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Chair

Mr. Chris Warkentin

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• (1535)

[English]

The Chair (Mr. Chris Warkentin (Peace River, CPC)): Colleagues, we are going to call the meeting to order. This is the 54th meeting of the Standing Committee on Aboriginal Affairs and Northern Development. Today we continue our study on Bill C-47.

For our first hour, colleagues, we have representatives from Nunavut Tunngavik Inc. We'll hear from them, as is our usual practice, and then we'll have questions.

We will turn it over to Ms. Hanson for an opening statement. You are joined by Mr. Merritt and Mr. Spaulding. Thanks for coming. We appreciate your willingness to be here and to share your thoughts with regard to the bill. We'll turn it over to you and then we'll have some questions for you.

Ms. Udloriak Hanson (Senior Policy Liaison, Nunavut Tunngavik Inc.): [*Witness speaks in Inuktitut*]

Thank you very much for asking us to present today. My name is Udloriak Hanson. As you mentioned, I have John and Dick with me. They're both with NTI as legal counsel. It's nice to see some familiar faces here. We have Nunavut Sivuniksavut students, our college students, all from Nunavut. It's great to have that support. We have people from NTI and my son here, so I'm very pleased to be here. Thank you.

First, I'd like to give thanks to the committee again for the invitation for NTI to appear today. NTI, Nunavut Tunngavik Inc., represents more than 25,000 Inuit of Nunavut for the purpose of asserting and defending the rights of Inuit under the 1993 Nunavut Land Claims Agreement.

Part 1 of the bill before you today arises directly from the Nunavut agreement. It is our job as representatives of Inuit, as we believe it is yours as legislators, to ensure that the bill fully respects and implements the treaty promises made by the crown to Inuit. We take that responsibility very seriously.

NTI is a not-for-profit, non-partisan organization incorporated under federal law. We have a board of directors headed by a slate of executive officers who are popularly elected by Inuit across Nunavut. Actually, today is our election day for presidents. The Nunavut agreement covers some 20% of Canada and a larger portion of Canada's marine areas. Our agreement is the bedrock of Canadian sovereignty in much of the Arctic. It is a treaty under section 35 of the Constitution Act, 1982.

The Nunavut agreement requires that legislation set forth the powers and functions of the resource management bodies created under the agreement, in this case the Nunavut Impact Review Board and the Nunavut Planning Commission, but there is an obvious risk to the aboriginal party in this legislative exercise. A land claims agreement is a contract. All its provisions, both large features and small details, are the outcome of negotiation and compromise. Neither side gets everything it wants.

The wording of many provisions reflects a careful balancing of interests. Implementation legislation proceeds differently. One of the parties to the agreement gets to draft the legislation. Recognizing that imbalance and reflecting the crown's duty to act honourably, the Nunavut agreement expressly requires that implementation legislation be prepared in close consultation with the designated Inuit organization, in this case, NTI.

There must be fair and sufficient collaboration and accommodation. Inuit cannot just be stakeholders in such a process. We have to be partners in the bill's design and wording. The Supreme Court of Canada has held that the crown is under a duty to consult and accommodate aboriginal peoples and to act honourably when aboriginal rights are involved. This duty logistically extends to the crown acting as part of Parliament, so that these principles should also be respected and applied by this committee.

Between 2002 and late 2009, the Department of Indian Affairs and Northern Development, NTI, and the Government of Nunavut worked together on the development of this bill. The Nunavut Planning Commission and the Nunavut Impact Review Board also participated in that work. The working group operated on the basis of consensus, building on the practical experience of the Planning Commission and the impact review board since they came into existence in 1996. The strength of the bill is the result of that consensus-based process. It is a credit to the federal officials with whom we worked that at this concluding stage of the process, NTI can say that it has been a partner in the bill's development. This is the first time NTI can say that about a federal legislative project.

Having said that, NTI did not draft this bill, nor did it instruct the legislative drafters directly. Therefore, NTI cannot warrant that this bill complies in all respects with the Nunavut agreement. As provided in the agreement, in the event of any conflict, the Nunavut agreement will prevail.

In fact, NTI will be proposing today a number of changes to the bill. While relatively minor, many of these changes are needed to ensure clearer compliance of the bill with the Nunavut agreement.

It is important to note that due to the limited time available, and the length and complexity of the bill, NTI has not been able to conduct a review of the French language version. Parliament must look to the Department of Justice and its own staff to ensure that the two official language versions are consistent.

In NTI's view, the strengths of the bill include: a requirement that public hearings and reviews be conducted in Inuktitut in addition to French and English, at the request of a board member, proponent or intervenor; specific direction to regulators not to issue permits unless the land use planning and environmental assessment processes authorize the granting of a permit; and direction to regulators to include in their permits applicable terms and conditions of land use plans and project assessment certificates. Another strength is offence provisions that backstop the duties of regulators in relation to land use plans and project certificates.

As well, other strengths include: a requirement for Inuit approval of land use plans, which is consistent with the unique Inuit role in the land management system in Nunavut and the Inuit ownership of much of the land; instructions for how projects will be scoped in advance, so as to avoid problems such as project splitting; and provisions to facilitate commission and board operations, such as recognition of their legal capacity to hold property and sign contracts.

Notwithstanding these positive features, a number of aspects of the bill should be corrected.

Contrary to the Nunavut agreement, the bill fails to identify cabinet as a body responsible in all cases to implement land use plans and project certificates. The result is a gap; where cabinet has exclusive authority for land-related functions, plan or project certificate requirements will be without anybody responsible to implement them.

The bill expressly requires that in exercising their functions with respect to land use plans, the Planning Commission, ministers, and Inuit must give specific attention to "existing rights and interests". However, existing patterns of natural resource use and economic opportunities and needs are already factors that must be considered. The introduction of another factor emphasizing the same or similar points improperly skews the delicate negotiated balance of the agreement.

There are some areas of the bill where process should be improved. For example, under clauses 141 and 142, proponents are the only source of notice to the Planning Commission and the Impact Review Board of modifications to a project during assessment. Regulators should also be required to notify the Planning Commission or Impact Review Board if they receive an application with a project description that differs from the project under assessment or that has been assessed by the Planning Commission or Impact Review Board.

In a number of places, the wording of the bill varies from the wording of the agreement for no good or agreed reason. This is unsound in principle and in law and is likely to create confusion and uncertainty in the day-to-day operation of the new act.

Draft amendments for these and other proposed changes are included in NTI's written submission, and I've been told you all have a copy of it. NTI requests the committee to make these amendments.

Finally, NTI reminds the committee that a law is only as good as its day-to-day administration. The bill gives the Planning Commission and the impact review board a number of new or expanded functions. For example, both bodies will have an extensive public registry responsibility that exceeds current federal record-keeping requirements. Functions such as these naturally require the allocation of appropriate levels of new funding.

Another funding need relates to the increase in the number of existing and anticipated mines and other resource development activities in Nunavut. Land and water inspection in Nunavut is already overtaxed. Adequate funding for these functions is long overdue.

● (1540)

The bill appropriately contains strengthened monitoring, inspection, and enforcement provisions. However, we have had no assurances whatsoever that sufficient funds will be allocated to implement the bill.

Arctic ecosystems are fragile, and this is an urgent priority. NTI invites you to ask federal government witnesses to identify specifically how and when the necessary additional funding to implement this bill will be made available to the boards and to relevant federal offices.

Nakurmiik. Thank you for your attention.

The Chair: Thank you, Ms. Hanson.

I will now turn to Ms. Crowder to begin questions, for seven minutes.

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

I want to thank the witnesses for coming before the committee.

I want to acknowledge the students as well. It's important that the young people, who are the future leaders, are here to witness and perhaps also raise some questions for their own leadership.

First of all, I want to thank you for your very thorough document. You raised a couple of important points in your testimony.

One of the points is around implementation and funding. I know we've had previous experience where funds haven't necessarily been attached.... I mean, they're never incorporated in a bill, but funds haven't been agreed upon when legislation has been passed, or in the implementation phase when things haven't run as expected. We only need to look to the Land Claims Agreements Coalition and the struggles that a number of the land claims and self-governing nations have had in terms of implementation of their agreements, to know that unless you nail it down in a piece of legislation, you're going to have a great deal of difficulty when it comes to the implementation phase.

I want to ask about the lack of a funding agreement, because that was identified back when people spoke about Bill C-25, the previous incarnation of this bill. At that time, the deputy minister indicated there would be funding, but it wasn't earmarked where that money would come from, how much, or when it would be available.

I've mentioned at this committee before that the B.C. First Nations Education Act is a good example of a piece of legislation that was passed five years ago and the funding is still not in place for that.

Are you aware of any specific discussions taking place with regard to funding, such as what amount and when? Are you aware of any of those discussions?

• (1545)

Ms. Udloriak Hanson: First of all, thank you for your question.

Specific to the discussions, they would be with the Nunavut Planning Commission. I think they're in the best position to speak to the numbers they have provided. It's our understanding that there was a written submission by NPC that provided for numbers, which would show how much more money is required to implement, to do their work effectively.

As per our amendments, the amendment to proposed section 39 would help to confirm the government's funding responsibility.

We understand also, as does the Government of Nunavut, that the bill can't deliver all that's necessary by way of funding, as you mentioned as well, but it would be good to have confirmation that those discussions will support the extra work that the legislation will provide for. It would be good to hear the minister's commitment to increased and adequate funding for not only NPC but also NIRB, and inspection at the federal and territorial levels.

Ms. Jean Crowder: When the Government of Nunavut came before us last week, they didn't propose any amendments to the part of the bill that applies to Nunavut. You've clearly done a substantial amount of work on amendments. In your introduction you make it clear that this is part of ensuring that the language in this new bill, Bill C-47, is consistent with the Nunavut Land Claims Agreement.

If you were to prioritize, are there particular amendments you've proposed that you think are essential to be included in the bill?

Ms. Udloriak Hanson: Unfortunately, we can't prioritize. We feel it is a priority that all 12 amendments be implemented.

The bill and the 12 amendments we're proposing would provide for that consistency and would make us feel that this a good piece of work that has been worked on for quite some time by all three parties.

Ms. Jean Crowder: Mr. Chair, how much time do I have left?

The Chair: You have three minutes.

Ms. Jean Crowder: Great.

One of the things you pointed out was that there could be some confusion and uncertainty if the legislation proceeds as is. Could you highlight key areas where there would be confusion or uncertainty?

Ms. Udloriak Hanson: Because we only have three minutes, I'll let our expert who did sit on the working committee answer that one.

Ms. Jean Crowder: Thank you.

Mr. Richard Spaulding (Lawyer, Nunavut Tunngavik Inc.): We've suggested a number of kinds of amendments.

One kind could be considered a design feature of the act, and that's the first amendment put forward. There would be significant confusion if the bill were enacted without providing that an implementation body would be responsible for planning in relation to conservation areas and parks. Right now the bill is silent as to what body is responsible for implementing plans in that sphere. The body that tends to have responsibility is cabinet, and the definitions of "department" and "agency" in the bill, which are the closest candidates to include the bodies I'm referring to, exclude them by defining these entities essentially as the public service.

Another source of confusion that's been highlighted has to do with the provision for what happens when a project changes in the course of assessment, which is a very practical, typical concern in an environmental assessment process. It happens more often than not when a project goes to review that at some point the description is going to change for reasons of financing, changes in plans, or changes in conditions on the ground having been encountered. NTI's submission is that the bill is overly confusing on that point. It's overly cumbersome. It could be simplified.

Funding is obviously, as Ms. Hanson mentioned, a key area.

Another one is that there are a number of language points in the bill that depart from the agreement in such a way that an NTI submission can only lead to less certainty rather than more certainty. To cite a simple example, in several places where the agreement says that a body has a judgment or a decision to make, the bill says that there's an opinion to be expressed. In ordinary parlance, those are different things. They lead to questions rather than to clarity. Those are some examples.

In general, the 12 amendments that Ms. Hanson has alluded to are intended to provide more clarity, more effectiveness.

• (1550)

The Chair: Thank you very much.

We'll turn it over to Mr. Richards now for seven minutes.

Mr. Blake Richards (Wild Rose, CPC): Thank you, Mr. Chair.

To the witnesses, I appreciate your being here today.

I understand that work towards creating this bill began about 10 years ago, shortly after the creation of Nunavut as a territory. I think you mentioned in your opening remarks that you certainly felt consulted and felt as though you were able to work with the government on the creation of the bill. That's something I'm sure you're quite pleased with.

I want to get a sense from you as to whether you feel you were closely consulted during the development of the bill. Maybe you could give some evidence of that.

Ms. Udloriak Hanson: Thank you.

I'll leave it to the lawyers to describe exactly what consultation means in that sense. What I can say, though, even though I wasn't part of the working group, is that NTI does feel as though we most definitely were part of the working group in that regard, and that we were able to work very hard together towards this. Because of that, most of the hard issues are resolved.

We are almost at consensus, but we're not quite there. Consultation in that sense has brought us so far. As I said in my notes, we weren't the drafters, so it did end at one point, and we've started this other process, which requires us to provide amendments that we feel would make it a more wholesome piece of legislation.

The 12 amendments we have made are not a surprise to anybody. We've been making it quite clear and obvious to all parties that this is something we feel needs to happen in order for the legislation to be consistent with the land claims agreement.

Did somebody want to add to that?

Mr. John Merritt (Legal Counsel, Nunavut Tunngavik Inc.): I have just a couple of extra points.

The common-law duty to consult aboriginal peoples, as you know, also includes the duty to accommodate. It's not enough to talk. It's also important to try to, where possible, achieve a result that accommodates the aboriginal party. As my colleague said, these 12 amendments aren't the only amendments that NTI proposed in the process. As you can imagine, we had a much longer list. This was very much a list of manageable amendments we thought were the irreducible minimum.

The other point I'd make is that, as mentioned in the oral presentation, the Nunavut Land Claims Agreement has a provision that says it prevails in the event of conflict with any law, so it's very important that other laws be developed in such a way that there won't be overt conflicts leading to confusion and potentially litigation.

Mr. Blake Richards: These areas that you believe require amendments, were they not discussed with officials when the bill was being developed? If they were discussed, can you give us some sense as to whether you received any response as to why not all of your views could be fully accommodated?

• (1555)

Ms. Udloriak Hanson: I'll have Dick, who was part of the working group, respond to that.

Mr. Richard Spaulding: In short, all of these proposed changes have been discussed. In most cases there has been at least some exchange of written views.

From NTI's point of view, the responses were not persuasive, and from NTI's perspective, the consultation now falls to be completed in this process with the committee. We are here to persuade the committee that these changes should be—

Mr. Blake Richards: I'm sorry to interrupt, but just so I'm clear, the changes you're suggesting were in fact discussed then, and there was a response to why they could not be completely accommodated. Is that accurate?

I'm just trying to understand. I wasn't sure from your remarks. Were they discussed, and were you provided with reasons why they couldn't be fully accommodated?

Mr. Richard Spaulding: Yes, as I mentioned, and as Ms. Hanson mentioned, there is no complaint before you that there has been a breach of the duty to consult here. We have been consulted. The process, from our point of view, is not complete.

Mr. Blake Richards: Okay. I just wanted to make sure that I understood.

You were given rationale for why some.... I'm still trying to make sure I'm—

Mr. Richard Spaulding: Yes, okay. Thank you for that clarification of your question.

When we say that the responses weren't always persuasive, I'll give you some examples. On the opinion versus decision and judgment call, we suspect, having had discussions with federal officials, that this is a preference on the part of the drafter. But we don't meet with the drafter. We don't have written arguments presented to us by the drafter. To some extent the federal officials are intermediaries there, but we sense this is a preference of the drafter. We ask the committee to make its own judgment. We think it's very important in the instances we cited for the language of the agreement to be tracked. It's in that sense that we say the consultation needs completion.

Similarly, on process questions which I alluded to, there is a lot of detail there. There has been good faith in the exchange of opinions. In our view, the simplicity we had proposed on the project change example is something the committee should consider. But we don't complain, in that instance, that federal officials have not responded to us and presented their views on the point.

Mr. Blake Richards: Can you give us any examples of how the legislation may have been adapted or changed during the consultation process to reflect some of the interests of Inuit for sustainable economic development in Nunavut? Can you give us some examples of that?

Mr. John Merritt: One feature of the bill that you'll notice is that there are time limits in relation to decision-making, and not just time limits for management bodies but also government officials, which is an important feature. It's important that public sector participants play by the clock, as well as private sector investors and organizations and other people. That's a feature of the bill that you won't see in the land claims agreement. The land claims agreement doesn't have that level of detail.

There was consensus in our working group that it would be useful for everybody to have some time limits, in terms of making sure that everybody can make management decisions within a rational world. I don't think that's just a gain for Inuit, for developers, for government. I think that's a gain for the people of Canada, having a system that's going to be more effective. Insofar as that makes economic development easier, that's a benefit coming out of a creative process where two parties themselves try to add value to the bare minimum set of rights that the land claims agreement entails.

Mr. Blake Richards: Good. Thank you.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Richards.

We'll turn to Ms. Bennett now, for seven minutes.

Hon. Carolyn Bennett (St. Paul's, Lib.): Like my colleagues, I was a bit surprised to receive your 32-page document and 13-page appendix in terms of amendments.

As you said in your testimony, the concern in the three party negotiations was that if there were an area of conflict, the Nunavut agreement would prevail.

Is the disagreement a matter of interpretation as to whether it conflicts with the Nunavut agreement? Did you see it when the drafters were finished with it and comment then? Do you believe that if push came to shove, certain parts of Bill C-47 would be struck down based on its inconsistency with the Nunavut agreement?

• (1600)

Mr. John Merritt: We haven't taken our analysis that far in the sense of predicting specific legal problems that could ensue.

As a general proposition, it's very important that new laws, particularly laws that are there precisely to help implement the treaty, are developed in such a way as to support and give further effect to that treaty rather than introduce doubts in places where there's a divergence in wording.

Whenever there's a divergence in wording, there's a potential for conflict. We know that just as a general proposition. We wouldn't have lawyers and lawsuits if that weren't a reality.

For example, we've had explanations brought back to us that legal drafters employed by the Department of Justice prefer certain wordings to others. Our view is that whatever the conventions of drafting in other arenas, when you're giving effect to an agreement, whether it's a domestic treaty or an international agreement, it's important to preserve what the parties themselves negotiated.

The fact that somebody later on might think there's a preferable or an advantageous way of phrasing something, or the fact that somebody might be appealing to conventions used elsewhere, is beside the point. To honour the agreement is to honour the words the parties chose.

On those things, we don't think we're proposing amendments that are bad for anybody. We don't view this as a zero-sum game. We're not suggesting something in these amendments that we think would somehow be adverse to the interests of the people of Canada or to peace, order, and good government in Nunavut. We're making suggestions that we think strengthen this bill, and we invite you to make those amendments accordingly.

Hon. Carolyn Bennett: Maybe you could carry on with the example, which was around the technical amendments, the possible gaps, your discomfort with the narrow definition of departments and agencies. Maybe you could expand what you were doing before, in terms of the potential impact on that in creating a national park or a marine protected area.

Mr. Richard Spaulding: Sure. One of the earlier questions was whether there were points of agreement on the design of the bill. One of the most difficult places to get points of agreement was with respect to how planning and the results of an environmental assessment will be implemented. Several key design features in the bill reflect the consensus that was clearly reached on those points. Some were mentioned in Ms. Hanson's presentation. For example,

proponents themselves will commit an offence if they act in a way that's contrary to the term or condition of a project certificate. It's stipulated in the bill that an authorization that can be issued by a regulatory agency may not be issued if the assessment process in the bill has not been completed.

Those are examples of where what's needed to implement planning an environmental assessment is spelled out in the bill. One of the features of that nature is the clause that says that departments and agencies are responsible for conducting their affairs in accordance with land use plans. That's the general provision that has to be relied upon to implement the terms of land use plans vis-à-vis the establishment of national parks, marine conservation areas, and a whole range of other conservation areas.

NTI asked about, looked for, and hoped to get more specificity on that front in the bill. NTI proposed that there be a specific clause stating how conservation areas and parks would be implemented once the Planning Commission had done its job. We didn't get it. We had to accept the general language, which is in clause 68, indicating that, in general, departments and agencies that have powers in relation to land use plans have to act in accordance with the land use plans. That's the provision being counted on, but when you go to the definition of a department or agency, you find that it is written in an exclusive way. There's no definition of a department or agency in the agreement. You find it used in different phrasing. All government departments and agencies, for example, is a typical phrase in the agreement, but in the bill, it's defined as being the public service, essentially.

We inquired. We said that surely there must be a way to interpret that to include cabinet. The answer we got back was no. There's an acknowledgement on the part of federal officials that the Governor in Council, when establishing these conservation areas and so on, will not be caught. That's a gap in the design of the act, in NTI's submission.

• (1605)

The Chair: Thanks, Ms. Bennett.

We'll now turn to Mr. Wilks, for seven minutes.

Mr. David Wilks (Kootenay—Columbia, CPC): Thank you, Chair.

I thank the witnesses for coming here today to testify again. I'll try to get through the four questions I have for you.

The bill establishes Nunavut Tunngavik as a signatory to the land use plans, which is not a specific requirement of the Nunavut Land Claims Agreement. Can you explain to the committee the significance of this?

Mr. John Merritt: We think that's a strength of the bill. The practice in land use planning in Nunavut since 1993 has been that the two governments and Inuit sign on to any new proposed plan. There are a lot of good reasons for that, not least of which is that the Inuit own 20% of the land. Insofar as one wants a plan that governs all land use, including land use on Inuit-owned lands, the political accommodation is such that you really want both levels of government and Inuit signing up to the same rule book, in effect.

The land claims agreement didn't explicitly say that Inuit had to approve a plan in advance of it coming into force. This bill actually enshrines the practice that has been in place since 1993, if I can put it that way. In that sense, we think that's a very strong feature of the bill. It's an important example of how parties to treaties don't have to check their imaginations once they sign. Treaties are floors, not ceilings, and insofar as willing parties can adapt those treaties and make them stronger, make them win-win for both the crown and the aboriginal party, there's a great opportunity with legislation like this. That's a very good example of how it can be done.

Mr. David Wilks: Thank you very much.

The minister and the president exchanged letters committing them to pursue amendments to the Nunavut Land Claims Agreement on four topics: the single-entry point, the transboundary shipping of persons or goods, the definition of "project", and responses to emergency situations.

In order to ensure the agreement and the Nunavut planning and project assessment act will be consistent, can you comment on what effect, if any, your submission has on that commitment?

Mr. Richard Spaulding: NTI's submission and request for changes to the bill before the bill is enacted are consistent with those undertakings. The understanding is that the intention of the parties is to develop a bill that is in all respects consistent with the land claims agreement. Again, it's in that same spirit that NTI is asking the committee to make the clarifications that it seeks.

Mr. David Wilks: The bill fulfills the last outstanding legislative obligation of the federal government related to the Nunavut Land Claims Agreement. Do you feel that this legislation will enable greater local autonomy for land use planning within Nunavut?

Mr. John Merritt: On your first point, I know a lot of people believe this is the last piece of implementation legislation. I think, in fact, it's not. There's a large project involving implementation legislation in relation to fisheries in Nunavut that has not yet been completed. That legislation may be such that it can be done through regulation as opposed to statute, but it's still a major piece of work. I'm just flagging that for the future.

I'm sorry, what was the second part of your question?

• (1610)

Mr. David Wilks: Do you feel this legislation will enable greater local autonomy for land use planning within Nunavut?

Mr. John Merritt: The bill doesn't actually focus on local land use planning. Local land use planning is governed by territorial legislation in relation to municipalities. I think it clarifies a little bit of the world that unfolds when local plans and the broader Nunavut and regional plans interact, so it probably helps a little bit, but it doesn't rob municipalities of the fact that they're primarily responsible for land use planning within their boundaries.

Mr. David Wilks: It's no different from any other community.

Mr. John Merritt: Correct.

Mr. David Wilks: The bill empowers the Nunavut Impact Review Board to review and assess projects outside of the Nunavut settlement area. In your view, does this address concerns regarding the potential impact of out-of-area projects on Nunavut?

Mr. Richard Spaulding: I have a short answer: yes. The agreement also provides for that, so in that respect the bill is implementing the agreement, and the conditions in which Nunavut can play that role are when those outside projects have significant impacts within Nunavut.

Mr. David Wilks: Thank you very much, Mr. Chair.

The Chair: Thank you, Mr. Wilks.

We'll now turn to Mr. Bevington for his five minutes.

Mr. Dennis Bevington (Western Arctic, NDP): Thank you, witnesses, for being here today.

When we had the Nunavut government in front of us, they characterized these differences between NTI and the Nunavut government as wording issues. Looking back over these recommendations that you've made to us, I was taken by recommendation 3, on clause 141 and related provisions, dealing with significant modifications.

What you're attempting to do here is more than simply a wording change. It's a very important distinction of how you come to understand the nature of an assessment. I sat on an environmental assessment board for years. The idea that the proponent does not have to forward the sufficient modifications to the commission seems to me to be an error in the legislation.

Perhaps you could comment some more on that. I don't view that as simply a wording issue. I see it as a very fundamental issue about how you conduct environmental assessments.

Ms. Udloriak Hanson: That might have been the way the Government of Nunavut characterized our proposed amendment. I'll pass it over to Dick after I speak, because again, he was on the working group.

They're more than just word changes, wordsmithing. There are changes recommended that would change the design features and basic processes.

When the comment is made about how big this written submission is, as large and as technical as it may look, really there are 12 recommendations that have been broken down into different sections. I think that very easily describes how the committee can make these changes, with the explanations, all of which make up the other 40 pages.

To respond more specifically to your question, I'll hand it over to Dick.

Mr. Richard Spaulding: Yes, that suggestion is for more than a wording change to the bill. It is for a process change.

Essentially, it is not to add to the burden on the proponent that the bill would place in relation to significant modifications. In fact, if anything it would reduce the burden because among the changes we're proposing is the proponent need not get it absolutely right in deciding whether the modification to its project description is, within the language of the bill, a significant modification to the project. We're suggesting that it's only if that kind of change may be in the ballpark of what could be viewed as a significant modification that the responsibilities under the bill would be triggered.

The key change that's proposed there is that regulators who have relevant knowledge about what's going on should contribute to the process. By adding responsibilities on the proponent in the design of this bill to come forward to the commission when it's bringing a project into the stream of assessment, we don't think the bill necessarily needs to be designed so as to leave regulators out of a cooperative process.

• (1615)

Mr. Dennis Bevington: I have one further question on it as well.

You have these timeframes established now for doing assessments. When you have significant modifications, what's that going to do to your timeframe? Are you going to see that the clock ratchets back on the particular aspects of the timeframe during the process you're engaged in if there are significant modifications?

I can see this as being a real stumbling block for both the commission and the proponent if we're tied to a timeframe and there's a quarrel or a disagreement over significant modifications.

Mr. Richard Spaulding: That's a question you may want to pursue with the federal officials appearing, but in terms of NTI's basic understanding of the scheme, yes, the clock does start again. If a step has to go back to a previous step that's been taken, then the body that took it initially has the same amount of time when it's looking at the change that it had when it looked at the project the first time.

The Chair: Thank you very much.

We'll turn now to Mr. Clarke, for five minutes.

Mr. Rob Clarke (Desnethé—Missinippi—Churchill River, CPC): Thank you, Mr. Chair.

I thank the witnesses for coming in today, and I acknowledge the students, too. It's great to see some aboriginal intuition here and to get their opinions as well. It's very beneficial.

We heard from the Government of Nunavut that they support the bill in its current form. They consider it probably offers improvements to the land use planning and impact assessment process.

Would you agree with this view?

Mr. John Merritt: Is the question, does this bill improve the land use process?

Mr. Rob Clarke: Yes.

Mr. John Merritt: NTI believes it does improve the land use process, yes.

Mr. Rob Clarke: In what ways?

Mr. John Merritt: If you look at articles 11 and 12 of the Nunavut Land Claims Agreement, you get limited text. Land claims agreements, by definition, don't get into the detail that is required in order to implement a complex land use planning environmental assessment scheme. The bill, of course, is many times that length.

The addition of the detail creates a more certain operating environment, a more full rule book so that everybody who has to play within that regulatory regime has a better understanding of what's expected.

We don't object to the additional detail. We think it's necessary; in fact, that's what the treaty contemplated. The treaty contemplated there would be subsequent legislative activity to backfill with more detail. We don't think this is excessive detail. We think it's a helpful amount.

Insofar as the GN, the Government of Nunavut, says this additional detail would make the land use planning process more effective, then NTI agrees with that. We wouldn't have participated in that working group for as long as we did if we hadn't believed in the same opportunity.

Mr. Rob Clarke: How does the clear and comprehensive planning review process as is provided by the bill assist Inuit as well as Nunavut as a whole by fostering economic development while still protecting the environment?

Ms. Udloriak Hanson: As John just said, it does provide a clear framework and it does explain a lot of detail that's not in the land claims that would provide for timeframes and for different regulatory bodies to consider projects based on their mandates.

That's not to say they haven't been as effective as they should have been, but this does provide for industry, for Inuit, and for the government to be able to have it clearly outlined in the legislation as to how it is that these projects are reviewed.

Do you want to add something?

Mr. Rob Clarke: How does the bill provide for Inuit participation in the development of the lands and resources of Nunavut?

Ms. Udloriak Hanson: There are a couple of parts to that question. The land claims agreement did provide for Inuit to participate in these decision-making processes right from the get-go, so that part of it doesn't change, necessarily. On the second part of it, in terms of devolution and the Government of Nunavut, the legislation would actually help—with the amendments, of course—to have that process defined in more detail, therefore providing for a very thorough review on the environment side and on the side of the impact on the Inuit and native community as well.

• (1620)

The Chair: Thank you, Mr. Clarke.

We'll now turn to Mr. Genest-Jourdain, for five minutes.

[Translation]

Mr. Jonathan Genest-Jourdain (Manicouagan, NDP): Good afternoon, everyone.

[English]

The Chair: As you're finding the headphones, you'll find the translation which is usually on channel 2—the English—but you may have to switch depending on the different settings.

[Translation]

Mr. Jonathan Genest-Jourdain: Is everything working for our witnesses?

[English]

The Chair: It's channel 1. Pardon me, my apologies; sometimes our hardware doesn't connect properly.

We'll just mention this to those in the audience as well. You'll see an earpiece next to your seat. If you're interested in listening to the translation, there should be translation on channel 1, but you may have to switch to find the actual channel.

[Translation]

Mr. Jonathan Genest-Jourdain: My question is about the Northwest Territories Surface Rights Board, the composition of which is established in Bill C-47.

Could you tell me your view of the actual involvement of Aboriginal groups and individuals in terms of appointments and the actual position provided for communities on the board?

[English]

Ms. Udloriak Hanson: Thank you for your question. I'll have one of my colleagues finish answering.

If I understand the question correctly, as I mentioned in the last answer, the land claims agreement had already outlined the make-up of the institutions of public government, how many Inuit would be sitting at the table. Therefore I'm not sure if the legislation needed to provide or does provide for any more clarity on that front.

Does somebody want to add to that?

Mr. Richard Spaulding: Thank you.

Yes, the surface rights legislation for Nunavut has already been enacted in a previous piece of legislation called the Nunavut Waters and Nunavut Surface Rights Tribunal Act. The second part of this bill doesn't concern Nunavut; it's NWT and Yukon. Our submissions are limited to the Nunavut component of the bill in part 1.

[Translation]

Mr. Jonathan Genest-Jourdain: Mr. Chair, I am going to share my time with Mr. Bevington.

[English]

Mr. Dennis Bevington: To get on with looking more at the variety of amendments you've proposed, you talk about the need for the authority structure in approving a number of the pieces that are taking place here. Could you explain in a little more depth why you've made that an amendment, with the role of the Governor in Council versus the minister?

Mr. Richard Spaulding: Sure. I'll try to summarize what I said earlier.

If the general rule of the agreement is that where government has a power relating to a term of a land use plan, government must use that power in accordance with the land use plan. That's after the plan has been approved, and it's subject to powers to grant minor variances and exemptions and so on, but that's the general rule.

There are terms of land use plans that the agreement provides for where the only power to implement them rests with cabinet, yet the bill defines the bodies that are responsible to implement those kinds of terms in a way that excludes cabinet. The matters I'm referring to here are mainly the establishment of parks or marine conservation areas, and also a list of conservation areas, which include protected marine areas under the Canada Wildlife Act, marine protected areas under the Oceans Act, and a number of other instances. The only

body that can implement the plan there is excluded from the definition of bodies having responsibility under the bill.

● (1625)

Mr. Dennis Bevington: What kind of structure is in place for reviewing an amendment of the land use plans once they're in place?

Mr. Richard Spaulding: The initial approval of a land use plan requires the agreement of the designated Inuit organization and the full federal and territorial cabinets. Once that's done, a land use plan can be put forward for amendment. The process then is a similar role for the designated Inuit organization. The federal and territorial ministers rather than full cabinets have to approve before the amendment comes into effect.

Mr. Dennis Bevington: There's no regular review process every five or ten years?

Mr. Richard Spaulding: It is within the power of the commission to conduct reviews. There's not a lot by way of mandatory detail in the bill as to when the commission must act. The question might be followed up with the people who come after us. They may have more detail on that.

The Chair: Thank you very much.

That brings us to the end of the allotted time for questions. We appreciate your testimony today and your willingness to answer the questions. They were comprehensive questions and answers, and we thank you for that.

We also want to thank the students for joining us today. This is an important step in the legislative process, and we certainly appreciate the interest that is expressed by having younger people here as well.

We also want to thank our committee witnesses for being here and making their time available.

We'll hear from the minister next.

We'll suspend the meeting, colleagues.

● (1625)

_____ (Pause) _____

● (1630)

The Chair: Colleagues, we'll call the meeting back to order. I ask that committee members return to the table as we invite the minister to join us as well.

We have undertaken to have this meeting for some time. Minister, thank you for being patient with us as we rescheduled and made changes to our schedule. We appreciate your willingness to be flexible with us and to come back in less than a week. Thanks so much for joining us.

Colleagues, I want to make note of the fact that it is our practice to have these meetings in rooms where they can be televised. Unfortunately, because of a number of things, that didn't happen, but I do want to recognize, as chair, that it is certainly the practice we want to undertake going forward. We'll just make sure that happens next time, maybe when we have a little better schedule planning.

Again, thank you, Minister, for being here and for being willing to be flexible with our schedule.

We'll turn it over to you now on our ongoing study of Bill C-47 for which, Minister, you have agreed to appear and bring testimony. Certainly we appreciate that. We'll turn it over to you for 10 minutes and then we'll turn to committee members for questions.

• (1635)

Hon. John Duncan (Minister of Aboriginal Affairs and Northern Development): Thank you very much once again.

As you all know, Canada's north is home to world-class reserves of natural resources representing tremendous economic opportunities for northerners and for all Canadians. Since forming government in 2006 our government has consistently demonstrated its commitment to equipping northerners with the tools they need to take advantage of those opportunities. I cannot emphasize enough how important Bill C-47 will be in allowing northerners to unlock these opportunities. Bill C-47 fulfills the Government of Canada's last legislative obligations flowing from negotiated land claims in both Nunavut and the Northwest Territories, and proposes mechanisms to improve regulatory processes, encourage investment, and allow resources to be developed in a sustainable manner. This will lead to jobs and benefits for future generations of Canadians.

I understand my officials were here on Monday last week to speak to some of the technical elements of Bill C-47, but their appearance was cut short due to votes. They're here again with me today and can answer some of your more technical questions. I understand they'll be coming again before committee soon.

The first part of this bill is the Nunavut planning and project assessment act. This bill sets out clear, consistent, reliable, regulatory processes that the people of Nunavut can use to manage development of their land and resources that will promote economic development by boosting investor confidence. Not only does this bill implement Canada's legislative obligations under the Nunavut Land Claims Agreement, it also fills existing gaps in the Nunavut regime for project approval. These improvements are not just necessary, they are urgent. They are needed in order to put in place a state-of-the-art planning and assessment regime to meet the surging tide of resource development opportunity in Nunavut.

The fact that the bill establishes the Nunavut Planning Commission as the single entry for project proponents will provide the clarity and certainty that has been called for and supported in various other jurisdictions across Canada, and will no doubt prove to be equally successful in Nunavut. For example, the bill assigns clear roles and responsibilities to the Nunavut Planning Commission, the Nunavut Impact Review Board, departments and agencies, responsible ministers, regulatory authorities, and project proponents. It allows the development and implementation of critical timelines for key decision points in the process, ensures that all parties to the process do not act until the appropriate approvals have been received, and establishes the critical inspection, enforcement, and monitoring regimes to backstop all decisions taken.

Mr. Chairman, there have been questions raised in the House of Commons about the adequacy of our consultations on this bill. Work on the Nunavut planning and project assessment act began in 2002, and the resulting bill before you today reflects almost a decade of negotiation and close consultation. This bill is a direct result of the government's strong partnership with the Government of Nunavut

and Inuit leadership, as well as extensive consultation with the resource industries that will be affected. This bill, produced in partnership, includes valuable input from the Nunavut Legislative Working Group, a group of representatives from the federal government, the Government of Nunavut, and Nunavut Tunngavik Inc.

Representatives from the Nunavut Planning Commission and the Nunavut Impact Review Board also acted as advisers. Their technical expertise and experience were great assets to the working group.

• (1640)

Representatives of the mining and oil and gas industries also provided useful suggestions related to maximizing regulatory efficiency and avoiding duplication, achieving clarity and certainty through specific timelines, and consolidating roles and responsibilities among institutions of government.

Other groups raised additional concerns. Certain roles and responsibilities outlined in the draft bill required further clarification; monitoring and enforcement provisions needed to be strengthened; and questions over the bill's application to development projects that cross geographic boundaries and political jurisdictions called for further clarity.

I'm proud to say that these consultations have resulted in legislation that will truly serve the needs of the people of Nunavut today and in the future.

The second part of Bill C-47 will establish the Northwest Territories surface rights board. This fulfills obligations in the Northwest Territories under the Gwich'in Comprehensive Land Claim Agreement and the Sahtu Dene and Métis Comprehensive Land Claim Agreement. Both agreements refer specifically to the need for a surface rights board.

The establishment of the board is also consistent with the terms and the spirit of the Inuvialuit Final Agreement and the Tlicho Land Claims and Self-Government Agreement, the other two comprehensive land claims in the Northwest Territories. The Tlicho agreement allows for the establishment of a surface rights board. The Inuvialuit Final Agreement specifies that any interim measures related to access across Inuvialuit lands to reach adjacent lands will be replaced when a law of general application, such as this bill, is enacted.

The board will, on application, make orders related to terms, conditions, and compensation only where they have been requested to do so and only after such rights have been previously issued. In so doing, this board will contribute to greater certainty and predictability for long-term economic growth and job creation in the territory.

I want to emphasize that this board does not, nor will it ever, issue any kind of right to surface or subsurface resources. To be absolutely clear, this board does not have any jurisdiction in the realm of resource development decision-making. This board does one thing only: if asked by one or both of the parties, it will settle disputes about access to land.

Consultations on the development of the Northwest Territories surface rights board act were also extensive. As I mentioned earlier, this bill responds to our last legislative obligation from the Gwich'in and Sahtu land claim agreements, and completes the regulatory regime that was originally envisioned in the Northwest Territories land claim agreements.

In total, over 35 consultation sessions were held with 13 aboriginal groups and governments, the Government of the Northwest Territories, and industry organizations. These sessions included groups within and outside settled land claims in the Northwest Territories, and groups outside of the Northwest Territories with transboundary claims. That was the comprehensive consultation, negotiation, and collaboration that went into developing the bill. That was the degree of partnership that went into putting together this very important legislation.

The bill before this committee today is a product that reflects the work, the opinions, and the positions of many interests and groups across two territories. All sides contributed to produce a bill that meets the needs of the people of Nunavut and the Northwest Territories.

As you can see, Bill C-47 responds to a chorus of other groups calling for action. Territorial governments have asked for better coordination and clearly defined time periods for project reviews. Resource companies have urged us to make the review process more streamlined and predictable. All Canadians want to make sure that promising opportunities will no longer be delayed or lost due to complex, unpredictable, and time-consuming regulatory processes. Bill C-47 will help make this a reality.

•(1645)

Thank you, Chair.

I look forward to the committee's review, and my officials and I will be pleased to respond to any questions.

The Chair: Thank you, Minister.

We'll turn now to Mr. Bevington for the first seven minutes.

Mr. Dennis Bevington: Thank you, Mr. Minister. It's good to hear you on this particular bill.

I'm going to focus mostly on the surface rights board.

Within the consultation with the aboriginal groups which you talked about, were those also the treaty entitlement groups that have had settlements under treaty entitlement? Have you had consultations with Salt River First Nation and Katlodeeche First Nation?

Hon. John Duncan: My understanding, Dennis, is that the answer is yes.

Perhaps someone could provide further detail.

Ms. Camille Vézina (Manager, Legislation and Policy, Resource Policy and Programs Directorate, Northern Affairs, Department of Indian Affairs and Northern Development): I can add further detail. I can enunciate which of the groups we actually consulted with.

Mr. Dennis Bevington: Could you do that quickly?

Ms. Camille Vézina: Yes. They were the Acho Dene Koe First Nation, the Akaitcho Treaty 8 Tribal Corporation, the Athabasca Denesuline, the Dehcho First Nation, the Dene Tha' First Nation, the Gwich'in Tribal Council, the Inuvialuit Regional Corporation, the Katlodeeche First Nation, the Manitoba Denesuline, the First Nation of Na-Cho Nyak Dun, the NWT Métis Nation, Sahtu Secretariat Incorporated, and the Tlicho Government.

Mr. Dennis Bevington: Under most of the legal opinions in Canada, it's consultation and accommodation. In the legislative summary, you say the aboriginal signatories to the relevant land claims agreements—the Tlicho, Sahtu, Gwich'in—had not yet released statements commenting on the proposed legislation.

If you're looking at accommodation and they haven't spoken to you with their point of view on this legislation, how can that be accommodation?

Hon. John Duncan: Well, Dennis, I've met with the major land claims settlement groups on more than one occasion on a personal level, and there have been other meetings. We're not doing anything that impinges on section 35 rights, in any way. We're being quite careful about all of that, so I'm not sure what your real concern is.

We have made the request. We've asked for input. I believe there has been general agreement that the direction we're heading in is one that will assist in economic development and other measures that will improve the social well-being of the NWT.

Tom, you seem to want to weigh in.

Mr. Tom Isaac (Senior Counsel, Negotiations, Northern Affairs and Federal Interlocuter, Department of Justice): I would just say that with regard to the consultation process that was undertaken with the first nations you mentioned, the Gwich'in, the Sahtu and the Tlicho, it is our view that those were iterative processes and those first nations were provided with an opportunity to present their views in respect of—

•(1650)

Mr. Dennis Bevington: But your document here, which comes from our committee, says they had not yet released statements. There was no formal release of any statement.

Is that correct, or is this document wrong?

Mr. Stephen Traynor (Director, Resource Policy and Programs Directorate, Natural Resources and Environment Branch, Department of Indian Affairs and Northern Development): I can answer that.

We do have statements from the Tlicho that they were very happy with the process itself during meetings.

There was extensive and meaningful consultation. As you rightly put it, there is always accommodation, and that's why it did take us so long to prepare this bill. We made sure we responded to each organization that provided both comments and meetings, or also provided written comments on the bill. We made sure that each organization was written to and provided with an explanation as to how we accommodated their concerns on each part of the consultation process.

Mr. Dennis Bevington: The unsettled claims area is where we're going to see the most opposition to this bill in the Northwest Territories, quite clearly. That's coming, and I've been told by chiefs across the north who come from the unsettled areas, including Katlodeeche and Salt River first nations, that they do not feel this bill represents their interests. These are unsettled areas.

Why were those unsettled areas not reserved for future dates within the legislation, so that as those comprehensive claims in some areas were finalized—and the other claims—they could be added in? You've taken the approach that it's all the same in the Northwest Territories, that everyone agrees with this, and that we can go ahead with legislation prior to a final settlement in the claims areas.

Hon. John Duncan: I guess you can portray that in different ways, but Dennis, we have engaged with the Dehcho, the Akaitcho, and with the other groups you referred to.

Yes, we want to have a regime north of 60. We have three Yukon first nations that are not under the umbrella of a final agreement there as well, but that's not to say we don't want or need a comprehensive agreement for each of the three territories to bring investor certainty and efficiencies into decision-making.

As I've said before, the NWT, which is the territory you're primarily making reference to, has real issues in terms of attracting exploration, further investment in the mining sector, and other investments, until we get clarity as to the environmental assessment process. To deny that is to deny the real statistics that are out there, which is that the NWT is struggling compared with the other two territories.

The Chair: Thank you, Minister.

We'll turn to Mr. Rickford for seven minutes.

Mr. Greg Rickford (Kenora, CPC): Thank you, Mr. Chair. Thank you to the minister and the officials for joining us today in what so far has been a very positive discussion about this piece of legislation.

I was looking through my notes. So far we've heard things like certainty, predictability, clarity, streamlining, single point of entry, one-stop shop, and clear guidelines. These are the kinds of descriptors that have been used so far by our witnesses, including our friends from NTI today.

Minister, it appears the bill contains a number of improvements that were laid out in the agreement. I'm wondering if you could cite specific examples of that, any definitions, or what the roles of different proponents would be under this legislation. Then I'll segue into a question about economic development.

• (1655)

Hon. John Duncan: Thank you for the question.

In terms of definitions, there are a number of improvements to the process described in the agreement.

For example, the definition of “project” has been clarified. It establishes the Nunavut Planning Commission as the single entry point for all project proposals. It clarifies the duty of all government departments, including those with regulatory duties, to implement their activities in accordance with land use plans. It affirms the power of governments and Inuit organizations to nominate members to the Nunavut Impact Review Board and the Nunavut Planning Commission.

It makes it possible for territorial and federal governments and Inuit organizations to manage northern resources and lands wisely. It provides legal certainty and predictability for resource managers. And as I mentioned a couple of times, it fulfills our legislative obligations under the land claims agreements by legislating roles and responsibilities for the Nunavut Planning Commission and the Nunavut Impact Review Board and clearly defining the powers, duties, and functions of those bodies.

Mr. Greg Rickford: Thank you, Minister.

That's a good starting point, because my next question has to do with economic development, specifically in Nunavut. I'm going to ask you shortly to give some specific projects that are on the horizon.

I understand that this proposed legislation would support Nunavut's economic development by and large, as it encourages the development of land use plans. That seems to be one of the centrepieces to this that considers economic opportunities, land use rights, and as we debated in the House just last week, an interest in important regulations to balance environmental protection at the same time. It seems to me we have these great interests at the forefront, and stakeholders heartily invested in the process.

I'm wondering if you could give some specific examples of what this bill would do in view of these more clearly defined roles, powers, and functions of the authorities in all parties to the agreement.

Hon. John Duncan: The legislation is clearly tilted towards supporting Nunavut's economic development by encouraging the development of land use plans that consider economic opportunities and land user rates and interests.

The bill clearly defines the roles, powers, functions, and authorities of all parties. It addresses the role of the Inuit. It streamlines approvals, especially for smaller projects. It provides opportunity for transboundary projects to be reviewed by joint panels. It establishes new and more effective enforcement tools to ensure developers follow the terms and conditions set out by the board. It provides industry with a clear and transparent process, making investment much more attractive. It establishes timelines to improve efficiency and predictability of the regulatory regime. I think overall it provides a good investment climate by providing a predictable process.

Where we're at now is that we have a bill that supports our northern strategy in terms of fostering economic development. This will provide investor confidence for such projects as the Izok corridor project, which is a significant zinc and copper project in western Nunavut.

As you know, the Mary River project is proceeding well. Although this legislation's not in place, we tried to meet the spirit and intent of this legislation on such things as timelines. It's a good test drive to see if we can make it work, and so far so good.

• (1700)

Mr. Greg Rickford: I have less than a minute left, Mr. Minister—

Hon. John Duncan: I could mention some of the other projects.

Mr. Greg Rickford: I'd like to hear about a few more projects, yes.

Hon. John Duncan: They include the Izok Lake project, which I just referenced. We have the Meliadine gold mine, and the Meadowbank gold mine in Baker Lake. Meliadine is also Agnico-Eagle Inc. The Meliadine project is north of their Meadowbank operation. That will primarily benefit Rankin Inlet. Then we have the Back River, Hackett River, and Roche Bay projects. They're all in the Kitikmeot region, which is in western Nunavut. I already talked about Mary River on Baffin Island.

These are game-changers for that territory, but that's not to say we don't have similar potential in our other two territories. What's actually happening in Yukon is very impressive. That's not in the future; they're already there in terms of high growth rates and high demand for miners and prospectors and others, jobs, economic development, and long-term prosperity.

The Chair: Thank you, Minister.

Ms. Bennett, we'll turn now to you, for seven minutes.

Hon. Carolyn Bennett: Minister, thank you for being so flexible after the craziness of the committee and the votes.

As we've said before, I think members of the committee were a little surprised to see the number of amendments coming from NTI after a decade of consultation. It seems, from the previous panel, that it isn't only a matter of the preferred language of the drafters at the Department of Justice. It's actually about how you stay in keeping with the Nunavut agreement. There are some issues that are really about process. There is obviously the amendment with respect to clause 39, which is actually about money. The federal government is responsible for funding the commission and the board.

The submission from the Planning Commission said, "to be successful with our organizational transition and the ongoing implementation...additional human and financial resources will be required".

I want to know your take on the amendments. Is the government prepared to accept the amendments proposed by NTI?

Again, what provisions have been made for the request for almost \$3 million to prepare and implement the new legal requirements and almost \$2 million in core funding for ongoing implementation?

Hon. John Duncan: Those are all good questions.

In terms of the funding, we've had to top up the northern boards, based on the level of activity, because there has been an increased level of activity, particularly in Nunavut. We know that this legislation will also bring new demands. We're looking at about an additional \$300,000 per year to set up the Nunavut surface rights.

You're right. The other boards are looking at a greater level of activity. We know that their needs are greater, and we'll be negotiating with them in terms of meeting their needs. If we were saying that there was no funding coming, that would be an issue, but we're not saying that. There will obviously be a need for more funding.

In terms of the amendments brought forward by NTI, we've gone through a 10-year process to get the legislation where it is today. We had the Nunavut Legislative Working Group, which included NTI. There were multiple drafts of the legislation. There are sections of the legislation based on NTI input. Actually, some of the things I highlighted were brought to us from NTI.

Nobody, including industry, got everything they wanted in this legislation, because there are obviously some competing interests. When we had a complete legislative package that basically everybody could sign onto, we knew at that time that NTI would still pursue some further changes through the parliamentary process.

We believe that we have a good piece of legislation that meets the needs.

• (1705)

Hon. Carolyn Bennett: If the Nunavut planning and project assessment act prevails in areas of conflict, how do you square that with the fact that—

Hon. John Duncan: That's a good question too. Is there a conflict between the bill and the land claim agreement? We do not believe there is any conflict between the bill and the land claim agreement.

Hon. Carolyn Bennett: How do you deal with the fact that NTI thinks there is? Is this another see you in court situation?

Hon. John Duncan: No. I don't believe it's there at all.

To finish my answer, though, the land claim agreement would prevail if there were a difference between the bill and the land claim agreement. I do not believe that any of the requests are for things that are substantive.

One of the rationales and objections in terms of the legislation is simply that the NTI has not had an opportunity to review the French-language version to compare with their land claim agreement. Well, it's our job to make sure that the French version and the English version reflect exactly the same thing. We don't think that's a substantive concern.

Stephen, was there anything you wanted to add?

Hon. Carolyn Bennett: The narrow definition of “departments and agencies” seemed to be the issue, in terms of how you plan or how you approve a park, whether it has to go to cabinet or not.

Hon. John Duncan: Did you want to weigh in, Tom?

Mr. Tom Isaac: Mr. Chairman, I can answer the member's question.

Regarding the requirement that NTI was speaking of, for cabinet to be involved in implementing the land use plan, it's our interpretation that the land claim itself restricts that implementation responsibility to departments and agencies in its language. We have a difference of opinion as to the scope of that particular obligation in the land claim agreement. Our view is that it doesn't capture cabinet as being caught by the obligation to implement the land use plan that's approved by the Governor in Council.

Hon. Carolyn Bennett: It does or it doesn't?

Mr. Tom Isaac: It does not.

We also do not see the creation of parks or marine conservation areas as necessary requirements of a land use plan. There are other provisions in the Nunavut Land Claims Agreement that deal with the establishment of marine conservation areas and parks. They are subject to the land use planning process, but we don't see them as being necessarily requirements of a land use plan. We have a little difference of opinion on that.

• (1710)

Hon. Carolyn Bennett: So what happens?

The Chair: Thank you very much, Ms. Bennett.

We'll have to turn to Mr. Seeback now, for seven minutes.

Mr. Kyle Seeback (Brampton West, CPC): Thank you, Mr. Chair.

Minister, it's great to see you here today. I want to change the channel, but also pick up on what you had talked about, jobs, growth, and long-term prosperity. I know my colleagues across the way love that term. They want me to say it a few more times, I think.

In talking about the Northwest Territories surface rights board act, how do you see that as being a driver of jobs and growth in the Northwest Territories?

Hon. John Duncan: The surface rights board has the potential to improve timely access to surface and subsurface resources, as well as increase the predictability and consistency of the resource management regime. Setting up the board creates a single, clear, balanced, and fair dispute settlement mechanism for access disputes for all of

the Northwest Territories. The board will not grant mineral or oil and gas rights, but it will make orders related to terms and conditions, and compensation related to access between holders of surface or subsurface rights and the owner or occupant of the surface when an agreement cannot be reached through negotiation.

It's going to bring certainty to the access regime. We see it as a board of last resort that will almost never be asked to do anything, if the historical record continues. We've had arbitration processes in place and we've had a surface rights board in Yukon. It has been asked to do very little over its time. The mere fact that it's there increases investor confidence and certainty and provides a settlement mechanism that is important to the process.

Mr. Kyle Seeback: That interestingly leads me into another question that I wanted to ask you. How many times has the interim arbitration process actually been used in the Northwest Territories?

Hon. John Duncan: Since 2006 the arbitration boards and panels have actually made zero decisions with respect to access disputes. The Saulneau arbitration panel received one application during this time, which was dropped and never proceeded to arbitration. As I say, it's viewed as an important board that sends a signal, but it probably won't be asked to do very much, although as our level of activity increases, who knows for sure?

Mr. Kyle Seeback: We hear a lot about consultation, and certainly we've heard that today a number of times. When you talk about the Northwest Territories surface rights board act, what type of consultation took place? How extensive was the consultation with respect to this portion of the bill? Could you describe that for the committee?

Hon. John Duncan: In respect to the bill, the consultations in NWT began in 2010 with information sessions, distribution of the draft bill, and consultation sessions. Comments were received, and accommodation measures were incorporated into the draft bill. This process was repeated on a second and third draft of the legislation in 2011, and again in 2012.

As I mentioned earlier, over 35 consultation sessions were held with aboriginal groups and governments, the Government of the Northwest Territories, and industry organizations. All comments received were responded to in writing with an explanation of any changes and a demonstration of what accommodation measures were incorporated. I think Stephen Traynor already described all that.

That pretty much summarizes it. I think it was a very comprehensive process. It was certainly different in NWT from what it was in Nunavut which was actually a much longer process.

• (1715)

Mr. Kyle Seeback: It certainly sounds as though there's extensive consultation.

With respect to the legislation, why do we need this legislation at this particular moment?

Hon. John Duncan: From the beginning, the access dispute resolution processes in the land claim agreements were intended only as interim processes. Once the surface rights board is established, this will provide a single mechanism to resolve disputes for the entire Northwest Territories. This has the potential to improve timely access to surface and subsurface resources, as well as increase the predictability and consistency of the northern regime.

We've twice before attempted to create a surface rights bill, once in the early 1990s during negotiations on the Gwich'in and Sauleau comprehensive land claim agreements, and once again in 2004. These bills were never completed due to competing priorities, so that's what led to the start-up again in 2010, which was at the same time as the announcement of the action plan to improve northern regulatory regimes, and that was in May 2010.

Mr. Kyle Seeback: I see I'm almost out of time.

The Chair: Mr. Seeback, you are out of time.

Mr. Kyle Seeback: I wanted to ask a question about the carbon tax, but....

Some hon. members: Oh, oh!

The Chair: Maybe Ms. Crowder will answer you on that. It's her turn next, and she'll have five minutes.

Ms. Jean Crowder: I appreciate the language that's been put out there, but I think it's worthwhile reminding all committee members that a number of the projects the minister mentioned are under way and this bill is still before the committee, so I don't think you can attribute those to this bill.

Thank you for coming, Mr. Minister.

I want to correct the record on the issue around consultation. The New Democrats in the House did indicate that the consultation process around the Nunavut part was a good example of how consultation could happen. What you see as a result is this bill. Although some amendments have been proposed, when you see the complexity of the bill, I think that 10-year process speaks to how a good consultation process can be effective.

The challenge we have before us is that the same process didn't happen in NWT. You had a two-year process, I think I heard you say 2010, so you haven't had the same kind of process in place.

Minister, you indicated in your speaking notes that this is urgent, so I wonder why the government didn't reintroduce a version of Bill C-25 and deal with the Nunavut piece of it as a stand-alone piece of legislation, given that there was such a good consultation process and largely consensus, and then allow the NWT process the amount of time it needed to get that same level of consensus?

Hon. John Duncan: I've already explained that there is a real advantage to having comprehensive environmental assessments north of 60. We—

Ms. Jean Crowder: I don't disagree with that, but why couldn't Nunavut be introduced as stand-alone legislation? Why did it need to be tied with the NWT?

Hon. John Duncan: It obviously could be, but there is such a thing as utilizing the Parliament of Canada in an efficient manner. Getting House time has proven to be somewhat difficult—

Ms. Jean Crowder: That's only because of the nature of the legislation introduced.

Hon. John Duncan: —and I don't see any of this as being super controversial. The only people who are finding it controversial are basically the opposition.

● (1720)

Ms. Jean Crowder: Again, I think you would have had agreement on the Nunavut bill. We had some preliminary discussions way back in May 2010 around that piece of legislation. It was disappointing to see it bundled when it came before the House. Clearly you have an agenda around that and we have a different opinion, but I'd like to move on.

My understanding is that the Nunavut Impact Review Board and the Nunavut Planning Commission have been in operation since 1996. What this piece of legislation does is it gives them a statutory basis. Just so people are clear, these two bodies have been operating. This is now with a statutory basis.

The funding is an important piece. I know the deputy minister, again, back in May 2010, had indicated that money would be forthcoming. You've indicated that there have been some discussions going on, but we also heard the Government of Nunavut, when they came before us, talk about good faith. Forgive me, we're both from British Columbia, but in British Columbia we are still waiting for funding for the B.C. First Nations Education Act.

When will this money become available? I'm not asking you how much. I'm not asking you to say May 25, but will it be within a year, within two years, next budget cycle?

Hon. John Duncan: Jean, we've already had some top-ups in the last year and a half or so.

Ms. Jean Crowder: But there are new roles and responsibilities as a result of—

Hon. John Duncan: Yes, there are, and there is some money that goes with it already. There is already some money that's earmarked and there is an acknowledgement that we'll have to....

Until we have the legislation, we can't very well ask for work plans and a budget. But—

Ms. Jean Crowder: But you would have a sense of that. You know that the legislation is going to pass because you have a majority, so I think a prudent department, and I'm sure the department is prudent, would be planning for what they anticipate that workload would be.

Hon. John Duncan: We can do all the planning we want but until the legislation is in place, we can't go to those boards and request a work plan and a budget. It's not realistic for us to do that until the legislation is actually in place.

Ms. Jean Crowder: But we can anticipate that in the next budget cycle there would be additional funds.

Hon. John Duncan: I hope so.

Ms. Jean Crowder: One final point—

Hon. John Duncan: When that's not possible, we can do other things. We have an economic development envelope within our department. If that's a priority item for economic development, we can always move money to support the board's functions, that kind of thing. I don't see money being a hurdle in enabling these boards to do their job. The boards are crucial.

Ms. Jean Crowder: Mr. Chair, you're going to cut me off, aren't you?

The Chair: Thank you, Ms. Crowder.

We'll turn now to Mr. Boughen for five minutes.

Mr. Ray Boughen (Palliser, CPC): Thank you, Minister and your staff, for taking time to meet with us today and answer some questions, some of which even make some sense.

Hon. John Duncan: The questions or the answers?

Some hon. members: Oh, oh!

Mr. Ray Boughen: I mean the questions make some sense.

Following my colleague and the questions he raised, let me talk about the GDP in Nunavut and Yukon, which has grown over the past couple of years while they have been struggling with the GDP in the Northwest Territories. Could the minister describe the benefits that will flow from the implementation of this bill?

Hon. John Duncan: Yes, I think it's fairly obvious that tremendous benefits will flow.

We've already seen some benefits because we're seeing people trying to meet the spirit and intent of legislation.

One of the very significant parts of the legislation is self-imposition of timelines. A big part of that is timelines within the federal family, our own approval times internally within the federal government. I've been heavily criticized by the mining sector and the territorial governments and others over the years. We're imposing some pretty tight deadlines on ourselves. Through the legislation, we're imposing deadlines on others as well.

They're all leading us to a place where the mining sector, for example, is completely supporting this bill. They're saying the new regulatory regime will enhance the territorial economic competitiveness for mineral investment, will have a positive influence on GDP, and will boost confidence in the north as a place to invest. This is really good stuff. They are the ones that have not hesitated to point out that the GDP in Yukon and Nunavut has had major growth, and it's gone the other way in the NWT. They know why; they're the ones

making the decisions. They are very much welcoming these initiatives.

I wanted to quote something, but I can't quite pull it down. The shade went down.

• (1725)

Mr. Ray Boughen: Do I still have a little time, Chair?

The Chair: Yes, you do.

Mr. Ray Boughen: Minister, in looking at the Nunavut planning and project assessment act and the Northwest Territories surface rights board act being put together into one piece of legislation, which you talked about a little, could you expand on that? I know my colleague asked you a similar question and then answered it as you went along. I wonder if we could hear your answer.

Hon. John Duncan: Basically we're trying to make the best use of what's termed limited House time. I don't care what anyone wants to say, we have a lineup of legislation for the House, and unless we use the House fairly efficiently, we'll never come close to being able to get everything through.

I can give you an example. Matrimonial real property legislation for first nations, which is a piece of legislation that's really important for women and children living on reserve, has been introduced into Parliament four times. There's been a legislative vacuum emanating from the Supreme Court for 25 years, and we're having trouble getting it through Parliament because of opposition resistance. This is occurring as a backdrop to our trying to get other important legislation through as well.

Whenever we can bundle legislation that's related, and this is all totally related to investment north of 60, to economic development, to environmental assessment, to protecting the environment, to doing things in an appropriate way, and it's welcomed by the three territorial governments, to me it's a no-brainer that we'll want to combine it.

Mr. Ray Boughen: Right, thank you.

The Chair: Thank you, Mr. Boughen.

Thank you, Minister, for being with us today. Thank you for accommodating our schedule as you and your officials have. They've come back for several false starts, so we appreciate their willingness to work with us as well.

Colleagues, we'll adjourn the meeting, but I would ask the members of the subcommittee if we could meet briefly for a minute.

The meeting is adjourned.

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