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Chair

Mr. Chris Warkentin

Standing Committee on Aboriginal Affairs and Northern Development

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• (0850)

[English]

The Chair (Mr. Chris Warkentin (Peace River, CPC)): I'll call to order this 56th meeting of the Standing Committee on Aboriginal Affairs and Northern Development.

Today we have two witnesses from the Nunavut Impact Review Board before us. We have Elizabeth Copland, who is the chair, and Ryan Barry, who is the executive director. We want to thank you for being here today.

Before we get started, we want to welcome a new committee member to our committee. Stella Ambler is joining us. We want to thank you for joining us. We look forward to working with you at this committee.

We'll turn it over to you, Ms. Copland. We'll begin the process by hearing your opening statement, after which we'll begin rounds of questioning.

Ms. Elizabeth Copland (Chair, Nunavut Impact Review Board): Thank you.

Ublaahatsiatkut. Good morning.

Thank you for this opportunity to appear before you on behalf of the Nunavut Impact Review Board. My name is Elizabeth Copland. I am the chairperson. With me today is Ryan Barry. He is our executive director. We also have our legal counsel, Catherine Emrick, here with us this morning.

We have provided the committee with a written brief setting out the details of our recommended amendments to part 1 of Bill C-47, the proposed Nunavut planning and project assessment act. Knowing that your time is limited, the focus of my opening statement will be to provide you with additional context and insight into the board's work and our recommendations.

I live in the hamlet of Arviat in Nunavut. As a member of the Nunavut Land Claims Agreement transition team, I have been involved with impact assessment in Nunavut since 1994. I have served several terms with the Nunavut Impact Review Board over 14 years as a nominee of the Government of Canada. On the nomination of my fellow board members, I was recently appointed chairperson for a three-year team.

I have also chaired four public hearings for the Nunavut Impact Review Board, including those for the Jericho diamond mine, the Doris North and Meadowbank gold mines, situated in the Baker Lake area, and most recently the review of Baffinland Iron Mines Corporation's Mary River project.

Mr. Barry lives in the Kitikmeot region of Cambridge Bay. Our head office is also located in Cambridge Bay. Ryan has been employed with the board for the last six years, leading numerous impact assessments, representing the board through many forums, and since 2011 serving as the NIRB's executive director. We have a team of 18 administrative professional staff, who are essential to the board's task of carrying out impact assessments for the entire Nunavut settlement area.

As a result of the efforts and commitment of my fellow board members and staff, the board has a strong reputation among all stakeholders for achieving timely, credible, efficient, and thorough assessments of proposed major development projects in Nunavut. It is with this experience and perspective that we bring our recommendations to you today.

As we discuss in our brief, Nunavut is unique, with a sparse population living in small communities widely scattered across two million square kilometres accessible only by air and by ship or water. Inuit have occupied the region for thousands of years and form almost 85% of the current population. Inuktitut is spoken by 80% of the population.

Many Inuit rely on their lands and waters to fulfill their basic needs. Many who have experienced resource-based development in their community know that eventually it leaves, and they will not trade what is necessary to sustain and protect their ability to live off their land and waters for economic development. This shapes their views of development.

The process of impact assessment as enshrined in the Nunavut Land Claims Agreement and carried out by the Nunavut Impact Review Board is essential to developing a community's understanding of the potential for significant impacts from development, the opportunities for managing impacts through terms and conditions under which a project will be approved, including requirements for ongoing monitoring, adaptive management, and a commitment to full reclamation. All of these elements are necessary in order for development to proceed in a responsible manner.

As we talk about striving to provide industry with increased certainty and timelines and improving the efficiency and effectiveness of our assessment process, it is also important to acknowledge that the opportunity for members of affected communities to access the impact assessment process is an important element in providing certainty to project proponents.

●(0855)

I think it is fair to say that project proponents would prefer to participate in the Nunavut Impact Review Board's assessment process rather than be forced to address concerns through the courts.

This is one main reason we are recommending that the statute provide for a participant funding program. In the long run it is likely more cost-effective to provide for a participant funding program and thereby reduce the potential for legal challenges down the road. Without participant funding the Nunavut Impact Review Board's reviews also become more costly for the Government of Canada as it can take much longer and require considerably more board resources to accommodate unfunded participants.

The lack of a participant funding program in the proposed statute also creates a disparity in public access to impact assessment in Nunavut and in the jurisdictions in Canada where the Canadian Environmental Assessment Act applies. For example, during the NIRB's review of the Mary River iron ore project, no participant funding was made available despite there being about 18 communities identified as being potentially impacted by this project. In contrast, on January 16 of this year the Canadian Environmental Assessment Agency announced it is making available \$81,600 to support public participation in the federal environmental assessment of the Fire Lake North iron ore project located in Quebec.

As noted in our brief, based on Natural Resources Canada's statistics, in 2012 Nunavut placed fourth in Canada for mineral exploration and deposit appraisals expenditures, behind Ontario, Quebec, and B.C., and far ahead of the NWT and Yukon.

In a recent information session on improvements to northern regulatory regimes, Aboriginal Affairs and Northern Development Canada reported that the 2011 growth in gross domestic product for Nunavut was 7.7%, with Yukon growing at 5.6%, Canada overall at 2.6%, and the Northwest Territories shrinking by about 5.5%. Based on these numbers, it appears that we are doing something right in Nunavut.

An important difference between resource management models in the NWT, Yukon, and Nunavut is that the Nunavut system is a simple integrated resource management system for land use planning, impact assessment, and land and water licensing. The scope of the Nunavut Impact Review Board's jurisdiction is also unique. It includes the assessment of both environmental and socio-economic impacts. The board conducts screenings and reviews as well as oversees the monitoring of approved projects.

A significant part of the board's written brief addresses the need to ready the system. There are three aspects to this.

First, with the level of development that we are currently experiencing in Nunavut, the Nunavut Impact Review Board's core capacity is already stretched to the breaking point. The NIRB's funding levels were originally set in 1992 and have not been formally re-evaluated since that time. Nunavut's regulatory system has been proven to work and NUPPAA, the Nunavut Planning and Project Assessment Act, may further improve its efficiencies. However, investment is needed to ensure the assessments of development projects are not delayed because of insufficient regulatory capacity. Although mineral resource development cur-

rently drives the Nunavut economy and makes up the NIRB's workload, the territory's first hydro project is coming to the Nunavut Impact Review Board for assessment next month. Oil and gas development and nuclear power projects are likely not far behind.

●(0900)

Another unique aspect of the Nunavut regulatory system is that the NIRB will conduct the screenings and reviews of these projects with the National Energy Board and Canadian Nuclear Safety Commission carrying out licensing responsibilities only.

We work cooperatively with these federal bodies, but further development of core capacity within our organization is still required. This is regardless of changes that will occur when NUPPAA comes into force.

The second aspect of the need for resources to develop the one-window system is contemplated in the statute. We know that the Nunavut Planning Commission has written to the committee setting out its funding needs for this, but it is also important that the other resource co-management boards, the Nunavut Impact Review Board and the Nunavut Water Board, be engaged in the design of the system. On a project-by-project basis our assessment and licensing processes are significantly more technical and our information needs are greater than those of the conformity determinations being carried out by the planning commissions. It is important that this one-window system be designed to meet our needs.

The third aspect is the need for resources to develop the capacity to administer and respond to the new requirements in NUPPAA. These include: extensive new requirements to meet access to information obligations beyond those set out in the Privacy Act; to translate lengthy and highly technical documents into three languages, for which corresponding terms in Inuktitut might not be available, work that only a very small handful of translators are qualified to carry out; and to comply with new public registry requirements.

Overall the highly prescriptive nature of NUPPAA as it is proposed removes much of the board's discretion on process and thus will require considerably more resources. Accordingly, the board was reassured to read Minister Duncan's testimony before this committee on December 10, 2012. His acknowledgement of the crucial nature of the work of the boards in Nunavut and the obvious need for more funding and his understanding that we're facing greater levels of activity resulting in greater needs are important.

We look forward to the opportunity to discuss the board's needs directly with the minister and his representatives as the necessary resources—people, systems, and finances—must be in place prior to NUPPAA coming into force in order to achieve the goal of a more efficient and effective regulatory system.

This leads me to the challenges associated with the lack of timely appointments of board members. All of the Nunavut institutions of public government are routinely without a full complement of board members and have had to put contingency plans in place due to the potential for lack of quorum. The Nunavut Impact Review Board has been in a position of not being able to make important decisions because of a lack of quorum.

We appreciate that NUPPAA will allow the board to appoint panels, which may make quorums easier to maintain, but it is not the only mechanism that could be implemented. We hope that you are able to help by supporting our recommendation that more should be done to address this ongoing and chronic problem.

My remarks today do not touch on all of the recommendations in the board's written submission.

I will close with a request to consider these detailed recommendations, including the board's support for many of these submitted to the committee by Nunavut Tunngavik Incorporated, along with our concerns with two of these recommendations directly related to the board's mandate.

● (0905)

In closing, I want to express the board's sincere appreciation to this committee for your time and to our dedicated colleagues from the Government of Nunavut, the Government of Canada, Nunavut Tunngavik Incorporated, and the Nunavut Planning Commission. We look forward to working together to implement the final bill approved by Parliament.

Matna. Thank you.

The Chair: Thank you very much.

Before we begin with the rounds of questioning, we have some housekeeping instructions. You have an earpiece next to your seat in case you require French translation. It is on channel number one, I believe, and it's working. As well, if you would like your legal counsel to join you at the table, you're welcome to do so. That would be entirely all right.

We'll begin rounds of questioning, with Mr. Bevington for the first round.

Mr. Dennis Bevington (Western Arctic, NDP): Good morning, witnesses. Welcome. I'm pleased that you're here to share your knowledge and understanding of this process with us today. This is very good.

Mr. Chair, I'm pleased to have an opportunity to ask questions.

You've proposed a number of amendments. You've joined with the NTI in the consideration of significant alterations to the projects. Have you been in contact with the Government of Nunavut over your proposed amendments? Is there a dialogue between this board and the government?

Ms. Elizabeth Copland: I'm going to ask Mr. Barry to reply.

Mr. Ryan Barry (Executive Director, Nunavut Impact Review Board): Thank you very much.

Yes, we've kept them informed through working with the legislative working group for a number of years. All the parties

have been around the table. They invited submissions from our board. Most of what is in our brief has been brought up through the course of the development of the legislation. We've certainly kept them informed.

Mr. Dennis Bevington: Yes.

In Yellowknife we received some informal testimony from the NWT and Nunavut Chamber of Mines. They had some recommendations for amendments as well. Are you familiar with those?

Mr. Ryan Barry: We received them as of yesterday and have given them a preliminary review.

Mr. Dennis Bevington: Are there any comments you'd like to make?

Mr. Ryan Barry: I think we could follow up with a written response. That would be appropriate and would give us a little more time to absorb and properly respond, if that's okay.

Mr. Dennis Bevington: It would be excellent if you could provide us with that—

Mr. Ryan Barry: We'd be happy to.

Mr. Dennis Bevington: —because of course we now have three organizations proposing amendments to this act. That certainly suggests that there's some work to do here, work that is required to make this act work appropriately for the people of Nunavut.

For the board, for our standing committee, could you talk a little more about the participant funding? My experience on the Mackenzie Valley Environmental Impact Review Board suggested to me that getting participant funding was always an ongoing issue. Maybe you could describe what that actually does for the participants.

Ms. Elizabeth Copland: It has always been an ongoing problem with Nunavut as well, but Ryan has more experience on the funding part of this, so I'm going to ask him if he can answer.

Mr. Ryan Barry: Thank you, Elizabeth. I'll try to keep it as concise as possible.

On participant funding, if you are a community group or an affected individual in most any place in Canada, and if an environmental assessment is being conducted by the Canadian Environmental Assessment Agency, the National Energy Board, or the Nuclear Safety Commission, you can apply for a set pool of participant funding to allow you to properly prepare for and make representations to the panel or the environmental assessment board, as the case may be.

In Nunavut this was often the case. The moneys themselves are usually used for the high cost of travel to get to a board venue, to receive outside help, and to prepare written briefs. Most of the costs themselves are relatively minor. They're not for things like hiring full-time staff or anything of that nature.

In Nunavut until the removal of the application of the Canadian Environmental Assessment Act, participant funding was made available through the CEA agency until the act and the application were removed in 2008 through an amendment to the land claims agreement. It is something that we've seen the effectiveness of; we've seen that it allows parties that would otherwise.... The board has to make additional accommodation for things like extending timelines to allow parties to prepare comments, so it allows them to adhere to the board's timelines a lot more effectively. It allows them to show up to venues, as opposed to the board itself having to find the money to bring in community representatives.

In our experience, what we found was that it allows for a much closer adherence to our timelines and that the overall costs, if you look at extending the timelines and the salary and staff costs, tend to be comparable, if not more efficient, by having that participant funding in place.

• (0910)

Mr. Dennis Bevington: Thank you. That's a very good explanation.

With the support of the amendments by NTL... We've seen just recently that with regard to the environmental assessment done on the Baffinland iron ore project you've now received a significant alteration to that project. Perhaps you can explain to us why the amendments are required for those significant alterations, because we now have a particular case in front of us, and perhaps that would also help the committee in its deliberations on these amendments.

Ms. Elizabeth Copland: I'll speak a bit to that. The changes on the Mary River project that we hear about are changes from the hearing itself, the first hearing, and because of the downsizing, we're going to have to review what changes they are bringing to the board.

Ryan, do you have anything more on this?

Mr. Ryan Barry: Thank you very much, Elizabeth.

I think we're generally supportive of NTL's amendments, as we've stated in our brief, with two minor exceptions. On the case for the Mary River project in particular, I think the way we tend to explain it is that we went through a lengthy process, a consensus building process, and got to a decision, which was a very challenging decision for the board and for the territory to make about this development and about the conditions by which it should be developed.

When immediately afterwards the proponent comes back and says they're now looking at things again and they'd like to amend it and develop in a slightly different way, and ship in a different area and that sort of thing, for us, being an impartial, objective board, we take that at face value. We say that we have to look at this. What parts of it have we assessed and what parts haven't we? We also have to explain this to the public and ensure that they still have faith in the system, and also that they understand that before any decisions are made, there is still an opportunity to participate in the assessment and thoroughly evaluate it.

In the case of this particular amendment and what the company is looking for, because of changes at the ownership level of the company and a downloading of some of the options from ArcelorMittal and the world global iron and steel situation, what it

has required is that their board of directors is asking them to implement an early development phase. It would allow them, instead of waiting until a railway is built and then shipping out using a railway, to mine and ship a smaller amount using trucks, through a northern route as opposed to a southern route.

They believe that will help them to generate a certain amount of revenue more quickly, and that will lead them to a greater likelihood of attracting the additional investment that's required to carry out the full project. The way it's being processed from a regulatory standpoint is that they are approved to build the large project, and this earlier development phase, which we're looking at as an additional piece on top of that, is now what the board has to assess and to decide on. Is it acceptable to allow them to ship in this other area through the open water season?

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

Thank you, Mr. Bevington.

We'll move to Mr. Clarke for his first round.

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

Welcome, everybody, back to another sitting of the committee.

I'd like to thank the witnesses for taking the time to come here today. It's always fun to travel in the winter, isn't it.

I have a couple of questions.

How long was the process of negotiations from the beginning to the final draft that we see right now?

• (0915)

Mr. Ryan Barry: I believe it took approximately 10 years.

Mr. Rob Clarke: It took 10 years. Okay.

Can you please expand on who participated in the consultation process regarding NUPPAA and the nature of their participation throughout the consultation process?

Mr. Ryan Barry: Maybe I'll take a shot at answering.

Our board was invited to the legislative working group in approximately 2007. I can't really detail the work that was done prior to that although I know there was considerable work done by the Government of Nunavut, the Government of Canada, and Nunavut Tunngavik. Along with the planning commission, our board was invited to join the discussions and describe how we saw these changes being implemented on the ground based on our experience of implementing article 12 of the land claims agreement. For us I think there were a lot of productive discussions at that level. They have led to a bill which I think is more consistent with how the land claim itself has been carried out today and with how the board has implemented article 12.

Mr. Rob Clarke: You started participating back in 2007. Do you know any other groups who participated before that?

Mr. Ryan Barry: That's a bit more than I can respond to, to be honest.

Mr. Rob Clarke: Would you know anyone who might have that answer?

Mr. Ryan Barry: I presume the Government of Canada was leading the working groups, so it would be the Government of Canada that could respond to that.

Mr. Rob Clarke: Does the Nunavut Impact Review Board feel that all the comments and concerns it raised during the development of this bill were adequately considered?

Mr. Ryan Barry: I'll take a stab at answering again.

We always felt our comments were given consideration. However, given that our board members would be the ones implementing it, I think our understanding of how things might work on the ground was often a little different from that of the people actually drafting the legislation.

Mr. Rob Clarke: Okay.

After years of consultation with both the working group and the public, I remember a comment by the minister about it being a "complete legislative package that basically everybody could sign onto" but that "nobody, including industry, got everything they wanted in this legislation".

Is that correct?

Mr. Ryan Barry: I've heard the same quote. That's correct.

Mr. Rob Clarke: Do you feel the same way about that?

Mr. Ryan Barry: It's a little beyond my day-to-day job to comment on the acceptability of the legislative process itself. I can say that given our experience of implementing environmental assessment in Nunavut, within our role in the process we hope to provide a very clear understanding of what is likely to work and what might make the job more challenging or what might not lead to the efficiencies that we want to be put in place.

Mr. Rob Clarke: From a legal standpoint, how do the legal representatives feel?

Ms. Catherine Emrick (Legal Counsel, Nunavut Impact Review Board): I would suggest that the recommendations that have come forward have been about improving the work that's been done to date. The mining industry's recommendation for a five-year review certainly suggests that improvements are an ongoing part of the legislative process. We have tried to focus the Impact Review Board's comments on the key areas that we think would help improve the effectiveness and efficiency. We believe those goals are shared among all the parties that were at the table.

Mr. Rob Clarke: How were the issues raised both by working group members and by external participants incorporated into the final draft of the bill?

Ms. Catherine Emrick: Just to be clear, none of us at the table were actually participants in the working group. My understanding was that the feedback was provided by working group members, and then the Government of Canada had a direct relationship with the legislative drafters.

Mr. Rob Clarke: Okay.

Thank you.

The Chair: We'll turn to Ms. Bennett now for seven minutes.

Hon. Carolyn Bennett (St. Paul's, Lib.): Thank you very much.

I was quite taken by your comment that the legislation would remove the discretion on process and therefore would require increased resources. Can you explain that a bit?

• (0920)

Mr. Ryan Barry: Yes. Thank you. I'm glad you picked up on that.

It is important to recognize that the set of instructions the board has been working with since 1996 has been very sparse but has given enough detail and direction such that we have been able to carry out the board's mandated functions very successfully, using some level of discretion. When we say "discretion", we're looking at recognizing that we have only two levels of assessment in Nunavut: a screening level and a review level. There's nothing like a comprehensive study or the levels you might find in other jurisdictions.

What this has required is that when we're carrying out a standardized process, sometimes we have to tailor the timelines to that particular project. If there are 18 communities, as there were for Mary River, you can expect that it's going to take a little longer to visit those communities and get their feedback. If it's a much smaller project, the timelines might be quicker. You might not need a draft environmental impact statement. You might be able to carry forward to a full statement right away without compromising any of the integrity of the process.

What we're seeing in the bill are new requirements for things like translating and consulting on the development of guidelines that lead to other steps in the process. While we support and understand the rationale for those, what we're recognizing is that although they deliver increased certainty about what the process will look like in each case, sometimes those steps currently aren't required, or they aren't required to the degree that they will be. Additional resources may be required to carry out that type of process.

Hon. Carolyn Bennett: I think you said that when this bill would be enacted you would need to have the people, the systems, and the funding in place. Can you explain what that would look like?

Mr. Ryan Barry: Again, I think that's a great question.

For us, being in Nunavut and having our funding levels set, the board's initial funding levels were set before the board was established. That was in 1992 through the original implementation contract, through the land claims agreement. At that time, there were certain assumptions made about staffing levels, the number of board meetings, and things like that, and here we are, quite a bit later. That was done for a first 10-year contract, and there was no renewed contract after that. This has been done on a year-to-year basis with Aboriginal Affairs since that time.

What it has led to is that we've had to develop things like a public registry system online, but we've only been able to afford the very lowest technology. It's FTP software, which is not very friendly publicly. The bill in front of you will require us to have an online presence. It brings in new translation requirements. It makes us have to adhere to the Access to Information Act and the Privacy Act. For a small organization such as ours that doesn't have those systems in place for all aspects, as the federal government might, that means we are expecting a much larger burden on an already very constrained budget.

Hon. Carolyn Bennett: Your submission, in the second last paragraph, refers to ensuring that the money's in place, or that the resources necessary be in place prior to the coming into force of the statute. Do you have any assurance of that in terms of whether it will be in the upcoming budget? Where are you going to get the money?

Mr. Ryan Barry: Now you know what keeps us awake at night, I think.

Realistically, our funding is provided by the Government of Canada through implementation of the land claims agreement. That's not about to change with this bill.

The Government of Canada, along with Nunavut Tunngavik and the Government of Nunavut, through a Nunavut implementation panel, is currently requesting a new 10-year budget submission from the board, so they are at least asking how much money do we feel we need for the next 10-year period. That's a first, the fact that they've asked us that question. We're preparing a very detailed submission for them and, through reviewing the legislation and thinking about the consequences, hope to make it very clear where we feel our funding level needs to be and what that funding would be required for.

Hon. Carolyn Bennett: Finally, in your commentary on the NTI proposed amendments, you liked two of them and you didn't like two of them.

How are we supposed to decide?

• (0925)

Mr. Ryan Barry: I think it's important to consider our experience in implementing the current directions under the land claims agreement. You'll notice in our submission that we've been very careful to highlight the fact that although we understand the spirit of the Nunavut Tunngavik submission, and we believe we understand their intention, we think the way things would work on the ground might be a little different from what they would anticipate.

From our perspective, we tried to be very pragmatic and to lay out what we thought were some of the complications that could arise really just through a misunderstanding of what certain terms in the process, such as "scoping", really mean, and when we do those and what they would entail.

Hon. Carolyn Bennett: So we should listen to you.

Mr. Ryan Barry: I see nodding with that, so....

Voices: Oh, oh!

Hon. Carolyn Bennett: Thank you.

The Chair: Thank you.

We will turn to Mr. Rickford now, for seven minutes.

Mr. Greg Rickford (Kenora, CPC): Thanks, Mr. Chair.

Thanks to the witnesses. I appreciate your submission and your proposed amendments for our consideration.

I want to move from the consultation process this morning to talk a little bit about environmental stewardship. I know that with respect to NUPPAA, this is one of the main thrusts—I think, Ryan, we can frame it that way—in an effort to establish a more streamlined

system for environmental assessments and provide additional measures for environmental protection.

As I understand it, in order to accomplish this, NUPPAA proposes to confirm and clarify the role of NIRB in clauses 18 to 27, to establish a process to determine, *inter alia*, the possible ecosystemic impact of a proposed project, which is in clause 88, to provide monitoring programs for ecosystem impacts, which is in clause 135, and to establish enforcement mechanisms as they're laid out in clauses 209 to 219.

I want to unpack that a little bit. I would start by asking which stages of a development project trigger an environmental or ecosystemic assessment.

Would you be able to answer that, Ryan?

Mr. Ryan Barry: Certainly I can take a stab at it.

As I explained before, in Nunavut we have two levels of assessment: screening and review. The majority of projects that have been coming to us are driven by the resource development sector, mineral resource development.

Given the current list of projects that are exempt from the requirement for screening, what the level is at is that usually once an exploration company starts actively drilling in an area, that's basically when they start triggering an environmental assessment requirement, a screening by our board.

Mr. Greg Rickford: That's the ecosystemic assessment.

Mr. Ryan Barry: Yes.

Mr. Greg Rickford: Okay. It's kind of a different word in play here, so I'm trying to wrap my head around it.

Then there are the criteria used to evaluate whether a project will have a significant ecosystemic impact during the project. What criteria are used to evaluate whether this project will have...? I mean, surely to goodness that happens well before the drilling starts to occur, obviously.

As well, who's involved in the decision-making process at the stage that you're going to tell me about?

Mr. Ryan Barry: Focusing on the screening level of assessment, the things that we look at I think to a large degree are laid out in the bill under what areas we have to look at for significant changes. We look at the—

Mr. Greg Rickford: And you feel they were laid out fairly clearly, Ryan, in your—

Mr. Ryan Barry: I think they were laid out fairly clearly, specifically in the section dealing with amendments to projects and judging the significance of those amendments.

For every one of the projects that come through NIRB for screening, a decision on whether or not the project should go ahead or be subject to further review is made by our board after consultation with the public in an open public commenting period, where all parties see the same information and are able to give their comments and concerns to the board for consideration.

Mr. Greg Rickford: Okay.

In answering the question of who's involved in the decision-making process at this stage....

Mr. Ryan Barry: It depends on where you draw the line with the decision. The ultimate decision rests with the Government of Canada or the Government of Nunavut ministers.

Mr. Greg Rickford: Okay. That's important, so thank you for that.

What steps are taken to ensure that the need to streamline environmental processes do not adversely affect the environmental protections? It's kind of a higher level question. At 30,000 feet we'll just say.

• (0930)

Mr. Ryan Barry: I think any time there is a clear process in place, and all parties understand what the rules are and they're playing from the same rule book, then it's clear that the ultimate goal there is to ensure that the projects that do go through go through the right way.

Mr. Greg Rickford: Okay.

Ryan and Elizabeth, the reason I'm asking this question is that when you take a look at the parts of Bill C-47, and of course we heard this loud and clear in our visit to the territories, the concern from industry was that there were different circumstances prevailing for different development projects. That raised a myriad of challenges, with issues ranging from investor confidence to environmental regulations or processes, if you will, to who was participating in whatever circumstances were prevailing. That's the reason I'm asking that question.

Do you feel that the piece affecting Nunavut addresses this environmental piece adequately in that regard?

Does this satisfy the test for you, Elizabeth, in terms of it being a streamlined process that's clear to everybody, fair to everybody?

I see a nod.

Mr. Ryan Barry: I think we're in general agreement that.... As explained in our statements, we view the Nunavut system as already working very well. It already is comparatively streamlined as compared with most any other Canadian jurisdiction, certainly the northern jurisdiction. We do view this as a further improvement upon that system overall.

Mr. Greg Rickford: Finally, what steps do you take to ensure that Nunavummiut participate in the environmental assessment process? Take me through that.

Mr. Ryan Barry: Certainly. I'll try to do it quickly in the interest of time, as there are many means by which we do it.

Mr. Greg Rickford: That's fair.

Mr. Ryan Barry: For a screening level assessment, it's done within 45 days, so obviously the opportunities are more limited. Everything is sent out via e-mail notices. People are aware that they can access all the information through our website. They're invited to give their comments in any way, shape, or form, through calling us toll-free or e-mailing us anything about the project. We make sure the notice of a screening gets to all the people it needs to get to in the communities.

For a review level assessment, during the course of a review we will visit several times the communities that would be affected by a project. We will work with individuals and community groups to ensure that they understand the process and how to participate, and that they fully feel empowered to do so. They're strongly encouraged to get their voice across, again through any means, through written means, through talking to us over the phone, and through presenting to the board at a final hearing as well.

Mr. Greg Rickford: Are you satisfied with that access?

Mr. Ryan Barry: I think we spoke earlier about the ability of the board currently to have that discretion over its process and how that has really led to a process where Nunavummiut have expressly stated their support for it. It's a made in Nunavut process which they feel really does reflect the realities on the ground and the need for really talking to individuals at the community level.

Mr. Greg Rickford: Thank you.

The Chair: Ms. Crowder.

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

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

I want to touch on the participant process. Thank you for outlining a very thorough public process. It sounds like you have support in Nunavut to continue that process, although I have to wonder; we can talk about a process being fair on paper, but if there isn't funding to continue to do that process, the question then becomes how fair is that process if there's no money available?

In that light, I want to touch on something you said, Mr. Barry. You indicated that in 2004 there was an amendment to the land claims agreement that changed the funding that was available for people to apply to be involved in the process. Do I have that correct?

Mr. Ryan Barry: Just to clarify, the amendment to the land claim was in 2008. It removed the application of the Canadian Environmental Assessment Act to the Nunavut settlement area. It completely removed it. When that act did apply previously there was at least the option of accessing the participant funding through the CEA agency itself.

• (0935)

Ms. Jean Crowder: What's the mechanism now? Is it ad hoc? Is it project by project? You indicated there has been money available for projects in other parts of the country, but that it has not necessarily been as available.

Mr. Ryan Barry: Since that time, since CEAA was removed from the territory, it has been on an ad hoc basis. Each time the board has recommended that a project be subject to a full review, the board has indicated whether or not it believes participant funding should be made available. In some cases it's been granted. More recently the response from the minister has been that because there is no established program, there will be no funding.

Ms. Jean Crowder: How does the credibility of your process continue without funding? It's an important process.

Mr. Ryan Barry: Unfortunately what we've seen is that more recently there seems to be a misunderstanding. There are two types of public reviews in Nunavut. One is done by the board, and for more transboundary projects there is a federal panel review, which allows different representation by affected groups. There seems to be confusion as to whether that type of a review, a federal panel review, might come with participant funding, whereas the NIRB review people think it doesn't. That's not actually true. There are no unique means for a panel to have funding that the board doesn't have, but unfortunately we are certainly seeing the effect of having no established program, and that is leading to confusion about the best option for review.

Ms. Jean Crowder: Given the challenges in Nunavut in terms of travel and access and the need to have things available in at least two or three languages, it is very important that NIRB during those public processes be on the ground talking to community members. Is that correct?

Mr. Ryan Barry: That's certainly correct. The main message I think we would try to get across is that without an established participant funding program, the board has to ensure that the affected groups have the ability to fully participate. As a result, we may need to extend timelines for comments so people have more time to prepare, because they don't have resources or help. The board may also have to pay out of pocket for affected individuals to show up to a hearing. Processes may also be lengthened in some instances.

Ms. Jean Crowder: It creates a real unevenness.

With regard to the timelines, I know you indicated that on mining you had only just received the recommended amendments and you haven't had time to give them a full review. I understand that, but one of the things they are asking for is that the assessment process consistently be completed within 24 months. From what you're indicating, it seems to me that doing that could continue to be a challenge if adequate resources are not put in place. Whether or not you agree with the 24-month recommendation, if you don't have the resources, it's going to be very difficult to consistently provide for a public process that people in Nunavut want to see within those timelines. Is that accurate?

Mr. Ryan Barry: I think that's a fair statement.

Ms. Jean Crowder: Just quickly on the board funding, I'm surprised to hear that the board funding hasn't been reviewed since 1992 given the increased costs of living and everything. It's actually pretty shocking that you continue to function in that kind of environment.

Mr. Ryan Barry: I think we could say that our funding has increased since that time, but there's been no formal review process for it, no transparent process. It's not a very well kept secret that our board as well as the other boards are currently chronically underfunded and have substantial difficulties in achieving their full mandate because of it.

The Chair: Mr. Seeback, you have five minutes.

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

From my review it seems as though the bill clarifies some of the roles and responsibilities for the board. Do you think the board will therefore be more efficient?

Mr. Ryan Barry: I think clarifying things in the legislation helps clarify expectations. In some cases doing that can make it easier for the board to ensure that it's meeting those expectations very clearly. The main other increase in efficiency is in having a clearer understanding of when certain decisions are coming back and of the timeline for them to come back from the minister's office, instead of that being an unknown. As well, with all projects going through the Nunavut Planning Commission, there will be some certainty as to how to formally trigger the process, something that is currently not there.

● (0940)

Mr. Kyle Seeback: I looked at some of your amendments. I don't have a lot of time, but I want to talk about a couple of them and perhaps understand a little bit of the rationale behind the changes. Your counsel can answer if you think it's appropriate.

In the first one, on proposed subsection 228(2), you appear to be moving consultation with the board to consent of the board. This seems to be a big change that you're proposing. Why do you think it's the consent of the board rather than consultation with the board?

Ms. Catherine Emrick: Under the land claim agreement, there's a requirement for the board to agree with the minister if any projects are exempted from screening through one of the schedules in the land claim. By introducing into the legislation the ability to exempt projects through regulation, that essentially has the same effect as the requirement for the board to agree to add a project to the schedule. We think it's parallel to that requirement for agreement that the board also consent on exemptions from the definition of a project, which essentially would exempt a project from screening.

Mr. Kyle Seeback: Okay. Thank you.

In the changes you propose with regard to proposed section 134, what do you see as the rationale for changing the words "would be inconsistent with" by substituting "in contravention of"? I guess "in contravention" is a little stronger, but these are sort of drafting interpretations. Certainly with this one it doesn't seem to be a substantive amendment. It's more of a drafting interpretation; it takes me back to my law school days when I tried to look at drafting. Am I wrong in that statement?

Ms. Catherine Emrick: We actually had some discussion about whether to leave in that request for amendment. It was the length of the discussion and exactly the issue you raise that led us to say it should be left in. It really is about consistency with the land claim and the desire not to add in something that might be confusing. We couldn't see a value in making that change. It wasn't clarifying. It was actually confusing.

Mr. Kyle Seeback: Okay.

Is it the same for proposed subsection 135(6)? Again, it seems to me that it's more the way you say it rather than a substantive change.

The proposed subsection in the bill states, “There must be no duplication of responsibilities between those assigned to the Board under a monitoring program and those referred to in subsection (5).” It’s certainly talking about a monitoring program and saying there shouldn’t be duplication. You propose to change it to, “A monitoring program must be designed so as to avoid duplication...”. To me, those two sections say the exact same thing; it’s a matter of you say “tomato”, I say “tomahto”. Is there a substantive change there that I’m missing, or is this just phraseology?

Ms. Catherine Emrick: Yes, I think this one is a substantive change.

Mr. Kyle Seeback: Okay.

Ms. Catherine Emrick: In our view, there is a difference between a restriction in the ability to have any duplication and avoiding duplication. In particular, I think what’s important about this proposed amendment is the facilitation of the coordination, and that may require some duplication.

Mr. Kyle Seeback: Okay, so you see that the section in the bill is a restriction: “There must be no duplication...”. Do you see that as more restrictive than “A monitoring program must be designed to avoid...”? Is that what you’re saying?

Ms. Catherine Emrick: Yes.

Mr. Kyle Seeback: Okay.

How am I for time?

The Chair: You’re pretty well out of time, since you ask.

Mr. Kyle Seeback: But there are so many more.... All right.

The Chair: Thank you, Mr. Seeback.

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

• (0945)

[*Translation*]

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

Ms. Copland, I have read your report. One part of it, in particular, has drawn my attention because it resonates with the reality of my community, which is located on the 52nd parallel.

I will quote in French—so we are talking about a translation—a passage from your brief regarding past land development. I would like you to put all of this into context and provide us with some concrete examples. The following is stated in your brief:

Many who have experienced resource-based development in their community know that, eventually, it leaves, and they will not trade what is necessary to sustain and protect their ability to live off their land and waters for economic development.

Could you provide us with some examples of such development in the past?

[*English*]

Ms. Elizabeth Copland: If I understood your question, you mean if a project is proposed in an area and the people do not agree. Is that what you’re asking?

[*Translation*]

Mr. Jonathan Genest-Jourdain: I was referring to land development that had taken place in the past, when that development was resource-based and led to conflict.

Could you give us some examples of that past resource-based development and explain to us why Inuit no longer support that type of development in 2013?

[*English*]

Ms. Elizabeth Copland: It’s pretty much a split a lot of times. There are people who are in favour of development and others who are not in favour.

Ryan, perhaps you can comment.

Mr. Ryan Barry: Thank you.

Yes, Elizabeth is correct. Perhaps as a concrete example, in the past there has been a clear ban on uranium mining in Nunavut. More recently that ban was overturned. In the same communities where there was almost total opposition based on, I think, more recent experience with having a gold mine in their backyard, and seeing both the opportunities and the impacts that come along with that, it’s led to a greater understanding of what comes with development sometimes.

That leads to again a further split, as Elizabeth said, with some factions strongly supporting increased development and some factions more adamantly not wanting to see it happen.

[*Translation*]

Mr. Jonathan Genest-Jourdain: Thank you.

I will share my floor time with Mr. Bevington.

[*English*]

Mr. Dennis Bevington: I want to go back to the significant modification issue.

In my experience with environmental assessment in the Northwest Territories, the two major mines that we approved both had modifications after the environmental assessment.

In the case of Diavik, they increased their capital project by putting in a dike and changing the dynamics. With Ekati, they took out one of the pipes they were going to develop, and that took about 10 years out of their mine life.

The significant modifications that occur after an environmental assessment in our case were very important because they changed the dynamics of what was happening with the mine in both Nunavut and the Northwest Territories, in terms of major economic value to the north in jobs and business opportunities, which are very time sensitive.

Going back to what you’re proposing here, with the bill as it stands, the company is responsible to establish the significance of the alteration. Is that correct?

If the company says they're altering the project and indicate the things that are significant, will you only be able to look at those things within the process? Isn't that why NTI is asking for the ability to look at the significance of alterations to the project, so that they can interpret the impact on the economy?

If, say, with the Mary River project you were reducing the output from 18 million tonnes down to three million tonnes, that would suggest to me that there might be some issues around high-grading ore. Would that be something that would be identified by the company as being of significance, or would it generally be held to the agencies within Nunavut to identify that significance?

That's just a hypothetical question, but I'm trying to establish why you have such a strong interest in the significance of alteration.

• (0950)

Mr. Ryan Barry: I think it's a fair question.

For projects that have gone through an environmental review and then, as you suggest, are subject to such changing things as the expected production or the placement of major project components, right now, as the land claim stands, because the board for a project that it has reviewed produces a project certificate that lays out the terms and conditions by which that project can be developed, when anything significant changes—whether they want to change a component of the project or whether something is just not working, where it works out differently on the ground from what was expected—there is the ability for the board, the government, Nunavut Tunngavik, a member of the public, or the proponent to essentially make application that the terms and conditions aren't working and need to be revisited through a formal assessment process.

We're supportive of that being kept the case, where when conditions change, there needs to be that ability to revisit the terms of approval and to determine if further assessment is required.

Mr. Dennis Bevington: Within this act that's being proposed right now, that will change from what you have today.

Ms. Catherine Emrick: I think it's a question of making sure that the regulatory bodies are aware that modifications are happening and then an opportunity to input or make that significant determination....

Mr. Dennis Bevington: That's right. The power still resides within the board, after this act is passed, to determine whether or not something is significant.

Mr. Ryan Barry: It's important to recognize that by putting notice on the proponent to report on these changes and any significant modifications, it doesn't change the process for reconsidering. What it does do is it gives another means, with the new enforcement powers that will be under the act, to hold a proponent to account if they're not in fact reporting these changes and if they have to be brought up through other means.

The Chair: Thank you very much.

We will now turn to Mr. Rickford for the last questions.

Mr. Greg Rickford: Thanks, Mr. Chair.

I just have a couple of questions, Elizabeth, going back to what we heard earlier in this process, in December of last year.

Representatives of the Government of Nunavut told this committee that Bill C-47 would contribute to devolution discussions by providing what I believe they said was “an effective regulatory system”, and that the process of drafting Bill C-47 demonstrated a collaborative effort between levels of government and organizations, which is also a necessary component of devolution.

In your view, Elizabeth, does or would Bill C-47 support northern governance and devolution, broadly speaking? Do you have a comment on that either way?

Ms. Elizabeth Copland: Probably, broadly speaking, it would support.

Mr. Greg Rickford: Do you feel that this part that affects Nunavut then extends or grants greater control over the decision-making process politically, environmentally, and economically for the people in the territory?

Ms. Elizabeth Copland: I think it would give more teeth, if you will, to our decisions—

Mr. Greg Rickford: Okay—

Ms. Elizabeth Copland: How do I say it...? In what terms and conditions we give to the company, it would have more legal...or more grounds or more teeth in our decisions.

Mr. Greg Rickford: Did anybody else want to chime in on that?

Ryan, did you?

Mr. Ryan Barry: I think Elizabeth is right. With the enforcement provisions, it certainly brings a new level of teeth or accountability and adherence to our terms and conditions.

With regard to devolution and recognizing that the act itself is somewhat removed from that type of process, I think the biggest thing to keep in mind is that currently in Nunavut approximately 80% of the land is administered by the crown. Devolution would make the control of those lands go to, obviously, the territory of Nunavut—

• (0955)

Mr. Greg Rickford: It's a significant shift in governance, first of all—

Mr. Ryan Barry: It's a significant shift, more in who the board is reporting to and who is then left to respond back to the board and implement the board's decisions. It would shift more to a territory focus than the federal government....

Mr. Greg Rickford: Thematically, this is what we're hearing in all of the territories as well. I just wanted to get that question out.

I have no more questions.

The Chair: Thank you, Mr. Rickford.

We do want to thank you for coming in today. We appreciate your testimony, and obviously it will be considered as we continue to undertake our review of this bill. Thank you so much for being with us this morning.

Colleagues, we don't have much committee business. I just want to inform you that the next meeting, Thursday's meeting, will begin at 9:45 a.m. rather than 8:45 a.m. I'm hearing great disappointment about that, but we've had some changes with the scheduling, and we'll start at 9:45 a.m.

Ms. Crowder?

Ms. Jean Crowder: Do we have an updated schedule? What are we doing after Thursday? Are we meeting now about it?

The Chair: Well, we can—

Ms. Jean Crowder: It wasn't on my agenda. That would be a really good idea.

The Chair: Well, we can. That hadn't been the intention, but we certainly can do that.

If that's the case, committee, then we'll suspend, go in camera, and do that.

I again thank our witnesses.

We'll let people clear out. Thanks so much.

[Proceedings continue in camera]

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