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Chair

Mr. Chris Warkentin

Standing Committee on Aboriginal Affairs and Northern Development

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● (1530)

[*English*]

The Chair (Mr. Chris Warkentin (Peace River, CPC)): It is now 3:30, so I'm going to call this meeting to order. This is the 12th meeting of the Standing Committee on Aboriginal Affairs and Northern Development.

Today we continue our study of Bill C-15.

We have before us officials from the department. We want to thank you for making your time available.

Mr. Wayne Walsh and Mr. Tom Isaac, thanks for joining us.

As well, Tara Shannon and Alison Lobsinger, thank you for joining us.

We appreciate the fact that you have been working on this for some time. You are truly the resident experts with regard to what's contained in these documents, and we appreciate the fact that you've come back to answer questions as we consider amendments.

We're going to start our rounds of questions with Mr. Bevington.

Mr. Dennis Bevington (Western Arctic, NDP): Mr. Chair, I thank the witnesses for being here today.

First of all, I want to know whether you're familiar with the testimony that took place in Yellowknife.

Voices: Yes.

Mr. Dennis Bevington: Everyone's gone through that testimony in good fashion.

I think one of the common things that came from the first nations in their presentations, whether it was the Tlicho, the Akaitcho, the Dehcho, or the Katlodeeche First Nation, was the feeling that the consultation process was flawed.

When you consulted on these two matters, one being devolution and one being the changes to the MVRMA, you did those in separate sessions. Is that correct? That was the testimony that was given to us by the Tlicho.

Ms. Tara Shannon (Director, Resource Policy and Programs Directorate, Northern Affairs, Department of Indian Affairs and Northern Development): That's correct, yes.

Mr. Dennis Bevington: If the plan of the department was to provide this in one bill, why did you choose, in the months prior to the introduction of the legislation, to keep these two matters separate in consultation?

Mr. Mark Strahl (Chilliwack—Fraser Canyon, CPC): I have a point of order, Mr. Chair.

At the outset, I apologize to Mr. Bevington for interrupting him.

The minister is not here. These are not the people who made that decision. Therefore, I think we need to stick to what they are, which is independent public servants. If he asks questions about how the bill was structured or that process.... I think he should have asked that question of the minister, and I think he did and has his answer.

I seek your guidance in that regard.

The Chair: We are constrained somewhat in terms of.... We know the protocol when officials are before us. Mr. Bevington is a long-standing member of this committee, and I fully expect that he'll keep his questions to technical aspects of the provisions of the bill.

Mr. Bevington.

Mr. Dennis Bevington: Well, just to the point of order and not to my timeframe—

The Chair: I have ruled, Mr. Bevington, on the point of order.

Mr. Dennis Bevington: That I was in error in bringing this forward?

The Chair: No, I didn't rule you in error, Mr. Bevington. I reminded and encouraged all members to continue to respect the responsibilities that we have as parliamentarians.

I turn it back to you, Mr. Bevington, for your opening questions.

Mr. Dennis Bevington: Okay. Well, that certainly was something that was brought forward by the testimony in Yellowknife, that these two aspects, the MVRMA and the devolution bill, were brought forward in separate sessions. I guess what I could ask you then is, were you instructed to do it in that fashion, or was that a choice that the department made?

Mr. Wayne Walsh (Director, Northwest Territories Devolution Negotiations, Northern Affairs, Department of Indian Affairs and Northern Development): Mr. Chair, if I may do so, I think it's important to provide the full contextual piece of how the consultations were done with both initiatives.

First of all, with respect to devolution, we conducted a fairly comprehensive consultation process—three phases—which took place from January 2011 up until we signed the devolution agreement. During that period, we consulted with 22 different aboriginal groups, first nation communities, and that influenced the outcome of our negotiation positions.

My understanding is that my colleagues who were working on regulatory improvement undertook similar consultations during the development of the framework of their proposal.

Where we then began to converge with respect to the two initiatives was on August 16, 2013, when the same groups, the 22 first nation communities and aboriginal groups, were sent a package. The package contained all four elements of the bill that is now before you.

We set out a timeline. It was from that point on that the consultations were coordinated on the elements of the legislative proposal. We set a deadline of October 15 to receive comments, whether they were written or through meetings with the department. From there we moved forward with our recommendations on a final approach to the government. The government then made the decision on how they wished to proceed with Bill C-15.

● (1535)

Mr. Dennis Bevington: Were the drafts separate when you presented the two bills? My understanding is that they were actually separate drafts, two separate pieces of legislation, that were presented.

Mr. Wayne Walsh: There were actually four. The bill is structured in four parts. The way we sent out the package, although it was sent in one envelope, it was in four different bills.

Mr. Dennis Bevington: When you talked with the consultation sessions, was the consultation taking place as a whole or was it taking place in each particular section?

Ms. Tara Shannon: We consulted on the regulatory improvements components over a period of one week. Our devolution colleagues were present in the room to answer any questions about the relationship to devolution.

Through our consultations on regulatory improvement, we were always very clear that the objective was to have regulatory improvement in place prior to the devolution effective date of April 1, 2014.

At the same time, through those consultations, we always indicated to the aboriginal parties that the Northwest Territories Waters Act would essentially have to be imported into the Mackenzie Valley Resource Management Act in order to effect devolution, so that they would see two types of amendments in the Mackenzie Valley Resource Management Act, those with respect to devolution and those with respect to regulatory improvement.

Mr. Dennis Bevington: Are you familiar with the protocol presented by the first nations on January 14, 2011, indicating that the AIP included terms that were not in the best interests of the aboriginal people?

Mr. Wayne Walsh: Are you referring to the devolution AIP?

Mr. Dennis Bevington: Yes.

Mr. Wayne Walsh: No.

Mr. Dennis Bevington: No, you weren't familiar with that? That's part of the testimony of the Akaitcho Territory Dene First Nations.

A voice: Was that the regulatory improvement process protocol?

Ms. Tara Shannon: Yes. I can speak to that. The aboriginal parties did submit a regulatory improvement framework protocol that they were proposing as a process for regulatory improvement amendments.

However, our minister at the time clearly stated in a response of February 29, 2012 that their approach was not accepted and indicated how he would be proceeding with consultations.

Mr. Dennis Bevington: This was presented on January 14, 2011, and the minister came back in February, 2012 on a protocol arrangement?

Ms. Tara Shannon: I'll just ask....

Ms. Alison Lobsinger (Manager, Legislation and Policy, Department of Indian Affairs and Northern Development): The aboriginal parties shared the framework proposal with officials in November of 2011 and the minister responded in February of 2012.

The Chair: Thank you.

We'll turn now to Mr. Strahl for the next questions.

● (1540)

Mr. Mark Strahl: Thank you very much.

Some of the other testimony we heard included that of Willard Hagen, the chair and CEO of the Mackenzie Valley Land and Water Board. He raised some concerns with respect to board member liability. I think he indicated that there was a concern that the proposed bill, Bill C-15, was not as strong as what is there now to protect board members in terms of liability. I think he called it “legally inferior protection”.

Could you address that specifically? Is it legally inferior in your view, and if not, why not?

Mr. Tom Isaac (Senior Counsel, Negotiations, Northern Affairs and Federal Interlocutor, Department of Justice): Mr. Chairman, when we reviewed the provisions in question, one provision that Mr. Hagen was pointing out talked about how no action lies against a board member. I think that's a provision in the amended waters act that's coming forward. The provision that's currently in the MVRMA is that there's no liability in respect of a board member's duties and functions. The small change they've made to that provision is I think to powers, duties and functions. They've just put in powers or functions as a new aspect.

It's not a change from the structure of the current MVRMA, which is “no liability”. Between “no liability” on the one hand, and “no action lies” on the other hand, it's our legal view that there's almost... there's no difference in the level of protection afforded to a board member against liability between those two provisions.

Mr. Mark Strahl: Okay. So the same level of protection will apply under the new act.

I want to turn to another concern that we heard. The Mining Association recommended consolidating the environmental assessment and environmental impact review processes so that there would be a defined 24-month timeline, not one stacking on top of the other.

Did the department consider that as they were undertaking this review? If it was looked at, how would you respond to the concerns that were raised about that potential to go to another 24 months?

Ms. Tara Shannon: We did undertake an analysis through the consultation period. It was our determination, however, that the proposal was inconsistent with the land claims agreements. We therefore were unable to proceed with any amendment in that regard.

If you'd like further detail on the land claims obligations, I would turn to my colleague Alison Lobsinger.

Mr. Mark Strahl: Sure.

Ms. Tara Shannon: She tells me that she has nothing else to add.

Mr. Mark Strahl: Okay. That was well answered, then. I appreciate that.

Devolution has been a long time coming. It's been something which the GNWT and the people of the Northwest Territories have been looking forward to for a long time.

What is the federal government doing, what is the department doing, to help the Government of the Northwest Territories implement this goal? Is the department or the government doing anything to help them offset the costs they will incur as a result of devolution?

Mr. Wayne Walsh: Mr. Chair, one of the elements we agreed to with the Government of the Northwest Territories in the agreement in principle signed back in January 2011 was what we described as one-time funding.

One-time funding was allocated to not just the Government of the Northwest Territories but all the aboriginal parties that were contemplated in devolution. That is really targeted towards defraying some of the costs associated with ramping up, with getting ready for devolution. The commitment we made to the Government of the Northwest Territories in one-time funding included $26.5 million, and $4 million to the aboriginal parties.

I'm happy to report to the committee today that we've been working with the Government of the Northwest Territories and the aboriginal parties on a number of different fronts towards implementation. Last week we were able to provide the final installment of the funding we committed to all of the parties.

Mr. Mark Strahl: Thank you.

We also heard from industry that although they were generally in favour of the regulatory improvement part of the bill, they didn't want to lose the regional knowledge, the capacity, the relationships they'd developed in those areas over the years.

Can you tell us how proposed Bill C-15 takes those factors into account and how the new structure will retain those features of that regional representation on the board?

● (1545)

Ms. Tara Shannon: I would point to two features of the bill.

The first feature would be the regional committees that the chair of the Mackenzie Valley Land and Water Board would establish to consider applications for projects wholly within a region. On those committees, the regional representative would be appointed by the chair.

At the same time that we move forward with implementation of the restructuring element of the proposal, cognizant of not only industry's concerns but also the concerns of aboriginal parties with respect to the retention of that regional knowledge, we will be working with all stakeholders to discuss what kind of administrative capacity we could maintain within each region to address those concerns.

Mr. Mark Strahl: Thank you.

The Chair: We'll turn now to Ms. Jones for the next questions.

Ms. Yvonne Jones (Labrador, Lib.): Thank you, witnesses, for appearing today.

I'm just wondering if you could remind me once again why you chose to include the massive changes we're seeing within the Mackenzie Valley Resource Management Act as part of the devolution bill instead of a separate bill. Can you tell me again why you chose to do that?

The Chair: Ms. Jones, you missed the first part of the meeting. That question was asked and answered.

Ms. Yvonne Jones: Oh, okay.

The Chair: I do remind you as well, as I reminded all colleagues, that we have the officials before us. It's not the minister. The political decisions of course were made by the minister. These officials are here prepared to answer questions with regard to technical aspects of the bill.

Ms. Yvonne Jones: I guess in the last little while we've all seen some push-back with regard to that decision. There's no doubt about it. In light of the representation that was made before the department, are you aware whether there will be any changes or amendments to the legislation coming forward from a departmental perspective as we see it today?

A voice: We're not aware....

The Chair: It's not usually the practice, Ms. Jones, that the department would propose amendments. Usually they would come from political parties.

Did you have any further questions, Ms. Jones?

Ms. Yvonne Jones: I have no technical questions according to your criteria, sir.

Go ahead.

The Chair: Thank you.

Mr. Seeback, we'll hear from you, if you have some additional questions.

Mr. Kyle Seeback (Brampton West, CPC): Thanks.

I want to pick up on what my colleague Mr. Strahl was talking about. You sort of gave a general answer. That was a big concern with industry. They actually said several years ago that they didn't think the boards were working very well together but that had changed significantly. They thought that there was great synergy between the boards. They were able to collaborate resources in certain circumstances, and that's something they want to ensure will be there in this new amalgamated board.

Can you give any more detail on how you'll be able to ensure that continuity for industry and for everyone else in fact?

Ms. Tara Shannon: As part of the transition measures in the legislation, the existing board employees would move over to the Mackenzie Valley Land and Water Board. That existing knowledge will move to the consolidated Mackenzie Valley Land and Water Board.

At the same time, we're currently working with the boards and others to develop an implementation plan that would keep in mind the preoccupations of both industry and aboriginal parties in this regard. We would, through implementation, work closely with both industry and aboriginal parties to ensure that projects aren't negatively affected and that the capacity that exists is retained.

● (1550)

Mr. Kyle Seeback: Do you have a timeline for that?

Ms. Tara Shannon: Our intention is that restructuring would come into force within one year of royal assent. There are a few other amendments that would come into force under order in council at the same time. Those would be the amendments that would provide for regional studies and the board member term extensions, as well as cost-recovery regulations and the consultation regulation-making authority.

Mr. Kyle Seeback: One of the things the Mining Association recommended was consolidating the environmental assessment and the environmental impact review process so they would all take place within 24 months. They seem to suggest that the way things happen now, it could be 24 for one and 24 for the other, and then you have 48. Did you look into that? Did you consider that? What's your comment on that?

Ms. Alison Lobsinger: The legislation sets out the requirement for an environmental assessment process and then a subsequent environmental impact review process. These two stages are set out in the land claim agreements. The land claims agreements are quite clear that an environmental assessment has to be conducted and then, if necessary, an environmental impact review. Both steps have to be gone through; you can't collapse the two steps into one. We have set out time limits in the legislation. There is an overall time limit for environmental assessment and an overall time limit for environmental impact review.

Industry had proposed that if there's a need for an environmental assessment and an environmental impact review that the overall time for those two steps would be no more than 24 months. However, the impact review board, the body responsible for conducting the environmental assessment and environmental impact review, has to have the discretion to conduct the process as it sees fit. It wouldn't be appropriate to have one time limit for an environmental assessment if it was just an environmental assessment, but then a different, shorter time limit if it was an environmental assessment and an environmental impact review.

For that reason, we've kept the time limits separate and sequential.

Mr. Kyle Seeback: Is there any way you would know sooner than 24 months if you're referring for the environmental impact, or would it always take 24 months? Is there any way to condense that process a little so it's not 48 months? Would it be that 12 months into it we know we're going to have to refer it to the environmental impact...? Is there any mechanism in the legislation for that? Did you consider something like that?

Ms. Alison Lobsinger: No, there's nothing in the legislation that allows for that.

Ms. Tara Shannon: There's nothing in the legislation to allow for it. I think it's important to note that since the legislation has come into force, there have been only two environmental impact reviews. One was the Mackenzie gas project and the other was the Gahcho Kué. There have been only two since the beginning of the act in 1999.

Mr. Kyle Seeback: What do you think about the Mining Association's suggestion that you should define public concern so you have a clear idea of when you're going to have that referral?

Ms. Tara Shannon: We didn't define public concern in the act. That's consistent with the approach to public concern in other environmental assessment legislation in Canada. For example, CEAA 2012 also includes a public concern test, and there is no definition. Were we to proceed with a definition of public concern, the consultation process around that would be quite intensive, and there could be implications, then, for other jurisdictions, for other legislation such as CEAA 2012.

Mr. Kyle Seeback: Thanks.

The Chair: We'll turn now to Mr. Genest-Jourdain for the next questions.

[*Translation*]

Mr. Jonathan Genest-Jourdain (Manicouagan, NDP): Good afternoon, ladies and gentlemen.

Would you please clarify for us what involvement government lawyers, particularity those in your department, have had in drafting the agreement addressed in the legislative tool that we are debating today?

● (1555)

[*English*]

Mr. Tom Isaac: The Department of Justice has several functions in respect of the development of legislation. We advise on policy, on the legal implications of the policy aspects as they develop the legislation, and then the Department of Justice has legislative drafters who draft the legislation. We're also advised in respect of the consultation requirements of the common law and land claim agreements, and we advise the department in respect of those things. It's a multi-faceted role that the Department of Justice plays.

[*Translation*]

Mr. Jonathan Genest-Jourdain: I believe that they were also called on to help draft the agreement.

[*English*]

Mr. Tom Isaac: The Department of Justice was called upon to assist in the development of the legislation and the agreement.

[*Translation*]

Mr. Jonathan Genest-Jourdain: To your knowledge, were legal counsel in your department also asked to give their opinion on the legitimacy, or at least the potential contentiousness, of the transfer of environmental liabilities that appears in the agreement but not in the text of the legislation? Were they asked to give their opinion on the highly contentious nature of the fiduciary relationship that must exist between the Crown and first nations?

When I talk about the transfer of environmental liabilities, I am referring to responsibility for abandoned mines and contaminated sites. This type of transfer is also included in other agreements and other legislation, such as the First Nations Land Management Act. Such transfers seem to happen frequently, to the point that they reflect a strong tendency on the part of the Department of Aboriginal Affairs and Northern Development.

I would like to know whether your legal counsels gave an opinion on the legitimacy and the potentially contentious nature of these liabiliy transfers that at the very least would expose the government responsibility for its fiduciary relationship.

[*English*]

Mr. Tom Isaac: As I mentioned before, the Department of Justice has provided advice in respect of the development of the legislation and the agreements. The specifics of that advice are of course subject to solicitor-client privilege, and I can't provide any specifics in that regard.

It's our view that the legislation and the devolution agreement are both compliant with all the legal requirements that the crown has to abide by in these initiatives.

[*Translation*]

Mr. Jonathan Genest-Jourdain: Thank you.

[*English*]

The Chair: Mr. Walsh.

Mr. Wayne Walsh: If I may, Mr. Chair, if I understand the honourable member's question correctly, I just wanted, for the record, to point out that in devolution and in the devolution agreement, what we've actually done is that Canada has agreed to retain responsibility and liability for any of the waste sites that were created prior to transfer.

We have a whole process and a whole chapter laid out in the agreement whereby we will retain the liability, remediate the site, and only once the site has been cleaned up will we transfer that to the Northwest Territories.

The Chair: Thank you.

We'll turn to Ms. Crockatt for the next questions.

Ms. Joan Crockatt (Calgary Centre, CPC): Thank you to the witnesses for being with us today.

I'm interested, too, in the environmental aspects. There have been concerns from some, and kudos from others, about reducing the time period for the regulatory approvals in the new structure. We're going to 24 months now.

I'm wondering if you could compare the consolidated 24-month total for the environmental reviews with other jurisdictions, and whether that's in keeping...because we all want to be sure that the environmental reviews can be done in a safe and effective way.

Ms. Tara Shannon: Yes, the time limits that are contained in this act are consistent with those that are contained within CEAA 2012, so the maximum of 24 months for an environmental impact review, 12 months for an environmental assessment without a hearing, and 21 months for an environmental assessment with a hearing.

● (1600)

Ms. Joan Crockatt: Do you know how those compare with any other international standards?

Ms. Tara Shannon: I'm not very familiar with other international standards, so I can't speak to those. All I can say is that they are consistent with those that are in other Canadian jurisdictions.

Ms. Joan Crockatt: They're also, by my reading, consistent with the European Commission standards as well. Thank you for your answer.

I'd like to talk about the regulatory bodies. Essentially they're being consolidated. What makes you confident that in the devolution the regulatory regime that is being set up now is competent to be able to handle the tasks? I think you touched on the regional representation, etc., before.

This is for whomever feels they would like to answer that.

Ms. Tara Shannon: I'll just say that the proposed changes don't impact the board member...or it will be the same capacity in the regions. We would focus on retaining that capacity.

I'd probably turn to my colleague Alison Lobsinger to speak to how decisions will be made in the regulatory regime post-devolution.

Ms. Joan Crockatt: Yes, I think that's where I want to go. Are you confident that we did have the capacity there before and that it will be retained in moving forward with devolution?

Ms. Tara Shannon: The short answer is yes.

Ms. Alison Lobsinger: The first thing I would say is that overall, how both land and water regulation and environmental assessment take place in the Mackenzie Valley, notwithstanding the changes we're adding to the margins of the process, won't change following these amendments.

The Mackenzie Valley Land and Water Board will continue to regulate land and water. The environmental impact review board will continue to conduct environmental assessment. We haven't changed, through these amendments, how those boards conduct their business. That will stay the same today through to when the amendments do come into force.

I don't think I have anything else to add beyond that.

Ms. Joan Crockatt: Okay.

The Mining Association advocated more board flexibility to allow the scope of an assessment to be tailored to the size and the impacts of the project. Does this sort of flexibility exist to some degree, and do you see there being any enhanced capability to do that?

Ms. Tara Shannon: I think it's safe to say that it's our view that the Mackenzie Valley Environmental Impact Review Board applies the principle of proportionality currently, and would continue to do so post amendments to the Mackenzie Valley Resource Management Act.

Ms. Joan Crockatt: So no additional levels of red tape would impede projects.

Ms. Tara Shannon: In our view, no.

Ms. Joan Crockatt: Thank you.

Thank you, Mr. Chair.

The Chair: We'll turn to Ms. Hughes now for the next questions.

Mrs. Carol Hughes (Algoma—Manitoulin—Kapuskasing, NDP): Based on a lot of the information we've had from testimony both here and on the ground, it's evident that a lot of amendments have been requested. I think they are fairly reasonable amendments. I think it would probably also be in the government's interest to consider those amendments seriously to prevent any further litigation here, and lengthy litigation at that, a waste of taxpayers' dollars.

These are the people who are actually living under and would be working under this agreement. When we look at this, certainly all of them are not against the devolution. They do have a lot of concerns with respect to the Mackenzie Valley piece.

I'm looking at some of the testimony that was actually provided, and I'm wondering if you could comment on what some of the impact would be on the bill itself.

For example, we have the Mackenzie Valley Land and Water Board talking about amending section 57 of the MVRMA, as amended by Bill C-15, to extend the terms of board members to ensure quorum until a board decision is rendered. A similar provision is found under part 3 of Bill C-15. They also talk about addressing the discrepancies regarding the standard of liability for board members so that provisions relating to board member liability under part 4 are the same as those found under part 3 of Bill C-15.

When you look at the amendments suggested by the various presenters, can you tell me what the impact would be on the bill itself, and the reasoning that it wouldn't be supportive to go through?

● (1605)

Ms. Tara Shannon: I can't speak to whether the amendments would be supported, but you raised a couple of issues in your question.

On board member terms and term extensions as raised by the Mackenzie Valley Land and Water Board, the term set forth in the Mackenzie Valley Resource Management Act of three years is consistent with the terms set out in other acts in the north. Those include the Nunavut Waters and Nunavut Surface Rights Tribunal Act, the Nunavut Planning and Project Assessment Act, the Yukon Surface Rights Board Act, and the Yukon Environmental and Socio-economic Assessment Act.

As to the question of liability, that was addressed earlier by my colleague, Tom Isaac. Our view is that there is no legal difference between the two provisions that are contained within Bill C-15.

Mrs. Carol Hughes: There have been other views with respect to whether or not this would stand up. We know there have been reversals on some decisions in court, so I hope there was due diligence done on that part.

Again, when we see the consultation piece, I think my colleague alluded to the fact that this was actually...I think you mentioned four different bills initially. Is that what you had indicated?

Ms. Tara Shannon: Yes.

Mrs. Carol Hughes: So to have to combine these bills now, we have basically two of the bills, two of the parts, and....

Over and over again, what we see is that people are supportive of devolution. They're just not supportive of having the Mackenzie Valley piece in there. What would the technical aspect be to separate those at this point in time and have them go forward on a separate basis? Would one hinder the other?

Mr. Wayne Walsh: I'll let my colleague, Mr. Isaac, answer that last question, but just for the record, I may have mentioned earlier that there were four “bills”.

Actually, it's four acts that comprise the four parts in the bill. While we may have consulted on four separate acts, the four separate acts form the bill. For instance, part 1 was one of the acts we consulted on, as was part 2, etc.

That's an important distinction to make. While they were separate acts, the consultation process for the four pieces was done at the same time.

As to the impact of now splitting the bill, I don't have insight to provide on that.

Mr. Tom Isaac: As my colleague, Mr. Walsh, indicated, there are four acts we were consulting on. We don't consult on bills. Bills are House business. How a bill goes through the House and how a bill gets put together are political decisions. We consulted on four pieces of legislation that contained various changes, improvements to the regulatory regime, and devolution implementation.

The overlap between the regulatory improvement bills and the devolution bill is principally in the Mackenzie Valley Resource Management Act. In order to implement devolution, we had to take a lot of powers that are currently in the Northwest Territories Waters Act and put them into the Mackenzie Valley Resource Management Act because we're repealing the federal Northwest Territories Waters Act. Those parts of the two initiatives have to be done at the same time. We had to have those changes to the MVRMA done at the same time we were making amendments to the Northwest Territories Waters Act and several other consequential amendments to other acts, such as the Canada Oil and Gas Operations Act. From a technical perspective, those had to go through at the same time.

That being said, because the MVRMA was going to be changed by devolution in any event, and because it was the instruction from the highest level of government that regulatory improvement should happen at the same time as devolution, the timing of the initiatives converged. So it was virtually impossible that they wouldn't be going through at very similar times. Whether they're in one bill or not, as I said, is a political decision that we can't comment on.

Did that answer your question?

● (1610)

The Chair: It did.

Mr. Strahl, we'll turn to you.

Mr. Mark Strahl: If we look back at some of Mr. Hagen's testimony, he proposed that Bill C-15 should make provision for the land and water board to dismiss an application for either a permit or a licence when a proponent consistently and repeatedly failed to provide necessary information. What are your thoughts on that idea from Mr. Hagen, and why was that not included, or is it already covered in another aspect?

Ms. Alison Lobsinger: It's our understanding that the land and water board already has the ability to dismiss applications when proponents aren't providing adequate information. It's something we would have to consider going forward. We'd have to do analysis on whether we could make such an amendment in regulations, not in the legislation. It's our understanding that we could tackle that question through the regulations, but we would have to do further analysis on the issue.

Mr. Mark Strahl: Okay, thank you.

Also, if we go back to some of the testimony we heard, industry groups suggested that the minister should clarify consultation obligation by way of a policy direction to the boards in the interim. What is your response to that? Could you maybe address that concern that industry raised, if that's appropriate?

Ms. Tara Shannon: Mr. Chair, I would offer two observations.

We are including a consultation regulation-making authority in the Mackenzie Valley Resource Management Act, and we would consult with industry, aboriginal organizations, the Government of the Northwest Territories, and other stakeholders on those regulations.

Regarding policy direction, we haven't given any thought to specific policy directions that would be applied to the boards following these amendments. My colleague is also reminding me that the boards themselves in their rules of procedure actually have a fair number of rules regarding consultation. Currently the minister does have authority to provide policy direction to the Mackenzie Valley Land and Water Board, and he has used that policy direction in the past to clarify issues regarding consultation, so it's conceivable, but as I said, there are no plans at this point in time.

Mr. Mark Strahl: With my remaining time, I'll thank you all for your work on behalf of the government and on behalf of all Canadians. It's certainly a difficult, complex agreement that was put together in shorter order than any of us anticipated just a few months ago.

Mr. Chair, I'll give the rest of my time to the committee.

The Chair: We'll turn now to Mr. Bevington.

Mr. Dennis Bevington: Mr. Chair, I guess we're pretty open on the timeframe now. We have another three-quarters of an hour. Are we going by fives?

The Chair: You have five minutes, Mr. Bevington.

Mr. Dennis Bevington: I'm interested in your testimony. You've said that the department is now going to restore some regional capacity in terms of administration, the kinds of things that were being done by the regional boards at the regional level. You've established the idea of these regional committees. It seems that you're moving to correct an error that was made in this legislation, which was to eliminate the regional boards. You recognize that now, and I'm kind of glad to hear that. It doesn't solve the more pressing problem with the land claims that goes beyond simply administration and committees and into authority that was granted through the land claims.

I'm curious. The land claim agreements must have some provisions within them for changes to the land claims themselves. Are there, inherent within those agreements, ways that the two sides can achieve changes to those agreements?

● (1615)

Ms. Tara Shannon: All land claim agreements have amendment procedures. However, with respect to the bill at hand—

Mr. Dennis Bevington: Thank you for that.

Ms. Tara Shannon: I'm trying to answer the question.

The Chair: Ms. Shannon.

Ms. Tara Shannon: Our view is very clearly that the proposed restructuring does fall within the provisions of the land claims agreement. It is consistent with the land claim agreements.

Mr. Dennis Bevington: I've read the provisions of the land claims agreement. It says that if there is another board, the regional board can be folded into it. Where's the process for creating another board? Where's the process that would actually say to the first nations, "Here we are. We're now going to engage in a change to the land claims agreement according to what we've talked about, and we're going to have a process to do that."

Is there some outline of a process by which you can move to make a change, even though the change is contemplated and only contemplated within the agreement?

Ms. Tara Shannon: Again, Mr. Chair, our view is that the bill before this committee does not require a change in the land claims agreement, that the provisions of the land claims agreement do allow for the consolidated Mackenzie Valley Land and Water Board that we are proposing. I would point to section 25.4.6 of the Sahtu Dene and Metis Comprehensive Land Claim Agreement, section 24.4.6 of the Gwich'in Comprehensive Land Claim Agreement, and section 22.4.1 of the Tlicho Land Claims and Self-Government Agreement.

Mr. Tom Isaac: I'd just like to add it's our view that the land claim does set out a process for this particular initiative. The land claims, each of them that were referenced, say “where legislation establishes a larger board”, so the process for establishing that larger board is legislation. The land claims also have a provision, usually in chapter 2 of the land claims, that talks about a duty on government to consult in respect of the legislation that implements the land claim agreements. The process is we do it by legislation. We have a duty to consult, and the consultation initiative that the department carried out was in furtherance of that process.

Mr. Dennis Bevington: You're saying that the consultation process that you carried out is going to stand up in court. Is that your position?

Mr. Tom Isaac: That is without a doubt our position.

Mr. Dennis Bevington: I have some more questions.

The Chair: You have 20 seconds.

Mr. Dennis Bevington: Once again, I see the department moving towards re-establishing some sort of.... This will help perhaps the next government that comes along that could probably put this right. In the NWT environmental audit in 2010 they looked at these, the processes that were going on between the central board and the regional board.

Are you familiar with the results of that audit?

The Chair: Mr. Bevington, you are out of time, but we'll just have a quick answer.

Ms. Tara Shannon: I'm aware of the audit. I'm not aware of the specific result of what you speak.

The Chair: We'll turn now to Mr. Dreeshen.

Mr. Earl Dreeshen (Red Deer, CPC): There are just a couple of things I wanted to ask.

Going through the bill, proposed section 29 talks about the Governor in Council. I'm just wondering whether or not the statements that are associated with that are sort of the standard wording that you would see in Governor in Council activities.

Also, with respect to clause 120, which is on page 96, I'm also wondering if those are standard procedures we are using for all boards that are being selected that have a national focus.

● (1620)

Mr. Wayne Walsh: What sections?

Mr. Earl Dreeshen: On proposed sections 29 and 30, on page 14, the question is whether it's standard wording that one would see for Governor in Council.

Mr. Wayne Walsh: Thank you.

Section 29 on page 14 falls under part 1, the changes to the NWT Act. It is consistent, both in 29(1) and 29(2). We talk about the power to withhold assent and the assent of the Governor in Council. It is consistent with what we've done in both the Yukon Act and the Nunavut Act.

Mr. Earl Dreeshen: On transmittal of laws and disallowance, which is the next two sections, again, is that standard?

Mr. Wayne Walsh: That's correct. The power of disallowance is not only found in the territories through those acts, but it's also found in the Constitution between the Government of Canada's power of dissolution with disallowance of legislation with provincial legislation, so it is consistent.

Mr. Earl Dreeshen: The standard process for the board, clause 120. Can you comment on that?

Ms. Tara Shannon: I'm just reading the clause. It's clause 120 on page 96.

Mr. Earl Dreeshen: Page 96, yes.

Ms. Tara Shannon: Yes, it's generally standard. My legal counsel is advising me that some claims say you pick among members, and sometimes the minister himself picks, so our view again is that it's generally standard.

Mr. Earl Dreeshen: Clause 8 on page 34, in section 30, the Western Arctic as a constituency: is this current under the April deadline that we're speaking of?

Mr. Wayne Walsh: I believe that is also found in the Canada Elections Act, schedule 3, I believe.

Mr. Tom Isaac: Mr. Chair, the member is referring to a consequential amendment that is a result of a change in the Northwest Territories Act. What used to be the definition of territories has been changed to a definition of Northwest Territories, so the only change that this bill encompasses is to put “Northwest” in front of “Territories”. Other than that, everything is staying the same.

Mr. Earl Dreeshen: I'm sure I've had my time.

The Chair: Mr. Genest-Jourdain, and if you have any additional time, I know that Mr. Bevington would like some time.

[*Translation*]

Mr. Jonathan Genest-Jourdain: Mr. Walsh, what steps were taken by the Canadian government to draw up a complete list of abandoned mines and contaminated sites before ratifying this agreement?

[*English*]

Mr. Wayne Walsh: Thank you for that question.

Mr. Chair, we undertook a number of different steps to ensure a full, exhaustive list of the contaminated sites.

First, we negotiated diligently with the Government of the Northwest Territories and the aboriginal parties with respect to the definition of what would constitute a waste site that Canada would retain. We looked at things like threats to public health and safety and the threats to the environment.

Once that common definition was determined, of what are waste sites and what are contaminated sites under the agreement, we then struck an intergovernmental working work group between the Government of Canada and the Government of the Northwest Territories and the aboriginal parties to go through the list of inventory. We applied the definition and the criteria that were agreed to in the devolution agreement with regard to the various sites that were in the Northwest Territories.

We came to a negotiated consensus between all parties as to what sites met those criteria. From there, we developed a schedule to the devolution agreement that itemizes exactly which sites are going to be excluded from transfer. That schedule can be found as part of the devolution agreement that was signed on June 25.

I can also tell you that through the implementation of the agreement at that time, we've had an intergovernmental working group that has continued to work on modifications to the schedule. There are provisions within the agreement that allow us to modify and amend the schedule as necessary, particularly around waste sites, because despite the fact that we signed the agreement on June 25, activity continues to happen up until transfer date.

We are now in the final stages of finalizing that site. We have consulted, we have sat down with all the parties, and we've come to a consensus. We are moving now through internal approvals to secure the necessary orders in council to ensure that those sites remain under the jurisdiction of the Government of Canada post-devolution.

Finally, the only other thing I would like to add, Mr. Chairman, is that there are provisions within the devolution agreement that allow for the Government of the Northwest Territories to come back, I guess, to the Government of Canada. We have dispute resolution. We do have mechanisms within the devolution agreement that allow us to go back and look at sites that we may have missed during those rounds. If, under the jurisdiction of the Government of the Northwest Territories, they find a site that we have missed in certain cases, then there is a process for us to sit down and go through that.

● (1625)

[*Translation*]

Mr. Jonathan Genest-Jourdain: I will let Mr. Bevington have the rest of my time.

[*English*]

Mr. Dennis Bevington: When it comes to the Tlicho agreement, the grand chief says that fundamental to the Tlicho agreement, the heart of the promise that is enshrined in the Tlicho agreement, is an equal voice in decision-making on their lands.

It took 13 years of negotiating for Canada and the GNWT to arrive at a compromise so they'll have co-management in the Wek'eezhii region. Do you see that in the Tlicho agreement, that there is a spirit that speaks to the co-management of those lands?

Ms. Tara Shannon: Mr. Chair, the terms of the agreement speak for themselves. What I will say is that with respect to your question on proportionality, proportionality is actually being maintained in the consolidated Mackenzie Valley Land and Water Board.

Mr. Dennis Bevington: So the proportionality that the Tlicho have is on the larger board. They have one member on a board with 11 members. In the case where there are regional committees struck, they'll have one voice out of three, perhaps. There's no guarantee that the person selected for the regional committee will necessarily be a Tlicho citizen. Is that correct?

Ms. Tara Shannon: In establishing the smaller panels, the chair would be required to give first consideration to the nominated member, the appointed member, from that region and would only not appoint that member were that member unavailable for reasons of illness, say, or some other reason.

● (1630)

Mr. Dennis Bevington: Well, the board can—

The Chair: Thank you, Mr. Bevington. Your time is up. We're going to go now to Ms. Jones for a few questions.

I want to inform committee members that we are going to have to take some time for committee business. An issue has arisen that we have to discuss, so we will do that, but we have time for additional questions before then.

Ms. Jones.

Ms. Yvonne Jones: In talking earlier about the regulatory regime, you said the decisions that would be made with regard to land and water regulations and the environment would not change. What I'd like you to explain to us is how the composition of the boards is changing and how the authority for that composition of the boards is changing. If you could explain that to us, it would give us some insight into where a lot of the concerns are coming from among the aboriginal governments.

Ms. Tara Shannon: Are you speaking only to part 4 of the bill, not to the board under part 3 of the Northwest Territories Waters Act?

Ms. Yvonne Jones: No, just to the Mackenzie Valley Land and Water Board Act, part 4.

Ms. Tara Shannon: Thank you.

The bill would remove the existing regional panels. There would be a consolidated Mackenzie Valley Land and Water Board of 11 members. There would be the chair appointed by the minister in the first go-round, and following that, the minister would confer with the Gwich'in, the Sahtu, and the Tlicho on the appointment of subsequent chairs.

There would be a Gwich'in nominee, a Sahtu nominee, a member appointed directly by the Tlicho as per the terms of their land claim and self-government agreement, two members after consultation with unsettled regions, two territorial nominees, who are nominees based on input from the Government of the Northwest Territories, and then three appointees from Canada.

Ms. Yvonne Jones: That gets back to the question that was asked by my colleague with regard to the designating of the three board members. I know that under the bill, on page 106, it is said that they can designate individuals from those particular groups, but it doesn't say they have to. That's the concerning part about this, because some of these changes—and I want you to clarify this for me—and decisions could be made without any representation from those particular aboriginal groups.

Could you explain that, please?

Ms. Tara Shannon: There are two points, Mr. Chair.

The first point is that, once appointed, the appointees are not representatives of the aboriginal group from which the nomination was received. They are independent members of the board.

With respect to the chair and the appointments to the smaller committees, we had to be in a situation where the chair wasn't constrained from appointing a panel on the basis of an appointee being unavailable to participate in the smaller committee.

Does anyone else want to add to that?

[*Technical Difficulty—Editor*]

Ms. Yvonne Jones: I'm sorry. I didn't hear what he said.

Mr. Tom Isaac: The obligation, if you will, on the chairperson to appoint a person from the specific region when the application is in respect of that region is if it's reasonable to do so. It would have to be unreasonable to do so for him not to follow that directive in the legislation. It's a pretty strong commitment for him to do that.

Ms. Yvonne Jones: Here's what my other question has to do with. First of all, has the definition of "licence" or "permit" changed in the context of this legislation?

The second part of the question has to do with proposed section 59, which is on page 107, and says, "The Board has jurisdiction in respect of all uses of land in the Mackenzie Valley....". Is this retroactive? Can they change any permitting or licensing that has already been issued?

Ms. Alison Lobsinger: No.

● (1635)

Ms. Yvonne Jones: They can't?

Ms. Alison Lobsinger: The definition hasn't been changed. The change you see in proposed section 59 is essentially acknowledging the restructured board. It's saying that the restructured Mackenzie Valley Land and Water Board has jurisdiction in the entire Mackenzie Valley, in comparison to what's in the Mackenzie Valley Resource Management Act now, which says that regional panels have jurisdiction within their specific management areas.

Proposed section 59 on page 107 is directly acknowledging that the Mackenzie Valley Land and Water Board regulates within the entire Mackenzie Valley following these changes.

Ms. Yvonne Jones: So nothing in the legislation states that any licensing or permitting that has already been granted can be changed or retracted.

Ms. Alison Lobsinger: No.

Ms. Yvonne Jones: Thank you.

The Chair: Mr. Bevington had some follow-up final questions, and then we'll turn to Mr. Strahl for the final questions.

Mr. Dennis Bevington: I just want to clarify one thing. Under section 90 in the Constitution, a bill passed by the provinces has a year before the federal government can disallow it.

Is that correct, under the Constitution of Canada?

Mr. Tom Isaac: I haven't looked at in a little while, but there are provisions for the disallowance by the Governor General in respect of provincial legislation.

Mr. Dennis Bevington: Through the crown.

Mr. Tom Isaac: Pardon me?

Mr. Dennis Bevington: Through the crown: there's no instance where a lieutenant governor can refuse to sign legislation in the provinces. Is that correct?

Mr. Tom Isaac: Not a lieutenant governor, no. It's the Governor General in respect of—

Mr. Dennis Bevington: So really, the territorial...the provisions within this act are much more immediate than is allowed under the Constitution for the provinces.

In other words, the commissioner acting for the Governor in Council can simply refuse to sign the legislation. Is that correct?

Mr. Tom Isaac: He can refuse to give assent to the legislation.

Mr. Dennis Bevington: Yes.

Mr. Tom Isaac: There's also a provision in the Constitution analogous to that. That's not the disallowance provision, but the ability for the Governor General to withhold assent to provincial legislation.

There are two provisions. One is a disallowance provision and one is the ability to withhold assent to legislation. The Constitution has both of those in respect of provincial legislation.

The Northwest Territories Act, the Nunavut Act, and the Yukon Act have those two things, but in respect of territorial legislation. It's the Governor in Council in respect of territorial legislation and it's the Governor General in respect of the provincial legislation. I think that's more or less it.

Mr. Dennis Bevington: I'll go back to this audit. What we heard from McCrank in his testimony was that no one in the Northwest Territories suggested getting rid of the regional boards. That was an idea that came from McCrank himself. He admitted that in the testimony.

Now we see that the audit says that the processing times are several times longer for the central Mackenzie Valley Land and Water Board than for the regional boards, with the shortest time by far where there are both a regional board under a settled treaty and a land use plan.

What we have is a situation where the regional boards are actually performing their function more efficiently than the central board.

Was that part of any discussion within your department?

The Chair: Again, Mr. Bevington, I think we're not looking for opinions or discussion. We're looking for the facts and the merits on which amendments may fall.

I'll turn to you, Ms. Shannon, if there's anything you'd like to add on that.

Ms. Tara Shannon: I would just say that the restructuring proposal was based on a number of inputs: the 2008 McCrank report, the considerations included in the Northwest Territories environmental audits, and other Auditor General reports.

The Chair: Thank you.

Mr. Strahl, you have no further questions? Okay.

Colleagues, we will now go in camera to discuss committee business.

[*Proceedings continue in camera*]