 12, if that's appropriate.

Chapter 12 is on migratory birds. Just a couple of questions here. So 12.9.1 talks about "the Maa-nulth First Nation Right to Harvest Migratory Birds" and that "Canada will Consult with that Maa-nulth First Nation regarding such conservation measures." Again, this is referring to conservation measures.

Was that discussed — that Canada will consult with the Maa-nulth Nations regarding conservation measures? Is there a mechanism? Who from Canada will discuss it? Is there a committee set up? Perhaps the minister can comment.

**Hon. M. de Jong:** I'll remind the member that "Consult" — in this case with a capital "C" — is a defined term, so there is a specific set of requirements laid out in the definition for what constitutes consultation within the meaning of the term as it's set out here.

**S. Fraser:** I hadn't noticed the capital "C". Thank you very much to the minister for that. That clarifies it.

So 12.9.3 goes on to say that "each Maa-nulth First Nation Government will provide to the Minister upon request, for Migratory Bird conservation purposes, information concerning the activities of the Maa-nulth-aht of the applicable Maa-nulth First Nation related to the exercise of the applicable Maa-nulth First Nation Right to Harvest Migratory Birds."

[1825]

The information being asked for — "each Maa-nulth Nation...will provide to the Minister upon request" — is this a substantive amount of work? Is it simple numbers? Is there a survey? What's involved with that?

**Hon. M. de Jong:** I am advised that what's contemplated here is essentially a harvest count.

With that, hon. Chair, I move the committee rise, report progress and seek leave to sit again.

Motion approved.

The committee rose at 6:26 p.m.

The House resumed; Mr. Speaker in the chair.

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

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

Motion approved.

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

The House adjourned at 6:28 p.m.



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