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Chair

Mr. Lloyd St. Amand

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● (1530)

[*English*]

The Chair (Mr. Lloyd St. Amand (Brant, Lib.)): Good afternoon, ladies and gentlemen. By my watch, it's 3:30 p.m. Thanks to everybody for their punctuality, including our witnesses, as we deal with Bill C-71, An Act respecting the regulation of commercial and industrial undertakings on reserve lands.

Appearing as witnesses before us today are the Honourable Sue Barnes, Parliamentary Secretary to the Minister; Mr. Paul Fauteux, director general, lands branch; Mr. Paul Landry, director, legislative projects; and Mr. Andrew Beynon, general counsel and manager, legal services.

I would invite you, then—Ms. Barnes, Mr. Landry, Mr. Beynon, and Mr. Fauteux—to commence your presentation.

Hon. Sue Barnes (Parliamentary Secretary to the Minister of Indian Affairs and Northern Development and Federal Interlocutor for Métis and Non-Status Indians): Thank you very much. I'll do the presentation. If there are questions, perhaps they could be addressed to us afterwards.

Mr. Chairman and colleagues, I'm pleased to appear before this committee today to discuss Bill C-71, An Act respecting the regulation of commercial and industrial undertakings on reserve lands. This bill is an integral part of a transformative agenda to close the socio-economic gap between first nations people and other Canadians, which, as you know, has been a key commitment of this government and this Prime Minister.

In the October 2004 Speech from the Throne, the government pledged to work together with first nations, Métis, Inuit, and provincial and territorial governments to create the conditions for long-term development with a focus on learning, economic opportunity, and modern institutions of aboriginal governance. This legislation represents a bold step forward in this partnership between the federal government and first nations.

I am proud to say that it builds upon the success of previous legislation in this area, namely the First Nations Land Management Act and the proposed First Nations Oil and Gas and Moneys Management Act—which cleared the House earlier today—as well as recent land claim and self-government agreements.

[*Translation*]

This bill is also founded on the progress made through other initiatives, such as the Canada-Native People's roundtable and the study meeting that followed.

[*English*]

Mr. Chairman, the government is committed to working with the first nations to build stronger indigenous economies, leading to greater economic independence. A key part of that strategy is ensuring that the appropriate legislative and regulatory environment is in place to support aboriginal economic development.

This is what Bill C-71 is all about. This bill will allow first nations to participate more actively in the Canadian economy by addressing the regulatory gap that currently acts as a barrier to economic growth. This bill will also improve quality of life by ensuring the applicability of industry-wide standards in environmental protection and public health and safety, and by creating more jobs on reserves.

The regulatory gap exists because current federal legislation generally does not provide the tools needed to regulate the increasingly large and/or complex commercial and industrial development projects on reserve that first nations are now bringing forward. Legislation such as the Indian Act, the Canadian Environmental Assessment Act, the Canadian Environmental Protection Act, and other legislation were never intended to provide a complete federal regulatory regime for these types of projects.

FNCIDA will enable a first nation to work with the federal government to develop regulatory standards in infrastructure that would essentially replicate the provincial regulatory regime. These regulations could be limited to specific projects and to a designated parcel of land, not necessarily an entire reserve or multiple reserves. And they could also be time limited. In other words, the regulatory regime could apply only for the life of a specific project. This approach will allow on-reserve regulatory regimes to be updated when there are changes to the provincial system.

Mr. Chairman, an essential requirement for economic development is transparent, consistent, and effective regulation. While it is true that overregulating an activity can discourage investment, it is also true that underregulating projects can have the same effect. A regulatory gap creates uncertainty about process, time, and costs associated with the project and can divert potential investors from reserves to other jurisdictions where an established regulatory framework already exists.

This legislation is designed to provide certainty to investors and developers as they consider locating major economic development projects on reserve. It will ensure that these projects meet the same standards as those that apply in the rest of the province off-reserve. It will have the added benefit of giving investors and developers certainty by ensuring that they are dealing with regulations they know and understand. It also responds to the appeals from first nations themselves to help attract this kind of major development, which will improve economic and social conditions on their reserves.

For example, Fort McKay First Nation in northern Alberta is pursuing a multi-billion dollar oil sands mine project to be developed by Shell Canada Limited. The oil sands in general represent an enormous economic opportunity for all Canadians, including first nations such as Fort McKay. Billions of dollars of investment will be flowing into the oil sands project in the next few years. For Fort McKay this investment would create unprecedented job and revenue growth, along with vast improvements in quality of life and social development on reserve.

FNCIDA will allow the federal government to replicate, or incorporate by reference, provincial laws and regulations to apply to projects such as this on reserve, providing the regulatory certainty needed for projects to proceed. I look forward to seeing projects such as this move forward under this legislation so that first nations can enjoy the accompanying benefits in their communities.

I'd like to take a few minutes to explain how this legislation would work. It is important to note that, like other recent legislative initiatives in this area, this legislation is optional. Any first nation can choose to come under its provisions by passing a band council resolution calling for regulations related to a specific development project on-reserve.

● (1535)

[*Translation*]

Before coming to a final decision on a request, and before developing regulations for the project, the government of Canada will carry out an evaluation.

[*English*]

If regulations are to be developed for the project, the Government of Canada would seek an agreement with the province and the first nation under which the province would contribute its experience and expertise in regulating major commercial and industrial development projects to administer and enforce the regulations.

[*Translation*]

The green light will not be given unless the project and its proposed site on the reserve have the clear support of the community. This condition can be fulfilled at any stage of the regulations process.

[*English*]

This initiative represents a true partnership between the Government of Canada and first nations. In particular, it has been actively promoted by five partnering first nations: Squamish First Nation in British Columbia, Carry the Kettle First Nation in Saskatchewan, Fort William First Nation in Ontario, and Tsuu T'ina First Nation and Fort McKay First Nation in Alberta. All of these communities are considering significant proposals for economic development on-reserve and have passed band council resolutions in support of these initiatives.

These partnering first nations are working with departmental officials to develop a comprehensive outreach and implementation strategy for this legislation. I'd like to thank them for their hard work and dedication in seeing this initiative through to this point, and I look forward to continuing to work with them as we begin to implement Bill C-71 in their communities.

Partnership and engagement with stakeholders on this bill has not been limited to first nations. Provincial governments were consulted to seek their support for the bill and to engage them in administration and enforcement of regulations under the legislation. Representatives of the oil and gas industry were also consulted and have indicated their support for eliminating the regulatory gap that acts as a significant barrier to economic development and investment on reserve.

Mr. Chairman, by moving forward with this important piece of legislation, this House will demonstrate its commitment to working in partnership with first nations communities to improve social and economic conditions on-reserve. For this reason, I encourage all of my honourable colleagues to join me in supporting Bill C-71.

[*Translation*]

I thank you for your attention.

If you have any questions, now is the time to ask them.

[*English*]

The Chair: Thank you, Ms. Barnes.

Did I understand your first comment to be that you were going to be making the presentation and the three gentlemen with you were available for questions rather than to present?

Hon. Sue Barnes: Yes. I have the Justice person and the specific person who has been working with the project and the overall policy.

● (1540)

The Chair: I understand.

Thank you, Ms. Barnes.

Mr. Jim Prentice (Calgary Centre-North, CPC): Mr. Chairman, do I understand this is simply the first panel?

The Chair: The second panel will be representatives from Fort McKay and another first nation, Tsuu T'ina. So yes, this is the first one.

Mr. Jim Prentice: So this is the departmental panel?

The Chair: Yes.

Hon. Sue Barnes: Mr. Chair, I'm open to it, if my colleagues would prefer to hear from the second panel also and then have rounds of questions to both of us, if you wish, together. That certainly would be more helpful to my—

The Chair: Is that the wish or will of the committee, then?

Some hon. members:: Agreed.

The Chair: All right, that passes favour with everyone.

Thank you, Ms. Barnes.

The witnesses are present. It may be that there will be name places available for one or two of the gentlemen who haven't yet had name plates assigned to them.

But before us we have Mr. Peter Manywounds, representing the Tsuu T'ina First Nation. Good afternoon, sir.

Also with us is Mr. Jim Boucher, chief of the Fort McKay First Nation. Good afternoon, Chief Boucher.

Chief Jim Boucher (Chief, Fort McKay First Nation): Good afternoon.

The Chair: Also with us are three gentlemen—

Mr. Peter Manywounds (Member, Economic Development Office, Tsuu T'ina First Nation): I can introduce the other gentlemen.

The Chair: If you would, please, Mr. Manywounds. Thank you.

Mr. Peter Manywounds: We have Mr. Harold Calla, who is a councillor with the Squamish First Nation; Mr. Bruce Campbell, who is a legal counsel for the Squamish First Nation; and Mr. Jerome Slavik, legal counsel for Fort McKay First Nation. And supporting us is Jason Calla of Fiscal Realities, which supported this initiative throughout.

● (1545)

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

Gentlemen, the floor is yours. It may be that you have presented before to our committee. If you have, then you'll know that ideally a 10-minute, perhaps 15-minute, presentation would be in order, followed by questioning by the committee members.

Mr. Peter Manywounds: Thank you, Mr. Chairman.

On behalf of Chief Big Plume, I would like to extend his apologies. He was here last week in anticipation of this meeting. Unfortunately, he is in Edmonton preparing for the first ministers conference on Thursday and Friday and is therefore unable to attend.

I'd like to make a brief opening statement, if I could, and Chief Boucher will then make some comments in relation to the bill from the Fort McKay perspective, and I'll close our presentation with some comments from Tsuu T'ina's perspective.

This bill will remove regulatory gaps to enable development of the largest economic development projects on first nation lands in the history of Canada. Presently, known fiscal benefits to the proponent first nations alone will exceed $25 billion in the first 25 years. This does not include related socio-economic benefits arising from employment and business opportunities.

After considering various options, the proponent first nations, Canada, and key provinces as well as representatives from industry determined that the most expeditious and efficient means to establish the necessary regulatory scope and certainty to minimize commercial and legal risk for these large projects is FNCIDA. These parties examined other potential approaches, including Indian Act bylaws in developing FNCIDA. None met or could meet the immediate and pressing needs that FNCIDA will address.

First nations leaders and membership have worked closely with industry—for example, Shell Canada, SNC-Lavalin, and Canada Development Corporation—and government to create opt-in legislation for first nations with large-scale economic opportunities now and in the future.

The bill creates the opportunity for first nations, government, and industry to jointly craft a suitable regulatory framework for specific projects on designated lands. The first nations will initiate, participate in, and approve any regulatory, administrative, and enforcement regime affecting their lands.

No first nation would be prejudiced by the passage of Bill C-71. An FNCIDA regulation will apply only to a first nation that requests and co-develops a regulatory regime, and only their first nation lands that they identify will be subject to the first nations approved regulations.

First nations have invested thousands of hours of work to find a workable solution to their regulatory requirements. That has culminated in Bill C-71. They have been engaged in this process for over five years. Further delay in enacting Bill C-71 will threaten the projects that evidence the need for this bill and will unquestionably delay the socio-economic and other benefits that first nations anticipate will flow from this legislation.

Electoral politics should have no place in determining the fate of this legislation, which is so clearly in the interests of first nations and Canadians as a whole at this time.

Chief.

Chief Jim Boucher: Thank you, Peter.

I would like to thank the committee for the opportunity to make a presentation with the hope and anticipation that we will have your support in passing this important legislation for the community of Fort McKay.

To give you some background information with respect to Fort McKay, if you look at the northeast corner of Alberta, along the Athabasca River there's a large territory called the oil sands that's currently being developed by major oil companies such as Syncrude Canada, Suncor, Shell Canada, and Canadian Natural Resources, just to name a few of the major entities that are involved with regard to resource development. The Athabasca oil sands, in the estimation of the Alberta government, is the second largest, if not the largest, oil field in the world.

Fort McKay has been active in working out partnerships and relationships not only with the governments but also with the industries that surround our community. Fort McKay is right in the middle, in the heart, of the Athabasca tar sands. We've established new regulatory regimes that address the consultation mechanisms for our community. These consultation mechanisms are seen as being at the forefront within Canada, if not the world. We address environmental issues that are of concern to our people in the community, redress socio-economic matters, and provide opportunities not only for our community corporations but also for individuals in our community.

Fort McKay, in cooperation with other first nations and regions, has developed consultation agreements. In 1999 we signed the first consultation agreement in our region. At that point in time we, the aboriginal community in the region, did $60 million in business with the oil companies in the region as a whole. We employ somewhere in the neighbourhood of 400 people within the oil industry. By 2001 we managed to obtain $250 million in contracts for the aboriginal communities. We managed to employ a little over 1,200 people. We've seen substantial growth in terms of the socio-economic conditions within our community as a result of these efforts.

Fort McKay has been actively participating and engaged with obtaining a land claims settlement for our first nation community. We've been negotiating since 1999. We managed to achieve an agreement in 2003, and in that agreement we obtained with the Government of Canada and the Province of Alberta, we managed to set aside some reserve land that contained some oil sands. The estimate in terms of the oil sands on our reserve land that are available for development is that they contain somewhere in the neighbourhood of 300 million to 400 million barrels of oil.

We asked the people for some direction with regard to that and held a referendum in our community. The people actively supported and voted in favour of this proposition. We have an opportunity to develop a natural resource for the benefit of our community. We've included our community with regard to making that decision.

The problem we faced, after discussing this opportunity with our legal team, was that there was no regulatory option for us to pursue with regard to making this happen. We approached the oil industry and asked them to participate, and they recommended that we pursue a model similar to what they have available in Alberta. They suggested not to create an uneven playing field, that we can address this by reference and by request from the first nation to apply for an agreeable regulatory regime that we see as fitting the needs of our community. With that, we asked the Minister of Indian Affairs and Northern Development and the Department of Indian Affairs and Northern Development to help us obtain that, and we've been working on this process for a number of years now.

As a result of this process we now have Bill C-71, and it's something we've worked hard for, something that we saw was in the best interests of our first nation to make things happen. It was work properly done to obtain what we wanted, an equal opportunity with regards to resource exploitation and extraction.

● (1550)

We're not asking for something that's different and out of the ordinary with respect to the provincial regulatory regime. We're asking that the Government of Canada and you support us by making this option available to us so that we can develop this project, with all the elements that are required with regard to good governance and good development, so that we can achieve a reasonable benefit from the oil sands extraction that's going on in our territory.

With that said, I will make myself available for your questions, and I welcome your questions today. Thank you very much for listening to me.

Mr. Peter Manywounds: Thank you, Chief Boucher.

Mr. Chairman, I would like to spend a couple of moments relating the story of Tsuu T'ina. To start with, we do not have the luxury of tremendous oil and gas wealth. We have one gas well that is declining. I think it returns about $300,000 a year in revenue to us. So we've had to look for alternate sources of development.

To locate us, as the chief did, we are immediately adjacent to the southwest quadrant of the city of Calgary. We have a huge opportunity for development there. Tsuu T'ina Nation has done economic development in different projects for over 50 years. We have a Redwood Meadows development and economic project, which is a golf course and a luxury housing development that was started in 1974. It is now 30 years old, and we are in negotiation with the residents to extend that lease back to 75 years. That deal is worth approximately $10.5 million to $11 million.

We are negotiating a major road deal with the Province of Alberta. It would be the southwest quadrant of the Calgary ring road, which is a provincial highway, and that roadway is potentially worth about $500 million in value.

We have a business development that we've been working on since 1992 in the southern portion of our community, southeast of Calgary, immediately adjacent to a number of the communities there. That project—phases two, three, and four—is worth about $125 million in capital construction, and Canada Development is the partner we've been negotiating with to complete that project. We have a casino development that has been approved in regulation. Our final documents and financing are in place, and that project is to go forward immediately.

Finally, after you look at those several projects, with the ring road completed, it will give us access to an area known as the former Harvey Barracks. It is a former military site in the southwest quadrant of the city of Calgary, and it's almost 1,000 acres in land. The cleanup took over 12 years with the federal government—the national defence, environment, and public works departments. That land has now been certified cleared and available for development.

So we're in a unique position and we hold one of the largest developable pieces of property in any urban centre in Canada, which over the next 15 to 20 years, it's estimated, will require a capital investment of about $3.5 billion. We have partners on that particular project that we introduced to our members when they gave us approval in principle—the B.C. pension fund and the Great-West Life realty advisory group. They told our elders that they were prepared to invest up to $1 billion in the first phase of that development.

So we, like Chief Boucher with Shell, have very credible partners with the financial wherewithal. However, in a number of those projects we also have regulatory issues. You also have to service those kinds of developments, and our neighbours in the city of Calgary are dealing with their own issues. We have had to look for alternative solutions to servicing, and we have created a major regional infrastructure proposal with the Municipal District of Rocky View, which is immediately adjacent to the north of the reserve, and we're right in the middle of the environmental engineering testing.

However, that testing has proven there is capacity within that regional system to handle both potable water and waste water disposal in excess of 25,000 residential units. It will also have the added benefit of recreating some wetlands that have taken a major hit. It is an economic venture for us, but it will also serve our membership in dealing with their needs for potable water and proper sewage.

So we have a number of different opportunities, Mr. Chairman. Like our partners in Squamish, Fort William, and Carry the Kettle, we are in the process of moving these forward. Some of the projects I spoke of—Redwood, in particular, and our business park—were developed under existing regulatory regimes that were under the Indian Act. Some of them may continue to be there.

Not every project that we do or other first nations do would require FNCIDA, and we're not proposing to our members, or to the government, or to this committee that everyone should go under FNCIDA. It is only those where our partners, the Government of Canada and the respective province—in our case, Alberta—identify the need for this type of legislation that we would ask our members for approval to go down this route.

So we'd like that clearly on the record, Mr. Chairman. Even with our own first nation, with the variety of projects, not in all of those projects do we contemplate the use of this particular piece of legislation.

However, for those that we do contemplate the use of this legislation, it is highly unlikely and virtually impossible for us to move forward and make those projects successful without this legislation.

● (1555)

That's the message we'd like to carry, Mr. Chairman.

We appreciate your time and the committee's interest. Like Chief Boucher, we are certainly prepared to answer any questions the committee may have.

Thank you very much.

The Chair: Thank you very much, gentlemen.

I'm wondering if departmental officials from Justice and Indian Affairs would be seated at the table in case there are questions from committee members.

We'll commence our first round of questioning.

Mr. Prentice.

Mr. Jim Prentice: Thank you, Mr. Chairman.

I don't intend to speak for very long. I spoke in the House on Friday, and at that time I indicated our party's unequivocal support for this legislation. We wish to see it dealt with by this committee today, following your attendance here, to see that we deal with the clause-by-clause, get it back to the House of Commons, and get this passed as quickly as possible. There still is ample time to do that.

The comment I would make first, however, is to say thank you to Chief Boucher, Peter Manywounds, and Harold Calla. We're honoured to have you here. I think everyone needs to know that when we have you three gentlemen here, in addition to some other people in the audience, whom I don't intend to slight, we have among the most capable, articulate spokespeople in Canada in terms of advancing the interests of aboriginal people. So thank you for being here. We know how important this legislation is.

I'll ask you to emphasize, for the assistance of some of the other people in the room, that this is legislation that.... We're not talking about legislation that will have effects years from now. We're talking about legislation that's needed immediately because it is blocking immediate economic development. I'm sure there are future projects as well, but the immediacy of this bill lies in the fact that, in the case of Fort McKay, there is a project with Shell ready to go; in the case of Tsuu T'ina, there is an economic development project, one of the largest in Canada, ready to go; and in the case of Squamish, I know there are port development projects that follow the Olympics that are ready to go.

Can you explain how many jobs will be held back if this House of Commons doesn't get this legislation approved? How much economic development for aboriginal Canadians is this blocking?

● (1600)

Chief Jim Boucher: I'll go first.

We've been working on the project with Shell at Fort McKay for approximately five years now. Currently, the project we are discussing has no home to go to with regard to a regulatory application. In the federal system, there is no legislation and no regulatory body that can deal with an application such as an oil sands development. The energy utilities board in Alberta does not have the jurisdiction or the authority to deal with this type of application.

The on-reserve development component is tied to other economic opportunities that we have been working on with Shell. We're developing an off-site project that would essentially be a part of the opportunity, that is linked. The immediate impact on Fort McKay with regard to delaying the approvals required to make this project happen is in the billions of dollars. In terms of employment opportunities, not only for Fort McKay but also for Canada as a whole, it is at this point in time probably in the thousands of jobs.

How much we need this project to proceed and this legislation to proceed can be illustrated in the sense that this loss will be felt for a long time. The legislation, once we adopt it and use it for our own purpose, is only for the amount of time for which it serves its purpose to the first nation. It serves only an immediate purpose. After the regulatory process has been engaged and finalized and has run its course, it need not be done again with regard to approvals, unless we need to change the project.

Those are key elements with regard to this legislation, as we see it. It does not hurt other first nations. It only applies to what the first nations want it to apply to with regard to the regulatory side, and it's done by agreement. So our rights would not be impacted or impeded by this legislation. It helps our economic aspirations. It provides clarity with regard to the mandate and regulatory process that's required.

Thank you.

Mr. Peter Manywounds: Perhaps very quickly in answer to Mr. Prentice's question, Mr. Chairman, I'll say that for the first phase of our developments—and they do interlock to a certain extent—we're contemplating a capital investment of between $400 million and $500 million and the creation of between 3,500 and 4,000 jobs. Those will not happen without this legislation, and in fact the infrastructure opportunity we're basing a lot of the other things on could disappear altogether simply because there's a need on the part of the outside jurisdiction to find a solution sooner rather than later. Right now this is the best solution, but there may be other ones if we can't do anything here for years.

Mr. Harold Calla (Councillor, Squamish First Nation): If I can, I'll just make a comment. I think in our case we're probably looking at $5 billion worth of development over the first 25 years, and that's a project value. The direct and indirect labour costs could represent about 50%; in general they do in a project like this, so that's the kind of labour we're talking about.

Understand that Squamish is situated in downtown Vancouver. Look at the combined efforts of government programs to improve the lives of first nations people. Some of the work in it, some of the funding in education, some of the job training that takes place, and the job partnerships you need to create all benefit the 16,000 to 18,000 status Indians from across this country who reside in downtown Vancouver and form part of the service area Squamish has to deal with.

If you look at the gateway project, which you may get to consider, and you talk about the port of Vancouver...well, we're all around the port of Vancouver, and now we own the third-largest remaining deep-sea port site on the west coast of North America, just south of the town of Squamish. So as we look to the future and we look to developing this, let's start understanding that it's not only for ourselves; there's an impact to the region and potentially across Canada, particularly with issues like the gateway. We need these kinds of regulatory environments. It is thousands and thousands of jobs, it is billions of dollars in salaries, and I dare say, respectfully, it is also tax revenues for every regional, local, and provincial government and the federal government.

● (1605)

Mr. Jim Prentice: Thank you very much. I think your answers have been very clear.

Thank you, Mr. Chairman.

The Chair: Mr. Cleary, please.

[*Translation*]

Mr. Bernard Cleary (Louis-Saint-Laurent, BQ): Thank you for having come here to discuss with us this most important matter.

I had the opportunity in the House to speak in favour of your bill. Over the course of the last few days — and I am not trying to make a bad joke here — there has been a little bit of water in the line. The Assembly for First Nations of Quebec and Labrador complained about not having been consulted on this issue by the government of Canada. It asked the chair to come and meet with it, so as to be able to discuss the issue and participate in some consultation.

On the other hand, we had planned on moving forward as quickly as possible with the passage of the bill, in order for it to come into force. You will understand that I was in quite a bit of hot water, because the members of the Association of First Nations of Quebec and Labrador have a very direct link to me. I feel that I am one of their special representatives. I talked with them in order to calm their anger. Given that I am very diplomatic, I succeeded in preventing the unthinkable.

It was obvious that if we put off meeting with them, this bill would not get passed before the election. You are the ones who would have suffered the consequences. My conscience told me that this simply did not make any sense. It was to my mind unthinkable that as an MP I do such a thing to you. I therefore told them very clearly that I would be voting in favour of the bill, because it seemed to me to be a good one. It is not our fault that the government did not consult them. I am all for criticizing the government, but not those who are not directly involved.

I wanted to tell you this, because these last few days of discussion have been very active ones. You have been in my thoughts and I was hoping that everything would work out well, for you in particular. As for the Aboriginal group, I am convinced that it will have the opportunity to make up for this. This in no way changes what I inferred in the beginning: I could change my mind. I am going to be voting in favour of the bill. The Bloc québécois will support you.

My question is for Ms. Barnes. I know that in Quebec there we no communities that had concerns, but why is it that the Assembly of First Nations of Quebec and Labrador was not consulted, in order to prevent problems that could have arisen and would have been unfortunate for everyone?

● (1610)

[*English*]

Hon. Sue Barnes: I'm going to take the first part of the question and then I'm going to pass it to the first nations community to answer the second part of this question.

First of all, I should say to you that the legislation establishes the framework that makes it possible to address complex commercial and industrial projects. We would expect detailed consultations with individual first nations regarding the content of their regulations where a particular project arises for consideration. Remember how this bill was brought forward; it had the five partners.

However, the partnering first nations have been intimately involved in the development and discussion of this bill. Those first nations have informed other first nations and their organizations about the details of the bill and its benefits for first nations generally. I know they have sent a bill package.

I'm going to let them talk to you about the websites, because this was done at the request of the first nations. We'll just go over that, and if I need to add to that for you, I will.

Mr. Peter Manywounds: Mr. Chairman, thank you.

I'm going to refer this to Harold in a moment; however, in answer to Mr. Cleary's question, I ended up handling, along with Mr. Calla—Jason Calla and Harold Calla—a fair amount of the outreach program to first nations across the country. We first sent out a letter from our chief on September 14 to all first nations chiefs, signed by our five chiefs, along with the information we had at that time. In that particular document, we asked them to contact us should they have any questions. We were prepared to attend to whatever meetings they had, to meet with them and present to them.

The first response we got was from Atlantic Canada chiefs. They asked us to come to Halifax, to their meetings—in late September, I believe it was. We immediately agreed to go. We attended there and made presentations, both individually and then collectively, to that group. They passed a resolution unanimously supporting the initiative.

We had outreach to a variety of other groups, including the Indian Resource Council of Canada. Chief Big Plume, Chief Boucher, and Chief Kennedy attended and made presentations two weeks ago to that group. We spoke with a variety of other first nations individually. The website is up, and as I said, I'm going to let Mr. Calla deal with that. There are other consultations scheduled—not because we didn't make the time, but because, for example, in Saskatchewan FSIN is not having its meetings until next week, and they've asked us to attend. Chief Kennedy and our advisers have agreed to attend, so there will be ongoing consultation on this.

Unfortunately—and traditionally, quite frankly—the way we deal with protocol is that we do not invite ourselves into other first nation territory, regardless of what province it is. We try to make contact and make people aware that we're available to attend if they would like us to; if they have any questions, certainly they may call us. For whatever reason—I have no idea why—there was no contact from Quebec. We did make efforts to contact people to see if we could be in touch with someone, and unfortunately that didn't occur. We have worked on that outreach.

Harold.

The Chair: Mr. Calla, would you mind being brief, please?

Mr. Harold Calla: I'll be brief.

First of all, Mr. Cleary, thank you for your efforts. We do appreciate them.

I think you raise an interesting point, because at some time in this country we will have to be able to represent ourselves. In this particular case, we asked and we got permission—because we still need permission—to represent our interests to our first nation clients and members across the country. Respectfully, and not wanting to offend anybody, we're the best people to represent ourselves, and when we need to consult, we want to consult on work that we're doing. We don't need somebody to interpret it for us; we'll tell people what it's about.

As Peter said, we have tried on many occasions. We too have water in the gasoline, as evidenced in the AFN meeting in Regina and some of the challenges that we face. Sometimes sticking your head in the sand doesn't mean you can avoid the opportunity to be consulted. We respect that those people who do not wish to have this do not have to have it. We believe that in time, you need a toolbox. This is in it; if you choose it, you can have it, and it should be available to all. We did not want to offend anybody by imposing ourselves on their traditional territory. We have to be invited.

Thank you.

● (1615)

The Chair: Thank you, Mr. Calla.

The issue of consultation, or otherwise, has been dealt with. With respect to appearances before the committee, I want to put on the record that the regional chief of the Assembly of First Nations of Quebec and Labrador was contacted at approximately the same time as the witnesses who are with us this afternoon. I received a letter on November 18—Friday last—indicating that our invitation for the Assembly of First Nations of Quebec and Labrador to be with us this afternoon was declined on the basis that today was not convenient for that group.

Mr. Martin is next.

Mr. Pat Martin (Winnipeg Centre, NDP): Thank you, Mr. Chair.

I too have some specific questions and very little time. I'll try to go through them quickly, and then we can address them later when we do the clause-by-clause consideration, I suppose.

What's worrisome to me, as I pointed out in my speech in the House, is in the summary. I'm not allowed to amend the summary, so I would ask you if you would agree that this change should be made. The summary of the bill—in the government's mind, at least—is quite revealing, in that it says, “As Parliament has exclusive jurisdiction to make laws in relation to Indian lands”.

Is that phrase worrisome to you? Anyone can answer. Is this concept a concern, if that's how this bill is being viewed?

Mr. Bruce Campbell (Legal Counsel, First Nations Financial Management Advisory Board): Particularly when you read it with paragraph 3(2)(q), which is another provision that *Hansard* indicated you had some thoughts on, I think it's clear that the complete thought is that the Constitution Act, 1867 provides that. I think that's implicit. I think anybody reading this summary, being somewhat knowledgeable in the field and having a look at paragraph 3(2)(q) and knowing why it's there, would not have a concern with it.

Mr. Pat Martin: I don't know why we wouldn't just do away with that, because there are some who would read it as not recognizing section 35. But because the summary is not something we can amend, I will leave that.

The preamble is amendable, though, stating that “WHEREAS existing Acts of Parliament do not provide sufficient authority for Canada or first nations to establish such regimes”. The argument being made to me is that under the Indian Act, as an act of Parliament, there is nothing stopping first nations from simply adopting the provincial regulations as a bylaw of that first nation.

How is that wrong? Everyone is shaking their heads, but I don't understand how it's a mistake.

Mr. Harold Calla: There are two aspects to that. One is a legal response, which I'm going to let the lawyers speak to, and the other is a more pragmatic business reason for it. When you're asking people to invest billions of dollars over a long period of time, you need to be in a position where you provide certainty and stability for that investment.

Mr. Pat Martin: They have to be able to trust their partners. So why couldn't they trust the first nations' bylaw in the same way as they would trust their partners?

Mr. Harold Calla: Well, we would like some day for that to be the case, but the fact of the matter is that it doesn't have the same standing.

Mr. Martin, no one has suggested in first nation country that the benefits inherent to and belonging to the federation should not extend to first nations as a result of their continuing to be within the federation—even if you're a self-governing first nation. And there are many benefits from being part of the federation. Having uniformity and a standard of care provide confidence. At the discretion of a first nation who opts in, we see this as fulfilling those requirements they have. So that would be my response.

There is a greater level of comfort in your due diligence, in fact, Mr. Martin, and those of your colleagues around the House of Commons, in being able to provide that standard of care and comfort on these kinds of regulations that inexperience is a disincentive to providing. We haven't yet developed the experience in our own communities.

● (1620)

Mr. Peter Manywounds: Perhaps in addition to that, Mr. Chair, if I could say to Mr. Martin very quickly, that's why I alluded to the fact that at Tsuu T'ina we have a range of projects.

We are certain that some of those projects can be done under the existing framework, perhaps with bylaws or other agreements. However, we've determined as well that there are a number of other projects that are impossible to move forward with unless we have FNCIDA in place. That is the result of many thousands of hours of legal work, of technical work, of looking at jurisdictional conflicts, of looking at gaps, and of looking at how you get the certainty, which Harold has talked about, that gives comfort, both to our own members—who want to make sure these kind of projects are properly regulated environmentally, and otherwise, to ensure their safety—as well as our partners who need that certainty.

So it's not something that we've gone about lightly; we've done a lot of work and we've had a lot of legal advice. You see the team sitting here. There are a lot of people behind this group that represents us here who have looked at these issues in a very detailed way.

Bruce Campbell or Jerome Slavik may be able to put a cap on that from a legal perspective.

Mr. Jerome Slavik (Legal Council, As an Individual):

It's simply—

Mr. Pat Martin: I'll be out of time very soon. If you could, make it brief.

Mr. Jerome Slavik: Yes, I'll just say one sentence. It's simply that the bylaws do not allow us to incorporate the scope of provincial regulation. We need to make the oil sands mining project on the reserve go. We looked at it, and frankly, it's a non-starter.

Mr. Pat Martin: And yet people I talk to say that hasn't been fully tested. We don't know if it's a non-starter—

Mr. Jerome Slavik: That's the very point. It hasn't been tested. Therefore, it creates risk and uncertainty. That's why we need a more certain approach.

Mr. Pat Martin: Thank you.

If I have a moment left—

The Chair: You have about a minute, Mr. Martin.

Mr. Pat Martin: I have a number of questions.

Page 2, lines 21 to 25, refers to the minister having the right to "confer any legislative, administrative, judicial or other power on any person or body that the Governor in Council considers necessary", etc. There's a feeling that Parliament should not be handing over its legislative authority to the minister to be given out to any person or body, nor should the judicial authority of the courts be handed over without the assurance of a system of appeals, etc. The recommendation is that we change paragraph 3(2)(b) to read "confer any administrative power" and delete "legislative" and "judicial".

Hon. Sue Barnes: I'll have the justice department answer this, please.

Mr. Andrew Beynon (General Counsel and Manager, Legal Services, Department of Justice): Perhaps I could answer that.

This provision, subclause 3(2), outlines in more detail specific regulation-making authorities. It's there to create greater certainty about the opening words in subclause 3(1), which is the conferral of a general regulation-making power.

What we had in mind, for example, under paragraph 3(2)(b), were bodies such as the Alberta Energy Utilities Board, bodies under provincial administration. We would like to make sure we can match the authorities they have.

Mr. Pat Martin: Well, that may be what you had in mind, but there are no limits specified to this wholesale transfer of power. It's an unbridled and untested transfer of authority in judicial and legislative authority. All we're trying to deal with is the administrative authority. Why don't we just say that?

Mr. Andrew Beynon: I guess I would just say that—

The Chair: A very brief answer, please.

Mr. Andrew Beynon: —it does need to be within the list, because sometimes these bodies have a function that isn't purely administrative. They can be quasi-judicial bodies. They can make rulings. They can issue orders that have the effect of law. That's the kind of authority we're trying to attract.

The Chair: Thank you, Mr. Martin.

Mr. Bell, please.

● (1625)

Mr. Don Bell (North Vancouver, Lib.): Thank you.

I'm glad to be here today and to see Mr. Calla and Chief Williams, from the Squamish Band, whom I know quite well.

I presume there's a parallel here to the First Nations Land Management Act in terms of the ability of those first nations that want to adopt and to take advantage of this. There's no compulsion, and I'm understanding the parallels to that extent.

The problem is that where the First Nations Land Management Act has given you the ability to determine the use of the lands, what you're now dealing with is the pragmatic ability to in fact give security to non-aboriginal investors, and to be able to have these projects go in the legislative framework where the provincial and/or federal regulations—be they environmental or other—override. Is that correct?

I did have a chance to speak with Chief Williams about this in general terms on a flight back to Vancouver, one of the red-eye flights. I understand the significance of this as it relates to both the gateway initiative and to your port ambitions. On the issue of comfort or security—and I fully support the whole thrust of this being toward self-determination, economic and social sustainability for first nations—this is something that certainly, from the five partner first nations that are in here, appears to be a benefit right across Canada. Having been mayor of a community that has two first nations within its boundaries, I know the benefits to the non-aboriginal community are there in terms of the related partnership spinoff economic benefits.

I would note that subsection 3(2) on page 2 says that regulations "may". So it's not a requirement, but it's there if it's needed to serve the purpose.

I noticed that under paragraph 3(2)(j) it says, "require that security be given or that a trust or other fund be established to secure the performance of any obligation arising under the regulations", and I'm assuming this would again provide two-way comfort to both the first nations and the non-aboriginal investor or partner who may be involved.

Mr. Calla, I don't know whether you want to comment. Am I reading that correctly?

Mr. Harold Calla: Yes, I think you're reading it exactly correctly. I've been in this business for 18 years now. Since we are an urban band, one of the challenges we face in trying to develop is how to create this regulatory harmony. Too often we're seen by local and regional governments as a black hole within their municipal boundary system. We see them as somebody who's in our traditional territory. Somehow you have to reconcile those things and you have to do so in a way that reflects the needs of the community and the region of today.

That's what this will do. It will provide the kinds of enforcement provisions on environmental issues, as an example, that will be required if we're going to get into the kinds of development on reserve lands that is contemplated. Without it, we're considerably at risk.

Mr. Don Bell: If I may, if I understand it, there's a hierarchical deference here. The federal laws and the provincial laws must be met, and they can be exceeded by the first nations, but they can't be relaxed. So there's a comfort level there for both the investors and the communities. They know that at least the federal and/or provincial minimums or standards are being met, and a first nation, if it wishes to apply more stringent conditions, can do so.

Mr. Harold Calla: Yes.

Chief Jim Boucher: If I can add to that, there's a point we want to make in terms of the regulatory process. One is that the first nation becomes appointed in this process. We need to achieve a permit to construct or a licence to operate or a reclamation certificate, and we need to be involved in defining what the regulatory process would be with regard to those elements.

The first nation has to consent to those, and from that perspective we get on the governance side with regard to seeing what the regulations are. We've been advocating for a long period with regard to regulatory schemes, for example, in our area. We've taken some pretty strong positions as to what our vision would be, and we've articulated those to the regulatory regimes. Now we're in a position where our neighbours, people at Syncrude and Suncor, are coming to us and asking, are you applying the same standards to your projects that you have for us? Of course we have to say yes. We have to be more rigorous, and we have to demonstrate some leadership with regard to these projects. I think that's clearly our intent in making these things happen. We don't want to see a second-rate movie here, we want to see first-class action.

● (1630)

Mr. Don Bell: Clearly, my experience in working with first nations—and I was involved in the Lower Mainland Treaty Advisory Committee and dealt with a number of first nations in the Lower Mainland on behalf of municipal government—is that the traditional connection of first nations to the land and the concern for the environment in particular is certainly as great, if not greater, than it may be in the other communities. It's certainly equal, anyhow.

I support this bill very much, and I hope it goes ahead.

Thank you.

The Chair: There is a minute and a half left ,if anybody else from the government side wishes to pose a question.

Mr. Valley.

Mr. Roger Valley (Kenora, Lib.): I just want to very quickly ask a question.

Chief Manywounds and Chief Boucher, you seem very confident and you've had a lot of experience and a lot of opportunity to work with this. My question is, how high is your confidence in this, and is this the format we're going to use for other legislation that will help first nations move forward? I'm specifically asking about the optional quality of this, that if you see value in it, use it; if you don't, you work around to another function or another format or another change in legislation.

You seem very confident; you've done your work. Is this the future for all development legislation we'll see in the future?

Chief Jim Boucher: I think we've set a good standard with regard to this legislation, which we've worked on for such a long time, trying to get all the elements necessary for us to make our projects successful. I think it fits our needs.

I think in terms of other first nations, it could be useful to their needs. I believe we're not homogenous in the sense that all our first nations are alike across the country. We all have different elements, and we're all at different stages in terms of our aspirations. I think in terms of our situation, it's most helpful. It's more useful in terms of making things happen on the economic side for our community.

Mr. Peter Manywounds: Perhaps as an addendum to that, if I could, Mr. Chair, the first ministers meeting that's taking place on Thursday and Friday is dealing with issues at a constitutional and very senior policy level, which may take a long period of time to sort out and come to some agreement on in regard to what those solutions are, either in a bilateral process or from an aboriginal, inherent right process. What we're talking about right now are opportunities—opportunities that we have, opportunities other first nations may have, which FNCIDA gives us the ability to do.

Eventually there may be a different constitutional or legislative environmental regime, somewhere down the road, but our members have given us a mandate to get this done now.

Mr. Roger Valley: Thank you, and we all look forward to our opportunity to stand up in the House and vote for this legislation.

Thank you.

The Chair: Thank you, Mr. Valley.

We'll return to the Conservative side, please.

Mr. Jim Prentice: Mr. Chairman, I'm going to suggest that we've heard what we need to hear at this point. I would like to suggest that we move at this point in the meeting to clause-by-clause consideration of the bill. I know Mr. Martin has put forward six amendments, which are in order and before the committee, so we're going to need to deal with those, and I would suggest we go to clause-by-clause at this point.

The Chair: Are there any comments about Mr. Prentice's proposal that we cease any further questioning and proceed to a clause-by-clause analysis of the bill?

Some hon. members: Agreed.

The Chair: All right.

Thanks, then, very much, Chief Boucher, Peter Manywounds, Mr. Calla, Mr. Campbell, Mr. Slavik, the departmental officials, Parliamentary Secretary Barnes. Thank you for your attendance, for your presentations, and for the cogent responses to the many questions. We particularly appreciate your presence on short notice. Thank you very much.

We will then proceed with our clause-by-clause consideration of Bill C-71.

Pursuant to Standing Order 75(1), consideration of clause 1 is postponed.

(On clause 2—*Definitions*)

The Chair: Dealing with clause 2, Mr. Martin.

● (1635)

Mr. Pat Martin: Have you raced through something here? I'm afraid I wasn't essentially at the table, as it were. What did you do?

The Chair: I indicated that we would be dealing now with the clause-by-clause consideration. What I read, Mr. Martin, was simply the back sheet of our orders of the day document. I simply read out, "Pursuant to Standing Order 75(1), consideration of clause 1 is postponed," and then I asked the question, "Shall clause 2 carry?".

(Clause 2 agreed to)

The Chair: Thank you.

(On clause 3—*Regulation-making power*)

Mr. Pat Martin: I have an amendment within clause 3, I believe.

Perhaps we could slow down just a moment, Mr. Chair. As you've noticed, I've given the clerk six amendments—seven, actually; one was considered out of order. But if you don't mind working with me as I arrange my papers—

The Chair: That's fine.

Mr. Pat Martin: —the bill I have here is only a draft; it's not numbered the same way, so I'm going to get my bill out. I didn't realize you were such an efficient chair that we'd be galloping along to this clause already.

The Chair: Thanks for what I think is a compliment, Mr. Martin.

Mr. Pat Martin: If you would, Mr. Chair, allow me to say that in clause 3 I do have an amendment to recommend.

On page 2, lines 21 to 25 of the bill, I would recommend we amend by striking the words "legislative" and "judicial or other", and if I could, I'd like to speak to that amendment just briefly to explain my motivation.

The Chair: So you're in clause 3, paragraph 2(b), okay?

Mr. Pat Martin: That's correct, in lines 21 to 25.

As I tried to point out when we had the witnesses here, I don't believe Parliament should be handing over its legislative authority to the minister to give any other person or body, as referred to here, that power, nor should the judicial authority of the courts be handed over without the guarantee that the necessary appeals and limits, etc., of natural justice be contemplated. These things are to be determined by Parliament. There are no limits attached to this unbridled and wholesale transfer of power.

The Chair: We understand your point.

Mr. Pat Martin: Let me say I'm interested in seeing this bill pass speedily, providing it doesn't have these irritants that have been raised with me. So I'm speaking on behalf of the people around the country who have this concern.

The Chair: I understand.

Mr. Pat Martin: So the motion is that we delete the words "legislative" and "judicial or other".

The Chair: Right.

Ms. Karetak-Lindell.

Ms. Nancy Karetak-Lindell (Nunavut, Lib.): I have a question. I don't have copies of any of these amendments, so I'm wondering if they were passed around.

Mr. Pat Martin: I would be happy to offer you one, Ms. Karetak-Lindell, but I can't circulate them because the translation did not come through in time, so I have them only in English. I'm happy to give you a copy, but the clerk is not allowed to circulate them because they are in only one language. I feel bad about that, but if you'd like to see them, I do have an English version.

Would you like to?

Ms. Nancy Karetak-Lindell: I think I'm getting one here. It's hard to follow when we don't have a written amendment.

The Chair: Mr. Prentice.

Mr. Jim Prentice: Ms. Lindell is being provided with a copy of that. I'd like to call the question on the proposed amendment.

Hon. Sue Barnes: Can I say beforehand that the government is not in favour of the amendment? We believe this is needed for provincial regulatory and quasi-judicial bodies.

The Chair: Certainly, Ms. Karetak-Lindell.... Does every other member of the committee have the proposed amendment in front of him or her?

Mr. Cleary.

● (1640)

[*Translation*]

Mr. Bernard Cleary: We, of the Bloc québécois, have studied the amendments, and we have no objections with regard to this amendment.

[*English*]

The Chair: Okay. Thank you, Mr. Cleary.

Ms. Karetak-Lindell, now that you've had an opportunity to see the amendment, do you have any comment on it? All right.

I'll call the question.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: Mr. Martin.

Mr. Pat Martin: Mr. Chairman, I have a further amendment in clause 3. For those of you who have it, it would be called NDP-2.

On page 4, lines 19 to 27, paragraph (o) would be amended by adding the words:

> provided that any such dispositions be voluntary on the part of the person or body holding such right or interest

Without being hasty, I think we should read lines 19 through 27 into the record with the addition, so what I'm trying to achieve can be fully grasped. I won't take long, but if I could be allowed the time to read (o), the amendment would then cause the section to read:

> With respect to reserve lands that have been designated for the purposes of an undertaking under subsection 38(2) of the Indian Act, authorize—to the extent permitted by the terms of the designation—the disposition by any person or body of any right or interest in those lands for the purposes of the undertaking, and specify the terms and conditions of such dispositions, providing that any such dispositions be voluntary on the part of the person or body holding such right or interest;

By way of explanation, the amendment is designed to place limits on the ability of the regulations to affect the right or interest of any person or body without that person's or body's consent. There are methods of proceeding for involuntary taking, such as the courts, which provide protection—the protection of the right or interest of any person or body.

I don't believe this changes the intent. I don't believe it limits the ability of the clause to succeed in its original intention. It adds greater certainty and greater comfort to those who may feel that the.... Well, it's designed to place limits on the ability of the regulations—

The Chair: Thank you, Mr. Martin.

Are there any comments?

Ms. Barnes.

Hon. Sue Barnes: The government's not in favour. We believe this is not needed. We are not changing anything; subsection 38(2) of the Indian Act is voluntary already. It's already there, and we've had both the first nations and government lawyers approve the text on this.

The Chair: Seeing no further comments, I'll call the question about Mr. Martin's amendment.

(Amendment negatived)

The Chair: Mr. Martin, I understand your next amendment deals also with clause 3.

Mr. Pat Martin: That's correct. With respect to paragraph (p), the amendment would cause the clause to read:

> (p) exclude the reserve lands or the undertakings from the application of the *Indian Oil and Gas Act*

and add the words:

> providing that the members of the first nation holding the beneficial interest in the reserve lands approve the exclusion by referendum;

This speaks directly to how necessary it is to have full consultation and opportunities to ratify this type of a move by the community.

Currently—and I'm going to read it into the record—the Indian Oil and Gas Act provides certain protections of the members of a first nation with beneficial interests in lands with oil and gas reserves. The bill that's proposed would allow the government, as we understand it, to unilaterally eliminate those protections by regulation.

This amendment provides protection to the members of the first nation in that regard.

● (1645)

The Chair: All right.

Ms. Barnes.

Hon. Sue Barnes: The government would not be in favour of this. Under paragraph 5(a), the regulatory power is already contingent on a band council resolution and the first nation government already has to have been consulted in approving. So we are not—

The Chair: Seeing no further hands raised to make a comment, all those in favour of—

Mr. Pat Martin: Mr. Chair, I think the rules of this committee say the mover of the motion gets to have a second go-around, as I understand them. You have the first speech to introduce an amendment, then it would be the last speaker—

The Chair: Briefly then, Mr. Martin. I believe you're right there.

Mr. Pat Martin: If that's the parliamentary secretary's only reason for not allowing this amendment, I don't see the harm in allowing it to succeed for greater certainty. If she's telling us that there's already that protection, what is the problem with allowing it?

Hon. Sue Barnes: I'll ask Justice to comment.

Mr. Andrew Beynon: I would offer the answer that if you look at paragraph 5(a) of Bill C-71, it sets out the procedure for making federal regulations, and the authority of the Governor in Council is actually contingent upon receiving a resolution of the council of the first nation.

So there is a mechanism specifically dictated in the act that sets up a barrier to making federal regulations until there has been a band council resolution. That band council resolution would likely be forthcoming after some extensive discussion and consultation regarding the particular project and the formulation of the regulations, which ones to incorporate by reference and so on. I would expect that a major part of the discussion would be on questions such as, do we exclude the reserve lands or the undertaking from the application of the Indian Oil and Gas Act?

(Amendment negatived)

The Chair: Mr. Martin, I understand that your next amendment, NDP-4, as described in the top right hand of the circulated pages, also deals with clause 3.

Mr. Pat Martin: That's correct.

Mr. Chair, the NDP proposes that we delete lines 31 to 37. I've heard it explained by proponents of the bill that a derogation clause is not necessary in this bill. In fact, there's some reason why it's not advantageous or that it's not even desirable here.

Our view is that if aboriginal treaty rights are recognized and affirmed under subsection 35(1), this bill would allow a mere regulation to be passed that would not limit the manner in which the regulations would abrogate or derogate from aboriginal treaty rights. So the regulation has the effect of giving Governor in Council the power to alter the effect of the Constitution of Canada and, therefore, it should be stricken—

The Chair: Thank you, Mr. Martin.

Mr. Pat Martin: I feel you're rushing me along before I'm finished my sentence, Mr. Chair.

The Chair: All right, then don't feel unduly rushed. Did you have anything further, Mr. Martin, on that point?

Mr. Pat Martin: No, I don't.

The Chair: Are there any comments?

Hon. Sue Barnes: No.

The Chair: Seeing no further hands raised to comment, I will—

Mr. Pat Martin: In terms of wrapping up, then, I was interested to hear my colleagues' views. It's certainly been our position that nothing should be passed in terms of legislation affecting first nations, Métis or Inuit people that doesn't have a strong non-derogation clause for added certainty that nothing in this legislation detracts from or diminishes existing aboriginal and treaty rights. Now, if there is a good explanation as to why you can't have...or there are reasons why these regulations should be able to derogate from those aboriginal treaty rights, I'd like to hear them, and I may be convinced otherwise, but I haven't heard anything convincing in that regard yet.

Hon. Sue Barnes: Very quickly from Justice, please.

Mr. Andrew Beynon: Again, I would just offer the answer that paragraph 5(a) of Bill C-71 requires a band council resolution before regulations are made. So there presumably will be extensive discussion about this issue of relationship with aboriginal and treaty rights. Paragraph 3(2)(q) in the regulation-making power is actually quite flexible. As noted, it can deal with limitations or not limiting, but it can also deal with matters like specifying how aboriginal or treaty rights are accommodated under the terms of the regulation.

There are federal regulations that can have an impact on aboriginal and treaty rights every day. For example, under the Fisheries Act this would not be different.

● (1650)

Mr. Pat Martin: The onus is on the government to justify why such a thing is necessary. A BCR is different from a referendum. No referendum is necessary for a band council resolution. If we are treading on constitutional rights here, how is the right of regulation somehow able to trump constitutionally recognized existing aboriginal treaty rights without that burden of justification? Recent Supreme Court rulings have dealt with the issue that there may be some times when it's justified to diminish or undermine existing aboriginal treaty rights, but in such a situation the burden of proof and the onus is on government to demonstrate why it's necessary. This takes us wildly away from that premise.

The Chair: Mr. Valley.

Mr. Roger Valley: Mr. Martin has had four interventions. Please call the question.

Mr. Pat Martin: Is that your only contribution?

Mr. Roger Valley: Moving it along, yes, it is.

The Chair: I will call the question.

(Amendment negatived [See *Minutes of Proceedings*])

(Clauses 3 and 4 agreed to)

(On clause 5—*Conditions for making regulations*)

Mr. Pat Martin: I have an amendment I submitted on page 5, lines 8 through 11, which takes us into clause 5.

The Chair: Please speak to that, then, Mr. Martin.

Mr. Pat Martin: The amendment calls for adding, after the word "regulations", the words:

> providing that the approval has been provided by the members of the first nation of the council resolution

This is, again, speaking to the need to involve the community, an issue of natural justice, to notify affected members of the community, and not just to have the BCR, the band council resolution.

The amended subsection would read:

> the Minister has received a resolution of the council of the first nation requesting that the Minister recommend to the Governor in Council the making of

I would change "those regulations" to "specific regulations" and add the words:

> providing that the approval has been provided by the members of the first nation of the council resolution

The briefing notes circulated with the bill call for community approval of the application of regulations, but the bill does not have this provision. The briefing notes lead us to believe that provision will be there; the bill is in fact silent on that provision. This amendment corrects this omission by ensuring that the members of the first nation involved approve the application of the regulation. The addition of the word "specific" means that the regulations being approved would be known both to the council and to the first nation prior to the approval being given.

Again, it's a simple issue of natural justice in that sometimes a band council resolution in and of itself doesn't reflect the wishes of the community. It's up to the community to choose their means of ratification; it's not for us to dictate how such a polling of the community is to be done. Something satisfactory with their own custom, tradition, or bylaws should be put in place. I think it's eminently reasonable and I'd ask my colleagues to consider it seriously.

The Chair: Are there any comments about Mr. Martin's amendment, which is on the floor?

Hon. Sue Barnes: Just that the federal government is not in favour of it at this time, because this is like a provincial or the federal government having the power as a government to make the regulatory process. It would certainly slow it down and make it very costly, and the first nation's band council can be the appropriate forum, etc.

● (1655)

The Chair: I see no other comments. Consistent with our rules, Mr. Martin will have the last word on this.

Mr. Pat Martin: Mr. Chairman, I would just say I find that a kind of weak defence of this clause in that this is a broad and sweeping change. It's a fundamental change for the community. We assume a good band council consults well with its people anyway, but I don't think there's any certainty of that. In order to undertake this devolution of authority, essentially, from the feds to the provinces—in the case of the examples we know of, the regulatory regime we're adopting is a fundamental sea change—we want to make sure the people in the community understand the possible precedent-setting nature of it and the severity of it.

I think, in the interests of natural justice, people deserve the opportunity to vote on such a thing by a referendum of a sort that is of their own choosing in their community, and "the approval has been provided by the members of the first nation of the council resolution" contemplates any type of referendum or ratification that may be customary in that community.

The Chair: Thank you, Mr. Martin.

(Amendment negatived)

(Clauses 5 to 13 inclusive agreed to)

The Chair: Shall schedule 1 carry?

Some hon. members: Agreed.

The Chair: Shall the preamble carry?

Mr. Martin.

Mr. Pat Martin: Mr. Chair, NDP-6 deals with the preamble, page 1, lines 11 to 13.

I don't accept that there are not existing acts of Parliament that do provide authority to establish such regulatory regimes, and I'm suggesting that we delete lines 11 to 13, which currently read: "Whereas existing Acts of Parliament do not provide sufficient authority for Canada or first nations to establish such regimes".

I think there's contradictory legal authority such that we may question the validity of the statement, especially as to whether a first nation acting under its inherent right to self-government would or would not have sufficient authority to establish its own regulatory regime by adopting bylaws that meet or exceed the regulatory regime of the provinces. For instance, a first nation could simply pass a bylaw that says "For the purposes of this investment or development the provincial regulations apply to this territory" or "We adopt the provincial regulations as our own regulations by virtue of a bylaw under the Indian Act".

I know that people have researched this and believe in their hearts, I suppose, that it is necessary to have a separate act of Parliament, but we believe this clause isn't necessary for the bill to achieve its purpose. In fact, it may have precedent-setting effects by stating categorically in a piece of legislation that existing acts of Parliament do not provide sufficient authority. My position is that in the most extreme case scenario other acts of Parliament do, but everyone should be able to agree that there's some question about that. It's not something we can categorically state in the preamble of a new bill.

The Chair: Thank you, Mr. Martin.

Is there any comment on that?

Hon. Sue Barnes: Very briefly, I can say the government is comfortable with this. The preamble was developed with our first nation partners, and Justice is satisfied with it as is.

The Chair: I see no further comments. Do you have any brief wrap-up, Mr. Martin?

Mr. Pat Martin: Then I would ask my colleagues to consider that inserting this paragraph in the preamble could call into question existing bylaws passed by first nations governing the commercial and industrial activities on their reserve land currently. If you're arguing that they do not have the ability to adopt regulations to allow commercial industrial developments, what about the commercial and industrial developments that exist currently and the bylaws they've passed? You're calling into question how valid those particular bylaws are. This is dangerous.

Throw me a bone here. You've got to give me one out of six amendments, anyway, and this is one that's—

● (1700)

The Chair: Well, we'll get to the vote, and then we'll see if the bone is worth throwing, Mr. Martin.

Some hon. members: Oh, oh!

(Amendment negatived)

The Chair: Shall the preamble then carry?

Some hon. members: Agreed.

The Chair: Shall the short title carry?

Some hon. members: Agreed.

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill carry?

Some hon. members: Agreed.

The Chair: Shall I report the bill to the House?

Some hon. members: Agreed.

The Chair: Ms. Barnes.

Hon. Sue Barnes: Mr. Chairman, I ask that you report this bill as soon as possible.

Also, I just wanted to have a conference after the close of this meeting with my colleagues the critics to see if we can get some agreement about speeding this through the House.

Thank you.

The Chair: First, thanks to all of the members for their cooperation in seeing a swift passage of this bill.

Yes, I will present it to the House as quickly as possible. Because of what's happened today, there's no meeting tomorrow. I just want to put you on notice of that. Today's meeting has essentially made superfluous or unnecessary tomorrow's meeting, so you'll receive a notice with respect to the next meeting.

Today's meeting is adjourned.

Thank you.

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