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Chair

Mr. Chris Warkentin

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● (0850)

[*English*]

The Chair (Mr. Chris Warkentin (Peace River, CPC)): Colleagues, we're going to call this meeting to order. This is the 59th meeting of the Standing Committee on Aboriginal Affairs and Northern Development.

We are pleased to have the departmental officials with us this morning for the first questions. Obviously, they will have an opening statement, and then we'll have some questions as they relate to Bill C-47.

Colleagues, I know there are a number of questions to start us out. Then we will proceed to clause-by-clause study. Our officials will be staying here with us through this process. We appreciate that, and thank them for being here to assist us in this endeavour of doing the clause-by-clause study.

I'll turn it over to our officials for their opening statement. Then we'll proceed with questions and move on from there.

Ms. Paula Isaak (Director General, Natural Resources and Environment Branch, Department of Indian Affairs and Northern Development): Good morning, Mr. Chairman, and members of the committee.

My name is Paula Isaak, and I am the director general of the natural resources and environment branch of the Department of Aboriginal Affairs and Northern Development. With me today are members of the team: Janice Traynor, Todd Keesey, and our legal counsel, Tom Isaac.

As you know, Bill C-47, the northern jobs and growth act includes part 1, the Nunavut planning and project assessment act, which responds to our government's obligations under the Nunavut Land Claims Agreement of 1993, and part 2, the Northwest Territories surface rights board act, which fulfills our obligations under the Gwich'in Comprehensive Land Claim Agreement and the Sahtu Dene and Métis Comprehensive Land Claim Agreement in the Northwest Territories. Both of these proposed acts were developed in consultation with the relevant aboriginal groups of the two territories in accordance with our legal obligation under the land claim agreements.

Over the past few weeks the committee has heard testimony and received submissions from a number of witnesses on Bill C-47. Given the nature and scope of the comments and recommendations received by the committee, it's conceivable that some may give rise to some questions, or may require additional context to be fully understood.

If that is the case, Mr. Chairman, my colleagues and I will be pleased to respond and clarify any outstanding questions.

If I may, I would like first to reiterate a couple of rather important points with respect to the development of both parts of Bill C-47 and the consultation efforts in each case.

With respect to the Nunavut planning and project assessment act, our commitment to close consultation resulted in a unique co-development approach where the drafting of the bill was guided by a tripartite Nunavut legislative working group. Canada, the Government of Nunavut, and the Nunavut Tunngavik Incorporated, or NTI, were members of the working group. They were assisted in an advisory capacity by the Nunavut Planning Commission and the Nunavut Impact Review Board.

Since 2002 the working group, guided by the provisions of the Nunavut Land Claims Agreement and aided by the counsel of its advisers, resolved questions of policy and language, and crafted the bill which is before the committee today. This unique partnership confirmed our commitment to consult closely with Inuit, but our consultative efforts extended beyond the working group once a legislative proposal was completed.

The proposal was circulated widely across Nunavut and in neighbouring jurisdictions. Departmental officials travelled to no fewer than 10 communities in Nunavut to talk to people about the proposal. Industry was also engaged over the course of the last three years, and their insights and suggestions resulted in several improvements to the bill.

With respect to part 2 of the bill, the Northwest Territories surface rights board act fulfills the Government of Canada's obligations under the Gwich'in Comprehensive Land Claim Agreement and the Sahtu Dene and Métis Comprehensive Land Claim Agreement. Both agreements refer specifically to the need for a surface rights board.

The establishment of the board is also consistent with the Inuvialuit Final Agreement and the Tlicho Agreement, the other two comprehensive land claim agreements in the Northwest Territories.

The Tlicho Agreement allows for the establishment of a surface rights board. The Inuvialuit Final Agreement specifies that any interim measures related to access across Inuvialuit lands to reach adjacent lands will be replaced when a law of general application such as this bill is enacted.

Obviously, our duty to consult fully on such a legislative undertaking was paramount, and our consultation efforts spanned the entire two-year period the bill was in development.

To fulfill our obligations, three successive draft legislative proposals were distributed which were reviewed by 13 aboriginal groups and governments in the Northwest Territories and adjacent jurisdictions, the Government of the Northwest Territories, and industry associations, at which time written comments were solicited.

These reviews were followed by consultation sessions primarily in the regional centres of Yellowknife and Inuvik to explain the changes made from one draft of the initiative to the next, and to discuss potential improvements to the legislative proposal, including any accommodation measures.

The written comments received and views shared during consultation sessions from aboriginal groups and governments were reviewed and taken into consideration in the preparation of subsequent drafts of the proposed legislation. All parties who provided feedback received written responses to their comments indicating what accommodation measures had been included in the draft proposal, or the reasons that accommodation measures were not or could not be included.

Funding assistance was also made available to all aboriginal groups and governments throughout the consultation process and could be used for the preparation of written representations, attending consultation sessions, and for legal counsel or consultants to assist in reviewing the more technical aspects of the legislative proposals.

In summary, we have met the crown's obligations under settled land claims agreements and in common law to engage in meaningful dialogue with aboriginal organizations, governments, and other stakeholders who participate, have an interest in, or may be impacted by the regulatory regime in Canada's north.

In addition, I would reiterate that this bill is intended to implement land claims. In our view, and in the view of the Department of Justice, both parts of Bill C-47 are consistent with those respective agreements, subject of course to the four amendments that Canada and Nunavut Tunngavik Incorporated have agreed to make to the Nunavut Land Claims Agreement prior to the coming into force of the Nunavut planning and project assessment act.

At this point, we thank you for the opportunity to appear today to assist the committee in its review of Bill C-47. My colleagues and I would be pleased to respond to any questions that members may have about the bill.

● (0855)

The Chair: Thanks, Ms. Isaak. We appreciate that very much.

We'll now turn to Mr. Bevington for seven minutes.

Mr. Dennis Bevington (Western Arctic, NDP): Thank you, witnesses, for being here today.

Over the past while, we've received many proposals for amendments to this bill. Most of the presenters who have come forward have had issues with the bill.

In the case of Nunavut, there were a number of very pronounced amendments that were put forward. In the case of the Northwest Territories, there were concerns that were raised around the consultation process, especially in the areas of unsettled claims and the legitimacy of this process on unsettled lands, on lands that were withdrawn, and the lands that had no formal claim agreements in place. A number of issues have been raised.

It was interesting that at the last meeting with the Nunavut Planning Commission, their response to this bill was that without proper funding they would likely soon be in contravention.

Can you explain how this government is planning to deal with the changes that are required for that part of the Nunavut regulatory process, the land use plan, to ensure they can meet the requirements that are laid out in this bill?

Ms. Paula Isaak: Funding for the boards that are laid out in Nunavut are part of the implementation contract in the Nunavut Land Claims Agreement. The funding will be negotiated as part of that implementation contract, to allow for appropriate funding for the boards to implement their activities under this legislation.

Mr. Dennis Bevington: In all the discussions with Nunavut, were there any requests made prior to this bill being drafted for participant funding to be included as part of the legislation?

Ms. Janice Traynor (Environmental Policy Analyst, Environmental Policies and Studies, Northern Affairs, Department of Indian Affairs and Northern Development): Yes, there was discussion of that issue at the working group table. The members of the working group, NTI, GN, and NIRB and NPC, discussed whether participant funding should be included in the bill. In the end, it came down to providing a regulation-making authority for participant funding, and that's what you see in the bill today.

Mr. Dennis Bevington: Could you explain that in greater detail? The regulation—

Ms. Janice Traynor: There's an ability to make a regulation to establish a participant funding program that's provided in part 1 of the bill.

Mr. Dennis Bevington: Would that require an order in council?

Mr. Tom Isaac (Senior Counsel, Negotiations, Northern Affairs and Federal Interlocuter, Department of Justice): It's done by a regulation by the Governor in Council. They would pass a regulation to do that.

Mr. Dennis Bevington: At the Nunavut level?

Mr. Tom Isaac: No, at the federal level.

Mr. Dennis Bevington: Okay, so it requires the consent of the government to do this.

Mr. Tom Isaac: That's right, yes.

Mr. Dennis Bevington: So there's really no guarantee of this happening.

Mr. Tom Isaac: No, there's no commitment of that, that it has to take place.

Mr. Dennis Bevington: So in reality, this is not part of the bill?

Mr. Tom Isaac: Just the regulation-making authority is what's part of the bill.

Mr. Dennis Bevington: Okay.

When it comes to the Northwest Territories surface rights board act, could you describe how this process will work without any discretion on the part of the board to say no to access?

There are cases that have come up in the Northwest Territories where access is an important issue culturally on particular segments of land that exist in the Northwest Territories. The board will have no authority to deny access. Is that correct? The situation such as what occurred in Drybones Bay.... Are you familiar with the dispute that occurred over Drybones Bay? In the case of this act that dispute would not have occurred at all; the access would have been granted.

● (0900)

Ms. Paula Isaak: The act provides for the board to resolve disputes where an access right already exists. Where an access right is granted through, say, the provision of a mineral right, the board has the ability to resolve disputes where the parties have not been able to negotiate access to that right. It does not have the ability to deny the access. It has the ability to set the terms and conditions or provide for compensation.

Mr. Dennis Bevington: That project would not have been denied access?

Ms. Paula Isaak: The board could not deny access for that kind of project.

Mr. Dennis Bevington: Is that a similar situation that exists in all surface rights boards across the country?

Ms. Paula Isaak: I can't speak for all of them, but my understanding is there are similar types of arrangements in other surface rights boards across the country.

Mr. Dennis Bevington: In the development of this act was there an analysis of all the surface rights legislation in Canada?

Mr. Todd Keesey (Policy Analyst, Resource Policy and Programs Directorate, Department of Indian Affairs and Northern Development): We looked at the other surface rights boards. Other jurisdictions are different with respect to the mineral rights issuance processes. As a result of that, the different surface rights boards are different throughout Canada. But where there's a similar mineral tenure system, the surface rights boards' provisions are very similar in that the board cannot deny access.

Mr. Dennis Bevington: How does this play out with the recent court ruling in the Yukon on the free entry system on aboriginal lands?

Mr. Tom Isaac: This legislation doesn't affect the free entry system. The system is established through regulations in the Territorial Lands Act in the Northwest Territories.

As my colleagues have said, this legislation resolves disputes as to compensation and conditions of access when a right of access already exists. The right of access in this case exists under the mineral tenure system, under the free entry system that you mentioned, but this bill doesn't change that.

The Chair: Thank you, Mr. Bevington.

We'll turn now to Mr. Boughen for seven minutes.

Mr. Ray Boughen (Palliser, CPC): Thank you, Chair, and let me welcome the panel with us this morning. We're pleased you're able to take some time to share your thoughts with us on this legislation. We appreciate your work on it. Two years is a long time to be whacking away at anything, and you've come up with what we feel is a very strong piece of legislation.

We have some questions for you around the legislation. Some stakeholders have questioned the need for a surface rights board at this time, given that the land access disputes have been resolved satisfactorily for years in the Northwest Territories. Could the panel please help clarify why the establishment of a Northwest Territories surface rights board is needed now?

Ms. Paula Isaak: Canada has an obligation set out in the Gwich'in Comprehensive Land Claim Agreement and the Sahtu Dene and Métis Comprehensive Land Claim Agreement to establish a surface rights board act with jurisdiction to resolve matters with respect to terms and conditions of access and compensation to be paid for any of the access.

The establishment of the board is also provided for in the Tlicho Agreement and the Inuvialuit Final Agreement.

The department has twice attempted to create surface rights legislation, once in the early 1990s during negotiations on the Gwich'in and Sahtu comprehensive land claim agreements, and a second attempt in 2004. A bill was never completed at that time due to competing priorities of all the parties. Work on the proposed legislation that you see before you was started again in 2010 with the announcement of the action plan to improve northern regulatory regimes.

● (0905)

Mr. Ray Boughen: Thank you. I think that answers one of the questions I had.

Moving along, certain stakeholders believe that the surface rights board should have the power to deny access to lands where appropriate, linking the board's jurisdiction to this concept of the commonly known free entry system in Canada.

Could you please explain why the surface rights board would not have the power to deny access?

Ms. Paula Isaak: The board would not have the authority to issue any mineral right or deny access to lands. The board's jurisdiction is strictly limited to resolving disputes over terms and conditions of access, and any compensation payable for that access when a right of access already exists under another act of Parliament or a land claim agreement.

Furthermore, the land claim agreements do not provide the authority for the board to deny access. For example, in the Sahtu agreement it states that the board shall have a jurisdiction to grant right-of-entry orders, whether or not compensation for free entry has been determined, but the board may not refuse to grant a right-of-entry order where an applicant has a right to access Sahtu lands

That's an example from one of the agreements.

Mr. Ray Boughen: Thank you.

We understand that several changes were incorporated into the various drafts of the proposed legislation as a result of the consultation process. Could you provide us with an example of the types of accommodation measures that were made?

Ms. Paula Isaak: There were a number of accommodation measures that were included in the bill as a result of the consultation process.

For example, the bill includes the concept of aboriginal traditional knowledge as a factor to be considered in the knowledge or experience requirements for potential board members. In addition, it provides for the ability for interested individuals, aboriginal organizations or governments, and other associations to receive proposed rules and provide representations on those proposed rules. It provides a review provision when there is a new land claim agreement that is settled. It includes some changes to definitions or inclusion of certain additional definitions that were provided as a result of the consultations. It also ensures definitions outlined in the bill align with the definitions in the land claim agreement.

Those are examples of some of the accommodations.

Mr. Ray Boughen: For the final question, why does the proposed Northwest Territories surface rights board act apply to all the lands in the Northwest Territories, including municipal lands and islands where no land claim agreement has been settled?

Ms. Paula Isaak: The bill would become a law of general application and would apply to all lands, that is, settled lands and lands where no land claim agreement has been settled, in the Northwest Territories, when there is an owner or occupant, such as a leaseholder.

The bill is consistent with the rights of access found in the land claim agreements and other acts of Parliament. As these rights of access are different in each instance, the bill does not apply to all lands in the same manner. Most of the unsettled lands where there's no land claim agreement are currently crown lands. Only in a situation where there is an owner or occupant, such as a leaseholder, on lands that are not part of a settled land claim agreement could a dispute be heard before the board. Therefore, the board would have no jurisdiction over unsettled land claim areas unless there's an owner or occupant on those lands.

Mr. Ray Boughen: Okay, thank you.

The Chair: Thank you very much.

We'll now turn to Ms. Bennett, for her seven minutes.

Hon. Carolyn Bennett (St. Paul's, Lib.): As my colleague noticed, despite everything we've heard at all the hearings, the government has viewed this bill as absolutely perfect and not needing any amendment.

Ms. Paula Isaak: We believe that the consultation has been thorough and we've provided a bill that represents the thorough consultations that have occurred over the last number of years on the bill.

Hon. Carolyn Bennett: My understanding is that pretty well every witness who came before this committee said there needed to be a participant fund, that there would be a process where every project could be carefully examined for the potential impact and benefits. From the planning commission to the NIRB it was quite clear. My assumption would be that all on the working group were recommending a participant fund. My assumption would be that it was only the Government of Canada that refused to put that in the bill.

● (0910)

Ms. Paula Isaak: There were discussions about participant funding in the working group, and the agreement among the group was that regulation-making authority would be provided for in the bill, should there be a participant funding program in the future.

Hon. Carolyn Bennett: Did you say agreement?

Ms. Janice Traynor: There was discussion. As we've indicated—

Hon. Carolyn Bennett: I don't think you could call it agreement based on what we've heard at this committee.

Ms. Janice Traynor: No, I would agree with that. There wasn't agreement such that everybody was entirely pleased. There was an agreement that the members of the working group were prepared for the bill to go forward. Whether everybody liked every single provision in the bill, I don't pretend to think that's the truth, but there was an agreement that the bill as it was prepared was ready to go for consideration by parliamentarians.

Hon. Carolyn Bennett: So the Government of Canada had a take it or leave it approach. If they wanted it to come forward, they'd have to let it go forward without the participant funding that everybody else in the working group wanted.

Mr. Tom Isaac: I think the proper characterization would be yes, that Canada was unwilling to provide a guaranteed participant funding program outside of the ability to provide a regulation that could establish that program in the future. That was the Government of Canada's position. I think there was disagreement at the working group on that position, but it was.... A number of checks and balances and takes and leaves by all the parties involved with it resulted in the bill's being in its final form.

Hon. Carolyn Bennett: I'll give Ms. Isaak the opportunity to say there wasn't agreement.

Ms. Paula Isaak: That is correct. There wasn't agreement—

Hon. Carolyn Bennett: —even though you said there was agreement.

Ms. Paula Isaak: I stand corrected.

Hon. Carolyn Bennett: Okay.

The reluctance of Canada to put this in the bill as it sits in the Environmental Assessment Act.... It's quite clear there that the act provides for participant funding, so why did Canada refuse to do it this time? Given that you refused to put it in the bill, why would we believe that you would provide it via regulation?

Ms. Paula Isaak: I think that at the time the government was not prepared to create a participant funding program in this piece of legislation but to provide for a future opportunity and create a regulation-making authority to do it in the future, should that be desired.

Hon. Carolyn Bennett: “Should that be desired” meaning...? It's quite clear that every witness we heard says this is a very expensive part of Canada in which you can't get on a subway and come down to a hearing. It's been very clear that everybody who is affected by this legislation believes there needs to be an assurance that there will be participant funding.

Ms. Paula Isaak: I'm sorry, I mean, should that be desired by all parties, including the Government of Canada. Should there be an interest in creating a participant funding program in the future by the Government of Canada, then the provision is in the act to be able to do that.

Hon. Carolyn Bennett: It borders on disgraceful. The Government of Canada doesn't need participant funding; all the other parties to this do.

This is not a pleasant revelation, that the Government of Canada has refused to put anything in place that will make this bill workable. You can't actually examine the potential impact upon benefits without getting people together to talk about it, and that costs money. That's the responsibility of Canada.

How do we believe that this will happen? We can't. You can't give us that assurance, can you, that this is just a new way of writing bills, whereby it's done in the regs and you can give every assurance that it will be in the regs and that the money will be forthcoming. On Tuesday, we heard from the Nunavut Planning commission that we will not be able to enact this legislation with additional funding even from Nunavut, let alone from the participants. There's no question about it.

It's like so much of the legislation that is raining down on this committee. Without the money to do the job, these pieces of paper mean pretty well nothing. Can you at least let us know whether, because this is so complex and has taken a decade of negotiation, the government will be able to agree at least that there will be a five-year review of this legislation?

● (0915)

The Chair: There's just time for a short answer.

Ms. Paula Isaak: We haven't provided for a five-year review. Experience in the past has indicated that five years is a very short period of time for a board to have experience to be able to review the activities and the effectiveness of a bill. Five years is a very short time in which to be able to have a history in order to have an effective review.

Hon. Carolyn Bennett: Five years is a very long time if there are not adequate funds to be able to do anything. It should be up to this committee to actually say this ain't working.

Ms. Janice Traynor: Do I have a minute to add to that?

The Chair: Sure, if you can give us a short answer, that will be the end of that question.

Ms. Janice Traynor: In terms of the review, I think we have to remember that the commission and the board have been up and running for over 15 years now, so we have been able to benefit from their experience over the last 15 years. In a sense we had the benefit of having 15 years of practice in developing the bill to begin with. The board and the commission were invaluable in providing us their expertise in the development of the bill.

We have also implemented a land claim agreement, so there is quite limited scope actually for changing some provisions, many provisions, most of the provisions of the bill, because we have to make sure that they stay consistent with the land claim agreement.

The Chair: Thanks, Ms. Traynor.

Ms. Ambler, we'll turn to you for the next seven minutes.

Mrs. Stella Ambler (Mississauga South, CPC): Thank you, Mr. Chair, and thank you to the witnesses for being here today to explain this to us a little better in the late stages.

My questions are with regard to the Nunavut planning and project assessment act. There's been some discussion today with witnesses in the committee about appropriate levels of funding for the NIRB, the Nunavut Impact Review Board, and the Nunavut Planning Commission so that they can implement the NUPPAA.

Can you provide a level of assurance in terms of the specific process later on for securing suitable funding? In other words, can you tell us how this will be accomplished even though it's not specifically laid out here in front of us?

Ms. Paula Isaak: The Nunavut planning and project assessment act to a large extent implements the planning and assessment process that is already in place in Nunavut. Nevertheless, some incremental costs are expected, and the department recognizes that appropriate funding levels will need to be negotiated once Bill C-47 receives royal assent.

In terms of how this is done, funding for institutions of public government in Nunavut is determined on a tripartite basis, negotiated among Canada, Nunavut Tunngavik Incorporated, and the Government of Nunavut, through the implementation contract. The Nunavut Impact Review Board and the Nunavut Planning Commission are required to provide annual work plans and budgets in order to access the funding allocated to them under the implementation contract.

Mrs. Stella Ambler: Thank you.

Also, with regard to funding and the requirement for the commission and the board to implement and maintain a public registry of documents, such as bylaws, rules, guidelines, decisions, and project proposals, we heard that these would all be maintained and provided online. This is obviously a significant undertaking and responsibility, something rather new. We heard about this and the new responsibilities just the other day. Would you say that all of these issues related to that kind of administration, the online registry and so on, have been addressed? Is the capacity there, would you say, for the organization to be able to do this?

● (0920)

Ms. Paula Isaak: I would say that at this time not all the capacity issues for the registry have been addressed. While the commission and the board largely acknowledge that as public institutions they have a duty to share certain information with the public, the bill requires an Internet-based public registry as a means to doing so. It's expected that the resources required will be a key component of the tripartite funding arrangement that I laid out in the earlier answer. That will be part of the discussions about how to fund a registry.

Mrs. Stella Ambler: The tripartite agreement will look after that as well, participant funding as well as the online registry.

Ms. Paula Isaak: It will address the issue of the registry. It will not address the issue of the participant funding.

Mrs. Stella Ambler: Funding is something different entirely.

Ms. Paula Isaak: That's right.

Mrs. Stella Ambler: Okay. Thanks for clearing that up for me.

So really, the bill itself is not the place for that, because there is a mechanism through the tripartite agreement.

Ms. Paula Isaak: That's right, it's the implementation contract.

Mrs. Stella Ambler: Thank you.

Speaking of participant funding, the committee has heard from the opposition that the legislation does not include the provision for participant funding with regard to the environmental assessment process in Nunavut.

Why is that? Why is there no provision for participant funding in this bill?

Ms. Paula Isaak: Currently, as we mentioned, there is no dedicated program for funding participants in the environmental assessment process in Nunavut, although some funding has been provided through other programs, for example, through the Canadian Northern Economic Development Agency, to assist some participants.

In addition, for some project reviews, Aboriginal Affairs and Northern Development has been able to provide funding for some participants, but it has not been on a predictable and sustainable basis.

The bill provides the ability to make a regulation, to establish a funding program, and to facilitate public participation and project reviews. However, such a regulation is not under development at this point, as a sustainable and reliable source of funding to support it has not been identified at this point. Should ongoing funding be secured in the long term, the department could move quickly to establish a program in regulation.

Mrs. Stella Ambler: That's good to know. Thank you.

The committee has been asked to consider amending the Nunavut planning and project assessment act to include a provision mandating a review of operations after five years.

What would be the impediments or disadvantages in doing so?

Ms. Paula Isaak: The concept of a statutory review of the act's performance after five years was not entertained due to a number of limitations and drawbacks inherent in such a process.

In Nunavut in particular, within the first five years of the act's existence, there may only be a few major projects that are subject to environmental assessment. This would be a very limited sample size from which to draw any meaningful conclusions.

In addition, such reviews often consume more resources, both financial and human, than are saved by any marginal improvements resulting from what can turn out to be a lengthy process.

Mrs. Stella Ambler: Sometimes the review can take five years.

Ms. Paula Isaak: It can take quite a long time, yes.

Mrs. Stella Ambler: I think we saw that with the CEAA review. Sometimes it takes that long to get around to it.

Thank you. That's good to know.

The Chair: You have 20 seconds left.

Mrs. Stella Ambler: Okay.

With regard to the environmental assessment aspect of the legislation, there's been some discussion about the current definition of "project". Do you think the present definition allows for adequate determination of what constitutes a project, especially for projects with a low impact?

Ms. Paula Isaak: The term "project" is fully determined in its definition in the bill. The bill offers some clarification on the definition of project under the agreement that Nunavut, Tunngavik, and Canada agreed could be read into the context of planning and assessment. For instance, it specifies that projects under the bill are only those that involve a use of land and water or resources, and that certain municipal activities are excluded. As well, it clarifies that those projects with impacts that are manifestly insignificant are not subject to the bill.

The term "manifestly insignificant" is the term that will exclude low-impact projects. This term is found in, for example, the Mackenzie Valley Resource Management Act, so there are some precedents for the use of this kind of term, namely, "manifestly insignificant".

● (0925)

The Chair: Ms. Crowder.

Ms. Jean Crowder (Nanaimo—Cowichan, NDP): Thank you to the witnesses for coming. It's a complicated bill, and I appreciate your taking the time to provide some clarity.

I have to come back to the funding once again. We heard from both NIRB and the Nunavut Planning Commission that they're having difficulty meeting their current obligations, never mind the new obligations that are being added as a result of this bill.

Did the department do an analysis of the funding that would be required not only to meet current obligations but for new obligations in the legislation? Did they actually do an analysis?

Ms. Paula Isaak: An analysis has not been completed yet. As part of the implementation process, the intention is to do some analysis once the act comes into effect to analyze if there are any incremental costs that would need to be factored into the implementation contract.

Ms. Jean Crowder: We know there are incremental costs because there is a public registry. There's the requirement to do the translation.

In other words, the department doesn't have a handle on the amount it will cost to implement this piece of legislation.

Ms. Paula Isaak: That is not fully determined at this point. That will be determined in discussion with the parties in the implementation contracting process for the funding—

Ms. Jean Crowder: It's not fully determined. Does that mean the department has taken a look at what some of the requirements would be with regard to funding costs?

Ms. Paula Isaak: We have not done a full analysis of the incremental costs at this point.

Ms. Jean Crowder: Have you done any analysis? You're using the words “full” and “partial”. Have you done any analysis?

Ms. Paula Isaak: We have not started that analysis.

Ms. Jean Crowder: We have a significant piece of legislation that's going to add a significant burden to regulatory bodies that will now have obligation under the legislation, and the department has not done any analysis of what costs would be incurred.

Mr. Tom Isaac: The concept was largely that after the bill is enacted there's a period of time for implementation prior to its being brought into force by an order, so during that time the concept at the working group level was to discuss with NPC, NIRB and other stakeholders the incremental costs associated with additional responsibilities under this bill and, in that context, develop an implementation plan and some budgeting for the implementation.

Ms. Jean Crowder: Forgive me if there is a great deal of scepticism around that given the fact that my understanding from hearing from the Nunavut Planning Commission and NIRB is although they've had some bumps in their current funding, in fact their current implementation agreement hasn't been renegotiated. Is that correct?

Ms. Paula Isaak: I believe that's correct.

Ms. Jean Crowder: Why would the participants believe they are going to get the money to do their job if you can't even negotiate this current implementation agreement? What is the good faith measure that they're going to get what they need to do the job? Is it, “Trust me, I'm from the government. I'm here to help you?”

Ms. Paula Isaak: My understanding is the implementation contracts are renegotiated on a cycle at which point all the matters for funding the implementation of the agreement are conducted.

Ms. Jean Crowder: The cycle is lagging now, so how long will people have to wait to get the funding for this current piece of legislation?

Ms. Paula Isaak: As our legal counsel indicated, there will be a period of time between when this legislation is passed and when it comes into effect to allow for discussions.

Ms. Jean Crowder: Can you give us a time estimate? Will it be one year, two years, five years, ten years?

Ms. Paula Isaak: The concept that we were thinking about was a year minimum before the act came into—

Ms. Jean Crowder: We'll pull this witness testimony and a year later we'll be able to sit down with you and discuss progress on the funding implementation of this agreement.

Ms. Paula Isaak: The contract will be negotiated for the implementation of this bill in that period of time before the act comes into effect.

Ms. Jean Crowder: Mr. Chair, perhaps I could ask the clerk to make a note that in a year we will recall these witnesses to discuss the funding implementation.

Have I any time left?

● (0930)

The Chair: There is about 20 seconds.

You will recall, Ms. Crowder, with regard to the coming into force within the legislation it is two years in the Northwest Territories.

Ms. Jean Crowder: I just heard the witnesses say that within a year—and I'm talking about the Nunavut Planning Commission and the Nunavut Impact Review Board. Within a year I'm expecting to hear about some funding.

You allowed Ms. Ambler time when she had 20 seconds.

With regard to schedule 3, we did hear some concerns from the witnesses about how schedule 3 would be developed. Could you tell us what the process for developing schedule 3 would be?

Ms. Janice Traynor: Yes, I can. Schedule 3 consists of projects that have been agreed to between the Nunavut Impact Review Board and a minister under the agreement, schedule 12-1, item 7 of the agreement, that should be excluded from the requirement for screening.

The board has already made such agreements with some ministers. We intend to work with the board before the coming into force to ensure that all those agreements that are in place now are included in the schedule.

The Chair: Thank you very much.

We'll now go to Mr. Seeback, for five minutes.

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

Paula, thanks for your opening statement. I thought it was helpful for the committee on a number of levels.

One of the things I want to do is to drill down quickly on your statement that all the parties who provided feedback received written responses to their comments indicating what accommodation measures had been included in the draft proposal or why the accommodation measures were not or could not be included. I take it there was a significant amount of back and forth that went on through the development of this legislation.

In that context, looking at the amendments that have been submitted both by NIRB and NTI, were these amendments that were passed back and forth during this process commented on, and were the reasons the accommodation couldn't be made passed on? I'm not saying all the amendments in the submissions, but a lot of them, none of them, most of them.

What would you say about that?

Ms. Janice Traynor: I would say almost all of them were. There were a few that we had not been aware of during the consultations with the working group.

Mr. Kyle Seeback: Is it fair to say that bringing these submissions back to the committee has been like a second kick at the can? Is that a fair description?

Ms. Janice Traynor: For many of them there's an opportunity for the witnesses to the committee to express those interests again, yes.

Mr. Kyle Seeback: With respect to those submissions, my point is that you already likely provided reasons to those organizations for why those accommodation measures were not or could not be included, so they would have that information before they came back to the committee.

Ms. Janice Traynor: Yes.

Mr. Kyle Seeback: Tom, being counsel, might be able to answer this a bit better than others, but feel free, anybody, to answer.

When I look at some of the amendments, for example to proposed section 134 and subsection 135(6), proposed by NIRB, they seem to be more along the lines of language and drafting. Would you say that a lot of these amendments that are being put forward are more drafting issues between two legal parties trying to get the language right in an agreement? That's my general view of a lot of them. It takes me back to law school when I looked at drafting agreements. I never did it after that.

What would you say to that comment?

Mr. Tom Isaac: I would agree that several of the amendments being sought are drafting issues. In several cases the legislative drafters were seeking consistency with the statute book as a whole when they chose particular language that was different from the language being sought by NTI. Sometimes it was a situation where we didn't think a particular clause was necessary to get the point across, whereas the other parties did.

So yes, there were several instances where it boiled down to a drafting issue. The difference of opinion was largely that the other party would consider the issue to have some substance to it and we would consider it to merely be drafting.

● (0935)

Mr. Kyle Seeback: Right, okay. That was my view of it.

On a bit more substantive question, in NTI's submissions to the committee, they indicated that some parts of the land use plans may not be implemented if the bill is not amended to include Governor in Council definition of the parties that have this responsibility.

My question is whether you're concerned at all with this, especially with respect to establishing a park.

Ms. Paula Isaak: The Nunavut Land Claims Agreement makes a distinction between cabinet that approves land use plans and the department and agencies that implement them. We don't think this is a gap, because there is a process for examining proposals to establish a park described in the agreement that has been carried forward into this bill. It involves the Nunavut Planning Commission deciding whether park proposals conform to the plan and the Nunavut Impact Review Board assessing potential impacts of establishing a park, and responsible ministers then responding to the board's recommendations. In our view this is the intended design of the system, and it's the reason the agreement distinguishes between the role of cabinet and departments and agencies.

Mr. Kyle Seeback: Mr. Chair, do I have any more time left?

The Chair: There's no more time left.

Mr. Bevington.

Mr. Dennis Bevington: Thank you, Mr. Chair.

I would just like to ask Mr. Keesey which jurisdictions in Canada do not have a free entry system.

Mr. Todd Keesey: I wouldn't be able to tell you that off the top of my head.

Mr. Dennis Bevington: You've indicated there are differences in mineral administration systems across the country. Which ones don't have free entry systems?

Mr. Tom Isaac: I think the maritime provinces don't have free entry systems, New Brunswick, Nova Scotia.... Quebec, Ontario, B. C., Yukon, Nunavut, and the Northwest Territories have free entry. I think Alberta does, and Manitoba as well.

Mr. Dennis Bevington: And Saskatchewan?

Mr. Tom Isaac: Likely Saskatchewan. Free entry is, generally speaking, in mineral jurisdictions with the prevailing system.

Mr. Dennis Bevington: What part of Canada has mineral exploration not taking place?

Mr. Tom Isaac: I think it would take place everywhere, but less so in the maritime provinces.

Mr. Dennis Bevington: Do they do it by concession there?

Mr. Tom Isaac: I think so. I haven't looked at that in a long time.

Mr. Dennis Bevington: Can you bring that back to us because you made the point that there are different approaches with these laws based on different systems. I would like to see if there are any different approaches within the same systems.

The unsettled lands are a difficult issue. Now, we have land withdrawals in the Northwest Territories in two regions, large-scale land withdrawals. To me that suggests there's an interest in the land, that the government has acknowledged there's an interest in that land. What you're saying is that interest does not apply to this legislation. It doesn't establish any level of future ownership or the importance of that ownership. The government doesn't have a responsibility to deal with that land in a different fashion than crown land that is not under withdrawal.

Mr. Tom Isaac: When land is withdrawn from disposition under the Territorial Lands Act, the intent of that withdrawal is that no new interests will be issued in that land. They do that for a number of reasons usually with respect to what future considerations might be for that land, such as land claim negotiations, protected areas, things like that. When they withdraw land, the purpose is to stop new interests from being issued in that land.

However, generally speaking, there are existing interests in the land that's withdrawn. In the case where there was an existing surface interest and existing subsurface interest, there is a potential for a dispute to arise between access in respect of that mineral interest. The bill applies to that circumstance. It's not a very common circumstance.

● (0940)

Mr. Dennis Bevington: Within the fact that there's some implied ownership with withdrawal lands that hasn't been settled, then you're saying this board should have the right to give access to that over those properties that have not been settled, that have not been finally determined, and that the law of general application should apply to all of them.

Mr. Tom Isaac: We wouldn't accept the view that a land withdrawal is a recognition of any sort of implied ownership of a party to the land. We don't accept that as being the case of a withdrawal. Like I said, a withdrawal is just to prohibit new interests from being issued. It's not recognition that someone else has ownership or an interest in law in that land.

Mr. Dennis Bevington: I don't think the view of my colleague Mr. Seeback that these amendments have been discussed already is really germane to what we're doing here. This is a legislative committee that has to determine whether the government and the bureaucracy have acted fairly in determining the nature of this bill, not whether you could use your upper hand in a working group to put forward the terms and conditions that you want. No, our job is to actually interpret what is fair for people. Wouldn't you agree?

Mr. Tom Isaac: Yes, we're here to assist the committee and answer questions to that end.

Mr. Dennis Bevington: It's not to support your position.

The Chair: Thank you, Mr. Bevington, your time is up.

We'll now turn to Mr. Seeback for any final questions that he might have, and if not—

Mr. Kyle Seeback: That's very fortuitous considering Mr. Bevington found my questions so entertaining. I'm happy to get a second chance to go down a couple of different roads.

That's certainly not what I was suggesting, Mr. Bevington, but I'm trying to explain that there seemed to have been significant back and forth in the negotiation with respect to this legislation. Some at the committee seemed to suggest that this was a take it or leave it type of exercise. From what I'm able to see, and especially with some of the statements that were made by Paula in her opening statement, that's quite far from the truth.

To pick up on that, with respect to part of your opening statement when you talked about how to fulfill our obligations, three successive draft legislation proposals were distributed. I take it that there was some give and take with respect to each draft proposal. Certainly some of the things that certain parties wanted included in the legislation were included in subsequent drafts. Is that fair to say?

Ms. Paula Isaak: It is correct. Over the course of each of those circulations of the draft, there were responses to requests and indications where accommodation measures were made and where they were not made and why they were not made.

That occurred in each of the three rounds, I'll call them, for the consultation for the Northwest Territories surface rights board act.

Mr. Kyle Seeback: How long did those three rounds take?

Ms. Paula Isaak: Over the course of the consultation, it took a total of approximately two years.

Mr. Kyle Seeback: One of the things that I heard at this committee previously, and I'll ask you to comment on, and you can agree or disagree with what I'm putting forward, is that, effectively, no one got everything they wanted, but everybody certainly got some of what they wanted or perhaps most of what they wanted.

Would you agree with that assessment? Do you think that's a fair characterization of what took place with respect to the negotiation and the drafting of this legislation?

Ms. Paula Isaak: I think the drafting of any legislation involves a lot of give and take and discussion among the parties. It's a delicate balance of all of those interests and discussions. I would say, by and large, all the parties felt they had been consulted, their views had been heard, and they had understood where accommodations were made and not made. The bill in totality represents many years of that back and forth and that delicate balance that ultimately is in the bill before the committee.

● (0945)

Mr. Kyle Seeback: Great. With respect to the amendments that NTI put forward, if they are not implemented, do you think that would jeopardize a clear interpretation of NUPPAA?

Ms. Janice Traynor: No. Do you want—

Mr. Kyle Seeback: I think it's an important question, so if you want to expand on that I'd be happy to.... I like succinct answers. When I used to cross-examine, those were exactly the responses you wanted, but here perhaps we can be a little more verbose.

Mr. Tom Isaac: In the language selections we made for drafting the bill and the mechanisms and structure of the bill, obviously clarity was one of the fundamental goals that we were seeking. The choices that we made in those regards, we think, it's the government's view, are the clearest way of expressing the thoughts and requirements of the land claim and the bill itself.

As I said earlier in my response, there were differences of opinion on the language and the drafting, but our view is that the language and drafting of the bill itself is the preferable language and drafting and the clearest way of expressing the concept.

Mr. Kyle Seeback: Great, I thought—

Mr. Tom Isaac: My colleague was mentioning that the differences in the language in the bill are not, generally speaking, differences in interpretation of the land claim agreement between NTI and Canada. They're just differences in how to express that and the language used to express that.

The Chair: Colleagues, thank you.

Thank you, Mr. Seeback.

Mr. Kyle Seeback: I have 30 seconds again. Now I'm getting upset.

The Chair: The time has come to end the first part of the meeting. We will now suspend for a few minutes to set up before we go into clause-by-clause consideration.

We'll suspend and be back in five minutes.

● (0945)

(Pause)

● (0955)

The Chair: Colleagues, we'll call this meeting back to order and begin the process of going clause by clause.

I'm hopeful that everybody has all of their amendments and is prepared to work through this with me. We do have over 50 amendments, so we will get as far as we get today and then we'll continue at the next meeting.

We are considering clause-by-clause of this bill, and we will move to clause 1 now. Pursuant to Standing Order 75(1), consideration of clause 1 is proposed at the end of the consideration of the bill.

I'll therefore call clause 2 of the proposed act.

(On clause 2)

The Chair: I notice there are a number of amendments with respect to clause 2. NDP-1, I believe, is the first one.

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

I'm not going to read my amendment as everybody has a copy of it, but there are a couple of comments I want to make on it.

There seems to be a difference of opinion in drafting versus substance. A number of the amendments I've presented are NTI's amendments. To reiterate NTI's position on this, they feel it's important that the legislation before us be consistent with the Nunavut Land Claims Agreement. In their view, there is some substance with regard to these amendments, and these amendments will ensure consistency and transparency with the Nunavut Land Claims Agreement.

On this first amendment, they are suggesting that clause 2 of the bill restricts the definition of "department" or "agency" to the public service, with the result that the Governor in Council is excluded from the list of bodies responsible to implement terms and conditions of approved land claims use, plans, and project certificates.

It's the implementation piece that's important in their view. Therefore, I'm proposing amendment NDP-1.

The Chair: Not seeing anybody wanting to speak to that in addition, I'll now call the vote on the amendment.

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

The Chair: Amendment NDP-2.

Ms. Jean Crowder: On NDP-2, it's the same argument, "regulatory authority means the minister". It's including the minister.

Again, it's around the implementation piece and clarity.

The Chair: Not seeing anybody in addition wanting to speak to that, we'll vote on amendment NDP-2.

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

The Chair: Amendment NDP-3.

Ms. Jean Crowder: In amendment NDP-3, there are a couple of pieces. One of them is around the addition of "except after close consultation with the designated Inuit organization and must be published in the *Canada Gazette*".

Consultation is an important part of a process and needs to be clearly outlined in the legislation. We've certainly heard concerns around the participant funding aspect of it, but I think if we at least agree that consultation needs to be included, it would be important to state that in the legislation.

The Chair: We'll take a vote on that.

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

The Chair: We're on amendment NDP-4.

Ms. Jean Crowder: On amendment NDP-4, again, it's in the same light of conducting public hearings and debate throughout the land use planning process.

On conducting public hearings and debate through the land use planning process, this is about promoting public awareness and discussion. With regard to this, one of the things we've heard the government say is that the Nunavut piece of this legislation had an extensive consultation process. That's been verified by many of the witnesses; people appreciated the consultation process.

We heard the Nunavut Planning Commission talk about the importance of the work they've done. I believe they said that in 90 days they'd been to numerous communities throughout Nunavut. It is important that this aspect of being able to conduct public hearings throughout a planning process be recognized in legislation and then be appropriately funded. I won't talk about funding at this point because I'm going to get a chance to talk about that later.

This would be an important amendment so there is that clarity, that consistency, in the legislation.

● (1000)

The Chair: I'm recognizing some people who want to intervene on this.

Go ahead, Mr. Genest-Jourdain.

[*Translation*]

Mr. Jonathan Genest-Jourdain (Manicouagan, NDP): I cannot emphasize enough the need to put forward proactive measures to encourage popular support and citizen participation. History shows that literacy rates in remote areas are quite low, and there is very little participation in both democratic and political life. That's one reason why, given the strong Inuit presence in that area, we should make an effort to go and meet with people.

It is important to always bear in mind that these are fundamentally oral cultures and that these people need to deal with human beings. We need to go there and meet on site with the local population. These aren't substantial amounts that are involved; it's simply will. Government representatives need to go there and, first and foremost, and encourage that a position be taken. Documentation needs to be provided so that the position is very clear and that the population has everything it needs to take a position on a given issue. So, these remote communities need to be given plenty of training.

That is all I have to say.

[*English*]

The Chair: Thank you.

Go ahead, Mr. Bevington.

Mr. Dennis Bevington: I think this amendment is important in a couple of respects.

One of them, of course, is what my colleague, Mr. Genest-Jourdain, was talking about, which is the fact that for affected communities on these lands, it is quite different from being in a farming area in Alberta, where the land use is predictable. It's fenced. There's a very clear outline of where the land use is happening.

Here you have a situation where there's a small number of people in scattered communities over huge areas. Their understanding of land use is completely cultural and completely traditional. It needs an expression that takes on a lot of importance when you come to it. If you don't do it correctly, as I've seen so often in the Northwest Territories, if you don't conduct proper consultation, you end up in bad situations.

I can think of times when, in sitting on environmental impact assessment boards, we had the opportunity to review companies that went out and talked with people about land use. It became clear after a while that the adequacy of that process fell down because the people they were talking to didn't understand the process. They didn't understand clearly how the law applied to them and how they could use the law to put forward the issues that they considered important, such as the movement of caribou.

We saw that with the diamond mines in the Northwest Territories. The first nations knew there were going to be impacts on the caribou, but unfortunately they couldn't project that in a good fashion. They didn't understand the underlying principles of the law that was being applied there because it hadn't been given to them in a good and proper fashion. They didn't have the opportunity to stand up very strongly on these issues. We have ended up with a situation in the Northwest Territories where linear development at the three diamond mines that exist there has now impacted the caribou herds and has very strongly impacted the subsistence hunting that takes place on that land.

Without public process, you're going to have a situation where that sort of thing can happen again, so it's very important that it be identified.

The second reason it's important and that it's identified for this legislation in an amendment is the negotiations that are going to take place with the land use planning commission about the resources they need to do the work. If it's in the act as one of the things that this commission must accomplish, then it's certainly going to be important, when you enter into the negotiation process, to establish the resources required to deal with the land use issues in a good fashion. It's going to be important that the commission has the surety that this is their job, that it has been set in the legislation, and that when it comes to the negotiating table, there will be no question about the provision of the resources, in order to accomplish the work laid out within this public awareness discussion, in the public hearings, and in the debate throughout the land use process.

That's why this amendment is important. That's why I'm sure the government has some reluctance with this, too, because it's going to cost them money. I really think those things have to be taken into account when we look at this law. That's why our role here on the committee is to determine what's appropriate in the legislation, not what particularly the bureaucracy wants to initiate, what it stands against with the people in....

Then there's the third point which is important to all of this. We are enacting legislation that really should be in the hands of the people of the north. There's no question about it. This is legislation that in a province would be dealt with in a provincial legislature, where those choices that have to be made on the legislation should well be made by that political body.

● (1005)

When I stand up and say that you should listen to the people of the north, absolutely. They have political rights as well, and you must respect those. Everyone here must respect those. If you don't respect them, that's really a sign that you don't understand what Canada is. I'll leave it at that.

The Chair: Ms. Hughes.

Mrs. Carol Hughes (Algoma—Manitoulin—Kapuskasing, NDP): I also want to indicate why this should actually be in here. Similarly, it's part of the consultation process as well, as far as we're concerned. I think it's quite timely, given the fact that we've seen the Idle No More movement, and the first nations, the Inuit, the Métis, and the general public coming forward and saying that these people have not been treated fairly. The government has basically not been responsible with respect to their judiciary responsibility.

This is exactly what this bill is all about. Yes, you indicated earlier that the people had a say and they didn't quite get everything that they wanted, but they wanted the bill to go forward. Of course they wanted the bill to go forward knowing full well that it was going to come to a committee so that they could have their voices heard with respect to amendments, to have that second thought, because this is where we should be able to make amendments.

To come to committee and have the government basically throw out every amendment that's going to be put forward I think is shameful. Are you saying that these people came here to voice their concerns, and it was all for nothing? Have taxpayers paid all of this money to have them come here to basically ignore what people are saying?

For these people coming to committee is not full consultation. You indicated in your remarks earlier that 13 aboriginal groups, governments, and adjacent jurisdictions were part of the drafting of the legislation, but that still leaves a lot of people who haven't been consulted, and this piece would actually allow for that. So in putting this piece forward, I'm just wondering how this would hinder the legislation. Why can't we put this in there?

● (1010)

The Chair: Whom are you addressing your question to, Ms. Hughes?

Mrs. Carol Hughes: It's for the department officials.

The Chair: Do you have someone specific in mind?

Mrs. Carol Hughes: It's for whoever can answer the question.

The Chair: Is there somebody who wants to comment with regard to amendment NDP-4?

Ms. Janice Traynor: Sure.

The Chair: We'll turn it over to you, Ms. Traynor. Go ahead, and then we'll continue with the speaking list.

Ms. Janice Traynor: The duty for the commission to promote public awareness is incorporated in various provisions in the bill already, under the land use planning process. This is a provision that deals with additional powers, and it's not appropriate that the duty to promote awareness and discussion be included under this particular section. Instead we've incorporated that duty in the relevant positions themselves throughout the bill.

The Chair: Thank you very much.

We'll go to Mr. Genest-Jourdain now.

[*Translation*]

Mr. Jonathan Genest-Jourdain: What I particularly like about the wording of this amendment is, of course, "promote public awareness and discussion". Now, I put a lot into sociology and anthropology, so I'll say that we need concrete measures put forward to maximize popular support and participation.

I grew up at the 53rd parallel, and I'll say that this happens by having a community feast. I'll tell you, this may not seem very relevant, but on site, you will see that to promote the awareness of people in these communities, you have to provide traditional foods, and not just tea and cookies. If you want people to come out, you have to get involved in what's going on in that region, in the traditional way of life of these people. This often involves holding preparatory meetings so that people can put a face to a name, after which traditional foods are offered to everyone. You can also attend a meeting that has already been planned by the community, where there will be a buffet and food served to the entire population. At that point, you will be able to maximize community participation. Otherwise, people will see it as extrinsic, as foreign to the community, and participation will not necessarily be guaranteed.

That is all I have to say.

[*English*]

The Chair: Ms. Crowder.

Ms. Jean Crowder: I have a point of clarification.

My understanding is that the department officials have finished as witnesses and they're here to respond to specific questions we have in the context of the amendments.

The Chair: Of the amendments, that's right, yes. The questioning in terms of the debate of this is finished. I do have a speaking list now that consists of many replications of this side of the table. I think you've sought clarification. I think clarification has been brought. Is there a specific technical question with regard to the legislation?

Mr. Bevington.

Mr. Dennis Bevington: Yes, because you've pointed out that there were some things in the legislation that were going to cover this. I wanted to make sure that we understood what those were, what you felt those were, and so I'm looking at proposed section 50:

> 50. (1) Before holding a public hearing in respect of a draft land use plan, the Commission must make the draft public and must do so in a manner designed to promote participation in its examination by the public.

Is that the section you were referring to?

Ms. Janice Traynor: That and some others, yes. Proposed section 43 is another one I would point you to.

Mr. Dennis Bevington: Proposed section 43 reads:

> 43. The Commission must seek the opinions of affected municipalities, interested corporations and organizations, residents and other interested persons regarding specific objectives and land use planning options for the region.

Ms. Janice Traynor: Proposed section 45 would also include the opportunity to hold a public hearing.

Mr. Dennis Bevington: They can hold a public hearing, yes.

The Chair: Thank you, Janice. That is helpful.

Not seeing anybody else on the speaking list, we'll now move to the voting on amendment NDP-4.

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

The Chair: We're on amendment NDP-5.

I do have a ruling with regard to amendment NDP-5. My ruling is that amendment NDP-5 is inadmissible.

● (1015)

Ms. Jean Crowder: Mr. Chair, I have a point of order.

Do I get to speak to the amendment before you rule on it?

The Chair: Ms. Crowder, would you like to speak to it?

Ms. Jean Crowder: I'd like to move and speak to it. Thank you, Mr. Chair.

This particular amendment deals with the cost of the commission and board. We heard extensive discussion earlier, Mr. Chair. First of all, we've had testimony both from the commission and the board indicating that they don't have the funding currently in place to do their current duties. We heard from the department today that they haven't done the analysis on the incremental cost of what would now be required of the review board and the commission.

Some assurance had been provided in the fact that there is an ability to make regulation with respect to funding, but you'll forgive me, Mr. Chair, in that the history over the last several years.... This is not a partisan remark; it goes back many years. We just need to look at the land claims implementation coalition about land claims agreements negotiated a couple of decades ago, and see they still don't have adequate funding. So you'll forgive me for saying that there simply is not the level of trust, and we would like to see it included in the legislation around funding.

Now I'll allow you to rule it inadmissible.

The Chair: You anticipated my ruling, and I will be ruling this inadmissible as it places a financial prerogative on the crown, which would require a royal recommendation. Therefore, I am ruling that out of order.

Ms. Crowder, would you like to move amendment NDP-6?

Ms. Jean Crowder: I think it's Mr. Bevington's.

The Chair: Mr. Bevington, if you'd like to move amendment NDP-6, I do have a ruling.

Mr. Dennis Bevington: Mr. Chair, I move that clause 2 of Bill C-47 be amended by adding after line 44 on page 20 the following:

> 39.1 For greater certainty the Commission and the Board continue to be funded by an appropriation by Parliament.

The Chair: Thank you, Mr. Bevington.

I do have a ruling with regard to this and the NDP-5 amendment is inadmissible as it infringes on the financial prerogative of the crown and would require again a royal recommendation.

Ms. Jean Crowder: Sorry, that was NDP-6, right?

The Chair: That was NDP-6, yes.

We're on NDP-7. Would somebody like to move NDP-7?

Ms. Jean Crowder: Mr. Bevington.

Mr. Dennis Bevington: Thank you, Mr. Chair.

I move that clause 2 of Bill C-47 be amended (a) by replacing line 30 on page 21 with the following:

> 45. The Commission must, in exercising its....

and (b) by replacing line 6 on page 28 with the following:

> 67. The Commission must, in conducting its....

Can I speak to this amendment now?

The Chair: Yes.

Mr. Dennis Bevington: What we're doing here is indicating a need to ensure that public hearings are not subject to the whim of the board, that they will be conducted on every matter of importance, and in review of land use plans, these rules are followed. As usual, it's simply a case of making sure the rights of the public are protected here in all matters that deal with land use planning.

Mr. Chair, and fellow members, once again, we're dealing with a culture and a society that puts land ahead of almost every other value. The land use planning commission, in its work, is going to be considered with great importance by the people of Nunavut as they are with first nations across this country.

To have a commission that may hold public hearings is not adequate. We need to ensure that this commission will perform its public duties.

The Chair: Having no other speakers on amendment NDP-7, we'll now move to a vote.

(Amendment negatived)

The Chair: We're on amendment NDP-8.

Mr. Dennis Bevington: Mr. Chair, I move that Bill C-47, in clause 2, be amended by adding after line 18 on page 23 the following:

> 48.1 When the carrying out of a project is allowed by the Commission, any new or revised land use plans applicable to the project do not apply to the licences, permits or other authorizations required to be obtained by the proponent.

Mr. Chair, this was actually a recommendation brought forward by the mining industry to ensure some certainty over what they are doing. In the understanding that the development of resources is a cooperative effort between the land owner—government—and the resource owner—government—and industry, this was something that would give some certainty to the industry that this would occur in the fashion that would be useful to them, that they wouldn't be undercut by changes to land use planning processes that may impact upon the business they are doing.

It also suggests that if there are changes, there is some protection given to industry as well, that they can negotiate on those changes by the fact that they do have the ability to hold back. In the spirit that you understand, we're not opposed to development, and we're not opposed to people coming in and doing work on the land, and their interests have to be protected as well.

What we have here is an amendment that I'm sure all of us around the table can agree on in principle. Perhaps the Conservative members may not want to support it because they have a reluctance, it seems, to think that anything within this bill needs improvement.

I would leave it at that. I'm hoping we will get the support for this amendment as with all the other amendments we're putting forward in good faith.

● (1020)

The Chair: Amendment NDP-8 will go to a vote.

(Amendment negatived)

The Chair: Because amendments NDP-9 and NDP-10 are consequential, if NDP-9 is adopted, then NDP-10 is adopted as well. If it fails, then subsequently NDP-10 fails as well.

Ms. Jean Crowder: Mr. Chair, this is to do with the section that includes “existing rights and interests”. I'm going to quote from the NTI document because this is a bit of a complicated argument.

What we are arguing with this particular amendment is that the existing rights and interests be considered only in the context of the factors contained in the Nunavut Land Claims Agreement. Part of the argument throughout this has been that it's important that there be consistency between the Nunavut Land Claims Agreement and , the Nunavut piece of Bill C-47.

The argument is:

> Article 11 of the NLCA contains a carefully negotiated balance of factors that must be considered in the development of a land use plan in Nunavut. It requires, for example, that plans provide for "development" as well as "conservation," and that all types of "economic opportunities and needs" be considered. There is also specific direction that a land use plan take into account both "the natural resource base" and "existing patterns of natural resource use." The addition of a requirement that the Planning Commission, governments and Inuit consider "existing rights and interests" when developing or accepting a land use plan undermines that careful balance.

They go on to say:

> ...this provision is overkill. Existing rights and interests are already given special status elsewhere in the Bill, over and above their treatment in the NLCA. The Bill's "grandfathering" rules prevent an approved land use plan from prohibiting a land use that is already being carried out (subsection 69(3)). The inappropriateness of giving "existing rights and interests" separate status in the plan approval process is especially obvious in the case of plan acceptance by the designated Inuit organization. Inuit organizations should not be required to privilege non-NLCA considerations in their decisions.

Mr. Chair, I think it's an important note just in terms of consistency between the NLCA, the protections that are already outlined in the NLCA, and making sure that Bill C-47 is consistent with those protections that are already outlined. I'm hoping that we will have the support of all members on this particular amendment.

● (1025)

The Chair: Not seeing additional speakers, we'll now go to a vote on amendment NDP-9.

(Amendment negatived)

The Chair: That fails, and as a result NDP-10 fails as well.

We're on amendment NDP-11.

Ms. Jean Crowder: Mr. Speaker—Mr. Chair. I'm so sorry.

The Chair: That's fine. I'm looking forward to the promotion.

Ms. Jean Crowder: Well, sometimes it can be considered a demotion as well, with all respect to our current Speaker, who's doing a fabulous job.

This particular amendment is:

> conduct their activities and operations in accordance with it.

This is around clarity of language. It's just making sure that there's a consistency with the language.

The Chair: Seeing no speakers on NDP-11, we'll vote.

(Amendment negatived)

The Chair: We're on amendment NDP-12.

Mr. Dennis Bevington: Mr. Chair, I move that Bill C-47 in clause 2 be amended by replacing line 14 on page 28 with the following:

> exercise their powers and perform their duties and functions in conformity with it.

This hardens the requirement that all government bodies at all levels comply, operate, and conform to land use plans. That is simply, once again, an amendment that strengthens the use of the land use plan. If I could, I'll speak to that briefly.

Land use plans are sometimes not all that well received by government. That's my sense of it. If you look at the government of the Northwest Territories and its attitude toward the Dehcho interim land use plan, you will see that there's a great deal of anguish that these governments have over their loss of authority over land. That's what land use plans do. They give certainty to industry, to the people, about what is going to happen there, but it also takes away the discretion of government to make different choices. I have found over the time that I have worked on land use planning issues—probably for two decades—that governments are very reluctant to give up that kind of authority. We want to strengthen this language so that people who buy into and rely on this process of land use planning as a surety, whether it's industry, whether it's the public, get that, and they understand that the land use plan will give them surety.

That's why we're concerned about the language. We're concerned that the language gives that protection to people.

The Chair: All those in favour of amendment NDP-12?

(Amendment negatived)

The Chair: On amendment NDP-13.

Ms. Jean Crowder: Mr. Chair. this is, again, just about clarity:

> 69(1) Without restricting the generality of section 68, each regulatory authority must, to

I won't read the rest of the proposed subsection. It's simply making sure that the two proposed sections, 68 and 69, fit together.

The Chair: We're voting on amendment NDP-13.

(Amendment negatived)

The Chair: We're on amendment NDP-14.

Ms. Jean Crowder: On amendment NDP-14, there is an addition after line 7 on page 30:

> within a reasonable time after receiving a written request from the Commission, send a copy of the licence, permit or authorization to the Commission.

Again, it clarifies roles. It's just a piece of the legislation that will make clearer where the commission has the authority to ask for this.

(Amendment negatived)

The Chair: We're on amendment NDP-15.

Amendment NDP-15 is consequential to NDP-16. Again, if the first is adopted, so will amendment NDP-16 be. In the case of its being defeated, so too will amendment NDP-16 be.

Ms. Jean Crowder: Mr. Chair, the amendment would replace line 10 on page 32 with the following:

> (e) the responsible Minister has decided under this Part

This is to add clarity. It also refers to other provisions for the minister's power to avoid implying incorrectly that these sections confer the powers.

You mentioned amendments NDP-15 and NDP-16.

● (1030)

The Chair: That's right.

Ms. Jean Crowder: Okay, that argument applies to amendment NDP-16 as well.

The Chair: Thank you.

(Amendment negatived)

The Chair: Amendment NDP-15 fails, so amendment NDP-16 does also.

We're on amendment NDP-17.

I should let you know that, again, this impacts amendments NDP-18 and NDP-39. Its success will be transferred to those. Again, if it's defeated, so will amendments NDP-18 and NDP-39 be.

Ms. Jean Crowder: The word "judgment" is spelled differently throughout the document. It should be fixed.

The Chair: Is this a spelling correction?

Ms. Jean Crowder: Yes, I believe so.

The Chair: I don't see any additional speakers to that.

(Amendment negatived)

Ms. Jean Crowder: I have a point of order. In the case of there being a spelling error in a document, do they automatically spell-check when it's finally reprinted? I don't know.

The Chair: That is a question I can't answer.

Ms. Jean Crowder: Can the department respond to that?

The Chair: I will seek clarification if there's somebody who might know.

Ms. Janice Traynor: I don't know what happens in that case.

Ms. Jean Crowder: Okay.

The Chair: Thank you.

We're on amendment NDP-18.

Ms. Jean Crowder: Amendment NDP-18 was the same thing.

The Chair: Pardon me.

We're on amendment NDP-19.

Mr. Dennis Bevington: Thank you, Mr. Chair.

My amendment NDP-19 is that Bill C-47, in clause 2, be amended by (a) by replacing lines 39 and 40 on page 39 with the following:

(b) a review is not required if the Board determines that

(b) by replacing lines 15 and 16 on page 55 with the following:

has issued if the responsible Minister determines that any of paragraphs (1)(a) to (c)

(c) by replacing lines 37 and 38 on page 79 with the following:

(b) the Board determines that the activities may proceed without such a review.

These aren't spelling issues. These amendments replace the vague word "opinion" with "determines". The legal definition of "determines" means to come to a determination, which is defined as:

After consideration of the facts, a determination is generally set forth by a court of justice or other type of formal decision maker, such as the head of an Administrative Agency. Determination has been used synonymously with adjudication, award, decree, and judgment. A ruling is a judicial determination concerning matters, such as the admissibility of evidence or a judicial or an administrative interpretation of a statute or regulation.

This amendment was requested by Nunavut Tunngavik Incorporated.

What we have here is a situation whereby once again we're improving the language so the board has the responsibility not simply to outline its opinion, but to come to a judgment on these issues. That's a significant difference.

Having sat on these boards, I know an opinion could mean that around the table we said to forget about something.There's an opinion. It may not be adequate. Certainly in many cases it will not be adequate. What we have here is an opportunity to set the legislation forward in a good fashion that provides the right language for the type of decisions that are being made on this matter. Not to approve an amendment such as this simply.... I would ask the government witnesses why "opinion" was chosen rather than "determination".

Mr. Tom Isaac: In the relevant portions of the land claim agreement that your motion is addressing, I think the concept in the language was where the board determines "in its judgment" and so the legislative drafters understood that to be more of an expression of an opinion. It's a judgment by the board. It's not a judgment.

When they looked at similar types of decisions of other boards in the statute book, the language that was used more consistently was "opinion". Those were the reasons behind the choice of the words "in its opinion" as opposed to in either its "judgment" or a "determination".

● (1035)

Mr. Dennis Bevington: You don't see a difference between "determination" and "judgment" and "opinion". Are you familiar with the definitions of those?

Mr. Tom Isaac: I am familiar with the one that you read out.

Mr. Dennis Bevington: What we have here is a very respected Inuit organization that says they want to have the proper language attached to the bill that is the bill that'll govern the land they have a say over. Why would we not want to give...?

Did Nunavut Tunngavik Incorporated bring this forward at your consultation sessions?

Mr. Tom Isaac: Yes, they did.

Mr. Dennis Bevington: Why would the government not acquiesce then to a demand for language that was more specific?

The Chair: Is this a question to an individual?

Mr. Dennis Bevington: To Mr. Isaac, of course. He's been answering all the questions here and he's doing a great job.

Mr. Tom Isaac: Thank you.

NTI did bring forward this particular language at the working group table.

At the time the rationale we gave in response was the same one that I just provided. When we looked at the language in the land claim agreement dealing with "determines in its judgment", we thought that was more analogous to the word "opinion" than "determination" or "judgment". When the legislative drafters looked at the language of "judgment", "determination", or "opinion", they found that in other circumstances of a similar type of decision by a board, the statute book typically used the word "opinion". That was the rationale behind the choice.

Mr. Dennis Bevington: At the very smallest level in these consultations you took forward with it, I would like to know where you actually made any concessions to the people who are actually going to have to deal with this legislation every day on an ongoing basis.

I'll leave that as a rhetorical question because I know, Mr. Chairman, the other side is starting to rustle with anxiety over my questioning. I'm sorry that these are all....

The Chair: Mr. Bevington, it's not the types of questions in terms of the more abstract in terms of the negotiations. We're talking about technical aspects of the bill now, so I think it's important that you restrain yourself to questions with regard to the technical aspects.

Not seeing any other speakers with regard to this amendment, I should just indicate that if amendment NDP-19 is successful, it will therefore impact amendment NDP-27. Amendment NDP-27 won't be able to be put.

We're voting on amendment NDP-19.

(Amendment negatived)

The Chair: We're on amendment NDP-20.

Ms. Jean Crowder: There are two aspects to this piece.

We're suggesting that the language be changed to say "project involves a matter of significant national", and so on.

I would note that in the French version, the word "*importante*" is used, and an English equivalent of that would be "significant".

With regard to the rationale for changing it, again I'm going to refer to the NTI submission. There are some concerns that without the significant national interest or important national interest, it could impact on the criteria. They say:

> Under the NLCA, the Minister may not send a project proposal to a federal panel rather than NIRB on the basis of Canada's national interest unless the interest in question is "important". This qualifier is missing from ss. 94(1)(a)(i). The omission creates confusion as to whether the Bill's criterion for this decision could be looser than the NLCA criterion. In keeping with the expectation that Parliament intends the Bill to be transparently consistent with the Agreement, the Bill should confine the criterion expressly to matters of "important" national interest.

I've used the word "significant" rather than "important" because of the translation issues.

Again, it's a matter of ensuring that Bill C-47 is consistent with the language in the NLCA. That's why I am proposing this amendment.

The Chair: Not seeing any additional speakers to amendment NDP-20, we'll vote on it.

(Amendment negatived)

The Chair: We have amendment NDP-21.

● (1040)

Mr. Dennis Bevington: Mr. Speaker, I'm not going to bring forward amendment NDP-21 at this time. I feel it's redundant because of the—

The Chair: Very well. We have Liberal amendment LIB-1.

Hon. Carolyn Bennett: I think I spoke to it in the previous hour. As you know, we do think it should be in the legislation as it is in the Environmental Assessment Act. That's what it's about.

The Chair: Thank you.

In terms of amendment LIB-1, I unfortunately do have a ruling.

Amendment LIB-1 is inadmissible as it infringes on the financial prerogative of the crown and would require a royal recommendation, so I rule in that direction.

We're on amendment NDP-22.

Colleagues, we're getting close to our time limit, so I think amendment NDP-22 is where we'll leave it, but let's see if we can get through amendment NDP-22.

Mr. Dennis Bevington: Mr. Chair, I move that Bill C-47 in clause 2 be amended by adding after line 26, on page 44, the following:

> 94.1 The Board must establish a participant funding program to promote public participation in the review of projects that have been sent to the Board under subparagraph 94(1)(a)(iii) or (iv).

The Chair: I actually have a ruling with regard to amendment NDP-22. It is inadmissible because it infringes on the financial prerogative of the crown and would require, again, a royal recommendation.

Colleagues, we will leave it there. When we return for the next meeting, we will begin at amendment NDP-23.

(Clause 2 allowed to stand)

The Chair: The meeting is adjourned.