House of Commons
CANADA

Standing Committee on Aboriginal Affairs and Northern Development

AANO • NUMBER 027 • 2nd SESSION • 39th PARLIAMENT

EVIDENCE

Wednesday, April 30, 2008

Chair

Mr. Barry Devolin

Standing Committee on Aboriginal Affairs and Northern Development

Wednesday, April 30, 2008

● (1535)

[*English*]

The Chair (Mr. Barry Devolin (Haliburton—Kawartha Lakes—Brock, CPC)): Good afternoon, colleagues.

Pursuant to the order of reference of Monday, December 10, 2007, the committee will now resume consideration of Bill C-30, an act to establish the Specific Claims Tribunal and to make consequential amendments to other acts. We will begin our clause-by-clause consideration of this bill.

On Monday, I believe all of you received a package of proposed amendments that members had forwarded to the staff last week. As I'm sure you will recall from our last clause-by-clause, the proposed amendments that have been put forward by committee members are not actually deemed moved until someone does that here today. So if someone who has proposed an amendment for whatever reason does not want to proceed with it, it's not a case that we have to take it off the agenda; we just have to not put it on the agenda.

As we move through this process, the staff have assembled these proposed amendments in the sequence of the bill on a clause-by-clause basis. In one case, where two proposed amendments were received that are virtually identical, they're presented in the order in which they were received by the staff. That is the logic. That explains why we don't proceed with them based on who they came from, but rather, sequentially through the document.

Pursuant to Standing Order 75(1), clause 1, which contains the short title and preamble, is postponed. In other words, the moving of the clause that contains the title will be done at the end, in case amendments are made that may cause us to actually want to change the title. In that case, it's actually a standing order that we do the short title at the end.

By practice, often, as clause 2 is an interpretation clause, if I have the unanimous agreement of the committee to reserve that also to the end, we will consider that. There is the potential for an amendment to that, but depending on what decisions we make on other clauses, it may have consequential impacts on that conversation. So that's the logic there.

Moving on to clause 3, clauses 3 to 13 do not have any proposed amendments. Do I have the consent of the committee to treat them as a group?

Monsieur Lemay, do you have a question?

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Mr. Chair, the Bloc has a proposed amendment to the preamble of the bill.

[*English*]

The Chair: Yes, I have that.

We are not required to do this, but what I had suggested was that we move the discussion of the preamble to the end of our consideration, because there's the possibility that if we were to make other amendments, we might actually want to make further changes to the preamble. It's not a requirement that we move this to the end, but there is a certain logic.

Oh, it actually is a requirement. Pardon me. It was my understanding there was a requirement that we move clause 1 to the end, but not clause 2.

So we're just setting that aside. We have proposed amendment BQ-1 here. I'm not forgetting about it, but we'll deal with that at the end of the process. Is that understood and agreed?

Moving beyond clauses 1 and 2 to clause 3, as I said, there are no proposed amendments dealing with clauses 3 to 13. Do I have the consent of the committee to treat them as a group? If so, I would ask whether there is any debate on any of these clauses, clauses 3 to 13.

If there is no debate on these clauses, are all in favour of moving them as written?

Some hon. members: Agreed.

(Clauses 3 to 13 inclusive agreed to)

(On clause 14—*Grounds of a specific claim*)

● (1540)

The Chair: There were two amendments proposed by committee members dealing with clause 14. In the package, they've been presented as amendments L-1 and BQ-2.

Hon. Anita Neville (Winnipeg South Centre, Lib.): Excuse me, but did you say clauses 2 to 13 or clauses 3 to 13?

The Chair: Clauses 3 to 13. We set aside clause 2. We will consider that on its own, at the end.

Hon. Anita Neville: Okay. Sorry to interrupt.

The Chair: That's fine.

For clause 14, as I said, we did receive two proposed amendments, one from Ms. Neville and one from Monsieur Lemay. They are the same, but Ms. Neville's has been presented first because it was received first.

At this time, Ms. Neville, is it your intention to—

Hon. Anita Neville: It is my intention to move the amendment as I have it here. I move to amend Bill C-30 in clause 14 by replacing line 26 on page 7 with the following:

the Crown's provision or non-provision of reserve lands,

Mr. Chair, we're doing this is response to some concerns that we heard, particularly from AFNQL. We believe this provides greater clarity for the bill.

The Chair: Would any other members like to comment on this?

Mr. Bruinooge.

Mr. Rod Bruinooge (Winnipeg South, CPC): Thank you, Mr. Chair.

I appreciate the member's raising of the point. However, with the drafting of the bill, it is felt that these considerations are within the current text. I know that a number of witnesses, including Professor Schwartz, had dealt with this in testimony and suggested that these concerns were addressed in the bill. Of course, the bill was the culmination of a lot of work by the AFN.

I would like to put that on the record and suggest that in fact this amendment isn't necessary.

The Chair: Ms. Neville.

Hon. Anita Neville: Well, I'm a little surprised to hear the parliamentary secretary indicate that; I understand there was some agreement prior to this. I believe from the AFN's perspective it is a useful clarifying step, and it was requested by the AFNQL. It's to ensure that there will not be any oversight of their concerns.

So we will proceed with it.

The Chair: Perhaps I could offer something here.

In terms of Liberal-1, there was some uncertainty about whether the intention of this amendment was to clarify meaning or whether it was to change the meaning. As a consequence, there was some question about the admissibility of it.

You're saying that the intention is to....

Hon. Anita Neville: To clarify.

The Chair: On that basis, I would see that it is admissible if the intention is to clarify.

We've heard Mr. Bruinooge's comments. Does anyone else wish to say something?

Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: Mr. Chair, we have moved the same proposed amendment at the request of the Assembly of First Nations of Quebec and Labrador. We have a saying in French that means it does not hurt to stress the issue. This way, we will not have to get back to it. This is why we support Ms. Neville's amendment.

● (1545)

[*English*]

The Chair: Are there any other comments or questions?

Well, then, let's vote on Liberal-1 as presented.

(Amendment agreed to) [See *Minutes of Proceedings*]

The Chair: The next amendment in the package is BQ-2. We won't be dealing with it because it has been dealt with in Liberal-1.

[*Translation*]

Mr. Marc Lemay: Mr. Chair, this may be a translation problem, but does that mean that amendment BQ-2 is withdrawn?

[*English*]

The Chair: Thank you. That's not necessary, but it's okay.

(Clause 14 as amended agreed to)

(On Clause 15—*Exceptions*)

The Chair: There was an amendment proposed to clause 15, but it's not clear to me whether it's going to be moved at this time.

Go ahead, Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: Mr. Chair, after due thought, analysis and consultation, we are withdrawing proposed amendment BQ-3.

[*English*]

The Chair: Thank you, Mr. Lemay.

There is in our package a second proposed amendment, BQ-4. Monsieur Lemay, is it your intention to move that amendment?

[*Translation*]

Mr. Marc Lemay: Mr. Chair, proposed amendment BQ-4 deals with clause 15. Officials of the department are here with us. I would like to ask them a question before making a final decision on this. You probably have had the opportunity to read this amendment.

Mr. Chair, do I have leave to address them directly?

[*English*]

The Chair: Technically, you're asking me a question.

[*Translation*]

Mr. Marc Lemay: With your permission, Mr. Chair, I will ask my question.

If this amendment is carried, how would it impact the bill? Would the bill's scope be extended or reduced?

[*English*]

The Chair: As I understand it, at this point it's not a question of whether it's carried or not, it's a question of whether it's proposed and subsequently carried.

Could you shed some light on that, Ms. Duquette or Mr. Winogron?

Ms. Sylvia Duquette (Executive Director, Specific Claims Reform Initiative, Department of Indian Affairs and Northern Development): I'll begin, and Mr. Winogron can continue.

This particular proposal expands the definition of "specific claims" quite significantly. Although it's removing, it's adding one word, "solely". It makes no difference, because what it does is allow claims that concern aboriginal rights and title to be brought before the tribunal. This is from an impact point of view. I don't know if you wanted to hear the impacts, but from an impact point of view, obviously this opens up the tribunal to considering a whole other complex area in the area of aboriginal law, aboriginal rights, and title. Obviously it will slow down the tribunal's proceedings, and there is a separate policy, the comprehensive claims policy, that deals with claims of aboriginal rights and titles, often resulting in a modern treaty.

● (1550)

The Chair: Monsieur Lemay, does that answer your question?

[*Translation*]

Ms. Sylvia Duquette: Not really?

Mr. Marc Lemay: No, Mr. Chair. Perhaps I did not understand. We wanted to move this amendment in order to help. However, we will withdraw it if it can be harmful.

Ms. Sylvia Duquette: I will be harmful.

Mr. Marc Lemay: Why?

Ms. Sylvia Duquette: Because we are dealing with specific claims. If this amendment carries, it will add claims based on aboriginal rights and title and other grounds. It would be harmful.

Mr. Marc Lemay: All right. It is clear now. Mr. Chair, we will withdraw the amendment.

[*English*]

The Chair: Okay.

In that case, then, there have been no amendments proposed for clause 15, so shall clause 15 carry?

(Clause 15 agreed to)

The Chair: There are no amendments proposed for clauses 16 to 19. Can we consider these as a group?

Some hon. members: Agreed.

(Clauses 16 to 19 inclusive agreed to)

(On clause 20—*Basis and limitations for decision on compensation*)

The Chair: Now we get to the fun stuff.

We have received seven proposed amendments regarding clause 20. They begin on page 6 of your package with amendment L-2.

Ms. Neville, is it your intention to move this?

Hon. Anita Neville: No. I'm going to withdraw it, Mr. Chair.

The Chair: Thank you.

The next item in our package is amendment NDP-1. Ms. Crowder, is it your intention to move this amendment?

Ms. Jean Crowder (Nanaimo—Cowichan, NDP): I'm going to proceed with this amendment, Mr. Chair. I would move this amendment.

We heard some concerns from a significant number of witnesses that there wasn't an adequate process for claims in excess of $150 million. This is an attempt to capture that concern.

I believe in working with others. There wasn't another way to incorporate that into the legislation, so this is an effort to recognize the significant concerns that we heard from a variety of witnesses who appeared before the committee.

The Chair: Thank you.

Bill C-30 establishes that the claim cannot exceed $150 million in order to be submitted to the tribunal. Furthermore, the bill establishes as well that the tribunal cannot attribute a compensation of more than $150 million. However, the amendment seeks to authorize the tribunal to value the total compensation for a specific claim to more than $150 million.

House of Commons Procedure and Practice states on page 655:

> An amendment must not offend the financial initiative of the Crown. An amendment is therefore inadmissible if it imposes a charge on the Public Treasury, or if it extends the objects or purposes or relaxes the conditions and qualifications as expressed in the Royal Recommendation.

In the opinion of the chair, the amendment proposes to impose a charge on the public treasury, which offends the royal recommendation. Therefore, I rule this amendment inadmissible.

Go ahead, Ms. Crowder.

Ms. Jean Crowder: I will not be challenging the ruling of the chair.

The Chair: Thank you.

We will set that to the side.

The next item in our package is identified as amendment L-3. Ms. Neville, is it your intention to move this amendment?

● (1555)

Hon. Anita Neville: I'm just thinking about it.

Mr. Chair, I will withdraw it.

The Chair: Thank you.

The next item in our package is on page 9. It is identified as amendment NDP-2 and has been put forward by Ms. Crowder. Ms. Crowder, is it your intention to move this amendment?

Ms. Jean Crowder: Mr. Chair, in consultation with appropriate groups, I will withdraw this amendment.

The Chair: Thank you.

Next is amendment NDP-3, on page 10. It is also from Ms. Crowder. Is it your intention to put this amendment forward?

Ms. Jean Crowder: Mr. Chair, I will be submitting this amendment.

I believe it clarifies the fact that the tribunal may decide what it will deduct. I think it clarifies the discretion that's open to the tribunal.

The Chair: Bill C-30 orders the tribunal to deduct any benefits received by the first nation from the compensation determined by the tribunal. However, the amendment seeks to authorize the tribunal to not deduct benefits received by a claimant in respect to a specific claim from the amount of compensation determined by the tribunal. If agreed upon, this amendment would increase the amount paid by the crown to the claimants.

Once again, *House of Commons Procedure and Practice* on page 655 says the following:

> An amendment must not offend the financial initiative of the Crown. An amendment is therefore inadmissible if it imposes a charge on the Public Treasury, or if it extends the objects or purposes or relaxes the conditions and qualifications as expressed in the Royal Recommendation.

In the opinion of the chair, the amendment proposes to impose a charge on the public treasury, which offends the royal recommendation. Therefore, I rule the amendment inadmissible.

The next item in our package is identified as NDP-4. Ms. Crowder, is it your intention to bring this amendment forward?

Ms. Jean Crowder: Yes, I will have it stand, Mr. Chair.

The Chair: Thank you.

Bill C-30 provides that the compensation awarded according to subclause 20(4) be divided equally among all claimants. However, the amendment seeks to grant each claimant the total of this compensation.

I won't reread the portion from *House of Commons Procedure and Practice* on page 655. However, in the opinion of the chair, the amendment proposes to impose a charge on the public treasury, which offends the royal recommendation. Therefore, I rule the amendment inadmissible.

Ms. Crowder.

Ms. Jean Crowder: Mr. Chair, although I will not be challenging the ruling of the chair on that, this was an attempt to clarify that when claimants are grouped together, they would actually be treated individually in terms of the total amount of compensation. I just want it to stand on record that it was the concern that each individual claimant could have up to the $150 million in compensation. I look to the government to treat individual claimants separately when they're grouped together.

The Chair: Thank you.

As we have discussed before, in the event that the chair rules an amendment inadmissible, the chair is not required to provide an explanation. Having said that, the ruling on admissibility was based on the fact that it would impinge on the royal recommendation, as opposed to on the substance or intent of the amendment.

The next item, on page 12 in the package, is known as NDP-5 and is also brought forward by Ms. Crowder. Is it your intention to move this?

● (1600)

Ms. Jean Crowder: Yes, I am moving this amendment.

Again, Mr. Chair, we heard from a significant number of witnesses before the committee that there were some concerns about considerations other than monetary consideration. I think it's important to recognize that a number of witnesses came before us to talk about those concerns, and that is what this amendment attempts to do.

The Chair: Thank you.

Bill C-30 provides that the principle of the bill, as established in clause 3, is to empower the tribunal to decide on compensation relating to specific claims of first nations. However, the amendment seeks to provide the tribunal the power to make recommendations on non-monetary matters relating to a specific claim. *House of Commons Procedure and Practice* states on page 654:

> An amendment to a bill that was referred to a committee after second reading is out of order if it is beyond the scope and principle of the bill.

In the opinion of the chair, the amendment, which empowers the tribunal to issue recommendations on non-monetary issues, goes beyond the principle of the bill. Therefore, I will rule this amendment inadmissible.

That's the end of the possible amendments on clause 20.

(Clause 20 agreed to)

Ms. Jean Crowder: Did Liberal-4 get dealt with?

The Chair: I'm going to deal with it right now.

The next item in our package, on page 13, is Liberal-4. If it were to be proposed, and if it were to be admissible and be accepted, it would be clause 20.1 in the bill. That's why we're not considering it as part of clause 20. Okay?

Hon. Anita Neville: I am advised, Mr. Chair, that it will be ruled inadmissible, so I will not be proceeding with it.

The Chair: I hadn't made up my mind yet.

Okay, so we won't be dealing with clause 20.1.

If you look in your package, you will see there are no proposed amendments for clauses 22 to 40 inclusive.

Mr. Todd Russell (Labrador, Lib.): Mr. Chair, I am going to move an amendment to clause 30, so if you want to proceed up to clause 29, you can certainly do that.

The Chair: In fact, before we deal with that, I need to take one step back. We did not deal with clause 21.

(Clause 21 agreed to)

The Chair: Now, to my knowledge, there are no proposed amendments to clauses 22 to 29.

Mr. Todd Russell: I have a correction, Mr. Chair: up to clause 34.

The Chair: Okay, so it's clause 35 that you're proposing to amend.

Okay. Given that to my knowledge there are no proposed amendments dealing with clauses 22 to 34, can we deal with these as a group?

Some hon. members: Agreed.

(Clauses 22 to 34 inclusive agreed to)

The Chair: Mr. Russell.

Mr. Todd Russell: Thank you, Mr. Chair.

If we could follow a similar process to what you've already allowed regarding similar amendments, I will present the wording of the amendment, if that's okay, and I will then ask our expert witnesses for their opinion on any implications or ramifications of the proposed amendment. I've been advised by the legislative clerk that in fact if I move my amendment it will probably be in order.

If it's okay with you, I will do it in this fashion.

The Chair: Let's try it that way.

Mr. Todd Russell: The proposed amendment, the first one, is that Bill C-30, in clause 35, be amended by replacing the word “facts”, which appears after the word “same” and precedes the word “on” in line 20 on page 16, with the following: “causes of action”.

● (1605)

Mr. Robert Winogron (Senior Counsel, Department of Justice): If there was an invitation to comment, I'd be happy to do it.

The Chair: I think it's clear.

What Mr. Russell is proposing is that in line 20 on page 16 of the English version of the bill, the word “facts” be deleted and replaced with “causes of action”.

Correct?

Mr. Todd Russell: Absolutely. *Oui*.

The Chair: Mr. Winogron, do you have a comment?

Mr. Robert Winogron: Yes. There are two issues here. One is a technical issue and one is a substantive issue.

By making this amendment and substituting “cause of action” for “facts”, the result will be to severely restrict the scope of the release in this clause. The reason is that the action is as a result of the facts. If you simply release a cause of action, a claim can be brought on the same facts under a different cause of action. For example, once a claim that is based in negligence is dealt with, the award made or the decision made on a release operates as a result of this statute, and exactly the same facts can be brought forward again on a different cause of action. So the release would have a very severely limited effect, and it would not resolve the claim, except for that particular cause of action. That's the substantive issue.

The technical issue is that I question whether there can be even substantially the same cause of action; it either is the cause of action or it's not the cause of action. So technically, I don't think you can say “substantially” the same cause of action.

The Chair: Mr. Russell.

Mr. Todd Russell: That was exactly the intent of this particular amendment: to restrict the nature of the release, because you can only bring forward a claim based on very strict or very prescribed conditions, or on a very prescribed basis. But even though the basis on which you can launch a claim by the claimant is restricted and narrow, you want the claimant to then release in a broader perspective.

For instance, you cannot raise a specific claim based on aboriginal rights, based on the loss of culture and language, and those types of claims cannot come forward under this particular bill. But under this particular bill in the release portion, you say you want to release the government from ever launching the claim based on those particular issues. That's where I'm coming from.

I relate it to the residential schools agreement. This was very problematic. Originally when we discussed a residential schools agreement, the government would compensate only for physical and sexual abuse. It still will only compensate for physical and sexual abuse. There was a time when it said that even though it was going to compensate them only for physical and sexual abuse, it wanted them to release it from any future claims dealing with the loss of culture and language and those types of things, even though the courts have never really seen fit to allow one of these on the loss of culture and language to go forward.

It begs the question why you would want the release if the courts were never going to uphold it. That has been the nature of this particular amendment: that if you launch a claim on certain facts, you get compensated for those, and you release the government from any more claims based on those. That is the argument I have behind this particular clause.

You can only compensate me for loss of land or this or that, for taking it or stealing it or whatever, but you want me to release any more claims based on language, culture, spirituality, or whatever else, even though you can't compensate me for it. That's why I put this in.

● (1610)

The Chair: Mr. Winogron.

Mr. Robert Winogron: I'll just respond.

We should actually be quite careful not to confuse grounds with causes of action. What this amendment will permit is claims brought on identical facts, but simply under a different legal theory.

A cause of action is a way of framing the claim, so if there is a transaction, a claimant says “you acted negligently in this set of facts”, and the claim is resolved on that basis. With this amendment, the same claim can be brought on a different cause of action. This time you didn't act negligently; you acted fraudulently or you acted in some other fashion framed under a different cause of action. The facts are identical.

Mr. Todd Russell: I don't want to get into a protracted debate, but this is a serious issue.

If the word “grounds” were substituted for the word “facts”, instead of “causes of action”, would the taste be any better?

Ms. Sylvia Duquette: You're moving an amendment to obviously improve a situation in which you are concerned that the first nation may not be able to bring their full claim, and therefore they will have already released.

On Bob's point about that distinction between cause of action and the other, it's very important to realize that there are grounds for the claim, but there can be multiple allegations. What we're asking first nations to do is, based on a certain transaction that's been engaged, make all of their allegations, so it is open, for example, under this bill for the first nation to say "You were negligent, and alternatively there was fraud, and alternatively any number of things", and for the tribunal to decide on all of that. So the whole claim related to that particular transaction is dealt with, and it's not a prejudice to the first nation bringing the claim.

Mr. Todd Russell: If you used the word "grounds" instead of "causes of action", does that substantially change your opinion, Mr. Winogron?

Mr. Robert Winogron: It doesn't change my opinion. I think it's still problematic with what the release is aimed at.

The release is aimed at the finality in a particular set of circumstances, as Ms. Duquette has said. Substituting "grounds" for "cause of action"—they are different concepts—doesn't get to the termination of the claim, which is what this is drafted to do.

The Chair: Do you have one last quick question, Mr. Russell? I also have a question.

Mr. Todd Russell: I would only say that in clause 15 of this particular bill, there are a number of exceptions.

You cannot lay a claim based on a number of "grounds" under clause 15, but if you go to clause 35, basically what it's saying is we want you to release us from ever making a claim against us based on those exceptions; you can't sue us or make a claim against us based on clause 15 or under all these different subclauses under clause 15, but we want you to release the government from ever bringing an action based on all of those exceptions listed in clause 15. Is that not right?

Ms. Sylvia Duquette: Yes.

The Chair: I'd like to intervene.

Mr. Russell, just from a procedural point of view, at this point we're discussing an idea that you may choose to move as an amendment. At this point, in terms of the decision tree, if you choose not to pursue this, then we move on. If you choose to actually move this as an amendment, then my first task will be to make a determination about admissibility. Subsequent to that, if it is admissible, we would have a discussion on the merits of it and then actually vote on the amendment at that point.

If you would like to proceed with this, then I would ask that you actually move it, in which case we can then move through this discussion. There will still be time for discussion on this, but it moves us beyond some of these hypothetical questions.

Mr. Todd Russell: I thank you, Mr. Chair, for your leniency and liberalism in allowing this particular conversation to continue.

I will move that Bill C-30 in clause 35 be amended by replacing the word "facts", which appears after the word "same" and precedes the word "on" in line 20 on page 16, with the following: "grounds".

● (1615)

The Chair: Thank you, Mr. Russell. We have received that.

I have a question for the officials who are before us.

Today several amendments have been proposed by members, and those amendments have been supported with substantive arguments about whether the member thinks that amendment will improve the bill, so to speak. Many of those have been ruled inadmissible on the grounds that they infringe on the royal recommendation, meaning they touch on the decision the government has made regarding the public purse and potential demands on the public purse. If they are found to have done so, they are ruled inadmissible regardless of their merit or appeal.

In your view and in your opinion, would the amendment as proposed infringe in some way on the royal recommendation?

Ms. Sylvia Duquette: I'm not an expert on the royal recommendation. I can say that in terms of the public purse, clearly if the claim is not released and can be brought again on the same facts, then there is a problem on the same grounds. We might have to deal with the same claim and pay compensation on substantially the same set of facts.

The Chair: Right.

Mr. Winogron, did you have any comments?

Mr. Robert Winogron: I have nothing else to add. That's exactly my opinion.

The Chair: Could I ask for clarification in the words that you used?

During our prediscussion, that chat we had a couple of minutes ago, when Mr. Russell was contemplating an amendment that used the words "causes of action", there seemed to be significant concern that it would in fact expand the potential universe of specific claims and would therefore have some impact on the royal recommendation.

When the language was changed from "causes of action" to "grounds", you seemed less concerned; I'm not sure. I'm reading your body language a little bit, but I didn't hear a clear answer to my question. I'm not asking for a definitive answer, because at the end of the day I will decide, possibly consistent with your advice and possibly not consistent with your advice.

In your opinion, does changing the word "facts" to "grounds" impact the royal recommendation in terms of...? Well, I'll stop there. Does it impact the royal recommendation?

Mr. Robert Winogron: In my opinion, yes, it certainly does.

The Chair: Thank you.

I understood the answer in the sense that you said yes instead of no, but I would like you to explain to me why you are saying you feel this infringes on the royal recommendation.

● (1620)

Mr. Robert Winogron: I should clear up that you may have mistaken my body language for careful consideration. The reason is that the term "grounds" is actually used in the bill in clause 14. Claims can be brought on a number of grounds.

The term “cause of action” is not found in the bill. The term “cause of action” is a litigation term. There's a distinction to be made there. What you bring a claim on in the courts is different from the grounds on which you can bring a claim here.

So “grounds” and “cause of action” would have the same effect with this amendment. What it would do is severely restrict the operation of the release and, practically, the claim would not be resolved. The facts that gave rise to the claim could resurface under a different set of grounds. The release would really be inoperative except on the very narrow grounds, and a claimant would be free to bring the same claim on a different set of grounds. The result would be that the public purse would be affected with every subsequent potential claim that could be raised as a result of this amendment.

The Chair: I'm going to rule that the proposed amendment is inadmissible on the basis that it could impose a charge on the public treasury, which offends the royal recommendation.

Mr. Russell.

Mr. Todd Russell: Thank you, Mr. Chair.

I will not challenge your ruling, but can I make a statement that I disagree with this? Is that possible?

The Chair: You already have.

Mr. Todd Russell: I will only say that in no way, shape, or form does this impede upon the maximum amount that's payable under this bill. The royal recommendation is specific to this bill of $150 million maximum, and this would have absolutely no bearing. You can only raise certain claims, under this piece of legislation, on certain grounds, but if you want to raise another claim on different grounds it would be outside the purview of this particular bill and outside the scope of this particular bill. Therefore, it would not affect the royal recommendation of $150 million.

Anyway, you've ruled—wrongly, but there we go.

The Chair: Thank you, Mr. Russell.

(Clause 35 agreed to)

(Clauses 36 to 40 inclusive agreed to)

(On clause 41—*Review*)

● (1625)

The Chair: We are now on clause 41.

In your package on page 14 is a proposal identified as NDP-6. It was received from Ms. Crowder.

Is it your intention to move this amendment?

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

Yes, I will be moving this amendment.

Part of the reason I proposed this amendment is again based on input from a number of our witnesses. This is in the review and report stage, and I think there are significant areas in which we are really reliant on goodwill, partly through the political agreement. I'm proposing this amendment just to ensure that first nations are included in that review process and that their recommendations will be included in a formal report to Parliament.

The Chair: Thank you.

Are there any other comments on Ms. Crowder's amendment?

Go ahead, Mr. Albrecht.

Mr. Harold Albrecht (Kitchener—Conestoga, CPC): Mr. Chair, it seems to me that the opportunity to make representation is already included in line 13. Why we would need to add it again in line 19 is a question.

[*Translation*]

Mr. Marc Lemay: Mr. Chair, I hope you won't mind if I address Mr. Albrecht. Ms. Crowder's amendment is related to the words “Within one year after the fifth anniversary...” It is important to carefully read clause 41 which mandates a review. Clause 41 reads: “... the Minister shall undertake a review of the mandate and structure of the Tribunal”, then: “In carrying out the review, the Minister shall give First Nations an opportunity to make representations.”

As amended, subclause 41(2) would read:

> (2) Within one year after a review is undertaken, the Minister shall cause to be prepared and sign a report that sets out a statement of any changes to this Act, including any changes to the Tribunal’s functions, powers or duties, that the Minister recommends and the representations which have been made by First Nations.

In my opinion — and I hope Ms. Crowder will agree with me — there is no extra cost to the public purse. We want First Nations to be involved. This is why this amendment is so interesting. Obviously, we intend to support it. It will give First Nations the opportunity to participate and it will give us the opportunity to adjust in the following year. This is a worthwhile amendment.

[*English*]

The Chair: Go ahead, Mr. Bruinooge.

Mr. Rod Bruinooge: Thank you, Mr. Chair.

In the spirit of this process being as expeditious as it is, I don't necessarily want to offend any of my colleagues opposite. However, I would like to suggest that typically the Minister of Indian Affairs does bring forward these types of reports and recommendations as Parliament would request.

I think that the first nations would need to be further defined in this case. I think it would be more appropriate to perhaps actually suggest an entity; however, I'm not even recommending that we proceed that far. The Minister of Indian Affairs has this mandate to do, so I think that to suggest an entity other than the appointed representative of government on behalf of Parliament goes beyond the scope of this place—perhaps not the scope of the bill, but just the process of government that we have.

That is, I think, the strongest argument I can make. I think we would really need to consider just what type of precedent we would be making should we attach another entity to also make this representation. That is the argument I would like to put forward.

The Chair: Thank you, Mr. Bruinooge.

Ms. Crowder.

Ms. Jean Crowder: Thanks, Mr. Chair.

I'll make a couple of points. One is that the bill itself, under subclause 41(1), says:

> In carrying out the review, the Minister shall give First Nations an opportunity to make representations.

So the government has already, in this piece of legislation, acknowledged that first nations is an acceptable term.

I'm just suggesting that in subclause 41(2) we add the amendment as proposed that talks about first nations. In terms of precedents, it would be a very healthy and welcome precedent, if what we did was incorporate information and representations from first nations in a report to Parliament.

That's why it comes under subclause 41(2); it is because this is where the report to Parliament will be made. This is a really important statement. In what we've heard from witnesses and from some of the government's own statements about this being a new model for working with first nations from coast to coast to coast, this would represent a very healthy step in that direction. I would suggest that in terms of intent and goodwill, this would be a very positive step, which would be, as I said, a welcome precedent.

● (1630)

The Chair: Are there any further comments?

Mr. Warkentin?

Mr. Chris Warkentin (Peace River, CPC): Maybe Ms. Crowder can give me some clarification on what she envisions, then. Would all correspondence that has come from any first nations in the country just be annexed to the report, or what is envisioned? What would be the practical application of this?

The Chair: I'll let Ms. Crowder answer this before I go to Mr. Bruinooge.

Ms. Jean Crowder: Thanks, Mr. Chair.

Thanks for that question.

I think it has to be more than an annex to a report. If the intent of this particular clause on reporting is to actually set out a statement of any changes to the act, including any changes to the tribunal functions, powers, or duties, I would hope it would be a joint process that looks at how this legislation has unfolded over the five years, where the problems have been, and what the potential solutions are. It would need to be incorporated into the report and truly reflect the feedback and the experience of first nations in this important five years. We've heard many concerns from witnesses, and if there are problems with it, it would be important to incorporate that information into the formal report to Parliament and not have it as an addendum or an annex.

The Chair: Mr. Bruinooge.

Mr. Rod Bruinooge: As Madam Crowder already noted, this asks for representations from first nations groups, and there's no disagreement on that. However, my argument was that we would in my opinion be calling upon a new entity to be making that recommendation back to Parliament. Should a group of first nations, including the AFN, come before a committee, I believe the committee could then make an additional recommendation, which would utilize the existing system that we have here in the House of Commons.

The biggest problem with this is that I just can't imagine another circumstance where we would be providing a non-government entity with this opportunity. The political agreement contemplates some of the elements that we don't have the ability within legislation to cover, and the AFN would be able to clearly state all the changes they want to see at that five-year mark. I believe that not only would this committee give a hearing to them, but clearly Canadians would hear that message through all of the fora that we have.

I just see this as something that probably isn't going to diminish the chance for the first nations people across the country to clearly state their issues with this bill. At the same time, I just think this is beyond what we should attempt today.

The Chair: Thank you, Mr. Bruinooge.

I have Mr. Warkentin, and then Ms. Crowder again.

Mr. Chris Warkentin: I'm trying to get a grasp on this. My concern is that we heard from aboriginal communities from across the country, representing their own communities, and what we consistently heard was that they didn't want other people speaking on their behalf. There's absolutely a desire to see aboriginal people speak on their own behalf with respect to this process in a review.

But we haven't spelled out anything concerning the practical aspect of it. I'm concerned that what we might have, if the minister has heard from certain groups and includes that input but doesn't have a process to consult all aboriginal people, is a piecemeal situation, and that would exacerbate the concerns that some of the aboriginal people have communicated to us in this process. That's my concern.

I have no problem with our asking the minister to include verbatim all correspondence that he's received regarding this process from communities all across. But I don't think it would be wise of us to call on the minister or call for the department to condense their interpretation of what has been said by individual groups and then publish it as some type of fact. We might exasperate those folks who seem to feel that they're already out of the process and might be giving an additional pedestal for one segment while diminishing the perspective that may be just a silent perspective out there.

● (1635)

The Chair: Ms. Crowder.

Ms. Jean Crowder: Thanks, Mr. Chair.

I'll make a couple of points. One is that the parliamentary secretary raises an important issue about the role of this committee if this legislation should pass. I agree that there is a very important role for this committee in ongoing oversight. That was a very strong recommendation from Professor Schwartz and others, and I would certainly agree that the committee needs to have that role.

Having said that, we already know from past experiences at committee that this committee can make recommendations, and reports can come forward to the House, and they will simply not be acted on. We have the report on post-secondary education, *No Higher Priority*, which this committee saw in the last sitting of Parliament. The committee resubmitted the report, and it came to the House on a concurrence motion, which we debated fully, and yet the recommendations in that report simply have not been acted on.

We saw this committee submit a report on the United Nations declaration on indigenous rights. It has come to the House through a report and has been debated as a result of a concurrence motion from the status of women committee, and we simply have not seen the government act on it.

I fear that even though the committee may examine how the legislation is being implemented over the next five years, we can't rely on reports coming out of this committee, no matter what government is in place, as a way to move it forward. I acknowledge that, although the practicalities are not spelled out in the legislation, the practicalities of many aspects of this legislation are not spelled out. We're reliant on a number of other mechanisms, including the political agreement, to spell out some of those details, and I would think it would be remiss of me to put forward an amendment that tries to spell out the practicalities. We have other processes to do that.

Perhaps this amendment may actually encourage the government to develop the consultative process that the Auditor General and others have called for. There are five years before this particular section would come into effect. It says it's within one year after the review, which is a five-year review. So in fact the government has six years to come up with a consultative process.

Perhaps supporting this amendment will light some fire under people to come up with a consultative process that recognizes some of the challenges that were identified by the witnesses, as Mr. Warkentin rightly pointed out. But I don't think it's the job of this committee, at this stage in this piece of legislation, to attempt to develop that consultative process. We can signal the committee's intention; we can make sure that intention is reflected in the legislation; then it's the task of the government to make sure it happens.

The Chair: Thank you.

Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: Mr. Chair, as I said earlier, it does not hurt to stress the issue. We are asking First Nations to get involved. It is important to read subclause 41(2) which our colleague's amendment proposes to change. As for the tribunal's responsibilities that we agreed to earlier, they are in clauses 11 to 13.

I find it very interesting that, under subclause 41(1), it is possible to consult with communities, aboriginal people and the AFN, among others, on the structure of the tribunal and its efficiency and effectiveness of operation. This is where it becomes interesting and that recommendations concerning the tribunal will be made to the committee and to the government. The government will not have to ask First Nations for their input and come back a year later with proposed amendments. Everything will be included in the same report. I find my colleague's idea extremely interesting. I think, Mr. Chair, that we should vote on this amendment.

● (1640)

[*English*]

The Chair: As much as I would like to move immediately to a vote, I will move to another committee member who wishes to say something.

Mr. Bruinooge.

Mr. Rod Bruinooge: Going back to the political agreement, I would like to suggest that within that agreement the Government of Canada has agreed to meet and consult with the AFN after five years on any proposed changes. That of course was an important part of the negotiation for this legislation.

Having said that, I would like to save all of my debating energy for the last NDP amendment, so I am going to simply cease here.

The Chair: Wonderful.

If there are no further comments, I would like to take a vote on the amendment.

(Amendment agreed to) [See *Minutes of Proceedings*]

(Clause 41 as amended agreed to)

(On clause 42—*Existing claims*)

The Chair: Mr. Bruinooge is girding for his arguments.

Before we go back to the first page, on the last page in your package, page 15, is a proposed amendment known as amendment NDP-7, put forward by Ms. Crowder regarding clause 42.

Is it your intention to move this?

Ms. Jean Crowder: I would be prepared to move it, Mr. Chair.

It will probably come as no surprise to many members of this committee that I have some serious concerns around clause 42 concerning the transition procedures. I think we heard that fairly consistently from any number of witnesses.

There were a number of groups who came forward, but I want to specifically quote from the Snuneymuxw position. They are talking about the fact that in their particular case they had submitted a claim back in 1993, and it's been under negotiation. Their point with this was that they felt the wait time is likely to be considerably longer, since all specific claims accepted for negotiation prior to the new legislation will face exactly the same wait time, and all of these claims could potentially obtain tribunal access on exactly the same date.

They expressed their concern by saying:

> We respectfully submit that it is unfair to require Aboriginal Nations who have already put in more than three years at the negotiation table to request permission from the Minister to access the Tribunal. The discretion created places undue power in the hands of the Minister and his advisors to determine the order in which the Tribunal will be accessed.

In suggesting that we delete this clause, my intent is that it will allow nations who have been in negotiation for more than three years to go directly to the tribunal at the coming into force of the act. That's why I propose this amendment.

The Chair: Thank you, Ms. Crowder.

Before we begin our discussion, we have a very small piece of housekeeping business. If we should happen to complete clause-by-clause today, on Monday I think we would have a subcommittee meeting, so the rest of the committee members would not have to come at 3:30 on Monday. If, however, this discussion carries on after 5:30, we will all reconvene on Monday at 3:30 to continue.

With that small sidebar, I'll go to Mr. Bruinooge.

● (1645)

Mr. Rod Bruinooge: The pressure is on, then.

I will start by suggesting that firstly Madam Crowder indicated that a number of witnesses had brought this forward. I would have to disagree. I know she brought it forward at every meeting, and that is her right.

However, I genuinely believe that it's in fact not the correct position. When individual first nations have been accepted for negotiation, that is actually the best position to be in. That is exactly where they want to be with the government. So many haven't yet been accepted for negotiation; that's why we have a massive backlog. The whole purpose in bringing this tribunal forward is to deal with that backlog.

For those who have been accepted for negotiation, it is truly a validation of where they initially put their position, and they're actually dealing directly with the Government of Canada, which is perhaps still the best path to a resolution. Those communities are in my opinion not affected at all in terms of timing, because they have been validated. Those who haven't are still waiting for that letter to come from the government.

Someone quite wise mentioned to me that there actually is no clock running. The only time a clock will start is when this bill passes. At that moment, those who haven't been validated for a claim will know that they have three years. In three years they will for sure have that letter come to them.

Mr. Chair, unfortunately this amendment will, in my opinion, add considerably to the backlog. It takes away from the very spirit of creating the tribunal itself, and it's something that I am quite certain would be very challenging for us as a government to accept in the light of our negotiated agreement with the AFN and the approval we've received through our cabinet.

I'd put those points on the record. This is something that we feel is not only unnecessary but takes away from the spirit of the bill itself.

The Chair: Ms. Crowder.

Ms. Jean Crowder: I thank the parliamentary secretary for that; however, I didn't hear anything that deals with the nations who have been in negotiation for substantially longer than three years right now. I would agree that this bill goes a long way towards dealing with first nations who are not currently in negotiation, who haven't had their claims reviewed, or are at whatever stage. We know there are significant numbers there.

But I am still concerned about nations who have actively been in a negotiation process. That's what I'm attempting to deal with here: those who have been actively in negotiation for more than three years now. I don't see a way in this clause 42 to track them into the tribunal without ministerial approval, in that first three years. If there's another amendment that could be proposed that would deal with this, that's what the issue is for me.

Although—you are right—oftentimes when I raised the question people would respond, there were submissions that talked about the fact that they felt they were being disadvantaged by not having some recognition that they had been in negotiation for substantial periods of time. That's what I'm trying to get at with this amendment.

The Chair: Thanks, Ms. Crowder.

Mr. Warkentin.

Mr. Chris Warkentin: Thank you, Mr. Chair.

I think the intent for all of us is to see the backlog reduced. I'm wondering whether our expert witnesses could shed some light on what effect they feel these changes might have, and whether in fact the outcome would be a reduced backlog or whether it would have any ramification for it.

The Chair: Would the officials like to make a comment on this?

Ms. Sylvia Duquette: Sure.

This was actually the subject of a large amount of discussion with the Assembly of First Nations during the task force meetings. One of the key issues here is that there is that huge assessment backlog. Were it to be removed, if the objective is that those who have been negotiating for a long time will get quicker access to the tribunal, that won't happen, and the reason it won't happen is this huge backlog. There's a huge backlog of about 560 claims in assessment waiting for the letter; there are and will be about 120 claims in negotiations, many if not most of which have been going on for some time.

If this amendment goes through, just from a very practical point of view technically there would be access to the tribunal, but practically there would be none, because the tribunal would then have to prioritize all of these claims.

So they're some years away from getting before the tribunal. That's why the plan is to bring those who don't have their letters into the assessment backlog. Those at the negotiation table are in a better position than those waiting, and the most they have to wait further for access is three years. But of course in individual cases the parties might agree to bring it to the tribunal, and that is provided for in the bill.

I don't know whether this helps, but it won't achieve the goal.

● (1650)

Mr. Chris Warkentin: That does bring clarity. For many around this table, the objective is to see the backlog reduced so that first nations have access to this process sooner, so I thank you for the clarification.

The Chair: Monsieur Lemay, please.

[*Translation*]

Mr. Marc Lemay: I would like to follow-up on what Ms. Duquette just said. Please tell me if I got that right.

Let us suppose clause 42(2)(c) is not amended and stays as is. If someone has been negotiating with the government for five years, under this provision, the minister would have to advise him in writing that for the purpose of section 16, he is deemed to have been notified, which would save him a few steps under section 16.

Ms. Sylvia Duquette: A few steps would be avoided. Access to the tribunal would automatically be granted within three years.

Mr. Marc Lemay: That would be the maximum. If they had already been negotiating, under section 42, they would have to wait a maximum of three years

Ms. Sylvia Duquette: That is correct.

Mr. Marc Lemay: If this is the case, I cannot support Ms. Crowder's amendment.

[*English*]

The Chair: I have no further names on the list. Are there any further comments?

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

The Chair: It appears the Rocky Mountains were the dividing line on that one.

There are no further proposed amendments from clause 42 to clause 53. Can I consider them as a group?

Some hon. members: Agreed.

(Clauses 42 to 53 inclusive agreed to)

The Chair: We now go back to the beginning and we'll deal with clause 2 first.

(Clause 2 agreed to)

● (1655)

The Chair: Shall the schedule carry?

(Schedule agreed to)

The Chair: Shall clause 1, the short title, carry?

(Clause 1 agreed to)

The Chair: Turning to the preamble, if members look at their packages, on page 1 the item known as BQ-1 has been brought forward by Monsieur Lemay.

Is it your intention to move this amendment, Monsieur Lemay?

[*Translation*]

Mr. Marc Lemay: Yes.

[*English*]

The Chair: This amendment seeks to add a paragraph to the preamble providing that the act be implemented in respect with the principles set out in the political agreement between the Minister of Indian Affairs and Northern Development and the National Chief of the Assembly of First Nations in relation to specific claims reform, signed on November 27, 2007.

However, this agreement is not part of Bill C-30 and is not referred to in any part of the bill. The *House of Commons Procedure and Practice* states at page 657:

> In the case of a bill that has been referred to a committee after second reading, a substantive amendment to the preamble is admissible only if it is rendered necessary by amendments made to the bill.

Furthermore, it states on page 654:

> An amendment to a bill that was referred to committee after second reading is out of order if it is beyond the scope and principle of the bill.

In the opinion of the chair, the amendment introduces a substantive motion to the preamble without any changes having been made to the bill and proposes to introduce notions foreign to the bill. Consequently, I rule the amendment inadmissible.

Mr. Marc Lemay: Oh.

No, I do not want to challenge.

The Chair: Shall the preamble carry?

Some hon. members: Agreed.

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

The Chair: Shall I report the bill, as amended, to the House?

Some hon. members: Agreed.

An hon. member: And as soon as possible.

The Chair: Shall the committee order a reprint of the bill?

Some hon. members: Agreed.

● (1700)

The Chair: Well, members, what are we going to do for half an hour?

Thank you very much to the members and to the officials.

To complete a small bit of housekeeping, I would suggest that the subcommittee on the agenda meet on Monday during our regular time, from 3:30 to 5:30. The rest of the class is dismissed until further notice.

The meeting is adjourned.

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

Also available on the Parliament of Canada Web Site at the following address:
Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante :
http://www.parl.gc.ca
