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THE HONOURABLE BILL BARISOFF, SPEAKER

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

THIRD SESSION, 38TH PARLIAMENT

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Honourable Bill Barisoff

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TUESDAY, NOVEMBER 27, 2007

The House met at 10:03 a.m.

[Mr. Speaker in the chair.]

Prayers.

Orders of the Day

Hon. G. Abbott: I call second reading of Bill 46, intituled First Nations Education Act.

Second Reading of Bills

FIRST NATIONS EDUCATION ACT

Hon. S. Bond: I move that Bill 46, First Nations Education Act, be read a second time now.

This legislation recognizes the rights of first nations to make laws regarding the education of their own children on their own lands. I know that so many people have worked for years to be able to hear those words. This bill provides an opportunity to ensure that first nations students have an academically strong program equal to that of every other student in British Columbia. This act is part of government's commitment to ensure that we meet the social, cultural and educational needs of aboriginal students in our province.

The facts about aboriginal education are clear. We know that aboriginal students can be successful, but we also recognize that they have had challenges often in the public education system. Our aboriginal completion rate has increased by 5 percent since 2001, to 47 percent.

[1005]

That is great news, but it is absolutely unacceptable that half of our aboriginal students do not complete high school. They deserve a better opportunity to succeed. That is why we are working together with school districts, first nations leaders and the federal government to work to improve aboriginal students' success.

This government has taken a number of steps to ensure the educational, emotional and cultural needs of our aboriginal students are met so that they can be successful. To date, more than half of the school districts in this province have signed aboriginal enhancement agreements.

An enhancement agreement establishes a collaborative partnership between the Ministry of Education, local aboriginal communities and school districts who share decision-making and create specific goals to meet the educational needs of aboriginal students in their districts. Educational enhancement agreements are just one way that our government recognizes the need for first nations culture and languages in our schools.

Next year we are also very excited about the fact that we will be offering students a choice between English 12 First Peoples or English 12 and that they will be able to use either course as they qualify for graduation and provincial scholarships. English 12 First Peoples is

being piloted this year in 14 schools across the province. Three of these schools are first nations schools located in the Stein Valley, in Bella Bella and on Sea Bird Island.

I want to assure you that this course is as rigorous as English 12 and includes a similar provincial examination. Post-secondary institutions will be asked to accept the new course as meeting their English 12 admission requirement.

[H. Bloy in the chair.]

The work to create English 12 First Peoples was incredibly productive as we worked together with the First Nations Education Steering Committee to ensure that the content was relevant and appropriate. We are going to continue to closely monitor aboriginal student progress, as well, through our annual *How Are We Doing?* report, which tracks demographics and the performance of aboriginal students at specific grade levels and in key academic subjects that can lead to a Dogwood certificate and post-secondary study.

Our government is committed to working with B.C.'s aboriginal people and the government of Canada to ensure that our aboriginal students have the best possible chance for success in school and in life. In fact, in July of 2006 this partnership resulted in the signing of not one but two milestone agreements with first nations education leaders. These agreements were the product of years of work by first nations, the First Nations Education Steering Committee, the province and the government of Canada.

The first agreement was a bilateral agreement signed between the province and the First Nations Education Steering Committee known as FNEESC. It recognizes the importance of students being able to transfer between participating first nations schools and public schools and of those first nations schools' graduates being eligible for admission to post-secondary institutions.

The second agreement was signed between FNEESC, the provincial and federal governments and establishes a framework for jurisdiction over the education of first nations children who attend schools on first nations land. These two historic agreements lay the groundwork for the proposed new legislation.

As set out in these agreements, and together with Canada's Bill C-34, the First Nations Education Act recognizes the right of first nations to hold jurisdiction over education on their own land. Following the terms of our agreements with FNEESC and Canada, the bill will do the following: it will recognize the authority of first nations to enact laws respecting education on first nations land, and it requires the province, if generally consulting on education policy, legislation or standards changes that affect first nations education, to consult on those matters with the first nations education authority.

The act also sets out that this act will take precedence over the legislation that may be in conflict with its provisions. It also replaces some provisions of the Final Agreement Consequential Amendments Act, 2007, to harmonize language in it concerning treaty

first nations with amended language in the Independent School Act and the Teaching Profession Act.

[1010]

In addition, this bill sets out amendments to the School Act allowing children who attend a school operated by a participating first nation or community education authority to be exempt from an obligation to enrol in public school and allowing the minister to issue graduation certificates to graduates of first nations schools. This means that first nations students attending a school operated by a participating first nation or community education authority who complete the required curriculum can receive a B.C. Dogwood diploma if they have completed a substantially similar curriculum to that of the provincial curriculum.

There are also changes to both the School Act and the Independent School Act allowing boards of education and independent schools to enter into agreements with participating first nations or community education authorities on education matters.

This amendment makes it possible for local boards of education or independent schools to work with their local participating first nations or community education authorities to deliver educational services to first nations students. This could be in the form of a shared bus contract or shared support services such as counsellors.

The First Nations Education Act also requires some changes to the Teaching Profession Act, allowing participating first nations to review the employers list maintained by the College of Teachers and to require members of the college to report any significant professional misconduct by any other member when it occurs in participating first nations schools.

These legislative changes are the result of our commitment to establish a new relationship with British Columbia's first nations, a relationship that is founded on respect, recognition and reconciliation of aboriginal rights and title. This new relationship is directly related to the strategic vision that this government has laid before British Columbians, a vision that includes making British Columbia the best-educated, most literate jurisdiction on the continent.

We can only achieve this goal if we work together to ensure that the needs of all B.C. students are met. This new act will help us work more closely with first nations education leaders in order to ensure that all students in British Columbia have a chance to be successful.

S. Fraser: I'll be speaking in support of this bill on behalf of the opposition caucus. As the minister pointed out, there is a very worrisome discrepancy in graduation rates in British Columbia and elsewhere across Canada between aboriginal students and non-aboriginal students. Despite the small successes that have been made, it's woefully lacking to date, and this bill will, hopefully — I'm an optimist — go a long way towards addressing some of those discrepancies.

The reasons for these discrepancies in graduation rates and, indeed, the lack of success in education for many aboriginal students in British Columbia are many, and they're varied. The entire system in Canada

under the Indian Act, I think, is part of the problem. Trying to get out from under the yoke of that is something that many first nations and aboriginal people have been trying to do for decades, if not centuries. It is still the Indian Act, the only — as far as I know — race-based piece of legislation existing in the world today. This is a step, I think, trying to break from the yoke of that Indian Act. So, again, a supportable bill.

Other reasons, of course, for the lack of success in education and graduation rates for aboriginal students in British Columbia and in Canada — but especially in British Columbia, very starkly — is the residential school legacy. That has had the effect of breaking up families, taking away the capacity of families in aboriginal communities.

[1015]

I think, from my discussions with first nations, that separating elders from youth, a fundamental part of education amongst aboriginal peoples throughout history.... Now, we're seeing so many of the knowledgeable and wise elders in aboriginal communities passing on without being able to pass on the legacies that they have, the wisdom they have. Hopefully — and I've spoken with Chief Matthew on this — some of the autonomy given in Bill 46, the First Nations Education Act, will help address that and bring together again, in a system uniquely aboriginal in British Columbia, the ability of elders and youth to be able to work together and try to heal some of those wounds and address some of the issues especially, I think, around language.

With the loss of the elders and that breakdown of communication between elders and youth in the province, largely due to the residential school legacy, we have seen a loss of the languages, which would be so tragic. We have a very short time span, really, to deal with that, where those that can actually speak fluently the languages of Nuu-chah-nulth, of the Stó:ló, of the Tsek'ene — across the province so many different linguistic groups....

Hopefully, this bill will allow the autonomy within the educational system, the first nations having the ability to actually make this a part of curriculum and a part of the system that doesn't occur in mainstream education right now. So I think that's another step in the right direction and another plug for this bill.

Another reason, of course, for the discrepancy in graduation rates and success amongst aboriginal children through the school system has been — I don't know any other way to put it — systemic discrimination within the system. This was clearly delineated in the now 11- or 12-year-old document of the Royal Commission on Aboriginal Peoples. In some ways it's very subtle, but that systemic discrimination still exists throughout institutional B.C. and institutional Canada. I see the abilities that Bill 46 brings forward as another step away from that discrimination, and of course, that comes with autonomy and with the ability to make decisions by and for aboriginal peoples in British Columbia.

One of my first functions as critic for the official opposition over two years ago in the interior was meeting with Chief Matthew. This issue came up, of course,

and he had been working on this initiative with the First Nations Education Steering Committee already for a long time, so this has been a long, long time in the works.

It's eminently supportable for that reason too. The inclusion of first nations in this decision-making and in the making and the drafting of Bill 46, I think, is a very important part of what makes this bill so supportable.

I believe this bill spans politics in so many ways, because it's addressing a lot of the problems that we all need to address. It doesn't matter which government is in power. All governments have a legacy that we need to atone for in this regard.

I would like to note — and, again, I don't want to detract from the bill — that this bill is coming in very late in the session. It was introduced on Thursday last week, so this is the very first time any of us will have had to speak about it. I know the House Leaders have spoken, and we've come to agreement on bringing closure on some other important bills. We have many important bills before us, and we have a clock ticking, where we have, after today, two days left in this sitting.

With the Maa-nulth treaty also coming to committee stage.... This bill of course has to be brought forward and supported. But it means it will be at the expense of significant debate that should happen at committee stage, and I don't think that's fair. We have a government that started the session, arguably, two weeks late. I mean, this has been years in the works, so this government knew this bill was coming forward. I believe it's doing a disservice to the bill and the spirit and intent of the bill by bringing it forward so late, because the challenges....

[1020]

There are many challenges with the implementation of this bill. This is not simple stuff. It's been years in the works, and then to make it a reality is still going to take close to two years. The challenges, I believe, should be addressed at least in part in this House with the parliamentary system, with the check and balance that can be brought forward in a parliamentary system such as this.

That can be done and should be done, I believe, through this House. There will not be time. With the agreements already made to move other bills forward by the end of this week and some disagreement on other bills that are also very important, the committee stage of this bill will be lacking.

I would urge this government in the future, when bringing forward such an important piece of legislation, to not jam it in at the last second. You could have allowed two more weeks for this to happen. Arguably, there could have been more time, and in a perfect world, that's great. Two weeks would have gone a long way towards addressing the ability of this House to have serious discussion about some of the key issues in committee stage.

Again, we are supporting the bill. It's a natural follow-through from Bill C-34 federally, which I think was December 2006. This is a perfect addendum to that to make this move forward. I noted that they had some discussion at the federal level, where they were able to

uss out some of the challenges. We aren't going to have that opportunity.

I want to make sure everyone understands on the record that despite the fact that we're supporting this bill, it cannot be dealt with in isolation. To deal with the issues around aboriginal youth and the successes that they need to achieve.... This bill alone will not do that.

I've dealt with.... I know the Minister of Aboriginal Relations and Reconciliation is here, and he knows, too, that there's a lack of hope in first nations communities across this province. It's leading to an appalling rate of attempted suicides amongst youth. This is a piece that will, hopefully, bring us out from that. But it's only a piece, and in isolation it will not be successful.

In Hazelton right now we're seeing issues of youth suicides, and the numbers are terrible. It's what we saw last year in Ahousat. For the issues in Hazelton, Dr. George Deagle, the family physician in Hazelton, says that many of the solutions are political, including creating and funding youth programs.

Hazelton is a community that called out for help — youth programs. The community is centred around an arena that is woefully lacking and needs work and needs assistance, and there's been none forthcoming from this government. I would ask the minister and other ministers and government backbenchers to consider that when these requests come in. Coming forward with a bill like Bill 46, which is arguably well overdue and is supportable by all sides of the House, is not the solution if it's done in isolation.

There's a Nuu-chah-nulth term, and I'll say it again: *hishuk-ish ts'awalk*. Everything is one. All things are united. This bill done in isolation will not work. This bill done with a global thought of *hishuk-ish ts'awalk*, where all pieces of the puzzle must come together, will be successful.

Please take some of that Nuu-chah-nulth wisdom as you move forward with this initiative but, more importantly, with other initiatives related to this.

[1025]

C. James: I am pleased to rise in support of Bill 46 and to echo the words that I've heard in this Legislature, which is how critical this piece of legislation is and how important this piece of legislation is not simply to aboriginal communities, to first nations communities to be able to improve education, but in fact if we improve education for aboriginal students in our province, we improve the lives of all British Columbians.

We all know the statistics, and we've heard them in this Legislature. When we take a look at aboriginal mortality rate, unemployment, poverty, ill health, involvement in the justice system, in all of those statistics, aboriginal people and youth fare worse than the general population. Key to changing those statistics is education. Key to changing and improving the lives of aboriginal people and aboriginal youth is education.

That's why I'm so pleased to speak in support of Bill 46, which, as we've heard from others, has been a long time coming. This is an issue that has been worked on for years and years. I want to express my

appreciation to Nathan Matthew in particular. I know there are a number of people who worked on this piece of legislation, but I know FNEESC and Nathan Matthew really put in years of their lives.

I know that because I, in fact, sat on a committee with Nathan Matthew when I was president of B.C. School Trustees back in early 2000. I know the kind of time, the kind of commitment that has been put into this work and this piece of legislation that we see today.

I think one of the other pieces that's important to note is that if you take a look at the population in general, the aboriginal population is much younger than the Canadian population. We have a larger pool of youth in the aboriginal population than we do in the general population, which, again, makes it so critical for us to be able to improve the lives of aboriginal youth through education.

People have talked about the importance of education to aboriginal communities, and that is a historic piece. In fact, family and community are critical to aboriginal communities. We all know the importance, and we all have heard of the importance or experienced it ourselves, of culture and community to aboriginal people — how critical that is to every part of their lives.

It's critical in education as well, and that's why this bill is so important. Because in order for culture and community to be part of education, that also has to include self-governance of education. That has to include the right of first nations people to actually control their own education system, to be able to ensure that culture and community, which are such a critical part of being aboriginal, are also a critical part of our education system.

It is important that this bill passes. I want to express my appreciation, as I said, to FNEESC, Nathan Matthew and all those who put years into supporting this. As the previous speaker said, we have to remember, as well, that this is one step, that this bill by itself is not going to fix the challenges that are there in the education system or the challenges for first nations communities.

After this bill is passed, we're going to have to deal with all the issues around funding and making sure that proper funding actually follows to make this happen. That's going to be critical, because if the funding isn't there, then this bill is going to be for naught. It won't fix the challenges. So the funding issues are going to be critical. The jurisdiction issues are going to be critical. But I'm optimistic that all parties coming together around this bill provides an opportunity for success, so I look forward to the passage of this bill.

C. Wyse: It is indeed my pleasure to speak briefly on this particular bill. I want to commend all the people that have been involved in the presentation of this bill. There are two pieces of information that I would like to share with the House for additional reasons to support this particular bill.

[Mr. Speaker in the chair.]

Education is the tool that provides opportunities. It opens doors for all people in the world in general. Specifically here within British Columbia, the first nations

communities in Cariboo have indicated their eagerness to accept the responsibility for providing education for their community.

[1030]

In particular, in my discussions with first nations leadership in the Cariboo, they have pointed out that with this act and with the new power that is being given to them, it allows an increased opportunity for the preservation of their language. It is language, in actual fact, that forms the basis of culture and allows for the continuation of it. That is a very significant reason for the support of this particular bill.

However, in addition to the Cariboo area, in particular, Cariboo South, this bill also provides an increased opportunity for education to be provided in the more rural parts of the riding in a school environment. Not that education being provided by distance learning is necessarily a bad way to obtain education, but a school environment also provides the increased opportunity for learning how to interact with people and the social skills that are also necessary to go on in life.

With those two items, given the nature of my riding, I wish to bring my support as an MLA to this particular bill and acknowledge the government for bringing it forward.

G. Coons: I also would like to rise in support of Bill 46. As we understand, this is a step in the right direction, coming from a riding that is so diverse. As the minister mentioned, the Bella Bella Community School is one of the schools that will benefit from this. When I visit communities, whether it's in Bella Bella — who are proud of their cultural heritage, who teach their students in both modern and traditional cultural ways, including many, many activities.... It is indicative of where we need to go and get it on par with what we've got going in our education system.

Also, I look at some of the institutions in the riding that I represent. The Coast Tsimshian Academy was honoured by the Premier in March of this year as an outstanding school. I think it is also an indicative measure of where we need to go.

Again, when we look at graduation rates and the dismal record that we have, this is a step in the right direction so that first nations can take control of their educational opportunities. I think it's critical and important that we improve the educational opportunities for aboriginal students, as it benefits all British Columbians.

As mentioned by members on this side, we are supporting Bill 46.

One other school I do have to mention is Chief Mathews School in Old Massett. When I visit that school, it makes my heart soar when I look at the preservation of their culture and preservation of their language, which is so vital in so many of our communities where there are so many instances where first nations need to draw on their culture.

Again, hon. Speaker, I support Bill 46, but we have to ensure that we are providing the resources and the funding to the on-reserve educational institutions — so that they are similar to what we have in the public

schools, so that they may advance in their culture and preservation of their language.

On that, we support Bill 46.

Mr. Speaker: Seeing no further speakers, Minister of Education, Deputy Premier, closes debate.

Hon. S. Bond: I want to begin by also expressing our incredible thanks to a team of people who have worked very hard to see that this bill reached the Legislature floor.

As the Leader of the Opposition pointed out, this certainly has been a very long time in coming. I think it has been well over a decade since the dreams of first nations leaders in this province in terms of educational jurisdiction were expressed.

[1035]

I want to say a very special thank-you to all of the members of FNEESC, most particularly Nathan Matthew, Christa Williams, Tyrone McNeil — leaders who have literally worked very hard with us to ensure that this bill reflects the principles and the importance of this jurisdictional arrangement.

I want to also add on that list of thank-yous a particular note of thanks to the then minister who had aboriginal responsibilities. Minister Jim Prentice was actually the signatory and helped with the federal government to make sure that this was moved through the federal House as well.

I want to say to the member for Alberni-Qualicum how much I appreciated the comments that he made and the passion he brought to the issue of "not in isolation." I think we certainly, as a government, recognize that there's not one particular act or bill or piece of legislation that will see the importance and bring to our province the kinds of results that we want to see for aboriginal people. It is about a number of things.

It's about a new relationship that looks at respect and reconciliation and all of those things working together. Certainly, in the educational portfolio we're looking at a number of things, including things like aboriginal enhancement agreements, language and culture. This is one part of what it will take, we hope, to see that success.

I want to thank that member in particular for the passionate way in which he addressed this bill. I think it does represent hope.

As I spoke at the conference for aboriginal educational leaders on Friday in Vancouver, there was such a sense of enthusiasm about the fact that this had actually reached the Legislature. I know there's a great deal of celebration going on to the point that we have brought some resolution to an issue that has been under way for more than a decade in this province.

I think that it is important to include aboriginal people in decision-making processes. There is no more important place to do that than in the education of their children, making sure that curriculum is relevant and appropriate and that it talks about those things that matter so much: culture and language.

Mr. Speaker, it is exciting today to know that we will have the support of both sides of this House in what is a historic piece of legislation in the province.

[1040]

Second reading of Bill 46 approved unanimously on a division [See *Votes and Proceedings*.]

Hon. S. Bond: I move that the bill be referred to the Committee of the Whole for the next sitting of the House after today.

Bill 46, First Nations Education Act, read a second time and referred to a Committee of the Whole House for consideration at the next sitting of the House after today.

[1045]

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

Committee of the Whole House

MAA-NULTH FIRST NATIONS FINAL AGREEMENT ACT

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

The committee met at 10:49 a.m.

On section 1.

S. Fraser: I just have some clarification on section 1 as far as Maa-nulth goes. I lived in Nuuchah-nulth territory for 12 years, and I'd never heard the term "Maa-nulth" prior to this treaty coming forward, so I am curious. Nuuchah-nulth make up some 14 different nations on Vancouver Island. The Maa-nulth treaty group represents five of those.

Now, I understand the history of that. There was a hiving off with agreements-in-principle and a separating of ways at the treaty table, and I understand the history there. But the Maa-nulth peoples in this treaty are five nations that are not contiguous boundary-wise. Ka:'yu:'k't'h'-Che:k:tlas7et'h' is north of Clayoquot Sound, separating the other nations.

[1050]

I'm curious. Does the minister have any wisdom on what the term Maa-nulth means, and how was that arrived at? Does it have meaning and significance here?

Hon. M. de Jong: I wonder if I might begin by introducing to the House, to my left, Michael Furey from the ministry, and Chief Negotiator Mark Lofthouse behind me. Keith Brown, as well, is joining us in the House for the purpose of the discussion and debate today.

The member has correctly alluded briefly to the history by which the Maa-nulth negotiating partnership arose — these five communities, first nations, within the larger Nuuchah-nulth group. The specific

word "Maa-nulth" I am advised means "people of the coast" or "people along the sea" and was the term that those five communities chose.

They actually had their AGM on the weekend. I can advise the member that I had an opportunity to attend yesterday afternoon in Campbell River, where the communities were gathered. It was a very festive affair.

The Maa-nulth are excited by the fact that the treaty has been introduced. Obviously, the chiefs were here and presented some stirring words in this chamber, but they were met with great support, great enthusiasm amongst their peoples who were gathered in Campbell River for the AGM. They are excited at the prospect of the House voting on the final agreement this week and seeing this second ratification stage in British Columbia met, and it's then off to Ottawa for the final one.

We've got some work to do, I told them, before we get there. We're doing that work now.

Section 1 approved.

On section 2.

D. MacKay: I'm assuming when you say section, you are talking about chapter 2.

The Chair: Section 2 of Bill 45.

S. Fraser: I was just going to ask if the minister.... I know he explained to me the process we are doing here today, but maybe there are others that don't at this time know how we're going to go through this.

Hon. M. de Jong: The proposal which makes sense to me is that when we get to section 3 of the bill, we would embark upon a more detailed discussion via section 3 of the actual final agreement.

Section 2 approved.

On section 3.

D. MacKay: The actual value of this treaty that's before the chamber today: did the negotiators actually cost out the entire package that we're going to be providing to the Maa-nulth peoples for this budget?

Hon. M. de Jong: I'll endeavour to provide some responses to the member now or, if the member wishes, as part of the discussion that relates to lands in chapter 2 or any of the other provisions. For the sake of time, however, I'm proposing not to do it twice. I can do it now or in the relevant chapter.

[1055]

D. MacKay: I would like to deal specifically with the land values. As you go through chapter 2, it refers to the amount of land that will be added to the existing reserves that will become part of the treaty settlement lands.

I just wondered: have we priced out the value of the land that will be added to the existing reserve lands?

Hon. M. de Jong: Yes, a valuation process has taken place, and the overall value of the settlement package is estimated to be about \$319.2 million.

D. MacKay: I would question the value, \$319 million. I think you said that was the overall cost. I'm assuming it includes the actual cash transfer moneys. If you look at the reality of the situation, there are in excess of 50,000 acres of land being added to the existing territories that the Maa-nulth people presently have.

If you assess the value at \$10,000 an acre, just the land value itself would come in at over \$500 million. That's using a lowball figure of \$10,000 an acre. I would suggest that some of those lands are valued at far in excess of \$50,000 and could be as high as \$200,000, given the fact that they are waterfront properties.

To estimate \$319 million as the total overall cost of this particular land transaction or the entire treaty is, I think, not being totally accurate. Of course, that's subject to what the lands are going to be used for. Just based on the actual land values, as I said, at \$10,000 an acre for 50,000 acres, that's half a billion dollars.

I wonder if I'm being a little out to lunch on that. I have, in fact, discussed this situation with people in the real estate business in that part of the Island.

Hon. M. de Jong: No, I think the member is correct when he points out that estimating the value of this land is far from an exact science, since so much of it depends upon the decisions that are made around its use and whether it is an area that's going to be excluded from any kind of development. Obviously, timberlands have one value; residential development lands have another. The member is also correct about the potential value of some of the waterfront sites for potential resort development.

[1100]

As this area begins to take off — and I think in some cases it will, and that's a good thing — we are going to see the value of at least some of these properties appreciate significantly. I think that's a good thing. I think it does pose some of the challenges that the member has referred to in terms of trying to estimate with accuracy, at any one point in time, values — particularly when, as the member says, we don't know what all of the decisions will be about how this land is put to use.

D. MacKay: I have one more question to the minister. It has to do with chapter 11, dealing with guiding. I wonder: did you want to deal with that now, or did you want to wait until we move forward? There may be other questions from other members leading up to chapter 11.

Hon. M. de Jong: In fairness to the other members, let's take it in order of the chapters.

[S. Hammell in the chair.]

S. Fraser: I note that the member offered a question from chapter 11. I'm hoping that we're going to try to

go chronologically here, if that's the right term. Hopefully, there will be a bit of leeway there in case other members come in and realize they've missed something. For my part, I'm going to try and follow the order of the document.

In section 1.10 it refers to court decisions. Now, we just had the Vickers decision, which I'm sure is going to be up for interpretation for a while by various lawyers. My understanding is that the Premier has already met with Chief William, and I know that the Leader of the Opposition has, so at some point there may be a precedent that comes out of such a landmark case — the case we saw just last week with the Chilcotin.

With that in mind.... There is an interpretation of the case that came out last week in the Vickers decision that there was a recognition of rights, if not title. I mean, I'm paraphrasing this badly, but presumably — from what I read of it — the rights would supersede fee title, for instance. Regardless of assessing in a treaty — for instance, a fee title situation of land, which we're seeing with treaty — the rights still exist on the larger lands.

Has there been any discussion at the ministerial level? I'm not meaning this to throw a wrench in here. I want to know how decisions and precedents that happen, in this case, concurrent with the treaty but that no doubt will happen following this treaty.... If a court determines that a right cannot be extinguished and, potentially, it was extinguished through treaty, is there a mechanism for dealing with that through this process?

Hon. M. de Jong: The member, I think, will appreciate that at a time when we are continuing to review and assess the judgment that was handed down by the Supreme Court of British Columbia by Mr. Justice Vickers, I'm going to steer clear of trying to offer interpretations or in any way offer an explanation, review, synopsis or interpretation of that settlement.

Suffice to say, though, that once again we have from the court a reminder that the best and most effective means of addressing the concept of reconciliation, of solving the long-unresolved land question is for three parties — the governments of Canada, British Columbia and first nations — to sit down at a negotiating table and negotiate an agreement.

[1105]

It was ironic that on the same day that decision was handed down from the court, we had an example — the first example — of a multi-first-nations-negotiated final agreement. So that agreement is here. It is consistent and has been negotiated in good faith by the parties. It is consistent with the constitution of Canada and is an agreement that I think will withstand the test of time.

S. Fraser: But in section 1.10.1, the "Court decisions," it refers to the parties. So I'm assuming that we're looking at the parties being the province, the federal government and the Maa-nulth themselves — the five Maa-nulth First Nations. Is that correct? Or are the parties the five Maa-nulth First Nations?

It's an interesting case, as the minister points out. If you have to open up this thing again because of a court

decision.... Actually, it's specifically referring to this in this section, so I'm not sort of pulling this out of the air. Then the decision to open this up would be from the parties. Would the parties be all five Maa-nulth Nations and the province and the federal government? Would any one of those have a veto? And if one of them in a tripartite agreement is five nations, can the minister just explain how that would work?

Hon. M. de Jong: I think I understand the member's question. All five first nations are parties to this agreement, so it would be accurate to say that the parties to this agreement are the governments of Canada and British Columbia. The first nations of the Huu-ay-aht, the Toquaht, the Ucluelet, the Ka:'yu:'k't'h'-Che:k'tles7et'h' and the Uchucklesaht would all be parties. Therefore, where there is reference made in this agreement to the parties, it refers to them collectively as the Maa-nulth but also individually as first nations.

S. Fraser: I'm not going to do this through the whole treaty, but this is key. I'm going to go hypothetical here. Say Ucluelet First Nation has an issue they want to reopen. It could be for other reasons, but let's just say it's because of a court decision that may or may not be precedent-setting.

Would it mean that the Ucluelet First Nation would need to meet with the Ka:'yu:'k't'h'-Che:k'tles7et'h', with Huu-ay-aht, with Toquaht and with Uchucklesaht? Would they first have to come to an agreement as the Maa-nulth if an individual first nation member of Maa-nulth needs to deal with an issue?

Hon. M. de Jong: This particular section would operate in the following circumstance. In a situation where a court had made a pronouncement interpreting one of the provisions of the agreement — so we're not talking about a case involving third parties or another legal pronouncement; this section is relevant to a decision pertaining to one of the provisions of the agreement — and the parties decided or one of the parties decided that they wished to amend this agreement to take into account that decision or to respond to that decision, all five first nations, the governments of Canada and British Columbia would have to agree.

[1110]

The amendment would require consent from all of the parties, and in this case, all the parties would include all five first nations.

S. Fraser: Thank you for the answer. That cleared that up. Thank you very much.

On the next page, section 1.11.6 at the bottom, "Release of past claims." I don't know if this is the appropriate point because this spans a number of different topics. But if I may, the minister may be aware that for some ten years now, there has been in place what is known first as the interim measures agreement and then the interim measures extension agreement — of five Nuu-chah-nulth first nations. So the Toquaht and Ucluelet were part of that — also Tla-o-qui-aht, Ahousaht and Hesquiaht.

This came out of a land use decision, and the interim measures agreement was then moved to the interim measures extension agreement. I think it's been extended about two or three times.

Through that process was the inception of what is known as the Clayoquot Sound central region board, which has and had those five nations that I referred to — two of which are Maa-nulth, who now have treaty.

I'm saying "release of past claims." I don't know if this is a point, but in past claims, that interim measures agreement was considered the bridge to treaty. That's the way it's been described from the beginning.

Now that we have two nations that have accomplished — or presumably will have accomplished — treaty here through the Maa-nulth table, do the Toquaht and the Ucluelet First Nations still have claim to a seat at the Clayoquot Sound central region board, which is the bridge to treaty?

Hon. M. de Jong: Thanks to the member for the question.

I'm advised that they presently continue to sit at the table of the body that the member referred to, but that in anticipation of ratification of the agreement, discussions are already taking place about what, if any, changes should be considered to take account of the very fact that the member mentions — that two of the parties are entering into a final agreement. I can't say much more than that because I think it's fair to say the discussions are at a preliminary stage.

S. Fraser: Thanks to the minister for that.

I assumed they were still sitting, because even though it's academic that this will make it through this House.... I don't like to assume, but I will make the assumption that it will get through the big House in Ottawa in a fairly timely fashion,

But the Maa-nulth treaty will not be fully enacted until.... Am I correct? Is that 18 months? It's a fairly lengthy period of time. First, can the minister clarify that?

Hon. M. de Jong: Well, I hope the member's and my optimism is not misplaced in the case of the federal authorities, though I do know this. They are anxious to see this ratified and will proceed. It will not receive ratification in Ottawa prior to the end of this year.

My hope, of course, is that the Tsawwassen agreement that we passed in this House several weeks ago will be introduced and receive ratification in Ottawa prior to the end of the calendar year. If that is so, it is more likely that this agreement would be introduced in Ottawa in the spring.

I don't have confirmation of that for the member or the House, but that would seem to be the logical time. There's then a period of implementation that is necessary.

[1115]

That having been said, I think I offered in the debate on the Tsawwassen the hope that an effective date at the end of 2008 or very beginning of 2009 was realistic. In this case, it would seem to me that realistically we would be looking at an effective date early in 2009

as opposed to sometime in 2008, but that is speculative on my part at this stage.

S. Fraser: Thanks to the minister for that. With that in mind.... Again, I don't like to make assumptions, but I would make the assumption that the Clayoquot Sound central region board in its current form would still have validity with all five members, whatever the discussions might be, because the bridge to treaty and the treaty wouldn't be enacted until that later date. I think it's still a role at the table and maybe post-treaty.

I guess what I'm getting to is that the role that's been played by the central region board has been a very critical one in bringing a means to Clayoquot Sound region, in general, to deal with land use issues, resource use issues. It's actually been a unique venue for bringing together first nations leadership from five nations currently and also five non-first nations leaders.

In that sense, it's a key part of.... Even the premise is laid out in the new relationship, where first nations and non-first nations communities can work together.

Just to finish this off. With this treaty and a separation, potentially, at the table between the Maa-nulth members and the other three Nuu-chah-nulth members of the Clayoquot Sound central region board, it's not a foregone conclusion that that will be the end of the Clayoquot Sound central region board. Am I correct in making that assumption?

Hon. M. de Jong: Given the schedule I've laid out, it's my expectation that the Toquaht and the Ucluelet will continue for the foreseeable future to participate in that process and exercise.

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

Section 1.12.0 deals with "Other aboriginal peoples." I've already alluded to this in my previous question, but there are certainly other aboriginal peoples in the region: Nuu-chah-nulth and the larger Nuu-chah-nulth — those nations that have not been part of the Maa-nulth treaty.

There are certainly some disputes about the nature of things like the boundaries. I understand that within Nuu-chah-nulth outside of this treaty, there are disputes amongst boundaries. I understand the challenges here.

Can the minister let us know which Nuu-chah-nulth first nations outside of this treaty have raised issues around the treaty, specifically around boundaries — but if there are other issues that have been formally brought up?

[1120]

Hon. M. de Jong: I'll answer, firstly, the member's question by making reference to any formal legal challenges that have taken place that might fall into the category of overlapping claims or disputes around overlapping claims. The only one that I am aware of was an action commenced by the Tseshaht against, specifically, the Huu-ay-aht. I don't know that the Crown was even named as a party. I'm advised that the Crown was not named as a party.

That action was heard by the court. It related to an allegation that boundaries in the final agreement contravened a bilateral agreement between the Tseshahat and the Huu-ay-aht First Nation. That action was heard, was ruled upon, and the application by the Tseshahat was dismissed by the court.

S. Fraser: I'm aware of that. I've spoken with Chief Sam on this on a number of occasions. I know that the minister probably has also — from the Tseshahat. These boundary issues are difficult.

The Tseshahat have some documentation that indicates there was some obligation to try to address these boundaries issues before leaving stage 4. I've seen the documentation on that. I understand the court made a ruling. But it was late in the day, and they've done this before on other rulings where it's too late to really bring these things forward and interfere with the treaty process.

Can the minister comment on those...? I'm sure he's seen the same documents. There are Treaty Commission documents that seem to indicate there was an obligation or an expectation that the boundary issues would be cleared up before going to stage 5. Can the minister comment on that?

Hon. M. de Jong: Thanks to the member for the question. I don't want to in any way diminish the significance of the issue that the member raises.

The question around overlapping claims is complicated at the best of times, and most of our experiences to this point have involved agreements with a single first nation and the potential impacts on neighbours. Multiply that by five here, and one gets a sense of the complexity.

I also think it's fair to say that the Crown in the right of the province of British Columbia... We — the negotiators, the government — have learned a great deal even in the last 18 months about how to better identify where some of these issues arise, where there's a potential for misunderstanding, how to communicate better around some of the maps.

I think we talked about this in the Tsawwassen discussion, as well, as to how some of the maps that are produced and show up in a particular community cause great consternation when someone sees a line coming through what is believed to be the heart of a traditional territory, not really understanding what that line represents except that confusion about why it's there.

So I think we're doing a better job. The absence of litigation, to this point at least, involving the Crown on this case is perhaps evidence of that.

[1125]

But I think we still have to take great pains to try to involve neighbouring communities. I know that is the wish of the Maa-nulth, who are obviously celebrating this achievement but also want to ensure, as we do, that neighbouring communities understand that by the non-derogation provisions, nothing in this agreement can adversely impact the aboriginal rights that those first nations communities have.

It's an ongoing process. I'll say this candidly. I think we're miles ahead of where we were with the Lheidli T'enneh in Prince George, mostly by virtue of having learned more about how to engage and how to spot some of the issues when they arise and deal with them in a timely issue. It requires, I think, a joint effort on the part of the Crown and the first nations involved in the negotiation to ensure that others who are not directly involved in the negotiation have some appreciation for what is taking place and for what the impacts are, and aren't from the results of those negotiations.

S. Fraser: Thanks to the minister for that. We've come a long way since Lheidli T'enneh and changes from that. We have Lheidli T'enneh, and Tsawwassen and Maa-nulth were simultaneous, except for the dates of their votes within the first nations. The negotiations were complete at the same time. What changes have occurred with Maa-nulth or Tsawwassen that you're referring to, which precipitated from the Lheidli T'enneh?

Hon. M. de Jong: I think the member's question is related to some of the differences that have characterized the engagement. An obvious one that did not take place in the case of the Lheidli T'enneh relates to some of the capacities, some of the funding.

In the case of the Maa-nulth agreement, we actually provided some funding to the Tseshahat, the Hupacasath, the Ditidaht, the Ehattesaht — perhaps modest funding but close to \$100,000 in total divided up amongst those first nations to assist them in terms of engaging with their neighbours around a better understanding of the agreement.

That's, again, a result of having learned the value of helping to facilitate that kind of direct contact and communication.

S. Fraser: Thank you to the minister for that. I knew there was a certain sum of money. I didn't know the number. That's good. Of course, those resources are, I'm sure, well used for that purpose and appreciated.

[1130]

Has that gone back to the Tseshahat? Are there funds flowing now from the no vote or the failure to get an agreement on the treaty for the Lheidli T'enneh? Is that pattern going back over to the Lheidli T'enneh?

Hon. M. de Jong: No, not at the moment. I think that's attributable to the fact that, at the moment, my latest understanding is that the Lheidli T'enneh continue to review their options and to decide whether or not to pursue additional ratifications. I think once that decision has been made — when it is; if it is — we'll be in a better place to assess what, if anything, needs to flow.

S. Fraser: I think I'm good until we get to "Lands."

The Chair: Chapter 2. We're on section 3.

S. Fraser: I'm dealing with section 2.3.0, "Ownership of Maa-nulth First Nation Lands." The minister

mentioned in the earlier chapter that.... I guess the example was the Tseshah and a potential boundary dispute there and that nothing in Maa-nulth would infringe on another first nation's rights.

When it comes to the lands, the actual lands in use in the Maa-nulth treaty, where we've got borders — because there are a number of borders.... There are the borders to the south of the Huu-ay-aht with the Ditidaht. There are the borders, geographically probably not exactly south and north but for that purpose of the Island, north of Huu-ay-aht. It's a Tseshah issue. With ownership, obviously, through the treaty, comes the rights to use of the lands.

Where there's a boundary dispute that, as the minister said, will not infringe on the rights of another first nation, what about the resources of those lands that are in contention? If they're utilized by, in this case, the Huu-ay-aht, who would have legitimate use of the land and autonomy over the land that they are achieving in this treaty, that's part of self-governance.

Where there are those border disputes, whether it's resource or cultural sites or whatever, what mechanisms post-treaty are we going to see to help adjudicate those and, hopefully, bring some remedy so that there isn't conflict?

Hon. M. de Jong: The member may have a more general question, but I did want to pass this along. I am advised that, with respect to the Ditidaht, which is the nation that he mentioned specifically, there are no treaty settlement lands located within the Ditidaht overlap area. I wanted the member to know that.

He may have a more general question, though, and I'll be happy to answer that as best I can.

[1135]

S. Fraser: I know there's been some discussion about dispute of cultural historical territory. Certainly I've seen it in the news. I think it was a Ditidaht elder suggesting that there might be some problem with the proposed boundaries. There might have been usage from the Ditidaht historically. Obviously, there probably has to be in these cases. There are no firm boundaries based on historical use.

Does that come across? If there is a dispute — I guess that's what I'm looking at — in the future.... We're looking at other Nuuchah-nulth First Nations involved in treaty. They're maybe not at as high a stage in the treaty process, but presumably, we'll want to engage them to allow them reconciliation too.

While these disputes are happening, even hypothetically, now with Maa-nulth Nations that have achieved treaty, how...? Is there anything anticipated that the minister can offer to try to help — mechanisms put in place or resources, as he's mentioned, that he learned from the Lheidli T'enneh? Is there any mechanism that can be used to help adjudicate any boundary disputes or historical usage disputes?

Hon. M. de Jong: I think the short answer is that where situations arise.... I'm not referring to any specific one, but where concerns are expressed of the sorts

that have been described here, the first response is to sit down with the party or parties and try to negotiate a resolution to them. That has occurred in the past. It may occur in the future.

Ultimately, though, if a situation were to arise where a third-party first nation felt that those negotiations were not sufficiently addressing their concern or if a settlement proved elusive, their right to proceed with an action against the Crown would continue to exist. If a finding were ultimately made by a court in support of that third-party first nation, then the non-derogation provisions of the final agreement would take effect to ensure that those rights have not been prejudiced.

The sequencing is, of course, first discussion and then negotiation, with the objective of trying to find a solution. But ultimately, the guarantee or protection for other first nations is the opportunity to commence an action in defence of what they perceive their rights to be or any infringement on those rights.

S. Fraser: Thank you to the minister for that.

Section 2.4.0, "Submerged lands." I don't know if the minister has read.... Recently in the press, there was a list of hundreds of first nations reserves that might be affected throughout Canada that may have explosive devices on them.

One that was noted was the Tla-o-qui-aht First Nation. Chief Moses Martin is the chief councillor. Of course, there's an airport there, Tofino Airport, which is on Tla-o-qui-aht traditional territory. It was built during the war. It's substantial. There are bunkers and everything else. It's quite historic in a lot of ways.

Apparently, there are some bombs missing, and there's the potential for those to show up in the water, subsurface. I know that Chief Martin raised that as an issue, with the notification that this is a possibility. Of course, they have extensive use, historically, of the waters off Long Beach and going up through Tofino and near the airport.

Again, it raised the spectre that there could be any number of problems that first nations — in this case, the Maa-nulth Nations, coastal nations — could be inheriting.

[1140]

I note that there's no ownership of submerged lands here. I'm not sure I understand that, but I'll get to that in a minute. If there were a problem, if there were something that was inherited that was unbeknownst to any of the parties at the time of this signing, is there a remedy in place? Who would be responsible? Presumably, the feds. It's an issue that has come up, and it's been raised in the immediate vicinity in the last week, so I raise it. It is a germane point.

Hon. M. de Jong: The agreement contemplates that in the case of undetected ordnance of the sort that the member has referred to the usual procedures for the disposal of that ordnance would apply. In fact, there are provisions that ensure the Department of National Defence and the experts that deal with such things would have access. As the member has pointed out,

where that ordnance is located on what are termed "submerged lands," those lands remain in the title of the Crown in any event.

The member is right. There is some history here in terms of some of the former defence facilities that were located there. It's not outside the realm of the possible that outdated ordnance might rise to the surface or become detected, and it's contemplated that the usual procedures for the safe removal of that material would continue to take place.

S. Fraser: Thanks to the minister for that.

If memory serves me — it sparks something here — I think there is historic documentation of a Japanese submarine during World War II that apparently made it to the coast, and I think it was Ka:'yu:'k't'h'-Che:k:tlas7et'h' territory. I think there was a lighthouse shelled or something. There was certainly some reference to that.

This may come up as a future issue too. There's a lot of first nation history here, Nuu-chah-nulth history, but there's also a lot of more recent history going back to the Second World War. Hopefully, it will not be an issue.

On the actual subsurface rights, it says here that Maa-nulth lands.... Nothing in this agreement affects British Columbia's ownership of the submerged lands. Now, I'm assuming — maybe incorrectly, but the minister can correct me — the traditional territories.... These are ocean nations, and the use of the ocean and the floor of the ocean on the coast here is well documented.

I'm assuming that there is an understanding that there are still rights that exist for the Nuu-chah-nulth Nations to use those lands, subsurface though they may be, at least to a point. Can the minister help me there?

[1145]

Hon. M. de Jong: Generally speaking, the member is correct. The title for the Maa-nulth stops short of the submerged lands. I'm advised there are a couple of exceptions to that emanating from existing Indian reserves, but in general, ownership stops short of submerged lands, which is a defined term under the agreement.

But the right to carry on activities — fishing being the obvious one — above and around those submerged lands continues as provided for in the agreement. So there are certainly rights that accrue to the Maa-nulth under this agreement in the waters above those submerged lands.

S. Fraser: Thanks to the minister for that.

Well, in section 2.4.3 "British Columbia will not...b. grant a lease that, with any rights of renewal, may exceed 25 years." What about under 25 years?

Hon. M. de Jong: The section 2.4.3b we're dealing with has to be read in conjunction with the wording at the end of the section. It says the province, in respect of the submerged lands that are "wholly contained within Maa-nulth First Nation Lands" — that further defines it, and it's actually a very small amount of submerged

lands involved there — will not grant a lease that exceeds 25 years without the consent of the first nation.

That term remains in place throughout the life of the agreement. So that provision doesn't end after 25 years or 25 years from effective date. That provision remains in effect and says that a lease exceeding 25 years will not be granted over those defined submerged lands without the consent of the Maa-nulth.

S. Fraser: Okay. Playing devil's advocate, can a lease, then, be granted for ten years without the assent of the Maa-nulth Nations?

Hon. M. de Jong: Yes. The answer would be yes to that.

S. Fraser: So the government could grant a lease for 24½ years for, say, a geoduck farm that has nothing to do with the nation involved — without any consultation? Is that a scenario that could happen?

[1150]

Hon. M. de Jong: In the specific example that the member has given, I'm advised that the prospects of locating a site on submerged lands and — again, this is the important part — wholly contained within treaty settlement lands is fairly remote, if not impossible.

But the other perhaps more significant answer to the general principle is that the member will see under 2.4.4 that specifically the riparian rights of the Maa-nulth First Nations are considered. So whilst the consent provision referred to in 2.4.3 does not apply in that circumstance, there are a variety of other obligations that would have to be met before that kind of an arrangement could be reached.

S. Fraser: In the case of, let's just say, an aquaculture tenure.... And I'm going to say within traditional territory here. These are often very proximal to the shore, so obviously the historic use is there for the first nation involved. Would it be a tenuring agreement that would go through lands as it does now, and the first nation involved would be consulted with? Is that how those tenures would be let?

Hon. M. de Jong: In any kind of a tenuring exercise, the rights of the Maa-nulth as upland riparian owners would have to be taken account of and would automatically ensure a degree of consultation and discussion, just as it would with other upland riparian owners.

S. Fraser: I'm just curious. Did the minister say "in other tenuring issues"? On land, on the shore within the new settlement territories, tenures can still occur? This is now a fee simple — right? I mean, I'm not talking about going underneath the water now. But just for clarification of the last point the minister made, other tenures...? There are all kinds. There could be mining tenures, forest tenures or any number of aquaculture tenures and probably any other tenures. There's a significant change through treaty — is there not? These

things are not just about consultation now. This is ownership. Is that correct?

Hon. M. de Jong: Yes. I thought the question related to offshore submerged lands, non-treaty settlement lands. There is clearly a very different regime in place around treaty settlement lands, where it will be the Maa-nulth who make the decisions about what tenures, if any, will exist on what will in effect be their land.

[1155]

S. Fraser: That's comforting. I'm curious. When it's subsurface, it does raise the spectre of offshore and offshore development for whatever reason, whether it's renewable energy sources, tidal, solar, waves or offshore drilling — oil, gas, exploration. Again, there's historic use, certainly, from Maa-nulth Nations.

Are there any protections put in place for the Maa-nulth Nations in this treaty for such usages, which are not there without the treaty? Does the treaty provide any protections or any other requirements for that kind of development?

Hon. M. de Jong: Firstly, I'll restate what I said a moment ago about the obvious jurisdiction that the Maa-nulth have over treaty settlement lands. The second part perhaps provides some comfort to the member insofar as the question he has raised. Decisions that the Crown, in the right of either the province of British Columbia or Canada, might make in offshore situations

or other cases are now constrained to a certain extent by the obligation that will exist under this agreement not to adversely impact the rights — be they gathering rights or fishing rights — that accrue under this agreement.

It is fair to say that in signing this agreement, the two Crowns are acknowledging that they will act in a way that is respectful and gives effect to the rights that are acquired and accrued and, in this agreement, constitutionalized under this final agreement that we're debating.

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

Motion approved.

The committee rose at 11:58 a.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 1:30 p.m. this afternoon.

The House adjourned at 11:59 a.m.

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