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—
Chair

Mr. Bruce Stanton

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• (0905)

[Translation]

The Chair (Mr. Bruce Stanton (Simcoe North, CPC)): Good morning, ladies and gentlemen, members, witnesses and guests. This is the meeting number eight of the Standing Committee on Aboriginal Affairs and Northern Development. On the Orders of the day we have, pursuant to the Order of Reference dated Friday, February 13, 2007, Bill C-5, An Act to amend the Indian Oil and Gas Act.

[English]

This morning we have two presentations, members. As the first, we'll lead off with Chief Carolyn Buffalo, chief of the Montana Cree Nation, representing the Assembly of First Nations. Second we'll hear from Mr. Eugene Seymour, the coordinator for the independent lobby to amend the Indian Oil and Gas Act.

From our presenters this morning, we will have presentations of ten minutes. We will do each in succession and then we will go to questions from members.

Chief Buffalo, welcome. Please proceed. You have the floor for ten minutes.

Chief Carolyn Buffalo (Chief of the Montana Cree Nation, Assembly of First Nations): Thank you, and good morning.

I want to thank the committee for giving me the opportunity to make a presentation today on behalf of the Assembly of First Nations and also on behalf of my own first nation, the Montana Cree Nation, located at Hobbema, Alberta.

I don't know if this is something that's required of me to do, but I just want to make a brief comment. I thought I would just point out very briefly to the committee that I was on the legal team on the Samson and Ermineskin cases, which were heard in the Supreme Court of Canada, and on which there was a ruling on February 13. I just wanted to point that out for your information, although my role in the trial did not extend to the oil and gas part of the case.

The first thing I would like to say on behalf of the Assembly of First Nations is that we believe this bill takes important steps with regard to the sharing of royalties and resource revenues for first nations and also perhaps provides for the employment of first nation workers on projects that are taking place within their traditional territories. The position of the AFN is that these are laudable goals and that this will set an approach for work on related matters in the future.

We also believe that the federal government has taken the right approach in developing this legislation with a thorough process, which was begun over 10 years ago and involved over 130 first nations in dialogue. The bill, as I understand it, was developed jointly with first nation leaders to ensure that the interests of those affected were addressed. The AFN has said repeatedly that this is how federal legislation must be developed. We further note the ongoing responsibility of the minister to consult with affected first nations, set out specifically in proposed section 6 of the bill.

However, having said all of that, the AFN does have a concern about Bill C-5, which we believe can and should be addressed by this committee.

One of the things I also wanted to say to the committee is that in my conversations with other first nations, before I travelled here to Ottawa, I heard that the position of some other first nations was that they would have liked to come here and make presentations to the committee, but that because of the whole process we weren't given a whole lot of time. They still would like to be heard by the committee with respect to their positions on this bill. I just wanted to raise that timing as an issue.

We are also wondering why this legislation is being hurried. At least, that's the way it appears to me and to some other first nations. We're wondering what the rush is. What we would have preferred is that this legislation would have been heard together with the regulations, because as I understand it, we still haven't seen what the regulations pursuant to this legislation will look like. We would have liked the opportunity to review the regulations pursuant to the bill.

I wanted to state that for the record: that there are other first nations that would have liked to come here and make a presentation before this committee.

First of all, with respect to the more technical aspects of the bill, the AFN's position is that where federal legislation purports to speak to the management of the environment or the economy—in this case, oil and gas development and the resulting revenues—it's important to be clear about the relationship between that legislation and any related provincial or territorial laws.

Moreover, as part of fulfilling its responsibility to support self-government by first nations, the federal government must plan for and support the efforts of first nation governments to make laws governing our own communities. This is a very important point for us. The federal role may be to facilitate harmony between first nation and provincial or territorial laws; it cannot be to prevent development by first nations by asserting either its own continuing jurisdiction or importing provincial or territorial jurisdiction into application in first nation communities.

● (0910)

I would direct the attention of the committee to proposed sections in the bill, specifically proposed new sections 4.2 and 4.3, which read in part as follows:

4.2 (1) Regulations made under subsection 4.1(1) — other than regulations made under paragraphs 4.1(1)(a) to (d), (f) to (r), (v) and (w) — may incorporate by reference laws of a province as amended from time to time, with any adaptations that the Governor in Council considers appropriate.

(2) Regulations incorporating laws of a province may confer any power or impose any duty that the Governor in Council considers necessary on any provincial official or body, to be exercised or performed on behalf of the federal government in the same circumstances and subject to the same conditions as those governing the exercise of that power or the performance of that duty under the laws of the province.

(3) The Minister may enter into an agreement with the government of a province, or with a public body established by the laws of a province, respecting the administration or enforcement on first nation lands of any laws of the province that are incorporated by the regulations, including the exchange of information related to administration and enforcement of those laws.

.....

4.3 Regulations made under this Act prevail over any by-laws or other laws made by a first nation under another Act of Parliament to the extent of any inconsistency between them, unless otherwise provided by regulations made under this Act.

This is a point I have particular issue with.

I would also like to point to clause 2 of the bill, amending former section 6 of the act, by adding the following language, as you know:

(1.1) The Governor in Council may, by regulation,

(a) require that a power of the Minister under this Act in relation to first nation lands be exercised only if prior approval of the council of the first nation is obtained, if the council is first consulted or if prior notice is given to the council, as the case may be;

(b) require that any such power of the Minister be exercised only if prior consent is given by any first nation member who is in lawful possession of the first nation lands; and

I'm reading this really carefully because I'm mindful of the time constraints. There is also a proposed new paragraph 6(1.1)(c), the notice provision.

AFN is of the position that this bill would be stronger and would set a better example for other legislation with two small amendments: in the first line of proposed new subsection 6(1.1) by deleting the word "may" and replacing it with the word "shall"; and under proposed new paragraph 6(1.1)(a) by deleting the word "or" and replacing it with the word "and".

I don't know that it's necessary for me to read what the text would look like with these changes, but the small changes would greatly improve the otherwise fine work done by the first nations and the federal government in crafting this piece of legislation.

That's what the Assembly of First Nations has asked me to present to the committee.

Other first nations to whom I have spoken have said that they believe there could have been more and better consultation than occurred. Some of the first nations have said that the bill was presented to them as a sort of *fait accompli* before they even had a chance to speak to the issue or say anything about what amendments they would like to see in the legislation. It was instead given to them already drafted, and there was not a lot of opportunity for the first nations to exercise influence over the content of the bill. I know that some of my friends would disagree, but that is the position of some first nations, and I have been asked to relay it to the committee. Despite the fact that we know there was some consultation, and we are appreciative and mindful of that, the position of some first nations is that there could have been more and better consultation done.

Another issue that some have had is that in the existing legislation and regulations the IOGC already has a number of powers and abilities available to it. The question for some of us becomes this: since these powers already exist but aren't being enforced, we wonder how effective this new legislation is going to be, given that there were powers already available to but not exercised by the IOGC.

● (0915)

The other thing is that Bill C-5 doesn't increase first nation control or input into the decision-making process. That's a key element that we say is missing from this bill.

Since this legislation does not address these concerns from the perspective of some first nations, there's no rush to amend the existing act. Therefore we're asking that you take your time and perhaps do more consultation to make this legislation more effective.

The Chair: We're out of time. Chief, perhaps you can quickly summarize, and then we'll go to our next presenter.

Chief Carolyn Buffalo: I have a lot more to say and it will be difficult to summarize all of it.

Thank you.

The Chair: Thank you.

Mr. Rickford.

Mr. Greg Rickford (Kenora, CPC): I want to ask if Chief Buffalo can repeat the specific amendments in the language that was proposed.

The Chair: Can you put that in, and when we have time for members' questions we'll go to that?

Chief Carolyn Buffalo: I can do that.

The Chair: Monsieur Lemay.

[Translation]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): Mr. Chairman, as the interpreters made us aware, I would like Chief Buffalo to send us the documents she is referring to because I think that I saw her reading from a text. We might have them translated. I would especially like the list of amendments.

I have the impression I was talking to the walls because none of the witnesses were using their earpieces. Let me start over.

[English]

The Chair: You're doing it again?

[Translation]

Mr. Marc Lemay: I will go slowly. I would like you to send us a copy of the documents from which you have read as well as your proposed amendments. Thank you.

[English]

The Chair: Do you understand? And can you include the text you had in your presentation, if possible?

Chief Carolyn Buffalo: I can do that.

[Translation]

The Chair: Thank you very much.

Mr. Seymour, you have the floor for 10 minutes.

●(0920)

[English]

Mr. Eugene Seymour (Coordinator, Independent Lobby to amend the Indian Oil and Gas Act): Thank you, Mr. Chairman.

Let me first explain to you how we got here to present a proposal, what we're proposing, how we see our proposal working, and where we're at in the process of having our proposal enacted.

We're certainly grateful to have the opportunity to present an amendment to the Indian Oil and Gas Act for a financial incentive program that will be a stimulus to promote vertical integration and value-added activities in the oil industry, both upstream and downstream, on first nations land.

To tell you how we got here, let me take a moment to reflect back on history.

The Iroquois people sided with the British and made an arrangement that was recognized in the Royal Proclamation of 1763, which is now enshrined in the Canadian Constitution Act of 1982, under section 25 of the Charter of Rights and Freedoms. As such, when the American revolution broke out, the Mohawks and other tribes fought to establish the country of Canada, and then again, in the American invasion of 1812, they successfully defended the country.

In 1867, when the founding fathers confederated the country, there was a recognition established in the Constitution under section 91 (24) that Indians and lands reserved for Indians would be the exclusive jurisdiction of the Parliament of Canada. Thus, the fiduciary trust responsibility was established between the trustee and beneficiary.

As development moved westward in the late 1800s, oil was discovered on Manitoulin Island and the Indians were boiling it to make a kerosene out of it. In 1898 the first Indian oil and gas mineral surrender was established at the Wikwemikong unceded Indian reservation.

In 1900 a joint Senate and House of Commons study reviewed petroleum deposits in the country and identified Wikwemikong as

being one such site. Exploration permits were granted, drilling commenced, and they discovered oil. They capped it in 1905, before there was an automobile and before the auto industry had a market demand for crude oil petroleum products.

When the Leduc oil field was discovered in 1947—and shortly thereafter the Bonnie Glen field on the Pigeon Lake reserve owned by the Hobbema band—mineral oil and gas surrenders were established. The leases were made in accordance with regulations under paragraph 57(c) of the 1951 Indian Act.

Then in the 1960s John Diefenbaker gave the Indians the right to vote in Canada and Pierre Elliott Trudeau became the Minister of Justice. The Department of Indian Affairs and Northern Development Act was established in 1967 and Jean Chrétien became the first Minister of Indian Affairs. He reached out and engaged first nations people in consultation and discussions, which were turbulent at first. As Mr. Chrétien said in his infamous speech of 1968 at Queens University, "The paths to hell have been paved with the good intentions of do-gooders from within the department."

In the early 1970s, under contract, the Indian Association of Alberta initiated a review of the 1951 Indian Act in its totality. At that point, the oil industry, concerned about their lease holdings on Indian land, pressured the government to establish free-standing legislation. The oil-producing bands were only getting a 12.5% royalty under the regulations, and, combined with the other interests, brought about the establishment of the Indian Oil and Gas Act of 1974, which you are presently amending today. It wasn't until 1978 that amendments to the regulations provided increases in royalty rates to the bands.

Then in 1987 the Indian Resource Council was established and for the first time the oil-producing bands were able to collaborate and bring forth their concerns to the government so that in 1999 they initiated the revision to the Indian Oil and Gas Act.

In 2002 Roy Fox, of the Indian Resource Council, came and met with us at Akwesasne on Cornwall Island and reached out to the downstream operations and retail gas stations.

●(0925)

At that point we launched this amendment for a financial incentive program for vertical integration and value-added activities. We petitioned other groups and got their support and then presented it to the Department of Indian Affairs. Their immediate reaction was to do what we were proposing as a major policy change. Our rebuttal was swift: That's exactly what is required to make major changes in the quality of life in first nations communities today.

We continued discussions with them on this matter, and they had an organizational problem at that time dealing with our proposal, namely that Indian Oil and Gas Canada is set up just to deal with the fiduciary trust responsibility in issuing oil leases under the Indian Oil and Gas Act. What we were proposing was economic development promotion, and they were not in a position to deal with that. Another department, economic development, would be more likely best suited to deal with that. In September 2008 they resolved that internally. They amalgamated into one branch under economic development, Indian oil and gas, and Indian lands and reserves and trusts, all in one, because somebody in the department, in their wisdom, realized that economic development on Indian land involves land tenure to a large extent, whether it be mineral rights or whether it be surface leasing and construction in some form.

We come to you today at this point to present this amendment as such. In the amendment this is what we're talking about in terms of vertical integration. We would like to have the government provide an incentive to allow the retail outlets on first nations land to purchase oil directly from the oil-producing bands, and we would like the government to provide incentives for oil-producing bands to joint-venture and participate in oil refinery construction and operation. Downstream we would like to be looking at bulk storage capacities. First Nation Independent Fuel Handlers Co-Op Ltd. of Ontario did an extensive study a few years back, and the economic opportunity is there throughout Ontario for such a venture.

On value-added activities, we can show you from example that we're not talking about just a simple gas station. A gas station can turn into a gas station-restaurant-motel-banquet hall, or gas station-convenience store-coffee shop, or home heating fuel operations. That's what we're talking about in terms of vertical integration and value added.

How we perceive this amendment working is we start with a premise that you do not throw money at the problem. I've worked in the department for four years in a program where we had money, but we had a sunset clause on our money and we had to distribute the money. We funded certain projects and we had auctions to call to get the money out. But the way we've structured this proposal is that you give an authorization as a stimulus to promote within first nations communities and you wait until they make applications accordingly, and then you measure their capacity as part of a business incentive.

The department in its letter.... Here's where we're at with the department. I asked the clerk to distribute copies of the department's letter to you. They said they have business centres set up. They just initiated that, and that is very fine and works well with this initiative because those business centres should have the capacity to provide professional consultative services to first nations people to help them organize and make applications that would coincide with our proposal. That way you would get value for your dollar.

At that point, Mr. Chairman, thank you for your time.

The Chair: Thank you, Mr. Seymour.

Members, as Mr. Seymour referred to, a letter was circulated in both languages, and that is available to you now.

While we have a moment here, in reference to Chief Buffalo's text and her proposals for amendments, they are in English only,

available electronically. If there is consent to circulate those we can do that. Otherwise, our rules require that documents be circulated only in both official languages, so I seek the direction of the committee to have those circulated if it is your choice to do so.

Mr. Lemay.

[*Translation*]

Mr. Marc Lemay: We shall follow our rules, Mr. Chairman. We will have those documents translated and they will be distributed next week. We must have those documents available to us when the time comes for the clause-by-clause study.

• (0930)

[*English*]

The Chair: Very good.

Okay, there is no consent, so we'll seek to get those documents properly translated and circulate them to members.

Mr. Seymour, I'm sorry, you had a question.

Mr. Eugene Seymour: Yes, I have a question for the clerk. I sent all this material in a couple of weeks ago, did I not? Was it not circulated in French?

The Chair: It's been distributed. The materials that you brought this morning are in the hands of members as we speak.

Mr. Eugene Seymour: Okay, sorry.

The Chair: Thank you very much for both your presentations.

Welcome to Ms. Back-Skidders, who is the secretary-treasurer of the Akwesasne Petroleum Co-op. It's great to have you with us here this morning also.

Now we'll go to questions from members, beginning with Mr. Russell, seven minutes.

Mr. Todd Russell (Labrador, Lib.): Thank you, Mr. Chair.

Good morning, Chief Buffalo, Mr. Seymour, and Ms. Back-Skidders. It's good to have you here.

Chief Buffalo, you began your presentation by saying there is general agreement around this particular piece of legislation, but then when I listened to the rest of the presentation there seemed to arise some substantive concerns around this particular piece of legislation. You can correct me if I'm wrong, but I heard that there were concerns about the legislation being hurried, that there could have been more consultation, that from the AFN's perspective you want to see the regulations that pertain to this particular piece of legislation. I mean, the legislation enables the regulations to be made and incorporated. There were also concerns around the environmental protections, as I heard, and the incorporation of provincial laws being applied on reserve lands. The comment was made that it does not increase the first nations control or management substantively.

These would not seem to me to be unsubstantive or not important. They seem to be rather weighty types of concerns that have been expressed.

I'm just looking for some direction from you as to where we should go, because I'm sure you're aware that according to our schedule, we had intended to go to clause-by-clause today. I gather that's what was on our schedule. This certainly seems to be a little bit inconsistent with what the IRC has been making presentations about, certainly in my meeting with them. They seem to say that this legislation is not perfect, it is not everything that they wanted, but it's certainly something that they need and something they want to move forward on in a fairly expeditious manner. That is what they have said to me personally at meetings that I've had with them, and what they also said at committee. I would just like to see if there's some way we can reconcile these two different positions, if you can help me with that.

My second question is for Mr. Seymour. I have read what you presented to the committee, a financial incentive program. Is there anything in this legislation that would prevent the government or first nations that have an interest in oil and gas development from working together to implement this program, even though it's not incorporated in the legislation? Is there anything that would prevent this?

This seems to make common sense, to be able to allow first nations to gather the most out of their resources and to benefit in a broad way from oil and gas development on reserve, both, as you say, downstream and upstream. Is there anything that would prevent this program from going ahead if this weren't incorporated?

I'll just go to Chief Buffalo first, and then ask Mr. Seymour to answer secondly, if that's okay.

Thank you.

• (0935)

The Chair: Chief Buffalo.

Chief Carolyn Buffalo: Thank you.

I do realize it does appear from my remarks that they're not consistent; however, I think I was consistent. I have said that, yes, there was some consultation, there was some discussion. I don't speak for the IRC, but yes, you're right, we do have some substantive concerns with the legislation.

I'm sorry, I didn't write down all of the points you raised, but as to the main part of your question about my presentation being inconsistent—

Mr. Todd Russell: I didn't say that your presentation was inconsistent. I just said that what you were saying was seemingly inconsistent with what the IRC was saying.

Chief Carolyn Buffalo: Right. Well, I'm not here on behalf of the IRC.

Mr. Todd Russell: Is there a way forward? If we have to make these substantive amendments we are certainly going to run into a longer timeframe than we had anticipated. And I'm not saying that we're there yet.

This legislation has been on the books for ten years; changes to the Indian Oil and Gas Act have been on there for ten years. It's been introduced in Parliament. I think this is the third time it has been tabled in Parliament. It really hasn't gotten to this particular stage for no other reason than that Parliament was prorogued or what have

you. So I'm just wondering if there's a way forward here that allows us to go through it in a fairly smooth manner.

Chief Carolyn Buffalo: We would all like that, I think, but as I said in my remarks, there are some first nations that would have liked to have been in attendance before this committee to present more of their positions on some of the more substantive aspects of the legislation. I didn't get to touch on all the issues that other first nations, and my first nation, have concerns about.

The main thing I would suggest is that we just not rush through the legislation.

The Chair: We have to keep to our timelines. We'll have to go to Mr. Seymour at this point.

Thank you, Chief.

We'll go to Mr. Seymour.

Mr. Eugene Seymour: No, but you have to be very, very skilful to find ways to do all that we're promoting. The reason we present this is to provide a stimulus to promote vertical integration and value activities to create opportunities that will assist economic development within Indian communities.

I'll read from my brief:

When you look at the billions of dollars of oil and gas production taken from first nations lands, and compare that with the economic realities within many first nations communities, it is easy to see that it makes more sense to encourage first nations to participate instead of focusing simply on maintaining a dependency on a welfare type of society.

The Chair: Okay.

Mr. Eugene Seymour: I submit that—

The Chair: All right, go ahead.

Mr. Eugene Seymour: —from day one to present, if you do the accounting, there has probably been more money taken from oil and gas and other resources on Indian lands than the total Department of Indian Affairs budget all put together.

[Translation]

The Chair: Unfortunately your time has expired.

We now go to Mr. Lemay.

Mr. Marc Lemay: Chief Buffalo, I am very concerned by the fact that the Assembly of First Nations comes to us with specific demands concerning this bill which has been tabled one year ago. I remember that this committee—on which I was sitting as my colleagues will attest—had requested to all interested First Nations to send us information, reports, briefs, in other words, their position. We have not received anything. The bill has died on the *Order Paper* following the prorogation of the House. It is the same bill that we have before us today, one year later.

This morning, the Assembly of First Nations comes before us without any document, without any brief, with a substantial number of proposed amendments. As a lawyer I verified the bill. I am flabbergasted. I must say that I rather agree with my friend Mr. Russell. I don't know what to do today. It may not have been today that we were going to consider the bill clause by clause but it shouldn't take too long. This surprises me, all the more because—and I will try to pronounce their name correctly—the Indian Resource Council of Canada, the IRC—I think that some members of that group are here today—came before us and told us that it had consulted 130 nations or communities. There is something missing. I looked at subsection 4(3) of the bill. I take issue with you on this matter but without debating the issue, I would have liked the department officials to have responded to your request which I find entirely legitimate. I am quite convinced of this.

What should we do this morning, I ask you? Should we suspend our discussions? Should we defer this matter for six months or a year from now? Do not forget that after this bill, there is the bill on matrimonial property. We also want to undertake a study on education. Clarify this for me because I must admit that I don't know what we should do this morning considering the proposed amendments you are submitting to us.

• (0940)

[English]

Chief Carolyn Buffalo: I do apologize. I should have had a written text submitted to this committee prior so that you would have had an opportunity to review it in both French and in English. So I do apologize for that, and I will endeavour to get this text over to you as quickly as I possibly can.

Although the changes, I believe, would be very beneficial to the bill, they're not that cumbersome. I don't think they will take that long to consider, but I think they would improve the legislation.

As far as what the IRC has presented, they have spoken with some first nations and they have canvassed opinion from various first nations. But, as I said, many first nations are not of the view that this consultation was very meaningful. Even though there are substantive issues with respect to the legislation, for example, the incorporation, by reference, of provincial laws, which is going to lead to a patchwork of laws across the country, because provincial laws are different...those kinds of things are not insignificant, but they will affect us. The form of consultation that took place was more of a "Here it is". From the perspective of some of the first nations I have spoken to, they didn't think it was adequate and meaningful enough.

I know that my friends on the IRC would disagree, but that is the position of some first nations I have spoken to.

[Translation]

Mr. Marc Lemay: Allow me to say this, and I speak frankly, that I have considerable respect for you. I am on the side of First Nations. Those who are here know me. I will defend them as best as I can, but as far as I know, and correct me if I am wrong, the Indian Resource Council is made up mostly of First Nations people who are directly concerned in these areas... Let me show you here: consultations have taken place in British Columbia, in Alberta, in Saskatchewan, in Manitoba, in New Brunswick, in Ontario. Let me ask you why the proposed amendments were not submitted to the Indian Resource

Council where you have lawyers paid a handsome sum to study and prepare amendments and submit them to the government. You may think, and quite correctly, that these are minor amendments, but let me ask you a single question.

• (0945)

[English]

The Chair: Ten seconds, Monsieur Lemay.

[Translation]

Mr. Marc Lemay: Good. Excellent.

How can we go about amending subsection 4(3) so as to satisfy your expectations? This causes me a serious concern.

[English]

The Chair: Maybe we'll let you think about that and perhaps incorporate that into one of your other responses, Chief Buffalo.

We do need to move on, so we'll go to Madam Crowder for seven minutes.

Ms. Jean Crowder (Nanaimo—Cowichan, NDP): I'm going to continue in the vein of my colleagues. I'm referring to issue paper number 4, "Outreach and Communications", which you may not have. I'm not going to read the whole thing, but I just want to go over the consultation process that was outlined for us. I have no reason to believe this isn't accurate.

It says that:

...it was recognized that there was a need to modernize the Indian Oil and Gas Act and Regulations. This decision was based on informal discussions that began in 1998 with the Co-management Board of Indian Oil and Gas Canada to ensure that Canada had a modern regulatory regime—

—and so on.

In mid-2000 a set of "guiding principles" on how the department will reach out to stakeholders was developed by the co-management board and tabled in September 2000 at the annual meeting of the oil and gas producing first nations in Regina. By 2001 discussions on the proposed changes to the act and regulations had been held with tribal chiefs associations in central Alberta as well as with over 50 first nations in B.C., Alberta, Saskatchewan, and Manitoba. As a result, first nations overwhelmingly supported the "guiding principles" and the process of modernizing the regime.

There's a lot more detail in here. It goes on to communication with stakeholders:

In 2002 the initiative begun to modernize the Indian Oil and Gas Act was established. A partnership between the department and the Indian Resource Council was formed to focus on the proposed changes.

A stakeholder involvement package was done and there was outreach done. In 2006 the IRC and the minister agreed to resume the work initiated. It went to the Indian Resource Council annual general meeting in 2006. A resolution was passed unanimously providing support to the process relating to the proposed changes. In 2007 it went to the AGM, and so on and so on and so on.

It seems to me that this process began in 1998, so I too am struggling with a process that has been going on for 11 years to suddenly find out, just before we're going into clause-by-clause, that there are proposed amendments. I think you've already talked about that. But we've only had one letter. And that's an option for people who want to communicate with the committee, to provide a written brief. We don't always need witnesses to appear. There has been over a year for people to start signalling their dissatisfaction with the bill and we've had one written brief—aside from Mr. Seymour's, which is a bit different, and I'm going to come to you in a minute—that expressed some concerns.

So I'm concerned that this information has been out here and at the last moment we're getting requests for amendments to the bill. I would urge anybody who's listening and paying attention to the committee, get your information in within the next 48 hours. If you've had concerns, you've obviously had time to work them up.

I want to come to Mr. Seymour for a minute.

I don't disagree at all with what you're presenting. However, there is an “and”. The notion of vertical integration in value-added I think is a very valuable aspect of economic development, capacity-building, business development for first nations. I'm not sure that this bill is where it belongs. It seems to me that part of what you're suggesting could be part of the economic development proposal the government has put forward. Despite the fact that I vehemently disagree with their Bill C-10, they have put forward initiatives in the bill around first nations economic development. My understanding of part of what you're asking for is that it could be integrated into the economic development package that has been proposed. So I'm not clear why it would need to be an amendment in this bill, and maybe you could explain that.

• (0950)

The Chair: Mr. Seymour.

Mr. Eugene Seymour: That list you refer to, is it going to be established in a federal statute? Or what's the government program?

Ms. Jean Crowder: Well, when the government speaks to you, you could actually incorporate that in your response to them. I'm not going to give them time to answer on my time.

Mr. Eugene Seymour: This is why we're here in the Indian Oil and Gas Act. We want it as a federal statute so when we have to deal with people in the Department of Indian Affairs, we could tell them, look, this is the law. Be assured that when I was here back in 1974, on the Indian Oil and Gas Act there was no such thing as binding consultation—

Ms. Jean Crowder: There still isn't binding consultation. There are court decisions—

Mr. Eugene Seymour: Well, in the act it says “shall”.

Ms. Jean Crowder: Well, that is part of the problem, and I do agree with Chief Buffalo's comments about changing that particular section—

Mr. Eugene Seymour: Yes, it has to be properly—

Ms. Jean Crowder: —from “may” to “shall”. But there isn't binding consultation, generally speaking.

Mr. Eugene Seymour: But there's reference to it.

Now, because there's so much opportunity here, we want this whole stimulus initiative enshrined in a federal statute. Because when you deal with different departments...

If they're prepared to put their economic development stimulus into a federal statute, I say this to the Conservatives. By all means, take the federal economic development stimulus law, and add this in along with other matters, as long as it's a federal statute.

I'm part of the lobby group, not just on the Indian Oil and Gas Act, but to amend the Department of Indian Affairs Act.

Ms. Jean Crowder: So, Mr. Seymour—

The Chair: Stay on this one.

Ms. Jean Crowder: If I could interrupt, I think I'm almost out of time.

Again, I completely agree with this. I'm just not clear this is the appropriate place to do it.

This bill deals with a number of aspects of how first nations can access and manage the resources on reserve. But when you're talking about this next phase, I'm not clear. The challenge we've had is that many things aren't enshrined in statute.

Monsieur Lemay has pointed out with respect to post-secondary education, for example, that the department claims it's a policy initiative rather than a legislative initiative. This applies to many, many different aspects of how the department deals with first nations. Although I have great sympathy for enshrining it in statute, I'm not clear how we could argue the case in this particular piece of legislation.

Mr. Eugene Seymour: I agree fully with you on that argument. When they brought forward the Indian Oil and Gas Act, in 1974, we asked why you should need another act when paragraph 57(c) under the Indian Act allows the government to make regulations to cover all this.

In our collaborations on Monday night with Roy Fox of the Indian Resource Council, he said that all this act is doing is amending the regulations or giving them force to make it obligatory on the Governor in Council in the regulations. We could have done all that. But now that it's in existence—

The Chair: Mr. Seymour, unfortunately our time is up.

I think there was a question to Chief Buffalo. If there is something Chief Buffalo wants to comment on with respect to Madam Crowder's intervention, then you'll have to do that at the next opportune time.

We're going to go now to Mr. Duncan, for seven minutes.

Mr. John Duncan (Vancouver Island North, CPC): Thank you, Mr. Chair.

Thank you to the witnesses this morning.

For Chief Buffalo, I have to say that the words from my colleagues in the opposition parties resonate, from the standpoint that we've had consultations that have gone on for ten years. We had witnesses before the committee earlier this week and it became very apparent that, of the 130 first nations that either are producing or are potential producers, essentially all of them would choose to opt for this piece of legislation.

This is a serious piece of business and we're trying to have some sense of urgency. We don't want the same thing happening that happened previously with this bill. It got introduced and then, for one reason or another, ended up not getting through the legislative process. There is some sense of urgency and there's a feeling that real progress, real economic development opportunities and possibilities, are missed as long as this regime is not in place. That's coming directly to us from earlier testimony.

So I guess my question is this: when does consultation end? If you put another set of amendments forward, technically and theoretically you could argue, all over again, in another round of consultations. We've had people who were actually very complimentary about the degree of consultation that has gone into this specific piece of legislation. That's where my question would lie.

For the other witness, Mr. Seymour, the question I have is that I'm having some difficulty understanding actually who you represent and understanding whether you're a registered lobbyist. Exactly what is it?

I'd also like to point out that 25% of the businesses associated with this industry that would fall under the Indian Oil and Gas Act are already first-nations-owned. As recently as yesterday, I had discussions with Indian interests that are very serious about a refinery venture. They are completely oblivious to this bill. This bill makes no real difference in what they are attempting to do.

Further, I'd like to say that every lobby group from every sector would love to have their funding envelope put under statute, but government can't operate that way. I think what you're requesting is rather extraordinary and is not a direction that governments want to go in. I'd like you to comment on that.

Those are my questions.

• (0955)

The Chair: Go ahead, Chief Buffalo. Then we'll hear Mr. Seymour.

Chief Carolyn Buffalo: Okay.

I thank the committee members for their questions. I take very seriously the concern that you have raised. I think the issue centres around the whole issue of consultation. It's an issue that's being talked about very much these days. I think that in my first nation, we would take the position that a lot of the consultation is really not meaningful.

Did anybody come to me and ask me what I thought? I've only been chief since last October. I have not participated anywhere where I've had the opportunity to let anyone know what my particular thoughts are on this legislation.

I also have a question for the committee. I take very seriously your question about your time constraint. You want to go into clause-by-clause review, and I understand that, but I would just like some clarification. I would just like to ask this. I'm mindful now that the committee has quite eloquently pointed out that this legislation was tabled in the House a year ago. I understand it was the same text. Is the whole purpose of holding the committee meetings not another opportunity for us to come forward to state our position? Is that not what we are allowed to do? This is a public process. This is going to be federal legislation. This is going to have a direct impact on our communities. Are we not allowed to come forward? I understand the time issue, but are we not allowed to come forward and say these are some changes that we would like to see?

• (1000)

The Chair: Okay, we'll leave that question on the minds of members if they wish to comment on that. We only have 30 seconds left for Mr. Seymour to respond to Mr. Duncan.

Mr. Seymour.

Mr. Eugene Seymour: I'm an independent volunteer in this lobby. We started our whole initiative through the consultation process with the Indian Resource Council when Roy Fox reached out to involve other first nations communities, when he went downstream to talk to the independent gas stations at Akwesasne. There was a wholesaler in that meeting and then we all decided on this package. Then we brought it to the AGM of the Indian Resource Council, which unanimously approved it, and we brought it to other groups, like the Akwesasne Petroleum Co-op, which approved this initiative.

I'm just volunteering to present this, but because I've been involved in this legislation since 1974 I got tagged with keeping the file together and having to present this here to you today.

Thank you.

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

Members, we're finished the first round. We'll proceed to the second round and we'll go to Mr. Bagnell for five minutes now.

Mr. Bagnell.

Hon. Larry Bagnell (Yukon, Lib.): Yes, and I might share my time with Mr. Regan.

Ms. Buffalo, are you an employee of AFN?

Chief Carolyn Buffalo: No, I'm not.

Hon. Larry Bagnell: You're representing them as their chief, okay.

I sympathize with you, but I don't think you should be too worried that you didn't have a written submission. We get lots of witnesses at committees who don't have written submissions in both languages, etc. Also, I understand how overwhelmed AFN must be with the many jobs they have to do. We have one federal government with a quarter of a million employees; AFN represents over 600 governments and with very few employees. I know as a chief you're overwhelmed with your demands, so I sympathize with you.

I'd just like to ask you this. It is a bit late coming in. Is it not your sense, representing the entire AFN and the 600-plus first nations, that a vast majority of the ones that have these resources in their territory are generally sympathetic and would like us to go ahead with this, as imperfect as it is?

Chief Carolyn Buffalo: You're asking about my sense of it?

Hon. Larry Bagnell: Well, you're representing AFN, which represents 600 first nations. I'm just saying that my sense from the witnesses is that the vast majority of the ones who have the actual oil and gas on their territory would like us to go ahead with this, imperfect as it might be, to at least get it in place as a start. I'm wondering if that's your sense, as a representative of all the first nations.

Chief Carolyn Buffalo: My sense is that some first nations would like to see this proceed and are in agreement with it, but others are not. The Assembly of First Nations represents many governments, and even the ones that are oil and gas producing and have oil and gas on their lands, such as mine, are not all in favour.

We're not all of the same mind on every issue; we can't be. We're part of a democratic process as well, and we're not all going to agree. I believe that my job speaking for the AFN is to represent all of those interests, not just the ones in agreement with the legislation. The other ones have voices and positions, and they deserve to be heard as well.

Hon. Larry Bagnell: As Mr. Lemay said, we have had one letter from one who has some concerns with it.

Geoff, do you want to speak?

Hon. Geoff Regan (Halifax West, Lib.): To Mr. Seymour, I'm not a regular member of this committee. I'm our critic for natural resources, which of course is certainly related. But the bill is about royalties and ensuring that the ability of the government to make sure that first nations receive the royalties they should is in the regulations—calculating that, and all those kinds of things. It's not about the kind of economic development you're proposing, yet I'm not aware of anything in the present law that impedes that.

We saw the letter from Minister Strahl talking about centres of excellence. I think you're saying you'd rather have that enshrined in legislation. I don't see how this is the right place to put it.

As to Chief Buffalo, the fact that you're here indicates that you are entitled to come here and bring forward your concerns, which you're doing today. The point that members have been making is that in deciding what we're going to do about that, we each take into account the fact that this is the first we've heard of proposed amendments of this nature after this has been before Parliament—or the identical bill previously—for a year now. Those are concerns.

When I look at subsection 6(1.1), it seems to me that enabling the government to do this is a positive step. But regardless of this provision, when a government makes regulations there are at least 90 days before that comes into effect. During that time there can be consultation, you can react, you can create media about this and get reaction to it.

We have the process of the joint committee on scrutiny of regulations here in Parliament that examines regulations and can challenge them if they're problematic. So there are a number of other

means to react to whatever regulations come forward. But the fact that you're putting into legislation something that at least provides another incentive, another reason to make sure there's consultation, seems to me to be a positive step.

•(1005)

The Chair: That's it, unfortunately. We're out of time.

I don't know if you have a brief comment. No.

Mr. Albrecht.

Mr. Harold Albrecht (Kitchener—Conestoga, CPC): Thank you, Mr. Chair.

I thank our witnesses for being here today.

I want to follow up on your positive overall view. You indicated these are laudable goals and the employment and economic opportunities for first nations people will be advanced and generally it was the right approach. You then went on to point out it's been in process about ten years.

My concern is that you come here and suggest it's a hurried process now and that you would like to have seen the regulations first. My position would be this would further bog down any potential progress and in effect reduce the opportunities for economic development. I just want to get that on the record.

The other thing you mentioned is that some of the first nations are not in agreement. With due respect, I think I can understand that, but my position is that today you're speaking on behalf of the AFN, and it would have been good for me to know the position of the AFN after having done all their consultations at their level. To me, it would seem it's their responsibility to bring their position here for us to grapple with. We cannot take into account every single first nation person's input in terms of giving them what they want. We listen to them, yes, the same as my constituents. They don't agree with everything I vote for, but I have to listen to them to arrive at my final position. You would have helped me today by coming here with the official position of the AFN. We heard from the IRC and we heard their position. As has been pointed out by my colleagues, virtually 100% of the 130 first nations communities that have oil and gas, or the potential, support what we're doing. I encourage you to be here, but it would have been good for me to hear the official position of the AFN, as you're the spokesperson.

Mr. Seymour, you point out the need for vertical integration and value-added activity. I would like to ask you if the proposals that Minister Strahl and Mr. Fox commented about, the centres of excellence for business development, and also proposed paragraph 4.1(1)(v), where it talks about

requiring, to the extent that it is practicable and reasonably efficient, safe and economical to do so, an operator to employ persons who are resident on reserves that include first nation lands on which the exploration or exploitation is being conducted.

It seems to me those two proposals in the overall material that we have here address many, if not all, of the concerns you're bringing to us. Can you comment on that?

•(1010)

Mr. Eugene Seymour: No, they don't, but they're going in the right direction.

When you put together a consultative agency like a business centre, that's not going to have a cashflow from the crude oil coming out of the ground to the retail sale and retail gas station outlet right away. It's going to have people there to provide professional services and training for first nations people to learn how to run their own exploration drills.

With regard to moving in the right direction—and what we're proposing would be far too broad a range to be addressed by this committee—I submit to the committee that maybe a name change would be appropriate. Call it the Indian Energy Act, with oil and gas as part of it, vertical integration and financial incentive programs another part, and alternative energy another part. You fully involve the first nations in opportunities on their lands, as opposed to the narrow scope that was established over a century ago in 1898 to get the first nations person to surrender his mineral rights and then lease it to somebody in the oil industry. In over a century we have to start modernizing. If we're modernizing, let's modernize our whole methodology and allow the Indian to sell oil and gas directly from his land.

Dr. Lorraine Ruffing came to the Department of Indian Affairs in the 1980s recommending, after her study on leasing agreements in the Navajo reservation, that you're far better served, instead of getting this surrender leasing arrangement, to get into a sales contract agreement. I was terminated from the Department of Indian Affairs, the Indian mineral section, in 1970 for suggesting the band not surrender anything to lease, but instead sell in a sales contract. They asked how the band could do that. They don't know how to take it out by contract. In the contract it's still a mandatory employment clause and on-the-job training.

The Chair: That's it, Mr. Seymour; I'm sorry. Thank you very much.

I have one speaker left. Mr. Rickford, you have five minutes.

Mr. Greg Rickford: Thank you, Mr. Chair.

I welcome the witnesses.

I have a few questions. I share some of the concerns of my colleagues today about this news and the level of dissatisfaction that I'm hearing.

I'll start with you, Mr. Seymour. Would you not share the view that the role of government in this process is to provide a platform vis-à-vis legislation for the kind of economic development that you're advocating today as voluntary?

Mr. Eugene Seymour: Yes.

Mr. Greg Rickford: Isn't this kind of legislation, in the pith and substance, set up...? We heard witnesses on Tuesday talk about the necessary role for the government in this process vis-à-vis this legislation. Could it be said, then, that we have something here that is going to be an enabling instrument for those kinds of business opportunities in terms of both vertical integration and value added? Is that a fair statement? Does this set the table nicely for it? Isn't that the responsibility of the government?

Mr. Eugene Seymour: You're going in the right direction, but it's not enabling legislation enshrined in a statute. It will become a policy within the department. Like everybody who's worked in the department knows, there will be a reorganization. We were way

down the road in discussions with the departmental official referred to us by Jim Prentice. We were making marvellous headway with Jim Prentice and we misconstrued the fact that we thought he was a junior—

Mr. Greg Rickford: I'm sorry to interrupt you. I understand, Mr. Seymour, but what we're talking about is the difference between law and policy here, and the right, the flexibility, and the necessity for a government to maximize its role by shaping policy as a result of laws.

The economic development initiatives of this government are aimed, *inter alia*, to economic development in areas of energy and in areas of forestry, for example. We have a record in those regards. That's what I'm seeking clarification from you on.

•(1015)

Mr. Eugene Seymour: Yes. We see that policy would be able to address the matter, but it's not going to be enshrined forever. Once you pass it in law—

Mr. Greg Rickford: Okay. We'll agree to disagree, then, on the idea of whether a government should be lawfully bound in economic development policy.

Mr. Eugene Seymour: Yes, absolutely.

Mr. Greg Rickford: I'll keep that one for myself.

Before my time is up, I have a couple of questions for Chief Buffalo. Is your position today the position of the AFN, or your position?

Furthermore, you mentioned “some communities”. Could you give me a sense of how many “some communities” represent, and would you be prepared to disclose for the benefit of the committee who those communities are?

Chief Carolyn Buffalo: Thank you for your questions.

On the specific amendments I read out, that is the position of the AFN. Those are the amendments of the Assembly of First Nations. They asked me to speak here today. They said that was their position.

As I said before, these are laudable goals, and we're thankful to the committee for all your work on this, but there are still some outstanding issues.

With respect to the second part of the question, about which communities, as far as some of our specific more technical and substantive issues are concerned, I'm speaking directly on behalf of my first nation, but I've also spoken with those who are involved with the Stoney-Nakoda nations.

Mr. Greg Rickford: I'm sorry...?

Chief Carolyn Buffalo: The Stoney nations: Wesley, Chiniki, and Bears paw. I've spoken with officials from there, and they have these concerns as well. I also have been speaking with some of the legal team that worked on the Samson case.

Mr. Greg Rickford: So “some” would be...? Could you give me a general idea of how many communities?

Chief Carolyn Buffalo: Five.

Mr. Greg Rickford: I have no further questions.

Thank you.

The Chair: Thank you, Mr. Rickford.

Members, there are no more speakers or questions at this point. I think at this stage we will suspend momentarily until members can determine which steps we take from there. This will give us an opportunity to bid our presenters adieu, and we'll proceed from there.

So we'll suspend and resume in several minutes. Thank you.

• _____ (Pause) _____

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• (1025)

The Chair: Members, we're going to proceed with consideration of Bill C-5. At this stage, as has been suggested by members, we're at a point where we need to consider, in light of the interventions that have been received thus far, how the committee would like to proceed in terms of our consideration of this bill. So I'm at the pleasure of the committee.

Mr. Duncan.

• (1030)

Mr. John Duncan: I think what we have agreed on is that we'll have two witnesses from the department, from legal services, so that we can ask questions about the proposed amendments and any other questions we might have. After hearing from Karl and John—I forget their last names—then we can make a decision at that time whether to move forward.

The Chair: So we'll welcome back, at least in one case, departmental officials and we'll get your name cards in place here momentarily. This is for the express purpose of providing clarification, or for questions that members may have in respect to the testimony that we've received.

We'll proceed then. Are there questions?

Mr. Regan has the first question.

Hon. Geoff Regan: Thank you very much for showing up so quickly. It's amazing. No, I know you obviously were here watching anyway and waiting for the clause-by-clause process, which we may be coming to at some point. We'll see.

The main question I'm left with is about the suggestion from Chief Buffalo about clause 2 of the proposed bill, which talks about section 6 of the act and amends section 6 of the act. She suggested that "may" should be changed to "shall" and that the "or" down in proposed paragraph (a) be changed to "and". What I'd like to ask you is what are the implications of that, and what difficulties would it create, if any?

Mr. Karl Jacques (Senior Counsel, Department of Indian Affairs and Northern Development): Proposed subsection 6(1.1) is the Governor in Council regulation of power. What it does is give discretion to the Governor in Council to make regulations. As a drafting convention, "may" is used in respect of regulation-making authority so that the Governor in Council would not be obliged to make regulations because we don't know the content of what the regulations would be. It would force the Governor in Council to make these regulations and the effect of it would be that it would require the minister to ask to have prior consultation and prior

approval in any case, which would basically slow down the whole process.

In a nutshell, this would force the Governor in Council to make regulations without knowing exactly what was intended or what kinds of approvals or actions would basically be targeted by possible regulations.

Hon. Geoff Regan: If you put aside the question of the "or" for the moment—the "and" and the "or"—and just said "shall", requiring that the minister not exercise his power unless he's got either prior approval of the council or prior consultation or at the very least prior notice.... It's hard for me to imagine a situation when you wouldn't have one of those in any event. At least one of those surely would be appropriate. To say that you shouldn't have to give prior notice, it seems like the least that you would have to do, and it seems to me that a government in any event would have to do that.

How do you respond to that?

Mr. Harold Albrecht: Mr. Chair, sorry, I'm confused about exactly what section we're on. Could you just identify that?

Hon. Geoff Regan: Sorry. If you look on page 11 of this bill, just below the half point of the page, you will see—

Mr. Harold Albrecht: Clause 2, proposed subsection 6(1.1).

Hon. Geoff Regan: That's right, (1.1), there.

The question I'm asking about is about the "may", that the Governor in Council "may", by regulation. There's also the proposal about the "or" now being changed to an "and", but my first question is about the "may".

As it stands, saying "shall" says the minister has to make regulations, and I guess in relation to each one of these developments the minister, before exercising power under this bill, would have to either have prior approval of the council, or consult with the council, or at the very least give prior notice to the council. What's being posed also of course is we change the "or" to an "and", which would instead mean that he has to do all three. Once you say "and" there, it changes the meaning entirely. But sticking with the "or" for the moment, my question was wouldn't the minister, at any rate, have to do one of those things?

• (1035)

The Chair: Mr. Dempsey.

Mr. John Dempsey (Director, Policy, Indian Oil and Gas Canada, Department of Indian Affairs and Northern Development): I'll answer that one.

There are many decision points right now in the Indian Oil and Gas regulations at which there is first nation consultation; there is first nation notice that goes out. But there are also a handful of areas where the government itself makes an arbitrary decision, one example being in the area of pooling.

What we've heard from first nations is that they have concerns about getting too involved in the technical decision-making side of it because of a perceived shift in the fiduciary obligations of Canada to a first nation, if it is involved in those decision points. This is something we have raised with first nations through our consultation process over the years. There have been a few suggestions for changes from first nations to involve them more, but as they have come to understand the implications of that higher-level involvement, in all cases they have pulled back their requests to Indian Oil and Gas Canada to become more involved.

Hon. Geoff Regan: I will ask one more question, if I may.

The Chair: Please, go ahead.

Hon. Geoff Regan: What confuses me is that they wouldn't want at least prior notice.

Mr. John Dempsey: That was an area that was talked about. Certainly first nations are involved at a very high level in the oil and gas operations right now on their lands, but we've had no requests from first nations for such an addition, not even in the area of prior notice.

The Chair: We'll go to Madam Crowder.

Ms. Jean Crowder: Thanks, Mr. Chair.

We didn't have it specifically proposed this morning, but on Tuesday we heard that we had had a request from a nation to talk about being able to cancel the leases.

I wonder whether you could comment on that. I don't have specific wording on it, but it's that the first nations themselves would be able to cancel leases.

Mr. John Dempsey: That was talked about on Tuesday as well by Mr. Crowfoot. The lease cancellation process is something that is used as a last resort for the government. We have a lot of mechanisms in place through which we deal with companies or deal with first nations to try to resolve an issue.

Ultimately, we do use that power. I think it was said on Tuesday as well that Indian Oil and Gas Canada won't cancel a lease, but we actually have cancelled leases over the years. It is something we don't use very often, because it's an approach that takes away the complete royalty from that first nation—it stops the leasing process. It stops everything in its tracks and removes the royalties from a first nation, at that point.

Often, in our discussions with first nations, that's not what they want. They're looking for a resolution to the issue, not a cancellation of the royalty stream.

Ms. Jean Crowder: When there is that kind of dispute, can you tell me what the dispute resolution process looks like?

Mr. John Dempsey: We don't have a formal dispute resolution process in place. That's part of the concern we have and part of the modernization of the regime. In addition to legislative and regulatory change, we're looking at a series of policy changes, such as an alternative dispute resolution process that would be brought in to address those types of issues.

Ms. Jean Crowder: Thank you.

The Chair: Thank you, Ms. Crowder.

Mr. Lemay.

[*Translation*]

Mr. Marc Lemay: Mr. Jacques, feel free to correct my notions about administrative law which are anchored a little in the past. I have hardly ever seen a provision requiring the Governor in Council to do something. Generally he is invited to do something. This is why I was surprised by the position of the Assembly of First Nations because generally, we say: "The Governor in Council may, by regulation [...]" He is not required to do it, but if he does it must be in the manner described in the Act. Am I correct in this interpretation of administrative law, so far?

A voice: Yes, good enough.

Mr. Marc Lemay: Let me look at the clause-by-clause analysis of the bill made by the department. Let me refer to the same section as my colleagues. For those who have the document, it is on page 25 of the French version. I am not sure on what page you will find it in the English version. It is about the interpretation of the proposed subsection 6 (1.1). It reads as follows:

The regulations will clearly spell out the Minister's obligations with respect to consulting with First Nations. The regulations will specify when consultation will occur in the form and manner of the consultation. This will provide clarity and certainty in respect of the consultative process. The regulations will clearly state when approval of the First Nation is required, when notice must be given and when the consent of the band member in lawful possession is required.

It continues:

[...] the regulations may provide for First Nations approval prior to the issuance of every oil or gas lease and every exploratory licence.

This seems rather general to me. Am I correct in thinking that it is in this spirit that the government will or almost commit itself to consult First Nations before making a regulation under this legislation?

•(1040)

Mr. Karl Jacques: Mr. Chairman, my understanding of that clause is that only the Governor in Council has the authority to make use of these regulations.

The content of the regulation is already provided for in paragraphs (a), (b) and (c). Thus, what the Governor in Council will decide under the regulation is in what circumstances prior approval and notification will be required. So, if the Governor in Council is compelled to use its regulatory power it loses its discretionary authority to determine in what circumstances it should use it. Furthermore, as was said in committee last Tuesday, consultations will be held with First Nations for the development of regulations. Thus, they won't do so blindly.

Mr. Marc Lemay: Correct me if I am wrong, but this section 1(1) is the same as in Bill C-63 which died on the *Order Paper*.

Mr. Karl Jacques: The bill has not changed.

Mr. Marc Lemay: Thus this section is the same.

Mr. Karl Jacques: It is the same.

[*English*]

The Chair: Thank you, Monsieur Lemay.

Now, Mr. Bagnell.

Hon. Larry Bagnell: I just had three quick questions.

Before I get to the amendments, if there is a self-governing first nation with a land claim, does this not apply to them? They have their own rules in their land claim and self-government agreement. Is that true?

Mr. John Dempsey: For this legislation to apply, a first nation would have to designate their lands by the Indian Act. They would have to go through a vote process to designate their lands for oil and gas development. So under a land claim a first nation may have the right to do that or not. It depends on which land claim.

Hon. Larry Bagnell: Right, okay.

In relation to the proposed subsection 6.(1.1) limits, actually, I don't have much sympathy with the amendments, but I do have a question. Why would something about consulting with a first nation before you do this kind of thing actually be in regulation? It seems fairly fundamental. Why isn't that part of the bill?

Mr. John Dempsey: There are a series of decision points within the existing regulations that we'll be bringing over to new regulations. An example would be the suspension of operations. Right now there is the ability for the executive director of Indian Oil and Gas Canada to suspend operations. That isn't done with the consultation of a first nation because of the implications to a first nation if they were involved in that suspension order—liabilities. There are a lot of other technical decision points where a first nation may or may not have that technical expertise to share in the decisions, so that rests with Indian Oil and Gas Canada.

Hon. Larry Bagnell: My last question is this. I'm not sure you totally answered Ms. Crowder's question. She asked about what you thought about the amendment that would give the first nation the decision to cancel these leases. And you said sometimes the first nation doesn't want it. Well, if they didn't want it, they wouldn't make that decision, then, if they had the authority to make the decisions. So the question she asked was about what you thought about the amendment that would allow that. She asked whether you could explain why you would or wouldn't as a department make the decision. But the question was on whether you agree with the amendment that would put that decision-making power into the hands of the first nation on whose property the oil and gas exists.

•(1045)

Mr. John Dempsey: It would be extremely difficult, I think, for us to support that type of amendment, simply because we would view it as a disincentive for the oil and gas industry. It would introduce another form of approvals. It would bring in some uncertainty to the process from the industry investment side. What the companies we deal with have told us in the past is this. When we're looking at making regulatory changes and legislative changes, they're looking for a regime that is more certain in their eyes so that when they go to their shareholders and their investors, and they want to invest money on Indian lands, there is some clarity in what they're investing in. Bringing in a first nation lease cancellation authority, in their eyes and in the eyes of Indian Oil and Gas Canada, would be problematic.

The Chair: Go ahead, Mr. Jacques.

Mr. Karl Jacques: This act basically has the management of oil and gas resources given to Canada. From a legal perspective, having the cancellation by a first nation, independently of the government or IOGA, would muddy the waters as to what the responsibilities are. If

Canada has fiduciary obligations and there's interference, then it puts us in an uncertain situation legally as to what exactly the relationship is among first nations and Canada, and what kind of liability could arise.

The Chair: Thank you, Mr. Jacques.

Is there something else, Mr Dempsey?

Mr. John Dempsey: Yes, I would add just one more comment. The ability of a first nation to cancel a lease is an option for them right now under the First Nations Oil and Gas and Moneys Management Act. If a first nation went that route and were to opt into that piece of legislation, they would have the authority to cancel a lease or a permit or build their own regime around how that cancellation would work. It's not that the door's been closed completely to a first nation. There is an optional route for them to go.

The Chair: Thank you.

Members, essentially, I don't have any other speaker requests at this point. We have about 12 minutes left in the meeting today. I should point out, in reference to a couple of issues that did arise today—and we are essentially at the end of orders of the day—that if you wish to commence clause-by-clause consideration of the bill, we can commence that today, although there's very little time.

One thing should be pointed out, however, and I have circulated this to the subcommittee: the question of the Stoney Nakoda First Nation, whose concerns were circulated to you all in a letter on February 19, I believe. We had undertaken to provide them with an opportunity to come before committee today. Unfortunately, due to the late time.... We had a request from them to appear officially to the committee on February 26, but by the time we got back to them, the only spot that was open was today.

If it is the wish of the committee, there is another option. Tuesday is booked for Minister Strahl, on supplementary estimates C, as well as one hour on clause-by-clause analysis of Bill C-5. That's currently the schedule for Tuesday, and as you know, Thursday has been reserved for our discussions in terms of future study. So the only opportunity for consideration of testimony, if members wish, would be to ask them if they wish to give testimony by video conference on Monday, March 9, to members, perhaps through a reduced quorum, if members are available. I really pose that as a question, if you wish to. You have received, of course, the concerns from the Stoney Nakoda First Nation in the form of a letter, and so that's your prerogative, if you wish.

Outside of that, the other thing I wish to point out today is that, following up from Tuesday's meeting, Minister Strahl made a commitment to circulate his letter to the IRC in respect to the question of regulations. He referred to it as a comfort letter expressing his wishes around the continuing evolution of the regulation-making aspects of this bill. So that has been circulated to you today in both official languages.

That's it, members. If you want to start today, that's fine, or we can adjourn and resume our consideration for clause-by-clause examination on Tuesday, as scheduled.

Mr. Duncan.

•(1050)

Mr. John Duncan: We have the minister coming on Tuesday for the supplementary C estimates. But the estimates themselves have been tabled, so could we do both at the one go? I guess that's my question.

The Chair: I don't think the wish of the committee would support that direction. We've almost been estimated-out here. We just did these—

Mr. John Duncan: Yes, we're getting the minister a lot.

The Chair: Is that all, Mr. Duncan?

Monsieur Lemay.

[Translation]

Mr. Marc Lemay: Mr. Chairman, my question is for the lawyers. I don't know if you have read the position of Rae and Company, the law firm representing the Stoney Nakoda First Nation.

In fact, my question could be a bit broader. The lawyers would like us to amend the bill by adding in section 4 a subsection 3 which would state that: in the case of non-payment of royalties, the council of the First Nation to whom these royalties are owed may give notice of lease cancellation. If these royalties are not fully paid within 60 days, the lease will be deemed null and void and all the rights of the lease holder lost.

I don't know if you have read it this way. If not, I would certainly like to have your view. This is the amendment that the lawyers wanted to introduce in the bill.

Mr. Karl Jacques: I am not in a position to answer that question. I would have to look at the text. I don't have it in front of me. However, if I understand you correctly the amendment would have the same effect to suspend or put an end to the contract. Perhaps Mr. Dempsey has more information on how this would be put into effect.

[English]

Mr. John Dempsey: On the Stoney Nakoda proposed amendments, I'd just like to make a couple of comments.

Since we first started this process back in 1998, Stoney Nakoda Nation has been a key part of our consultations. They've been a key part of all committees that we've put together. They are a significant oil and gas producer, so it was thought that they needed to be involved at every step of the way, which they have been. They've had members on all subcommittees. They've attended all meetings. They've received all the information about the proposed changes.

This change being talked about now isn't something that was formally raised through that process. There have been informal discussions about those types of things, but they were involved in the drafting of Bill C-5 as well. That proposal was never tabled within our committee structure.

The Chair: Are there any other speakers?

Mr. Duncan.

Mr. John Duncan: I guess I'm wondering if it's the will of the group to proceed with clause-by-clause or not.

Ms. Jean Crowder: I would suggest at this time that we go to clause-by-clause on Tuesday.

Now, we didn't resolve yet whether or not there would be a telephone meeting with—

The Chair: I didn't hear any members speak to it. I assumed, since there wasn't interest.... If there is no further expression in doing it, then we won't do anything further at this point in time.

Mr. Russell, and then Mr. Bagnell.

Mr. Todd Russell: I agree with the chair. We would see the minister for estimates, supplementary (C), on Tuesday, and then go with cause-by-clause.

The Chair: Mr. Bagnell.

Hon. Larry Bagnell: I agree, but I'm just wondering; the minister has actually responded—I have a copy here—to the seven questions.

•(1055)

The Chair: Yes.

Hon. Larry Bagnell: So perhaps we could ask that first nation if they want to, before Tuesday, just for the committee's information, give their responses in writing to the minister's seven responses. We would then have that for our own personal reference while we go through clause-by-clause on Tuesday.

The Chair: That's a fair suggestion. We'll offer them that opportunity and seek their response in that regard.

Mr. Russell.

Mr. Todd Russell: Is it okay for me to move to a totally different topic, Mr. Chair, just for 30 seconds?

The Chair: Please, yes, we're good.

Mr. Todd Russell: Throughout our hearings, a number of witnesses who come forward make commitments to get back to committee members on questions that may have been asked, or on additional information. Do we keep track of that? For instance, there was some reluctance on the part of some departmental officials to share information on how schools are built, and what schools get chosen to be built. They promised to get back to us with an answer.

So I'm just wondering, do we keep track of that, or can we keep track of that? I'm telling you that a number of people say in committee, "We can't do that right now, but we'll get back to you."

The Chair: Yes. That's a very important point, Mr. Russell.

We will endeavour to make note of those instances where a commitment is made to get back to the committee. It may not happen right away, but certainly we will keep track of that, in review of the testimony each meeting, and provide follow-ups. We'll keep you informed, too, by the way, as to when something has been provided, as we did today in Minister Strahl's letter.

So we will keep track of those outstanding items and bring them forward as they arrive.

Mr. Albrecht.

Mr. Harold Albrecht: Mr. Chair, this is a little bit along the same line, although it may take a different tack.

We've had some conversation today about the fact that some of our witnesses did not have written materials. I understand that it's not always possible, but is it a practice that the clerk or someone identifies to the proposed witnesses, before they come, that it's expected of them? Perhaps a week before, they would be aware of the requirement we have.

If it helps them, it helps us. I think it's a mutually beneficial idea.

The Chair: I'll defer that question to the clerk, actually.

The Clerk of the Committee (Mr. Graeme Truelove): It's written on the witness confirmation forms that we send to them when they confirm with us. I haven't been expressing it as something that is expected by the committee. I have been expressing it as something that is an option available to them.

Mr. John Duncan: Further on the same question, if a witness sends you their speaking notes in one of the official languages, how long does it take to get the translation done? How much ahead do you request that they submit it?

The Clerk: It's five days.

Mr. John Duncan: It's five days.

The Chair: Thank you.

Thank you, Mr. Jacques, Mr. Dempsey, and members.

This meeting is adjourned.

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