



House of Commons
CANADA

Standing Committee on Aboriginal Affairs and Northern Development

AANO • NUMBER 043 • 2nd SESSION • 40th PARLIAMENT

EVIDENCE

Tuesday, December 8, 2009

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Chair

Mr. Bruce Stanton

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•(1105)

[Translation]

The Chair (Mr. Bruce Stanton (Simcoe North, CPC)): Honourable members, witnesses and invited guests, welcome. This is the 43rd meeting of the Standing Committee on Aboriginal Affairs and Northern Development. On our agenda today is the consideration of barriers and challenges to economic development in the North.

Today we welcome representatives of two businesses and associations. The first witness represents the Yukon Environmental and Socio-economic Assessment Board.

[English]

First we have the representatives of the Yukon Environmental and Socio-economic Assessment Board. It's a pleasure to have with us Ken McKinnon, who is the chair of the board. Of course, we welcome back Stephen Mills, whom we were able to meet when we were in the Yukon two weeks ago.

Our second organization today is represented by Mr. Ian Robertson, a council member with the Yukon Land Use Planning Council.

Before we begin with presentations, members will have seen on the orders of the day that we planned for committee business beginning at 12:30, so we have slightly less than an hour and a half to go through questions. We'll begin with presentations of up to 10 minutes from each of our two organizations, and then we'll go promptly to questions from members. In light of our tight agenda today, we'll stick very closely to the times for questions and answers as well.

Let's begin. Who wishes to lead off?

Mr. McKinnon, go ahead.

Mr. Ken McKinnon (Chair of the Board, Yukon Environmental and Socio-economic Assessment Board): Thank you very much, Mr. Chairman.

Thank you very much for inviting us.

Your press release of October 30, 2009, launching your comprehensive study of issues related to northern economic development, states that, "The Committee intends to focus on gaining a better understanding of the barriers and challenges northerners in the three territories face in promoting their economic well-being, and possible solutions to overcome those barriers".

We'd like to try to make the case to you today that the Yukon Environmental and Socio-economic Assessment Board is one of those solutions you are seeking.

YESAB is totally unique in Canada in that it is a single made-for-Yukoners assessment process that applies throughout Yukon to all projects on all Yukon lands, and to the territorial, federal, and first nations governments.

How did this come about? It was mainly through the Yukon land claim and the insistence of the Yukon first nations people that there would effectively be no more Faros created in the Yukon.

Faro became the largest lead/zinc mine in the world in the 1970s. It was created with absolutely no consultation with the Ross River Dena, in whose traditional territory the mine was located, and no consultation with any other group of Yukoners. The cost of cleanup of this mine to the Canadian taxpayer is now estimated at anywhere between \$500 million to \$1 billion over a lifetime of some 50 to 100 years.

The Yukon first nations, under chapter 12 of the Yukon first nations Umbrella Final Agreement, demanded that federal legislation establish an assessment process that would apply to all lands of Yukon, so that no more Faros would ever take place on Yukon lands without going through a stringent and thorough assessment conducted by Yukoners.

So how are we doing? Since our inception some four years ago, our six offices throughout the Yukon have handled nearly 1,000 assessments. The average number of days for YESAB to complete an assessment is 34 days. We have been commended as presently outperforming all other assessment regimes across the north, and possibly across Canada.

I'd like now to reintroduce to someone you met in Whitehorse. He is Stephen Mills, my fellow executive committee member. As a negotiator for the Council of Yukon First Nations on the YESA Act, Stephen has been invaluable to our process since the very beginning of YESAB.

Mr. Stephen Mills (Executive Committee Member, Yukon Environmental and Socio-economic Assessment Board): Thank you, Mr. McKinnon.

Thank you, honourable members and Chair, for inviting me back to appear before you in a slightly warmer location than Whitehorse when you were there. I only say "slightly"; it is a little chilly still.

I will just continue on what Mr. McKinnon had to say. YESAA replaced several formal and informal assessment processes when it came into force. It really did slice through some complex land ownership issues that were created partly from first nation final agreements, but also in association with the Canada-Yukon devolution agreement.

Some of the unique aspects of YESAA are that it looks not only at environmental effects, but at socio-economic effects, that it also integrates local and traditional knowledge into assessments, and that it provides for guaranteed opportunities to participate for all Yukoners, including first nations.

Another key aspect of YESAA is that it calls for timelines for all stages of assessment. As Mr. McKinnon mentioned, at our designated office levels, these timelines have I think all been met, and in most cases, exceeded—to the good, not to the bad.

Having said that I believe this process has worked very well over the last four years, I would add that there are some ways to improve it. At the current time, there are two different reviews taking place. There's a five-year review being conducted by the three parties to the Umbrella Final Agreement, those being the Government of Canada, the Yukon, and the Council of Yukon First Nations. We have participated in these reviews in providing input. We also have understood some of the concerns that have been raised, as well as some of the good things that have been identified as part of that review.

When we brought in our rules and started assessing, we promised Yukoners that we would go back out to Yukoners after a couple of years of practice and would vary our rules to fix any issues that came up. We have been doing that as well. We have reviewed our rules at the designated office level, because that's where we have around 1,000 assessments, and we are implementing some changes that we hope to have in place by the end of this fiscal year.

These changes are based on input from first nations and all the regulators of the other governments, as well as various environmental and industry groups, including the mining industry, the chamber of commerce, and other proponent groups. We believe these changes will improve the rules at the designated office level.

Part of our discussion here is around barriers and solutions. I want to identify a few.

One of the biggest barriers that we find involves capacity. First of all, first nations and even some of the governments, federal and territorial, are still getting used to this process after four years and are not always prepared to participate or to provide input into these assessments in a timely way. First nations are trying to participate in our assessments while trying also to implement their new governments.

Another issue around capacity is that we have five of our offices located out in communities throughout the Yukon. We find that we're competing for a very small skilled labour pool in each community. We're competing against first nations and other governments, as well as private industry, in trying to get skilled, qualified people to work in our offices. As a result, we've had to look at importing people from other parts of the Yukon as well as people from outside the Yukon to fill these positions.

This has only caused more issues around our very tight housing and the other shortages in the communities. For a solution to that, we've been trying to work with the Yukon Mining Advisory Committee and other groups to say that we need more training in the community, that we need to steer people into these professions. I think this work, with Yukon College, will be very helpful. That definitely is a solution: the training of people in these offices. We want community members assessing projects that mostly affect their communities.

Another issue that has come up is with respect to what we call decision bodies, or regulators. At this time, all governments are having some difficulty in including socio-economic conditions in any of their licences. For example, DFO has a great difficulty in putting socio-economic mitigations into a licence. So does the Yukon government, and so do the first nations. The solution to this is regulatory change at that level—not necessarily to our act, but at the actual regulatory level.

• (1110)

The second side of this is a difficulty in coordinating federal regulators in our assessment process. Currently, Transport Canada does not participate in the front end of our assessments. It only takes part towards the end, but by that time, we've already made it clear what information we need from proponents and have already assessed the project. Then Transport Canada enters as a regulator and we run a real risk of uncertainty in the process if we have not assessed all issues that Transport Canada requires.

One solution I'm starting to see come forward is through CanNor and the Northern Project Management Office. We have met with them over the last couple of weeks. We see a real role for that major projects office in trying to coordinate some of the various federal regulators, whether that's Transport Canada, DFO, or some other federal department. If this continues, I think it's a good, positive sign with regard to that particular office.

I will identify one other issue. It will feed in nicely to Mr. Robertson's presentation. It is that when the Umbrella Final Agreement and the first nation agreements came into force, we envisaged chapter 12, which was the development assessment process or YESAA, and there was also chapter 11, which dealt with land use planning.

It was always thought that land use planning would feed into our assessments. To date, only one land use plan has been enacted in the Yukon. Not having land use plans does sort of force us to assess in a bit of a vacuum. We think these plans are key tools as part of any assessment. Adding completed plans, along with additional completed resource management plans, whether for renewable or non-renewable resources, will greatly help us in completing our assessments and probably will shorten timelines for assessments as well.

Thank you.

•(1115)

The Chair: Thank you, Mr. Mills.

Mr. McKinnon, and Mr. Mills as well, I think, committee members remember your kindness in giving us all a great Air North cap to take home. We appreciate that, too, and members were wearing them proudly on the trip over to Yellowknife the next day.

Now, with that great segue, we'll go to Mr. Robertson, who joins us from the Yukon Land Use Planning Council.

Go ahead, Mr. Robertson. You have 10 minutes.

[*Translation*]

Mr. Ian D. Robertson (Council Member, Yukon Land Use Planning Council): Thank you for giving me this opportunity to represent the Council. If there are no objections, I would prefer to make my presentation in English.

[*English*]

Regional planning assists northern development by being holistic: providing a clear vision of the appropriate balance between conservation and development interests applicable to the circumstances of a given region. It does help to ensure orderly and efficient provision of infrastructure and an appropriate land management regulatory and policy framework.

Providing present and future potential land users with greater certainty and access to valued resources is also an important consideration, as well as the flexibility of creating plans that can adapt to new knowledge. Land use planning also helps to prevent and, hopefully, resolve conflicts. Also, an important thing from industry's point of view is that it helps to reduce risk.

One of the other advantages of regional planning is that it provides an upfront and overarching framework for individual projects as well as socio-economic and environmental assessments. It's interesting that the back end of the process presented to you first. We're the front end of the process.

If regional planning is done right, it can facilitate positive development. I'm going to give you a bit of history about land use planning in the north.

Really, the key sort of change situation was the 1977 Berger report dealing with the Mackenzie Valley pipeline. Berger recommended a 10-year moratorium on major development to allow time for the settlement of land claims and to build governance capacity. He also recommended that regional planning follow immediately after land claims settlement.

DIAND tried a top-down planning process in 1985 and it didn't work, mainly because first nations were more concentrated on resolving land claim negotiations. So only to the extent that planning contributed to resolving a claim or assisting a first nation to make its case for its land claim were they prepared to participate.

The program was cancelled in 1990 and later resurrected, and in the case of Yukon, specifically because it was included in the 1993 Umbrella Final Agreement and tied to the first four land claim and self-government agreements, which involved the Teslin Tlingit Council, the Vuntut Gwitchin First Nation, of which Stephen is a

member, the Champagne and Aishihik First Nations, and the Nacho Nyak Dun.

The key is chapter 11, but I'm not going to go into detail. What I want to tell you is that only one plan has been completed after all this time and that is the North Yukon Land Use Plan. But a second plan for the Peel region has reached the recommended plan stage. Unfortunately, these plans are taking too long to complete and they're costing too much. Why?

In the first place, there is the amount of time required for preplanning, setting up commissions, and collecting basic resource information. Much of the resource information is sketchy, incomplete, of questionable accuracy, and out of date. This is primarily because of the lack of government attention to science. Science is not seen as an investment but as a cost, so governments at both the federal and territorial levels have consistently been cutting back and looking to development proponents to do their work for them.

Regional planning is funded through the land claim implementation process. Here's one place you can help us. There's a 10-year implementation review that is now in year 14, and we don't believe Canada is taking the completion of this review seriously enough. We also note that the Auditor General has already rapped DIAND's efforts north of 60, calling for more accountability and consequences for non-performance. We agree, but this must apply to all involved.

First nations have not received adequate funding to build their own capacity to participate in land use planning or development assessment. High staff turnover, inadequate funding, and lack of qualified first nations people are part of the problem.

•(1120)

It's interesting that in the committee's discussion we talk about the definition of the north as being the three territories. As a planner, I don't think that way. I see two norths.

There's one that incorporates the boreal forest, which is the southern band of the territories in the northern parts of the provinces and stretches from coast to coast. The 60th parallel is really an artificial boundary.

The north is also not an unoccupied frontier. The development game has changed, particularly with the emergence of the territorial governments. But I can assure you that it's taken well over 35 years for people to get the message that the old ways of doing business are no longer appropriate.

This planning takes a more holistic approach. We're really dealing with the front end versus the back end. Planning adds value and context for development assessment. One of the weaknesses in the YESAA legislation, from our point of view, is in the implementation. That is, if there is no land use plan existing and it is in the process of being developed, say, remembering that this can be a three-year or four-year process, it's business as usual.

What business as usual means is that the commissions must focus on getting their plan done, and as council we have told them this. We tell them, "Don't get involved in the YESAA process". That's government's responsibility at this stage.

But then we have the scenario where a plan is completed and the issue becomes, "What do you do when a proponent brings forward a proposal that is inconsistent with the plan?" This is an area that requires greater clarity. At the present time under YESAA, the assessor is to assist the proponent in trying to facilitate as much compliance as possible, but effectively he recommends to the parties if it's not compliant. That's really up to the governments, then, which are the parties, to make a decision. But there's a question we have here. At that point, really, shouldn't the proponent have to stop, go back, and seek a planned amendment?

There are some implications of the business-as-usual approach to doing plan preparation. For example, you have the whole issue of claim staking and the free entry rights. In the case of the Peel plan, which is in a very environmentally sensitive area, there was a concern of the conservation side of the equation. Wait a minute, they said, there's all this staking going on at the same time, but in effect we can't go in and stake our interest; only the mining people get to stake their interest. I think it's a fair point that's worth consideration.

It's somewhat ironic that industry considers best practices as being an adequate standard whereas we tend to think of them as the minimum standard.

If we're going to make plans more successful, we need more strategic thinking and we need to be thinking about how strategic investment has paid off. A good example is the extension of the Internet to the north, the telehealth concept, and things like RADARSAT, that technology. Ironically, conservation organizations sometimes seem to have a better appreciation of the needs for strategic thinking than the development industry or the respective governments.

We believe that development planning and conservation planning can and should proceed in hand in the north. The Yukon is too polarized, but the NWT has been a bit more successful in that regard.

So how can we improve planning quickly?

Our 10-year review is going on year 14, and it sure would help if we could get that solved. Also, I believe that first nations have to spend more time resolving overlap issues with respect to their boundaries, because it makes it very difficult to plan when there are areas that are in conflict. The council's position has been that the planning boundaries must be seamless and there should be no doughnuts.

As well, Canada and Yukon both have to insist on greater accountability for plan production.

We need to get the outstanding land claim negotiations going again, particularly with respect to White River and the Kaska.

• (1125)

We have some suggestions in terms of how things can be improved. One of the interesting things—

The Chair: We're a little over time right now, so if you can give a brief statement just to summarize, Mr. Robertson, then we'll go to questions.

Mr. Ian D. Robertson: Okay. There are two things I'd like to add here.

One is that we believe that the Yukon atlas is a good model for putting information together. It's interesting that for northern Canada there is no national atlas; most of us are familiar with atlases.

We believe that we have to spend more money on science. Science is a key to us being able to do our work successfully. That also includes recognizing the importance of traditional knowledge.

Finally, I think Canada needs to demonstrate it both in how it funds the process and in how it participates if we want land use planning to be successful.

The Chair: Thank you very much, Mr. Robertson.

Now we'll go to the first round of questions.

We'll begin with Mr. Bagnell, for seven minutes.

Go ahead.

Hon. Larry Bagnell (Yukon, Lib.): Thank you.

Thank you all for coming today. It's great to see you again.

Just to put it on the record, Stephen, I think you've now probably set a record in the history of the Parliament of Canada by being a witness on the same project three times. In my nine years, I've never seen someone be a witness twice, and now you've had three different hats, so I think you've set a great record there.

Ian, on the 10-year review, you can rest assured that the committee had that point from a number of witnesses. I've brought it up in Parliament numerous times. We really agree with you and we want to get moving on that.

Stephen and Ken, as you said, it takes 34 days. We heard from a witness in the Northwest Territories, I think, that what took you 34 days takes months or years in their processes. This is the only process in Canada, actually, where you go through one process for all the crown land. In those jurisdictions that have self-governments, and actually three orders of government, you could go through three assessment processes.

This is a great model for the rest of the country. Could you suggest why it might take only 34 days? What are the clues to this success, against the barriers we're having in the other two territories, where they say it takes months or years?

Mr. Ken McKinnon: It's obvious: because of Stephen's great negotiating skills in creating the act.

Voices: Oh, oh!

Mr. Ken McKinnon: I'll defer to him on this one.

Mr. Stephen Mills: Thanks for the question, Mr. Bagnell.

On the offices that do these assessments, we were talking about the designated offices. At the executive committee level, we're dealing with the more major projects. They take a longer period of time—anywhere from six months up to two years—but we're talking about very major hardrock mines. We've completed two of those and have two more being assessed now.

But at the designated office level, we're talking anywhere from very small projects up to fairly large exploration and small-level mines. There is a spectrum on the time it takes. We have fairly tight timelines, so our assessors have to work to those timelines.

We also have worked very hard at trying to make sure that the information request, or what is needed for a proponent to file in our assessments, is clear and comprehensive so that proponents are coming in with complete proposals. That is different from other jurisdictions.

That is actually different from how CEAA did assessments in the Yukon. Proponents would come in with partial applications and then would work through a long process of more information requests, back and forth.

We've been trying to front-end load this process, as we call it, so that the proponents are really clear. What that does is weed out a lot of bad proposals that will never get through. It also makes sure that it's kind of a level playing field that allows proponents to gear up. If you're looking at an exploration project, you know what kind of research and information you need to collect as you start to work on the ground, before you ever come in our door. We think that's probably one of the keys to proper assessment.

I'm sorry that is a bit of a long answer, but on some of the issues that came up in the five-year review, we're addressing them. I'm going to be working with the DO. We're going to be working with conservation groups, first nations, proponents, and the regulators to come up with sector-specific application forms and information requirements. We tried a generic one that wasn't working as well, so we think this will add even more clarity.

Depending on what sector you're in, the information that you need to bring in and be assessed on will be much clearer. We think that's going to actually result in a more efficient process as well.

• (1130)

Hon. Larry Bagnell: Thank you.

As you both said, as I've been saying for years, and as we heard from other witnesses, land use planning is the key. Once that's in place, it's easy. It's like zoning a city. You know what you can do where and developers can get on with it more quickly.

I have a question for all the witnesses. As you said, only one has been done so far in the whole Yukon. What do we have to do to get the rest of the Yukon done as quickly as possible? What would we

have to invest? What has to occur so we can speed that up? It's obviously going too slowly.

Mr. Ian D. Robertson: I think there are several things. One of the big issues has been the issue of overlaps between first nations, because until they can resolve some of those boundary issues, we've basically said we're not going there. The other thing is that we still have outstanding land claims for the Kaska, which includes the Ross River and Watson Lake areas, which are both very resource rich, and also the White River area, which is near Beaver Creek, on the boundary with Alaska. Those are two specifics.

The other thing I tried to bring out in the presentation was the importance of the available science. Stephen talked a little bit about the coordination of the federal government in the regulatory review process, but we also have the same sort of problem.

The other thing he talked about, on which we have the same issue, is capacity. Very few first nations people are really participating at the level they could be in the land use planning process. It's the same people juggling four or five different responsibilities, and we're not really breaking through some of those barriers to strengthen their capacity.

The Chair: You have 40 seconds left.

Hon. Larry Bagnell: Stephen, did you want to comment on what we need to do to get more land use planning completed in the Yukon more quickly?

Mr. Stephen Mills: In any case, because this is a situation where recommendations are made to the various governments to approve the plan, I think there should be better cooperation between the governments that approve them, those being the Yukon—with federal input as well—and the first nation governments. If they have a more common vision, I think that would expedite the development of the initial guidelines as well as the final approval of these plans.

[*Translation*]

The Chair: Thank you.

The next member to speak will be Mr. Lemay.

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Thank you, Mr. Chair.

I want to apologize because I was unable to travel with the committee to the Yukon. Since I'm also a member of the Standing Committee on Justice and Human Rights, I had to remain in Ottawa.

I listened very closely to your comments which I found most interesting. I also read the submission of the Yukon Environmental and Socio-economic Assessment Board. The six-stage process outlined is very interesting and could, in my opinion, be applied to other locations in Canada.

Since I'm from Quebec, I will take note of the details of this process. It could probably be applied to many claim cases and project assessments.

I'm not sure which of the three witnesses will be able to answer my first question. The White River First Nation, the Ross River Dene Council and the Liard First Nation are still without any land agreements. Given that your organization is important to Yukon's development, is it involved in some way in land claim negotiations? If it is not, would you like to take part in these negotiations? Or are you following these land claim negotiations closely?

• (1135)

[English]

Mr. Ken McKinnon: No, we're not involved in the negotiations, and we won't be, because they're between governments. As an assessment body, we just aren't in that category. Both Stephen and I have had a long history in the settlement of the first nations that have settled in the Yukon, so naturally we follow all the negotiations very closely. Hopefully, the negotiations will start again for the three first nations that have not settled to this time in the Yukon.

Having said that, we have been assessing projects in the territorial interest of the first nations that haven't settled to this time. Those assessments we have done in those traditional territories have been accepted to this time. The question is, if they disagree with an assessment that we do in their territory and they have not settled, what will the result be? We don't know, because we haven't come to that point at this time.

[Translation]

Mr. Marc Lemay: You understood quite well what I was getting at with this. I'm just trying to understand. I'm from Quebec and Quebec Aboriginal communities— whether it be the Innu on the North Shore or the Algonquin close by, since we are on Algonquin land— are involved in numerous land claims.

Let's take one example. Suppose I discover a mine in Old Crow and I'm an entrepreneur. My company is called Mines Agnico-Eagle Limitée and I'm interested in developing this mine. Since the land is already home to some aboriginal communities, how would I go about things, practically speaking? I understand that the process involves six stages. You have the project promoter and the regulatory body. You are the regulatory body. How do you work with the aboriginal communities that occupy the land on which the mining operations would be carried out?

[English]

Mr. Ken McKinnon: We're really lucky, because we have a Vuntut Gwitchin member from Old Crow to answer your question.

Voices: Oh, oh!

[Translation]

Mr. Marc Lemay: It wasn't planned. I will listen to the answer, because the subject interests me a great deal.

[English]

Mr. Stephen Mills: Thank you for the question. I'll try to answer it in terms of both situations, one down in the place where Ross River—

[Translation]

Mr. Marc Lemay: I don't mind if you take all of the time I have left, even four or five minutes, to respond, since I want to be clear on this.

[English]

Mr. Stephen Mills: Okay.

With regard to first nations that have settlements, if a project is in their traditional territory but not on their settlement land, there's a difference; traditional territory is very large and they have different settlement land. If a project is on their settlement land, they are the ones who will decide whether the project proceeds or not. They issue the approvals and so on.

If it's on their traditional—

[Translation]

Mr. Marc Lemay: Excuse me for interrupting you, but what you are saying is very important. The First Nation is the party to decide whether or not the project will go forward. Did I hear you correctly?

• (1140)

[English]

Mr. Stephen Mills: It gets very complicated, but generally, on some settlement lands, there are surface and subsurface rights, while some have only surface rights.

If a project is to go on first nation land where they have both surface and subsurface rights, that first nation is the decision body under YESAA and they will make that determination.

What happens in areas where there's not a claim, such as Ross River, is that our legislation still applies, and to all the Yukon. In the case of a project proceeding down by Watson Lake, which is in an unsettled area, we still assess the project the same as we would in Old Crow or anywhere else.

What we have done is include the first nation when we look at the project proposal to determine adequacy. They are part of providing input into the assessments we conduct. Also, there's an obligation under the legislation that before the government decision-making body issues what's called a decision document, it must consult with those first nations that do not have final agreements. Our legislation puts in an extra step of consultation that's required.

But for us, in all levels of our assessment, we include Ross River and those unsettled first nations the same as we include any of the first nations that are settled. Also, those first nations are funded by DIAND with a certain amount of money to participate in YESAA assessments.

The Chair: Okay.

[Translation]

Mr. Marc Lemay: I just want to say that this is a good example to emulate. Thank you.

The Chair: Thank you, Mr. Lemay.

[English]

Now we'll go to Ms. Crowder for seven minutes, followed by Mr. Rickford.

Go ahead, Ms. Crowder.

Ms. Jean Crowder (Nanaimo—Cowichan, NDP): Thank you, Mr. Stanton.

Thank you for appearing before the committee. Sadly, I also was not on the trip to the Yukon, although I have been in the Yukon in the past. It's beautiful country.

Mr. Mills, I just want to follow up on something you said. You made a distinction between the settlement lands and traditional territory. What happens in a traditional territory for a band that has settlement land? Is that handled differently?

Mr. Stephen Mills: Thank you for the question.

On large-level projects that go to the executive committee, there is a statutory obligation or requirement for a proponent to consult with affected communities and affected first nations prior to submitting a proposal to YESAA.

In the case of our traditional territory, for any project that is partially or totally in one of those traditional territories, there is a statutory requirement for consultation—on the proponent.

Ms. Jean Crowder: Just to interrupt for a second, you said that on settlement land it's the first nations who decide whether a project goes ahead. What happens on traditional territories?

Mr. Stephen Mills: On the settlement lands there are so many blocks, even with my own first nation, the Vuntut Gwitchin in Old Crow, that many projects tend to cover more than one jurisdiction. So we issue one recommendation for an assessment. I'll give you a good example.

We had a large power-line project. In the end, there were three decision bodies and regulators: the Yukon government, the Little Salmon Carmacks First Nation, and the Selkirk First Nation. All three received their recommendations and all three issued what they call a decision document.

All three agreed with our recommendations, which was good, and then they issued whatever regulatory authorizations they needed to, such as land use permits.

A voice: It's very complicated.

Mr. Stephen Mills: It's complicated, but it has worked.

That's why initially everybody was wondering if this was going to work or not. The fact is that it has worked. There have been many cases where you have a first nation and, for instance, a federal decision authority like DFO where they work together to make sure they agree. There's a federal coordination regulation that says different decision bodies are going to work together to try to come

up with the same decision on a project. So far, I don't believe they've ever gone against each other.

Ms. Jean Crowder: That's great. That's good news.

Mr. Robertson, you indicated that in the land use planning where the proponents have a proposal to go ahead that's outside of the land use plan, at this point there is no requirement for an amendment to the land use plan. That's a bit of a surprising statement.

I was on a municipal council. We used to have official community plans and we needed to do an amendment—a community process around amending the official community plan—if something came forward that council was recommending. I'm surprised that you don't require an amendment on the land use plan or that there isn't a requirement.

● (1145)

Mr. Ian D. Robertson: I must admit that as a planner I was surprised as well when it came up. I think the way it was envisioned was that in the YESAA process, being at the back end of dealing with a specific proposal, the assessor would have and has a responsibility to work with a proponent to try to see how much can be done to bring a project into alignment.

But what do you do when you have a situation where it says this should be a conservation area and the proponents have found a significant mineral deposit? There is ambiguity there, and basically it's up to the parties to make the decision. If it's too much of a conflict and the YESAA process recommended that the proposal go ahead, the obligation would be on the parties to say no, it shouldn't, not until an amendment is done.

Ms. Jean Crowder: If the parties did agree on a project and it went ahead through the YESAA process, doesn't that undermine the land use plan? Doesn't that set a precedent?

Mr. Ian D. Robertson: Yes. It does in my eyes.

Ms. Jean Crowder: It seems to me that it's pretty fundamental.

Mr. McKinnon or Mr. Mills, I don't know if you have a comment on that.

Mr. Ken McKinnon: The only comment I have is that Ian keeps referring to us as the rear end of the project, which I take total exception to.

Voices: Oh, oh!

Mr. Ian D. Robertson: I didn't say the ass end. You're the rear end.

Mr. Ken McKinnon: We really believe in the land planning process because we feel that it is going to make our job that much easier. In areas where there isn't land use planning, I take.... Well, in the Champagne-Aishihik traditional area, there's a block of land where we're getting application after application for agricultural purposes, on an almost daily basis. We've now refused about 15 applications, but our staff has to go through the total process of assessing every application because there's no land use plan.

The Champagne and Aishihik First Nations have said that because of wildlife movement and because of different traditional cultural pursuits in that area, the land is not suited for agricultural purposes. But without the land use plan, every time we get an application, we have to go through the whole assessment process in coming up with the recommendations. There's a small Kluane land use plan in the area, but not a total plan, and Champagne-Aishihik is objecting to the agricultural applications. We've turned down about 15 of them. We wouldn't have to do all of that extra work if the land use—

Ms. Jean Crowder: It would make everybody's job easier.

Mr. Ken McKinnon: Absolutely.

Ms. Jean Crowder: It would seem that resources need to be put into land use planning to make sure that component is completed—

Mr. Ian D. Robertson: Absolutely.

Ms. Jean Crowder: —and that's certainly lagging.

I think Mr. Mills has a comment.

Mr. Ken McKinnon: I have just one added comment on Stephen's comment on the Carmacks-Stewart transmission line. You see, there were three governments involved in the assessment: Little Salmon Carmacks, because they have a settled land claim or a decision body and acts as a government; Selkirk First Nations, because they have a first nation government and act as a decision body; and then the YG acts as a decision body.

So technically speaking, if each government had decided to do its own assessment process, there would have been three separate assessments instead of the one single assessment that comes under YESAA. That's the beauty of the project, of the YESAA legislation, and that's why we are able to meet those strict guidelines, with the cooperation of all the governments.

The Chair: Thank you, Mr. McKinnon and Ms. Crowder.

Now we'll go to Mr. Rickford for seven minutes.

Mr. Greg Rickford (Kenora, CPC): Thank you, Mr. Chair.

Thank you to the witnesses for coming down here to Ottawa.

It's nice to see you again, Stephen. I appreciated your interventions in Whitehorse. I want to develop that conversation a little bit more today.

I also want to commend the work YESAB has done. I concur with Mr. Lemay, who said that this is an important process and board that has, in my view, the potential to be a frame of reference for other jurisdictions. Maybe I'll try to flesh some of this out in terms of how we can export that.

I'd just like to drill down on some of the process matters.

Stephen, you mentioned that YESAB had replaced several formal and informal processes. Can you, very briefly, highlight what specific strategies you used to get them on board and whether there was one group—informal versus formal, let's say—that was more difficult than another?

• (1150)

Mr. Stephen Mills: I think the heavy lifting was done by the negotiators of the Umbrella Final Agreement. We did some of the light lifting, which took a long time after that.

Basically, the federal government had the EARPGO guidelines. Also, the CEAA process was in place for a number of years. But you have to remember that CEAA only applied in cases of federal lands or where there was a federal trigger. A lot of Yukon government land, or what we would call commission lands, was not covered off. They had an informal, non-legislated assessment process.

In 1995, when the final agreements started coming in, you had four first nations that had to assess projects with no assessment regime. You had the Yukon government, with their own informal process. They had what they called the Yukon Environmental Assessment Act and we had CEAA operating, so there was quite a bit of uncertainty.

I think the benefit of YESAA, as Ken McKinnon said, is that it brought them all under one umbrella. CEAA still is not totally out of the Yukon. There is still some authority that rests with the Minister of the Environment to deal with such things as transboundary projects or others.

Mr. Greg Rickford: Okay.

I'm interested in the five-year review. Is it anticipated that there will be another five-year review? Are these the timelines?

Mr. Stephen Mills: The only thing I can say on the five-year review is that it's not our review. It's a review by the three parties: Canada, the first nations, and the territorial government.

Mr. Greg Rickford: You seem to suggest, Stephen, that it was a particularly useful process. It was a time to build on some of the strengths and to identify some of the weaknesses, if that's the right word. You gave some specific examples in terms of sector-specific processes and coming to the process initially with more information that dealt with this sector-specific application.

But you identified, in terms of barriers, that there is still a lack of awareness and understanding among some groups that would come to this process. What are you doing to facilitate that? Can you talk briefly about that?

Mr. Stephen Mills: I can. There are two reviews happening. One is a very formal review under the Umbrella Final Agreement. It's a five-year review of the entire YESAA process, including the legislation, the regulations, how we're performing, and how each first nation and all the other governments are performing.

There's that review, but we've also undertaken our own review at a specific level at designated offices. How can we improve how we conduct assessments under the existing legislation? Some of the comments we're getting feed into both processes.

First nations were concerned about their input. We agreed with them that, yes, we could improve. So when we strike technical committees, we automatically ensure that first nations are part of these technical committees. We bring them in. That's an example.

Also, industry was very concerned about some of the application forms. They said they weren't useful and that an application form designed for each sector would work better. We've adopted that.

Some of the things you will see from that five-year review are just policy changes. On others, we're actually implementing changes to our rules to try to improve the process, because we don't know what the results of that five-year review will be.

Mr. Greg Rickford: I just want to move quickly through some topics here. You mentioned an issue around Transport Canada. You were concerned that they were participating at the end. I think, as you say, that probably doesn't do it justice, but it does add risk to a specific project and a lack of certainty.

You said you felt that CanNor could help this process, if I understood you correctly. Are you suggesting that they can be an effective conduit to counsel and advise Transport Canada on whether they should be involved earlier on at specific or strategic parts of the process, and/or are you suggesting that Transport Canada just be involved in other parts of the process? Can you clarify that?

Mr. Stephen Mills: I think there are two things. Transport Canada will not participate until there's an application later to them. That doesn't occur until after the assessments are completed. So we may be assessing a project and not considering what Transport Canada needs to go ahead. That's a definite problem.

As for the second part of the question on Transport Canada, sorry...?

• (1155)

Mr. Greg Rickford: It's just the role of CanNor, very briefly, if you could.

Mr. Stephen Mills: Oh, sorry. The northern major projects office is different from the major projects office south of 60. We met with them and said that the biggest issue in the Yukon is not the big projects; it's any project where there's uncertainty around the regulators.

Mr. Greg Rickford: Okay.

Mr. Stephen Mills: We've asked them to consider coordinating the federal roles, with Transport Canada and NRCan, for example, and ensuring that they have more timely input into assessments, no matter if it's a little project or a big project. We think that is a really good role for that entity that's being established under CanNor.

Let's be careful how we talk about major projects, because there are only a few major projects in the Yukon, but issues around assessment happen in small or large projects. It depends more on who the regulators are.

Mr. Greg Rickford: Thank you.

Mr. Robertson, I just have two quick questions. You mentioned overlap with the first nations and the Yukon Land Use Planning Council. Are there any dispute mechanisms in place to deal with disagreements as they occur? Can you provide any examples for the committee that—

The Chair: We'll have to leave it at that, Mr. Rickford. You have one of those two questions out. We'll let the answer come and then we'll go to the next speaker.

Go ahead.

Mr. Ian D. Robertson: Yes, there is. Essentially what it requires is for the two first nations governments to get together. They have managed to resolve it in several cases. The appeal would not have not gone ahead if the various first nations could not have reached agreement on that point.

Most recently, the Vuntut Gwitchin and the Tr'ondëk Hwëch'in had an overlap issue. The point we were trying to get them to accept, which in the end both parties did, was that from a planning perspective it really didn't matter that there was an overlap, as long as they agreed to work within it.

The Chair: Very well. Thank you, Mr. Rickford.

Thank you, witnesses.

We'll now go to our second round and I think we will have sufficient time to get through the second round of questions. These rounds are five minutes now, for both the question and the answer.

We'll begin with Mr. Russell for five minutes.

Go ahead.

Mr. Todd Russell (Labrador, Lib.): Thank you very much.

It's good to see you again, Mr. Mills.

I want to welcome our other two witnesses.

I come from the great Labrador riding. I just want to make that very clear.

Voices: Oh, oh!

Mr. Todd Russell: How do you deal with claimant groups that do not have a settled land claim? Are they treated as just another Yukoner or Canadian for the purposes of involvement in the environmental assessment process or is there some special way you deal with that?

Because there are asserted claims that haven't been dealt with, as I understand it, or finalized. Would that not impact the nature of the negotiations, their land selections, and things of this nature?

For a group that hasn't had a settled land claim, Mr. Robertson, they would not be included in the land use planning process other than as regular Yukoners as well. Is that the way it is? I'm just trying for clarification. I'm using some words, but I'd like to have some clarification on that.

Mr. Stephen Mills: The first nations in the Yukon that do not have settled agreements are still caught in the definition of a first nation under YESAA. Our legislation says we must provide guaranteed opportunities for first nations and so on. When it comes to the assessment process, we do not treat a “settled” first nation any differently from the way we treat an “unsettled” first nation. They all provide input. We invite them to technical committees. We go out and meet in their communities on projects and everything else.

The difference is in where the recommendations go. Those first nations that do not have final agreements are not a decision body under our legislation. Also, there are legal issues around the right of Canada or the Yukon to issue permits on unsettled areas. It's not an issue for us to deal with. We simply assess a project as the project is, recommend mitigation, and issue the recommendations.

Mr. Ian D. Robertson: Quickly, with respect to land use planning, if there is no settled land claim, we don't do regional planning there, because they must have signed an agreement under the Umbrella Final Agreement. Until then, we can't go there. Even if there is a lot of pressure for it, we can't go there.

Mr. Todd Russell: You made the comment, Mr. Robertson, that the land use plan is the front end of the process and YESAA is the back end. If you're saying the front end is not efficient enough or we don't have the resources—

• (1200)

Mr. John Duncan (Vancouver Island North, CPC): Choose your words carefully.

Voices: Oh, oh!

Mr. Todd Russell: —or the people resources to do that work and it is integral to YESAA's process, what does it say about the integrity of YESAA itself in carrying out its particular mandate?

Mr. Ian D. Robertson: I think we have to recognize that there is consensus in that we think YESAA has done a remarkable job. All the first nations agree, whether they are settled or not, that the YESAA process works and having a Yukon-based process works.

The real issue here is that we're not carrying our end of this, and we're not carrying our end of this partly because there's a bunch of disconnects. The disconnects go right back to the political commitment to get planning done, to the quality of the information we use to prepare the plans, and to whether or not everybody will come to the table and participate. If people don't want to participate, the process gets blocked.

Where it's going to get really interesting is in the case of this new Peel plan, which is recommending that up to 80% of a large area be set aside as special management areas. That is being perceived by industry as a significant negative, but the argument the planning commission is making is that in this situation, in this particular region, the weighting should be on the conservation side as opposed to being on the development side of the equation. But we don't know whether there is the political will to follow through on that recommendation.

The Chair: That's about all the time you have. We have about 15 seconds if you have a short one-word answer type of question.

Go ahead. Now you have 10 seconds.

Mr. Todd Russell: On the land use planning side, it's basically a land claims implementation issue. Is that right?

Mr. Ian D. Robertson: Yes, it is.

Mr. Todd Russell: Are all levels of government living up to the spirit and intent of the land claim agreements?

Mr. Ian D. Robertson: Absolutely.

Mr. Todd Russell: Okay.

The Chair: That was good.

Now we will go to Mr. Duncan for five minutes.

Mr. John Duncan: Thank you, Chair.

Correct me if I'm mistaken, but the McCrank review had only one Yukon-specific recommendation, and that one recommendation was related to this five-year YESAA review that you referenced, Mr. Robertson. Do you anticipate that this review is near completion? Is there anything significant that the review will enlighten us on?

Mr. Ian D. Robertson: There are two reviews. There is the five-year review specific to YESAA, which Stephen can speak to. There is the nine-year overall implementation review of the land claims implementation, from which we get our funding.

I'm hoping they will increase the requirement for accountability by everyone as part of the funding agreements that come out of this. I'm also hoping that they will increasingly recognize that things like climate change have significant impacts on the north in terms of land use planning and then will start putting more money into basic science, because we can't produce good plans without having good science to work from.

Mr. John Duncan: Thank you.

With the economic action plan, there was a windfall in the science area for the north, I understand. I hope that will partially address your concerns.

It would constitute good news and is a testimony to the good example the Yukon is setting that only one recommendation from McCrank addressed the Yukon. That goes without saying, but it is worth stating for the record here.

You look as if you want to respond, Stephen.

• (1205)

Mr. Stephen Mills: We met with Mr. McCrank and gave him an overview of the YESAA process. We were quite pleased with the report that came forward.

You asked about the five-year review. I think there will be some changes, but I don't think system-wide changes are going to be coming forward. I think they're going to be fairly minor in nature, with changes to YESAA to maybe catch a few issues but not try to overhaul that system. I don't think we'd want to see that.

Mr. John Duncan: Thank you.

When we were in Whitehorse, we heard from the Klondike Placer Miners' Association. They had a real concern about working with the Navigable Waters Protection Act. They have an agreement in place already with DFO, an MOU with DFO, specific to placer mining. They made a request through our committee to have something similar set up with the Department of Transport specific to placer mining.

I'm wondering if this is a bigger issue than placer mining and, if so, if it could be addressed through that kind of mechanism. I'm not sure who best to address this question to. Perhaps Mr. McKinnon...?

Mr. Stephen Mills: If I may answer...? Thank you.

It's a bigger issue that just the placer mining. One the designation on what is a navigable water, but also, another one is the late decision that's made sometimes. I think the Transport Canada issue is just a bigger issue, that is, having them in the process earlier for assessment or anything else so that they identify themselves as a regulator on a particular project.

So it's a bigger issue. It happens. We've had the same issue on quartz mining, on exploration activities, and on almost any project: it's the could/might trigger. Anything that's close to a stream of any size might trigger a Transport Canada sort of process, but as I've said before, we are having some difficulty in getting early engagement from those officials.

Mr. John Duncan: There was an earlier line of questioning here having to do with the process on unsettled claim lands. I'm just wondering if the timelines remain the same on those lands or if the timelines don't apply.

The Chair: Make that a short answer, if you could.

Mr. Stephen Mills: I can give you a short answer. All the timelines are the same. The only difference is that there's a bit of extra time for a federal or territorial decision body to consult with the first nation that is not settled before they issue a decision document. That's the only difference.

[Translation]

The Chair: Thank you, Mr. Duncan and Mr. Mills.

You have the floor for five minutes, Mr. Lévesque. After that, we will go to Mr. Payne and to Ms. Crowder.

Mr. Yvon Lévesque (Abitibi—Baie-James—Nunavik—Eeyou, BQ): Thank you, Mr. Chair.

Good day, gentlemen.

This was my very first visit to the Yukon and I truly appreciated the experience. I understand what Mr. McKinnon is saying when he talks about Stephen's negotiating skills. He is also very good at delivering on his promises. We received some very nice caps during our visit and I'd like to take this opportunity to thank Stephen.

I believe Mr. Robertson mentioned the Peel River drainage basin. Regarding this project, what kind of consultations did the commission hold in order to come up with the plan that is being recommended?

[English]

Mr. Ian D. Robertson: I should clarify that the council is not involved directly in the planning that's done by an independent commission. The commission solicits input from all possible stakeholders, and that includes going to all the communities. Not that there are a lot of communities, but they do visit all the communities. They invite industry associations and specific companies that have interests in an area to participate in the process and to present their views on what would be an appropriate regional plan and that type of thing.

● (1210)

[Translation]

Mr. Yvon Lévesque: Is that the same thing as Stephen was talking about, for example, in the case of the land for which claims have already been negotiated, that is land rights and subsurface rights? Were these rights taken into consideration during the process?

[English]

Mr. Ian D. Robertson: Yes, it is. The key part of it is the mandate that the commission is given, and that's the opportunity, when the parties say up front, "Look, these are the main issues that we want to see addressed in the plan". That usually includes all sectors.

The question that has come up in the planning process itself is whether it is balanced enough so that you're giving fair hearing to all the different interests. There has been a suggestion that in the case of the appeal there was too much focus on the conservation side of the equation. In fact, the council had to step in a number of times and remind them that we recognize that there are conservation values here as well, but there are other values. But it's up to the commission to produce the plan and make the recommendations.

[Translation]

Mr. Yvon Lévesque: In view of the problems encountered in connection with this project, what recommendations would you make to interested parties like First Nations and industry? In your opinion, what are the main issues in dispute and how likely is it that they will be resolved?

[English]

Mr. Ian D. Robertson: The biggest problems are generally ones of trust: willingness to come to the table, give full and transparent disclosure of information and interests, and work towards building a consensus.

Personally, because I'm trained as a planner, I would add more discipline to the process. I believe that if you can build consensus at the options stage for the criteria you're going to use to assess the options, it doesn't matter how varied they are. Once they're pushed through the hopper, the best solutions will come out at the bottom by using the sieve process.

[Translation]

Mr. Yvon Lévesque: Would anyone else care to comment?

[English]

Mr. Ken McKinnon: There have been several questions on what should come first: the land use planning or YESAB. Just to put this in a historical context, which is a really important context, it would be great if all of the land use plans in the Yukon had been in effect before YESAB came into effect. It would have made our jobs much easier.

You have to remember that YESAB was critical at the time, because as far as the first nations people of the Yukon were concerned, it was an absolute deal-breaker in the process. If YESAB did not come into effect and there were more atrocities committed on Yukon first nations land, which first nations were protesting against, they said that as far as they were concerned the land deal in the Yukon was a total deal-breaker. So it was absolutely essential that YESAB came in at the time it did, which was before this land process.

[Translation]

The Chair: Thank you, Mr. Lévesque.

[English]

Now we'll go to Mr. Payne for five minutes, who will be followed by Madam Crowder.

Go ahead, please.

Mr. LaVar Payne (Medicine Hat, CPC): Thank you, Mr. Chairman.

It's nice to see you again, Stephen. I have your hat sitting on my desk at home and I wear it proudly.

I also welcome our other guests.

My trip to the Yukon was very interesting. It was my first time there. I certainly appreciate the beauty and some of the issues surrounding the territory.

One of the things that I'd like to understand a little more fully as part of this committee is how the environmental assessments impact economic development. As you know, of course, we're doing this study of economic development. How does that impact the relation to the federal program initiatives and, certainly, the northern territory communities? I'm not sure who wants to jump in on that one.

Mr. Stephen Mills: Thank you for the question.

It's a big question. First of all, federal funding normally triggers a CEAA assessment. In the Yukon, it triggers a YESAA assessment. So certain projects are going to go through an assessment even with federal funding, let's say, and even with some of the new initiatives that are out there.

One of the projects that we're assessing at a more advanced level, a bigger project, is a fairly large hydro project. A very large amount of federal funding flowed into that project.

We recognize that there are time limits on funding. We work with the proponents closely, as well as with the other parties that are going to participate, as early as possible before they submit their proposal, to make sure that the proposals are complete and are viable projects. In that case, we think that so long as proponents do their job, we can provide fairly good timelines to projects.

On the economic development side, I think that provides some certainty in the Yukon. We've heard what it takes to raise funding for major mining projects and others, so our timelines are an integral part of that. We think a good assessment can provide for good projects in a timely manner.

● (1215)

Mr. Ken McKinnon: The argument in the Yukon towards this is, what should the timelines be? But the certainty of timelines is what everybody appreciates under our process, particularly industry.

Mr. LaVar Payne: I have a couple of other questions. I'm not sure how much time I have left.

The Vice-Chair (Mr. Todd Russell): Go ahead.

Mr. LaVar Payne: First off, certainly I am sensitive to the fact, as is the rest of the committee, that the object of the environmental and/or socio-economic assessments in the north often involve competing interests related to economic development, community objectives, environmental protection, private interests, and territorial interests. I'm wondering if you could help us out with your thoughts around that.

Mr. Ken McKinnon: They're totally competing interests, and I am amazed, going on a thousand assessments, at the real lack of controversy there has been. Having come from an entrepreneurial and political background, when I saw YESAA being created, I said, "My goodness, this is incredibly complex, both the act and the regulations, and I'm not sure whether it can work in the Yukon". When I was asked to take over as chair of YESAB, I did it rather reluctantly, not knowing whether it really could work. I'm surprised at how well it has really worked, what with all of the competing interests.

I tell our assessors constantly that if they don't want to be in the business of controversy—it's almost like your jobs—they ought to find another occupation, because you always have a winner and loser in assessment. It is always a controversial process. I am amazed at how well we have accomplished it in the north, where, as you know, everybody has a really strong opinion. I am amazed that we've done as well as we've been able to.

Mr. LaVar Payne: Thank you.

Mr. Stephen Mills: If it's okay, I have just a quick response to add to that.

Although we haven't had a lot of controversy, when it comes up it's big. The thing is that when we do assessments, we have to assess those particular concerns that are coming forward and determine if they're valid or not, and if they can be mitigated or if they're significant. So yes, in some cases, our recommendations may not be liked by a particular community, but we have had to make the decisions and weigh that.

What's good for some of the governments is that it now sits with us. We wear that controversy and then we issue recommendations, which sometimes has moved it away from the governments that issue the final regulatory approvals.

Mr. LaVar Payne: Do I have more time?

The Vice-Chair (Mr. Todd Russell): You're right spot on, sir.

We'll move now to Ms. Crowder for five minutes

Ms. Jean Crowder: Thank you, Mr. Chair.

I want to come back to Mr. Robertson.

You mentioned the importance of science a couple of times. I wonder if you could say more about that. You quickly talked about climate change. I'm not sure what kind of science you're talking about. What are you looking for specifically around climate change?

Mr. Ian D. Robertson: We know that the north is experiencing climate faster and to a larger degree. The impacts of this on land use planning are significant, partly because land use planning focuses on a timeframe of 20-plus years. So if it's happening at the rates that it has been and that we see on the ground, we're going to have tremendous changes occurring, which means that we end up dealing with a whole new batch of issues that were unanticipated when the process started, or when it's time for the first set of reviews.

• (1220)

Ms. Jean Crowder: So what sort of science are you looking for? You've mentioned that a couple of times.

Mr. Ian D. Robertson: The basic science goes right back to everything from fisheries, water.... You know, we used to have water stations on all sorts of remote rivers. They're gone, so you're missing the continuity of the information. There's climatic data, some of the most fundamental basic stuff. There's the vegetation and the vegetation changes.

I can tell you, for example, that in my time in the Yukon, we've seen ranges of species of vegetation and wildlife change by 1,000 kilometres. We've seen the tree line move further north.

All of these things that are fundamental are really.... You know, we talk a good story, but one of the biggest issues for Canada as a whole is that we don't treat it as an investment and recognize the importance of continuity of information over time. We're picking and choosing what's the popular issue of the day. Yet if you went back historically, you would see that we spend a lot of time building up basic geology, surficial geology, and our mapping technology. We don't have adequate mapping of the north as a whole. The mapping of waters is a classic example. It is totally incomplete.

Ms. Jean Crowder: You're saying this information is scattered and there's not a coherent, cohesive picture. In the context of a 20-year land use plan, without this kind of information you're going to be making decisions 20 years out that actually may not have any relevance 20 years down the road.

Mr. Ian D. Robertson: Exactly. You're using imperfect information to make a best call at this point in time.

One of the issues that comes forward all the time, particularly for industry, is that very large areas just haven't been explored yet. If you identify an area for other values and there isn't an equal level of

research and information, then you may decide to protect an area for its other values when it's sitting on a giant mineral deposit, which we might find we really need. That's just one example.

Ms. Jean Crowder: Mr. Mills, did you have a comment?

Mr. Stephen Mills: In relation to some of the information that he identified, such as water quality, water quantity, and other aspects, shutting down a lot of these monitoring stations has had a big impact on proponents. They have to undertake even more studies than in the past in order to get in the door with YESAA. It's a lot more difficult, and the onus is on even very small proponents to collect data that used to be collected by government over a long term.

Ms. Jean Crowder: In that context, again I'm coming back to the municipal planning process. In the province where I live, British Columbia, a lot of the scientific assessment has been downloaded to municipal councils. They don't actually have the capacity to gather that kind of scientific information, so what's happening is that the proponents are doing it, and there is a mistrust because the proponents have a stake in the outcomes from that scientific data.

I'm not suggesting that they all skew the data, but there is a fundamental mistrust because they're not seen as independent and unbiased. I don't know if you've come across that.

Mr. Ian D. Robertson: I think that's very true, but it goes back to what the government's role is. When government neglects to pay attention to the basics, such as straightforward traditional research, they're creating problems that have consequences down the way.

Where did we see this happening? We saw it happening in the 1980s when we were cutting the deficits. The first places we cut were the ones that cost us the most. If you have to fly up to the Belle River, it costs a hell of a lot more than the data in, say, a document.

The Chair: Thank you, Mr. Robertson. That's great.

Now we'll go to Mr. Clarke. This is the last time slot, by the way.

I understand you're going to split your time with Mr. Rickford.

Mr. Rob Clarke (Desnethé—Mississippi—Churchill River, CPC): That's correct, Mr. Chair.

The Chair: Go ahead. You have five minutes.

Mr. Rob Clarke: I thank the witnesses for coming back and speaking here today.

My question is in regard to YESAB. From what I understand, it's an independent arm's-length entity that is responsible for implementation of the YESAA legislation and regulations. My question is in regard to the period when the board is sitting on assessments and the board members are being appointed.

First of all, I'd like to know long the appointment process is. How does it affect the members being appointed? From what I gather, they're all appointed at the same time. Is that correct?

•(1225)

Mr. Ken McKinnon: Yes, and it presents real problems, because we could be going through four major assessments in June, when all our appointments come up. It would mean that we would be gone, and everything would start from scratch on four really major assessments that we'd be involved in. It's a problem.

Mr. Stephen Mills: The only thing I would add is that the entire board doesn't do the assessments. There's an executive committee on the board. Ken, I, and one other person, Simon Mason, are on the executive committee. We conduct the assessments on the large projects; our designated offices have their own independent authorities to conduct assessments at the community level on most of the projects. Our board members deal with administrative matters, and they're there should we strike a panel.

Mr. Rob Clarke: What would be a proper recommendation in regard to the appointment process or for a timeline for each board member to be appointed? Would there be any suggestions?

Mr. Stephen Mills: The Umbrella Final Agreement limits it to three years. That's the constitutionally protected duration. We have a couple of members on a slightly different timeline owing to some delays in their appointments. There's a recommendation in the five-year review.

Our biggest risk is a changeover of all the executive committee at one time. That puts new people into the middle of an assessment. That may be a risk; I'm not saying that it is absolutely a risk.

The other side is that if we establish a panel, panel members must be made up of board members, and you can't replace them because it's a quasi-judicial process. Should the appointments run out during a panel, which may take a long time, then we lose those members, and they can't be reappointed. We could see a panel stop. There's a recommendation in the five-year review on that matter.

The Chair: You're at the halfway point now.

Mr. Rob Clarke: I'll pass it on to Mr. Rickford.

The Chair: Go ahead, Mr. Rickford.

Mr. Greg Rickford: Thanks, Mr. Chair, and I also thank my colleague.

Stephen, I want to revisit a question I asked. I want to get to the land use planning questions, but on your answer about the Transport Canada issue, I almost feel like it was cut off a little bit. From my own review of this literature in preparation for this meeting, I think this is an important point and an important function. It isn't just about Transport Canada; there may be other major departments.

But you identified Transport Canada and I want to give you an invitation to finish if there is more that you had to say on that, and

whether it's on Transport Canada or others. As you said, I think this is really important for major projects in other regions of Canada.

Mr. Stephen Mills: I'll try to be as brief as possible on that.

Natural Resources Canada, Transport Canada, and the Department of Fisheries and Oceans all provide regulatory roles, but in some cases they come in fairly late, or they're hard to reach in assessments.

On the northern major projects office, I think it may be helpful to have them as effective participants in our assessments and to have them recognize what is happening in the Yukon. They don't have offices in the Yukon, so it's difficult.

For example, with DFO, we have one major project before us where they are currently the only regulator on it. The biggest issues on that project are socio-economic and DFO has already said that they have no authority to add any socio-economic aspects to a fishery authorization.

We have some big hurdles to overcome and I think all the governments—first nations, territorial, and federal—have not kept pace with the YESAA legislation. If you really want to deal with socio-economic effects, you need to have some way of enforcing those effects through licence or something else.

The Chair: Thank you very much, Mr. Rickford and Mr. Clarke.

Witnesses, at this point we are going to go to the next segment of the meeting. We'll suspend briefly for two minutes so you can say goodbye to some of the members here. We'll then resume immediately after.

Members, we'll suspend for two to three minutes maximum, if we can. Thank you.

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_____ (Pause) _____

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•(1230)

The Chair: I call the meeting back to order. We are resuming with consideration of committee business.

Members, I believe the documents have been circulated.

Mr. John Duncan: Mr. Chair, I'd like to raise a point of order.

The Chair: Go ahead, Mr. Duncan.

Mr. John Duncan: This motion concerns me a lot. The motion is referencing a 2008-09 report of the Office of the Correctional Investigator, which has 19 recommendations, only one of which is specific to aboriginal Canadians. That recommendation is actually specific to the public safety minister and an action he might take. The other 18 recommendations generally fall outside the mandate of this committee. Yes, it's true that aboriginal inmates may be impacted by the other recommendations, but no more so than any other inmate, generally speaking.

We have copies of those recommendations. They consistently talk about recommendations regarding "the Service", which means the Correctional Service of Canada, and which is outside the mandate of this committee, clearly outside the mandate of this committee.

I think it must also be considered that in our study on this topic, Mr. Sapers mentioned his recommendations from his 2007-08 report as they relate to aboriginal people. Ms. Crowder's motion does not mention that report, even though it was included in our consideration of the topic.

The report mentioned in the motion, "Good Intentions, Disappointing Results: A Progress Report on Federal Aboriginal Corrections", was not a report by the Office of the Correctional Investigator, but it was released by his office. There were no specific recommendations in that report. The only thing we had in that report was a conclusion, and I can tell you that the conclusion contains no recommendations.

He talked in the conclusion about "a concern about ongoing performance gaps between Aboriginal and non-Aboriginal corrections", which has turned into alarm as the Correctional Service of Canada is failing to deliver on commitments to date. He talks about previous good intentions reflected in the Correctional Service of Canada policies and strategies, which "have been inadequately operationalized, at least partially due to a lack of data tracking, clearly enumerated deliverables, and accompanying accountabilities", whatever that means, "leading to disappointing results".

He talks about the "Aboriginal Corrections Accountability Framework", which is:

...intended to establish concrete actions with projected results and expected outcomes subject to evaluation and establish levels of accountability in regards to deliverables in implementing the Strategic Plan, 2006. Future implementation of the Framework should be expected to further CSC's meeting of its goals in Aboriginal corrections.

Therefore, he endorses the approach of setting up "tangible targets with timelines, relevant performance indicators, strengthening accountability and clarifying roles and responsibilities, enhanced monitoring, and public reporting on progress". This says, "Only time will tell if the Draft Strategy for Aboriginal Corrections Accountability Framework will live up to its promise of accountability and results in Aboriginal corrections".

I see no recommendation there. It also states:

● (1235)

However, while supporting this initiative, the...[Office of the Correctional Investigator] also feels compelled to ring the alarm. The anticipated growth in the federal Aboriginal offender population and potential shifts in their geographic distribution is in the pipeline, suggesting continuing over-representation in correctional populations for the five-year [Correctional Service of Canada] planning period from 2009/10 to 2014/15.

There is no recommendation there, I submit. It continues:

At this juncture, given the young and growing Aboriginal population, a... [Correctional Service of Canada] failure to expeditiously mobilize good intentions in Aboriginal corrections will reverberate throughout the youth and criminal justice system, Aboriginal communities and Canadian society for years to come.

That's a summary of what this report represents.

The Office of the Correctional Investigator's "recommendations", which are referenced in Jean's motion, appear to point to two reports, which are the 2008-09 report and the progress report. In the first instance, as I've already mentioned, all but one of the 19 recommendations are clearly outside the committee's mandate, and I would submit that the other one is also outside our mandate, although it does mention "aboriginal" in its intent. In the second report, there are clearly no recommendations.

I would submit that according to Standing Order 108(2) the motion is clearly inadmissible. For the record, I think I'll read Standing Order 108(2):

The standing committees, except those set out in sections (3)(a), (3)(f), (3)(h) and (4) of this Standing Order, shall, in addition to the powers granted to them pursuant to section (1) of this Standing Order and pursuant to Standing Order 81, be empowered to study and report on all matters relating to the mandate, management and operation of the department or departments of government which are assigned to them from time to time by the House. In general, the committees shall be severally empowered to review and report on:

- (a) the statute law relating to the department assigned to them;
- (b) the program and policy objectives of the department and its effectiveness in the implementation of same;
- (c) the immediate, medium and long-term expenditure plans and the effectiveness of implementation of same by the department;
- (d) an analysis of the relative success of the department, as measured by the results obtained as compared with its stated objectives; and
- (e) other matters, relating to the mandate, management, organization or operation of the department, as the committee deems fit.

Both of the Correctional Investigator's reports are clearly beyond the mandate of this committee. I would suggest that if the NDP wants a committee to recommend these to the House, then the reports should be sent to the relevant committee for further study there.

In addition, both of these reports have already been tabled in the House. It would be completely redundant for this committee to report them to the House when that has already been done.

● (1240)

That's my objection to reporting this to the House, Mr. Chair.

The Chair: Thank you, Mr. Duncan.

It is a legitimate point of order. Normally these questions are dealt with fairly quickly. There is some discretion on the part of the chair. If others wish to make interventions in respect of the point of order, we'll allow some brief interventions on it before I make a determination.

Ms. Crowder.

Ms. Jean Crowder: Thank you, Mr. Chair.

We just heard from witnesses who talked about some of the challenges with the silo approach to regulation. I would argue that in the case of first nations, Métis, and Inuit men and women who are in prison, the Indian and northern affairs committee has some responsibility around the conditions that lead to people entering prison and the conditions that don't contribute to their success on release.

There are a number of factors involved in this. The Correctional Investigator, in the report that came through the department, talked about the poverty, social exclusion, substance abuse, and discrimination that contribute to people ending up in the prison system, and then of course to their challenges when they're released.

Part of my motivation around recommending that it go to the House was the frustration that we heard through the Correctional investigator around the fact that for 35 years he's been reporting on these issues and really has not seen the kinds of changes that would contribute to successful reintegration into society and to prevention. Because of the lack of attention in the House over 35 years, it would seem that the aboriginal affairs committee could have a role in raising attention to this. I would argue that we can make a case for its fitting within the mandate of this committee.

• (1245)

The Chair: Mr. Bagnell.

Hon. Larry Bagnell: Thank you. I'll try to be really brief, because I think the chair should rule quickly so that we can get on with it.

I would agree with a couple of Mr. Duncan's points, in that the recommendations are at times hard to find in the report, the way it's written, and also that there are a number of recommendations that would help non-aboriginal people as well as aboriginal women.

But not wanting to throw out the baby with the bathwater, obviously there are things here that would help aboriginal women, so I think we can recommend it to the House. I think Mr. Duncan should call for a concurrence debate on it and he can bring up these particular points.

The Chair: Okay.

Ms. Glover.

Mrs. Shelly Glover (Saint Boniface, CPC): Thank you, Mr. Chair.

Thank you for allowing me to take part in your meeting today. I'm here for two reasons. First of all, as an aboriginal woman, I take great interest in what occurs within your committee, and I congratulate all members of the committee for the fantastic work you do each and every time you appear.

But as an aboriginal woman and the daughter of a woman who spent her entire career in a correctional facility dealing with mainly aboriginal women offenders, I wanted to be here today to express my concern about the fact that there is a motion before your committee to accept these recommendations, when I have to agree with Mr. Duncan that they're clearly out of the mandate of this committee. I appreciate Ms. Crowder's willingness to try to help aboriginal people.

The second reason I'm here is that I am a member of the Standing Committee on Public Safety and National Security. It is in that committee that we are presently looking at mental illness in the prison systems, and we are focusing quite a bit of our time on the fact that we do have a number of aboriginal offenders who are in fact affected by mental illness and addiction.

The report by the Correctional Investigator is the basis of much of our study. In fact, as many of the members here know, each and every party represented has taken part in an extensive trip to visit and to study prisons across Canada, and we've also made an effort to visit institutions in other countries, so that we can provide the best possible recommendations to the House in collaboration with a number of stakeholders, including the Correctional Investigator.

The countries we have visited are Norway and England, so there has already been substantial cost on the endeavour in this study. We are looking at very similar recommendations and we are studying the recommendations of the Correctional Investigator. It would be highly untimely for this committee to put forward some kind of proposal in the House. It would interfere with the work that is being done. It would really, in my opinion, tell the taxpayer that we don't care how we spend their money, that we're going to interfere in any way we can, even knowing that it's an obstacle to the good work that others are trying to do, at a high cost to the taxpayer.

More than anything, we want to help these offenders. We want to make sure they get every benefit of the Correctional Investigator, of the stakeholders within Correctional Service of Canada, and of parliamentarians who are working very hard on this issue.

I truly believe that each and every member of this committee wants what's best for aboriginal people. I truly believe that. That's why I'm here today to suggest that this is an inappropriate submission at this point, knowing what all of the parties are involved in other committees, and knowing that we are all trying to do the right thing here.

The fact that it's inadmissible, given the points that Mr. Duncan has provided, suggests that all of us should look within ourselves and really dismiss this motion at this time, because it will negatively impact on the things we're doing in the public safety committee.

I want to tell a very short story just to put into perspective how this study that we're doing in the public safety committee is impacting aboriginal people. With Mr. Don Davies from the NDP, I met a young woman, an aboriginal woman by the name of Debra, and she was actually incarcerated for a murder in the Saskatoon—

• (1250)

The Chair: I would ask you to stay on the topic of the point of order, as opposed to the merits of the motion. If you can just sum up, we're running short of time. We have two speakers on the list.

I stress that these are going to have to be short interventions so that we can stay within our timeframe.

If you can wrap up on that, then we'll go—

Mrs. Shelly Glover: I will. This woman suggested to us that there were some improvements that could be made within the prison system itself for aboriginal women. I think those are suggestions that will be really important to consider when our public safety committee puts forward our report. I think that anything to disrupt that flow at this given time would set us back.

With all due respect to this committee, I hope that you really take this into consideration, choose not to put this motion forward at this time, and allow us to do the good work that's being done in collaboration with members from all parties.

The Chair: I have Mr. Clarke, Mr. Rickford, and Mr. Russell.

There's no time limit per se here, but debate on points of order is intended to be brief. Please stick to the question, which is on the admissibility, if you will, of this motion.

Mr. Clarke.

Mr. Rob Clarke: Thank you, Mr. Chair.

When this motion was brought up by Ms. Crowder, I felt somewhat concerned about it. I believe this is out of our committee's mandate. We're stepping on another committee's mandate for public safety and corrections.

I've worked with the RCMP for 18 years. Everyone knows that I've served all my time stationed on first nations or working closely with first nations or Métis communities. I've seen the worst and best of what people can offer.

I have a story with regard to what transpired with me and how this committee is looking at bringing this motion to the House. This is about my brother. When I was six years old, we brought a foster brother into our home from a very troubled family from Sechelt, British Columbia. He was involved with and in and out of the law at six years of age. Growing up with him, I saw the trouble he had gone through in being taken in and out of foster care. Then, when he turned 16, he moved out. It was devastating for me, because I lost a brother. At that time, he went into the correctional system for stealing cars; you name it and he would do it.

That's one of the main reasons why I got into law enforcement. I thought I could try to help the communities and first nations. There is a lot of work in the communities. But as for what I've seen from correctional strikes where the RCMP have to be brought in on a provincial basis, I've seen a lot of good work being undertaken by corrections and the federal corrections. I see the corrections leading right now by providing sweat lodges, meeting with the elders, talking about traditions, trying to get their—

The Chair: Can you bring that back to the admissibility question?

Mr. Rob Clarke: I will. I think this will go right back into the scope and mandate this committee is looking at. I've seen the elders teaching the traditions of self-healing and how a community takes on the role of a sentencing circle and provides guidance, and I've seen the type of punishment or alternative punishments an offender could have. It could be for females or males or young children.

Mr. Chair, I believe this motion is way out of line. I feel it would be more appropriate if we took this motion to the justice committee. They have been touring the correctional institutions and seeing first-

hand the challenges of addictions that are facing first nations and Métis men and women.

Is there a simple solution? No, it's a learning experience.

• (1255)

The Chair: Okay, we do have to move on here. We have two other speakers. I'm sorry, we're allowed some discretion, but we do have to get to a decision.

Let's go now to Mr. Rickford, followed by Mr. Russell.

Stay on the question of admissibility and consider that points have been made. Simply repeating points isn't necessarily adding to the debate.

Mr. Rickford, go ahead.

Mr. Greg Rickford: Mr. Chair, we've heard concerns about redundancy and interfering with a process that's already going on in another committee. We've also heard some concerns about our specific mandate. I would take that a step further and, for those reasons, I would say that this is incomplete. The reference in the motion is to one specific report, but we've already heard from a colleague that there may be other reports that have to be considered in regard to this.

I have an appreciation for Jean's comment that first nation socio-economic development should be viewed through a broad lens. She mentioned the silo theory, if you will, as it relates to our discussion today. And there may something to that, through you to Jean, Mr. Chair, who I know has historically been passionate about this issue and the work that this committee does.

But I would submit respectfully that if we were really looking at broader determinants, then we would have to consider the things that are going on in other committees and that ought to be read in and considered for the purposes of this motion or anything like it that we would hope to achieve.

We've heard from a colleague that there are issues around mental illness and addiction. Based on my own history of living in isolated and remote first nations communities—and across this country, in fact—I know that Health Canada's first nations and Inuit health branch has some information with respect to this. I think we certainly want to ensure that we reach that balance where we're not interfering with the important work that other committees are or may be doing. We respect our mandate, and I would say that I think we've done a pretty good job of looking at broader determinants and at what could prevent the kinds of activities that often lead to this specific issue.

It seems quite analytically natural to me to see that redundancy and interference take us to a place where we're really incomplete. For the purposes of this motion and all of the technical concerns my colleague outlined earlier, I think it would be reasonable at this point to objectively take a step back and look at what else is going on here and may impact what this motion is striving to achieve.

The Chair: Thank you, Mr. Rickford.

I've basically heard enough. We're almost at one o'clock and we have to move on.

Okay. Thirty seconds. Go ahead.

Mr. Todd Russell: Thirty seconds?

The Chair: Yes, sir.

Mr. Todd Russell: Well, with respect to what everybody has said, I don't see.... We should interpret the standing orders in the broadest context to allow the committee to have a full airing of all aboriginal issues and those that affect aboriginal people.

It would not be the first time that more than one committee has looked at a similar topic. This report was not commended to any particular committee for its consideration, so I think it's well within our purview as a committee to study it, to accept it, and to have witnesses here in front of us.

It is not a matter of interfering with another committee. It's a matter of us doing our work and reporting to the House, which hopefully will find some congruency and consistency between our work and that of another committee. It's not overstepping the bounds of another committee for us to study it, to look at it.

Neither is it against the standing orders for us to commend a report. We're not talking about a statute or a law of whatever; we're talking about a report to the House for consideration. If there were to be a debate on this motion, for instance.... This doesn't call for a report back from the House. That discussion in itself could inform other committees, so I see no argument for why this is outside the standing orders. It is admissible and it should be put forward.

• (1300)

The Chair: Thank you, Mr. Russell.

Thank you, all members, for your input and advice on this question. There's no doubt the mandate of each committee is something that's very clear in the standing orders and we are obliged to follow. It's important, therefore, that all notices of motion meet the admissibility test. I appreciate the thoughts and comments of members in that regard.

I'm inclined, in this case, to uphold the comments that have suggested that this motion is, in fact, not admissible, simply and principally for the fact that it is a broad range of recommendations—

in fact, as was pointed out, 19 recommendations in the 2008-2009 report—that are not specifically within the mandate of our committee. So we'll rule the motion out of order.

We of course have a process in place for substantive motions. It can be reworked and brought back to the committee at any time.

This is perhaps instructional for all members, in that when you're considering notices of motion, if there is a question about admissibility you can speak with me or the clerk. These are questions that could be covered off to ensure that we have those in front of us, but we'll abide by our normal committee rules and proceed as follows.

There being no other business before the committee, this meeting is adjourned.

Mr. Marc Lemay: I have a point of order.

The Chair: There's another point of order.

Mr. Marc Lemay: We challenge your decision, Mr. Chairman.

[*Translation*]

If you do not wish to discuss this right now, we ask that it be the first item on our next meeting's agenda.

[*English*]

The Chair: Okay.

Respectfully, I heard two things there. I heard that you want to challenge the ruling on the point of order. That is something that is not really debatable and I would be seeking a motion from the committee to sustain the position and the decision of the chair. That would have to go in front of the committee right away.

Mr. Marc Lemay: Call the vote.

The Chair: Okay. It's not debatable. All those in favour of sustaining the decision of the chair?

(Ruling of the chair overturned)

The Chair: All right. We will proceed. At this point, there is insufficient time to proceed on this question, so the motion stays in front of the committee and will be taken up as the first piece of business for committee business at the next meeting of this committee, which won't be until January, members.

May I take this time to wish you all happy holidays and a great time with your families at home over the next six weeks? Please drive safely and have a wonderful break.

Thank you very much.

The meeting is adjourned.

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