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Chair

Mr. Chris Warkentin

Standing Committee on Aboriginal Affairs and Northern Development

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•(0845)

[English]

The Chair (Mr. Chris Warkentin (Peace River, CPC)): Colleagues, I want to thank you for being here this morning. We are continuing our consideration of Bill S-8 today in this 76th meeting of Standing Committee on Aboriginal Affairs and Northern Development.

Today we are joined by departmental officials who will be here for our assistance if necessary. Feel free to turn to them if in fact there is a question that they might be able to help you with as it relates to the consideration of the legislation we have before us.

If our officials will introduce themselves, we'll do that and then get into clause-by-clause.

Mr. Jamie Lafontaine (Program Manager, Environmental Public Health, Interprofessional Advisory and Program Support, First Nations and Inuit Health Branch, Health Canada): I'm Jamie Lafontaine, program manager in the environmental public health division, Health Canada.

Mr. Karl Carisse (Senior Director, Innovation and Major Policy Transformation Directorate, Department of Indian Affairs and Northern Development): Good morning. I'm Karl Carisse. I'm senior director with Aboriginal Affairs in the community infrastructure branch.

Mr. Andrew Ouchterlony (Counsel, Operations and Programs, Legal Services, Department of Justice): I'm Andrew Ouchterlony, Department of Justice, in the legal services unit at Aboriginal Affairs and Northern Development.

Ms. Lee-Yong Tan (Legal Counsel, Legal Services, Department of Justice): I'm Lee-Yong Tan, Department of Justice, legal services, Health Canada.

The Chair: Thank you for being here this morning. We appreciate your willingness to join us.

Colleagues, pursuant to the order of reference of Wednesday May 8, 2013, we'll now proceed to the clause-by-clause consideration of Bill S-8, an act respecting the safety of drinking water on first nation lands. Pursuant to Standing Order 75(1), consideration of clause 1, which is the short title, and the preamble are postponed.

We'll move on to clause 2, where some amendments have been proposed. We can only consider this if... The amendments to the interpretation section of this bill can occur only if amendments have been adopted to warrant amendments in this part of the bill, so we will deal with clause 2 after we deal with the consideration of the schedule.

(On clause 3—*Aboriginal rights*)

The Chair: We'll move to clause 3, where we have amendments NDP-1 and Liberal-1. These amendments are identical. We'll turn to NDP-1. If NDP-1 is adopted, we will obviously not hear from Liberal-1. If NDP-1 is defeated, Liberal-1 will be also.

Jean.

Ms. Jean Crowder (Nanaimo—Cowichan, NDP): Thank you, Mr. Chair.

With amendment NDP-1, what we're doing is actually turning clause 3 into a true non-derogation clause by removing this line: "except to the extent necessary to ensure the safety of drinking water on First Nation lands".

I want to refer back to the brief provided by the Canadian Bar Association. I want to read into the record their statement on this. They say:

We believe that the qualification "except to the extent necessary to ensure the safety of [the] drinking water on First Nation lands" is in itself an explicit abrogation or derogation of existing Aboriginal or treaty rights pursuant to section 35 of the Constitution Act, 1982. The qualification in section 3 of Bill S-8 does not, in our view, ameliorate the constitutional problems identified in our earlier submissions on Bill S-11.

We have been unable to find any precedent or explanation for this proposal which would still, in our view, abrogate or derogate from section 35 rights under the Constitution Act, 1982 in order to provide safe drinking water to First Nations. This provision raises two key issues:

[I]s it necessary to implement the objectives of the bill?

[I]f so, is it constitutionally valid? Can Parliament use its legislative power under section 91(24) to abrogate or derogate unilaterally from the rights protected by section 35?

The attempt to abrogate and derogate aboriginal and treaty rights by statute or regulation would set a dangerous precedent and should not slip by without full explanation and discussion.

Mr. Chair, I encourage all members to support this amendment.

•(0850)

The Chair: Mr. Rickford.

Mr. Greg Rickford (Kenora, CPC): Thank you.

I appreciate my colleague's input on this matter. The non-derogation clause included in Bill S-8 addresses the relationship between the proposed legislation and the protection of aboriginal and treaty rights under section 35 of the Constitution Act, 1982. This clause specifically excludes from its scope any derogation or abrogation that is necessary to ensure the safety of first nations' drinking water.

Under Bill S-8, to be clear, a regulation could be created to limit activities on first nation lands around sources of drinking water in order to reduce health and safety risks of first nations being exposed to contaminated water. Thus, in the regulations, the rights of first nations to use land in certain ways may need to be infringed in accordance with the Supreme Court of Canada test for justification.

If this clause were changed to a non-qualified non-derogation clause, as has been proposed, it may restrict the protection of source water on reserves. As demonstrated in previous Supreme Court rulings, legislation can validly affect the exercise of aboriginal rights if it meets the test for justifying interference with a right. That was set out in *R. v. Sparrow*. Including this non-derogation clause is meant to support the objectives of the bill, and in particular, the protection of source water on reserves.

Thank you, Mr. Chair.

The Chair: Thank you.

Ms. Hughes.

Mrs. Carol Hughes (Algoma—Manitoulin—Kapusksing, NDP): Thank you.

In support of our amendment, I'd like to refer you back to the Canadian Bar Association.

They specifically said:

While the wording about section 35 of the Constitution Act, 1982 in the previous Bill S-11 has been revised, section 3 of S-8 remains problematic. We believe that the qualification "except to the extent necessary to ensure the safety of the drinking water on First Nation lands" is in itself an explicit abrogation or derogation of existing Aboriginal or treaty rights pursuant to section 35 of the Constitution Act, 1982. The qualification in section 3 of Bill S-8 does not, in our view, ameliorate the constitutional problems identified in our earlier submissions on Bill S-11.

Then it goes on.

Obviously, this is coming from the Bar Association. Maybe the legal representation would like to comment on this as well.

The Chair: Ms. Hughes, do you have a question for a witness?

Mrs. Carol Hughes: Well, in regard to the current wording in the proposed legislation in this particular clause, I'm just wondering whether the department agrees that this is a problematic area, given that the Bar Association has defined it as that.

Do they agree with the Canadian Bar Association?

Mr. Karl Carisse: I think it could help if we give an example of why the clause is written that way.

If we look at the situation that unfortunately happened in Walkerton, it was cattle grazing near the community's wellhead that led to *E. coli* in the water source. That's what contaminated the water. Now, there were a bunch of issues afterwards with the operations and the operators as to why there was some contaminated water that went to the community, but that's the root of the issue of what happened in Walkerton. This is what with this clause we're trying to prevent in any community.

Maybe there is a certain perceived aboriginal right—we'll take that example—for cattle to graze or for a homeowner to have that cattle graze near the community wellhead, but it makes a lot of sense for

health and safety to ensure that there's a certain limit around the wellhead where you wouldn't have that activity being done.

This is simply to replicate what exists off reserve right now in regulations. There are regulations that state that for a certain number of feet around a community's wellhead, you're not allowed to use the land for certain purposes. Without that last part of that clause, we may be stuck in a situation where that would actually happen. We have to remember that this will not be done unilaterally. We're going to work with first nations to develop the regulations. This gives us the power while we're negotiating the regulations to give that specific instance to protect source water, just for the safety of the community.

The Chair: Thank you.

Mr. Genest-Jourdain.

[*Translation*]

Mr. Jonathan Genest-Jourdain (Manicouagan, NDP): Mr. Chair, I have a simple comment to make.

Associating the blame for a threat to safe drinking water with the exercise of existing rights or treaty rights under section 35 of the Constitution Act, 1982, is questionable. In fact, we know that the real threat is much more rooted in natural resource extraction initiatives, which at the end of the day, indigenous nations are not very interested in. I have my doubts about this because it suggests there could be a threat associated with the exercise of ancestral or treaty rights.

I submit that.

● (0855)

[*English*]

The Chair: Thank you.

I don't see any other speakers to the amendment.

Ms. Hughes.

Mrs. Carol Hughes: Just on that note, again, would you clarify whether or not...? Because they indicate that it abrogates and derogates from section 35 the rights under the Constitution Act of 1982.

If it does, is this section, as worded, actually constitutionally valid?

Mr. Andrew Ouchterlony: I'd like to start by mentioning that this issue is complicated by the fact that no courts have been asked to decide or interpret a non-derogation clause. We're in that situation. However, in answer to your question, this clause is an interpretive provision rather than a substantive provision.

The idea that the clause abrogates or derogates itself, I would not agree with that understanding of it. It is meant to be used as an interpretive tool. If a court were asked about a provision in the regulations, for example one that restricted an activity on reserve lands, and if that were challenged, this clause could be used to help the court try to interpret the relationship between that regulation, that provision, and the constitutional protection in section 35.

Federal legislation cannot reduce the protection that is provided by the constitution. What this clause is meant to do is preserve and continue to allow the government, if a claim is made against a regulatory provision, to continue to make arguments as to why that infringement, if it's been determined there's been an infringement, is justified.

Essentially it's to preserve the common law, which was mentioned, the Sparrow test for justification. There are differences in understandings and the department has a different understanding from what's presented by the Canadian Bar Association.

The Chair: Thank you very much. I'm not seeing any additional speakers to NDP-1, so we'll now vote.

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

The Chair: As a result, Liberal-1 fails.

Moving on to a vote on clause 3.

(Clause 3 agreed to)

The Chair: There's been a proposal for NDP-2. This is under new clause 3.1, maybe Ms. Crowder would like to move that.

Ms. Jean Crowder: I'd like to move that this act does not apply to a first nation for three years after the day on which this section comes into force if, on that day, the first nation is a first nation as defined in subsection 2(1) of the First Nations Land Management Act.

We saw this particular clause introduced in matrimonial real property to allow the first nations who were in the process of developing their own matrimonial real property codes the time to actually move forward with that. We quite clearly heard from Akwesasne in their testimony that they're very close to reaching an agreement. I'm sure there are other first nations who are in the same place, where they're close to reaching agreements on self-government or the type of arrangement that Akwesasne has, and are concerned about being caught up in this process when they fully intend to occupy the space in terms of developing their own regulations.

This would allow the time for that to unfold and not put them into a position where they're having to deal with two different regimens in a short period of time. I think it sounds like a reasonable amendment.

• (0900)

The Chair: I do have a ruling here, as you are aware. I think the NDP have been notified of this intention.

The *House of Commons Procedure and Practice*, second edition, states on page 766, "An amendment to a bill that was referred to a committee *after* second reading is out of order if it is beyond the scope and principle of the bill." Therefore in the opinion of the chair the amendment attempts to introduce a new concept that is beyond the scope of Bill S-8, and therefore it is inadmissible.

(On clause 4—*Recommendation of Minister*)

The Chair: Moving to clause number 4, we have NDP-3.

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

In this amendment we are introducing the concept of the preparation and implementation of a drinking water safety plan and the audit of drinking water safety plans by third parties and the results of such audits.

I want to refer to two pieces of testimony that we heard with regard to this. The first one is from Dr. Hrudehy who indicated that the regulations in themselves will not provide for safe drinking water. He specifically referenced the fact that the World Health Organization approach calls for every water system to develop its own drinking water safety plan. He went on to say that smaller systems in particular face greater risks of producing unsafe drinking water and that places like Alberta are moving toward a mandatory drinking water safety plan. He goes on to say that drinking water systems for Canada's first nations are essentially all small systems and many also face additional challenges because they are remote.

As well, the Canadian Environmental Law Association introduced the concept around barriers. They are talking about a multi-barrier approach. They referred to the types of recommendations that came from both Walkerton and North Battleford. They indicated there should be a number of factors, and many of these factors would be included in a safe drinking water plan. These include things like drinking water protection systems should: include source water protection; provide binding drinking water standards; include reliable certification of operators, reliable certification of labs, clear oversight and reporting responsibilities, clear delineation of roles of the various organizations, clear and comprehensive monitoring and testing of drinking water, and reporting of adverse events; clearly delineate responsibility for responding to adverse events with clear protocols; provide for public involvement of community members' disclosure and transparency and a means of receiving expert third-party advice, such as from the Ontario Drinking Water Advisory Council; clearly outline resources and funding mechanisms for remote and small systems; and provide for infrastructure planning over time.

On this last point around resources we heard this over and over again, that communities simply do not have the resources to develop a drinking water plan or to respond to the regulations. The Canadian Environmental Law Association went on to say that this is vague enabling legislation and there needs to be a clear vision articulated before legislation is passed. We haven't seen that.

A great deal of the discomfort centres around the fact that people don't know what they're getting into with this. Quite frankly, they have no trust that the government will consult appropriately because in the preamble it just says "working with First Nations". It doesn't lay out a consultation process. Consultation processes to date have failed to meet the test for first nations in being acceptable.

That's my rationale behind this amendment.

The Chair: Thank you, Ms. Crowder.

I should note that if NDP-3 passes so will NDP-13 as it applies, and likewise if it fails, the other fails as well.

Mr. Rickford.

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

I appreciate the member's contribution to this particular amendment. I want to be clear that according to the World Health Organization, its water safety plan approach is based on risk assessment, prioritization, and management of the water supply. Bill S-8 is enabling legislation with language worded in broad terms so regulations can be created to address a variety of needs.

As it's currently written, Bill S-8 does not prevent the adoption and implementation of the water safety plan approach. The government is committed to work with first nations and other stakeholders to develop federal regulations tailored to the needs of each region. That has been equally clear here at committee. Bill S-8 allows regulations to be adapted to the local context and determined in close collaboration with stakeholders and includes allowing communities to incorporate a water safety plan approach.

The adoption of this clause, in combination with other proposed amendments dealing with water safety plans, would allow the regulations developed under Bill S-8 to require that all first nations adhere to a water safety plan approach. This would reduce the flexibility of the legislation and could limit the potential for regulations to be tailored to the specific needs of first nations in respective regions.

Thank you, Mr. Chair.

● (0905)

The Chair: Thank you.

Not seeing any additional speakers to amendment NDP-3...

Mr. Genest-Jourdain.

[*Translation*]

Mr. Jonathan Genest-Jourdain: Thank you, Mr. Chair.

The proposed amendment to clause 4(3)(b.2) requires the establishment of regulations for an audit of drinking water safety plans by third parties. Based on my interpretation of the French text, the concept of third parties opens the door to the audit of plans put forward by private entities. At the very least, that would make it possible to take a look at plans presented by entities other than First Nations entities and, inevitably, by private entities that may put forward certain plans governing water safety.

[*English*]

The Chair: Thank you.

(Amendment negated [See Minutes of Proceedings])

The Chair: As a result, I should note that amendment NDP-13 fails as well.

We'll move on to amendment NDP-4.

Ms. Crowder.

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

In this one, we're looking at adding "as well as emergency response protocols" after "First Nation lands".

I think that just makes sense in terms of making sure we're not only talking about the provisions for drinking water and disposal of waste water but also talking about the emergency response protocols.

We've seen cases in which, first of all, there were no protocols in place, and second, communities have not been notified in a timely way that there were problems with the water system, so it's just a clarification measure.

The Chair: Thank you.

(Amendment negated [See Minutes of Proceedings])

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

Ms. Crowder.

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

With regard to this one, we're making a recommendation that the Minister of Health and the Minister of Aboriginal Affairs must take into account the capacity of each first nation to comply with the prescribed standards to install their drinking water systems and waste water systems, and to train the operators of these systems. As I said before, we've heard time and time again about the issues of resources and capacity to manage the systems. Without those resources, we are referring back to the expert panel on safe drinking water. They indicated that putting in regulations without an adequate resource plan will simply force first nation communities into using their resources in compliance with the regulations and not in terms of developing capacity in their organization to actually deliver safe drinking water.

The issue of liability has come up time and time again as well. With the government attempting to absolve itself of all responsibility and with inadequate resources in communities to meet the regulations, there is grave concern that first nations are going to end up assuming a liability that they simply are not equipped to assume, because they don't have the resources or the capacity. That's the reason for the introduction of this amendment.

● (0910)

The Chair: Mr. Genest-Jourdain.

[*Translation*]

Mr. Jonathan Genest-Jourdain: In this proposed amendment, we need to comment on the notion of capacity.

The capacity of a First Nation can be altered by obligations that are linked to the First Nations Land Management Act, among other things, depending on when a band agreed to these commitments. It all adds up. Therefore, this notion of capacity is measured based on the expertise available and the responsibility of a First Nation.

Therefore, I think it is essential to come back to this notion of capacity and, basically, to the factors that may add up and alter this capacity expressed by a given band.

[*English*]

The Chair: Thank you.

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

(Clause 4 agreed to)

(On clause 5—*Included powers*)

The Chair: On clause 5, we are considering amendment NDP-6.

Go ahead, Ms. Crowder.

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

In this one we're asking that clause 5 be amended by adding, "establish a system of capital infrastructure lifecycle planning so that future capital needs are known and expected and can be appropriately budgeted for at the local, regional and national level".

Again, this relates to my comments about resources. We have also seen, with regard to the engineering assessments that have taken place at communities, the severe state of many communities in terms of both high and medium risk to their systems.

This isn't an attack on this current government. This is a long-standing issue, over decades. We haven't done the long-term planning. We haven't done the long-term budget allocation. We haven't done the assessment of the life cycle on the resources. It's a serious problem. We now have such an infrastructure crisis within first nation communities that it's difficult to see, without the political will and the long-term commitment, that first nations are going to be able to meet the obligations reflected in this bill.

We heard, as well, from Metro Vancouver, and they were reflecting other communities in terms of their own issues around infrastructure and their capacity to provide drinking water systems and waste water systems.

Part of what has happened in this bill is that although the focus was largely on drinking water, the issue around waste water management is equally problematic. We need that long-term planning. It would be a responsible thing for government, both now and into the future, to understand its obligations with regard to infrastructure planning and development. Without this life-cycle planning, that's not going to happen.

The Chair: Thank you.

Mr. Genest-Jourdain.

[*Translation*]

Mr. Jonathan Genest-Jourdain: Along those same lines, I would appreciate it if we could refer to the notion of budgets to better understand the proposed amendment or addition, since capacity, as I mentioned, is associated with the envelope. Ultimately, the envelope will determine a band's capacity to retain expertise and provide on-site training. It is therefore essential that this notion of budget comes back to the surface or, at the very least, is paramount in the proposed measures.

[*English*]

The Chair: Thank you.

Mr. Bevington.

Mr. Dennis Bevington (Western Arctic, NDP): If the desire of the government is to make this legislation effective, then the government needs to enter into agreements and work on these regulations with first nation communities across the country. In order to do that, there has to be some assurance to first nation communities that there's going to be a system in place that will allow them to match up to these regulations. That's clearly not the case now.

This type of amendment would at least give some sense of assurance to the first nation communities, which has been largely absent over decades in their struggle to develop sustainable and

healthy communities. It just hasn't been there. We know from the national engineering report that this government is not in line to provide the capital funding that is essential to do the work that has to be done on the reserves—work that is a federal responsibility. The money is not there.

This bill is really a sham without this type of clause added to it. It's more about window dressing for this government. I know the government is going to vote this down, as they have voted down everything else that first nations have brought to these tables on the bills and laws we've worked on here. Their sense of superiority in this regard is truly, I would say, repugnant in some ways.

● (0915)

The Chair: Ms. Hughes.

Mrs. Carol Hughes: Mr. Bevington certainly has indicated some of the stuff that I was going to mention with respect to the challenges here. If the amendments are not going forward, if this government believes that municipalities will actually come forward now and want to provide assistance or access to their system, I think they will think twice. I think it will be much more difficult now for those relationships and those abilities to come together to provide safe drinking water to first nations. The responsibilities without these amendments are going to be huge. As you well know, after Walkerton, we already have smaller communities that are in proximity of first nations, which have systems that won't be able to handle this. Some of them actually have systems that still find themselves on well water even with the new ones.

We heard just this week from one of the first nations that talked about the fact that the government invested so much money from Saskatchewan into a system that still isn't working properly. They're still on a boil water advisory.

On that note I would respectfully request that the government side seriously consider the amendments and ensure that any piece of legislation that is going to be put forward is going to have the means and the gist of what the government is really trying to put forward.

The Chair: Thank you, Ms. Hughes.

Mr. Bevington, I appreciate your comments. I'm hoping that we can keep to the content of the amendments. When you seek to speak to amendments, please keep to the amendment before us.

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

The Chair: We're on amendment NDP-7.

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

With regard to this one, we're calling for an amendment that establishes a participant funding program that facilitates participation of the public and the implementation of the drinking and waste water system. I've already referenced the concern raised with resources. The points I raised in other amendments stand.

The Chair: It won't come as a surprise, but I do have a ruling with regard to this amendment.

As folks know, the *House of Commons Procedure and Practice*, second edition, states, on page 767 and page 768:

Since an amendment may not infringe upon the financial initiative of the Crown, it is inadmissible if it imposes a charge on the public treasury, or if it extends the objects or purposes or relaxes the conditions and qualifications specified in the royal recommendation.

In the opinion of the chair, this amendment does infringe upon the financial initiative of the crown. It requires a royal recommendation. Therefore, I rule that this amendment is inadmissible.

We'll move to amendment NDP-8.

● (0920)

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

This amendment would fall in line with requiring a drinking water safety plan. That's what this speaks to.

The Chair: Thank you so much.

Mr. Genest-Jourdain.

[*Translation*]

Mr. Jonathan Genest-Jourdain: The proposed addition has to do with public communication in terms of the governance and self-determination of First Nations.

We know that public involvement is essential to the implementation of measures like the ones being planned. Therefore, public involvement is a central element. Public communication is a bastion of this support. If we really want this to be successful, we need to ensure that the public as a whole reclaims these measures, which requires constant contact and communication.

[*English*]

The Chair: Thank you very much.

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

The Chair: We're on amendment NDP-9.

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

This amendment says, "under the regulations, clearly establish the roles and responsibilities of each person and body". Again, this relates back to both the Canadian Environmental Law Association's testimony and Dr. Hrudehy's comments with regard to a drinking water safety plan.

As well, we noticed that in a number of these clauses there isn't the specification around who that would be. First nations did raise some concerns that in some cases it refers to first nations and in some cases it refers to a person in the legislation. That lack of clarity does lead to some concern about where the liability rests, who's going to be assigned the penalty, and it goes on.

It also relates to paragraph 5(1)(h), where it talks about the power to seize and detain.

Again, the lack of clarity on role and responsibility is troubling throughout this legislation.

The Chair: Mr. Genest-Jourdain.

[*Translation*]

Mr. Jonathan Genest-Jourdain: Again, the way I see it, outlining the responsibilities of each party is essential. Otherwise, it will be similar to the situation in the First Nations Land Management Act. Certain signatories or actors could discover their role and obligations at the end of the process, which would be deplorable because the positions must be presented before the measures are implemented. In fact, everyone can adjust their efforts so there are no surprises in the end.

That is what I have to say on the matter.

[*English*]

The Chair: Thank you.

Mr. Rickford.

Mr. Greg Rickford: Thank you.

As currently written, paragraph 5(1)(n) enables the Governor in Council to make regulations that prescribe obligations for any person or body that exercises powers or performs duties. By virtue of defining obligations and duties, roles and responsibilities will be clearly established. This process is best left for regulatory development where all stakeholders will have input on a region-by-region basis to determine how the roles and responsibilities will be outlined.

It's the government's view, then, that this motion is unnecessary.

The Chair: I see no any additional speakers on amendment NDP-9.

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

(Clause 5 agreed to)

(Clause 6 agreed to)

(On clause 7—*Conflict with First Nation laws*)

The Chair: The NDP has proposed amendment NDP-10.

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

With regard to this amendment, we're moving that:

A First Nation may request that a law or a by-law it makes respecting safe drinking water prevail over regulations made under this Act, if it submits a report from an independent third party indicating that the law or by-law provides equivalent or more stringent standards than those provided in regulations made under this Act.

Clause 7, as it stands now, essentially says that this act will override any laws or bylaws made by a first nation.

In terms of inherent rights and jurisdiction, we had testimony from witness after witness who raised concerns around infringement. Akwesasne in particular raised this. Certainly, the Blood Tribe and others raised this. So it would seem first nations that demonstrate that they have an independent verification, which their laws meet or exceed the standards of, should be able to proceed with their own laws.

We are hopeful, of course, that the government will support our amendment.

•(0925)

The Chair: Unfortunately, I won't let them get there. I do have a ruling with regard to this amendment.

Bill S-8 provides, in clause 7, that the regulations made under this provision prevail over any laws or bylaws made by a first nation. The proposed amendment provides that the laws or the bylaws made by the first nation prevail over the regulations made under the provisions of Bill S-8. As the *House of Commons Procedure and Practice*, second edition, states on page 766: An amendment to a bill that was referred to a committee after second reading is out of order if it is beyond the scope and principle of the bill.

In the opinion of this chair, the amendment tends to introduce a new concept that is contrary to the principles of Bill S-8, and therefore it is inadmissible.

(Clause 7 agreed to)

The Chair: The NDP has a proposal in amendment NDP-11 for a clause 7.1.

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

Part of the concern that's been raised throughout the testimony as well is the fact that regulations are made with virtually no parliamentary oversight. This particular amendment—I won't read all two pages of it—essentially what it would do is require that the House and the committee would have oversight on the regulations. There is a precedent for this, because it was done in the Quarantine Act. When you've been around long enough, you see these things come around. Back in 2004 or 2005 the health committee did have regulations come before it. So there is a precedent for it in other pieces of legislation.

Given the concerns that have been raised with regard to the development of these regulations and the impact, it would seem that a reasonable thing to do would be to ensure there is parliamentary oversight. So, I would encourage all members to support this amendment, particularly since it would allow us to see whether there had been unintended consequences from this particular piece of legislation.

The Chair: Thank you.

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

(Clauses 8 to 13 inclusive agreed to)

(On clause 14—*Addition of Aboriginal bodies*)

The Chair: There is a consequential amendment that has been proposed for us to consider it. It is important, though, that we first vote on clause 14.

(Clause 14 negated)

The Chair: I note that as a result of the vote on clause 14, the consequential amendment G-1 is adopted.

Now there is a consideration for a clause 14.1, which is NDP-12.

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

This is again with regard to parliamentary oversight. There are precedents in other pieces of legislation that “Within five years after

this Act comes into force, a comprehensive review of the provisions”, and so on. I won't read the whole piece of this.

There have been a number of other pieces of legislation where we had built in those reviews. The Specific Claims Tribunal Act comes to mind. Again, because there have been so many concerns raised about this piece of legislation, it would seem a responsible thing to do to have a reporting back after a five-year period to see whether there's been progress. We deliberately made it five years rather than three to allow time for the regulations to be developed and to hopefully see a fulsome consultation process put in place.

So that is our proposal with NDP-12.

•(0930)

The Chair: Thank you.

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

(Clause 15 agreed to)

The Chair: Shall the short title pass?

Some hon. members: Agreed.

The Chair: Shall the schedule carry?

The schedule fails.

(On clause 2—*Definitions*)

The Chair: Clause 2 was delayed in consideration because there was some work to be done on that, but as a result of other votes Government-1 was adopted as a result of the defeat of clause 14, and NDP-13 was defeated as a result of the defeat of NDP-3.

So considering the now amended clause 2, shall clause 2 carry as amended?

(Clause 2 as amended agreed to)

The Chair: In terms of considering the preamble, I believe there is an NDP proposal for that. That would be NDP-14.

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

Again, with regard to the suggested changes to the preamble, this is with respect to the issue around a water safety plan. We've outlined a number of elements that would be important to include as sort of setting a framework for where this legislation goes, such as, for example, looking at international best practices for supplying safe drinking water, relying on consistent and efficient operation of water treatment and distribution facilities, and looking at sources and the effective drinking water safety plan.

As well, we're emphasizing that the issue around consultation is really important, because the preamble talks about “working with First Nations”, yet we had the experience that the First Nations of Alberta Technical Services Advisory Group indicated. When they were asked to put together an impact analysis report, which was submitted to Indian and Northern Affairs in 2009, they had no feedback on that. They indicated that Bill S-8 was developed without any meaningful input “from first nations leaders, communities...or water system operators in Alberta”.

So there's little comfort that the regulations will actually be developed "in consultation", given the track record with developing this bill, and I would encourage members to support our changes to the preamble.

The Chair: Thank you, Ms. Crowder.

I do have a ruling with regard to this amendment.

The proposed amendment NDP-14 aims to amend the preamble of Bill S-8. As the *House of Commons Procedure and Practice*, second edition, states on page 770:

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

In my opinion, no amendment has been adopted to warrant this amendment, and therefore it is inadmissible.

Considering the preamble unamended, shall the preamble carry?

Some hon. members: Agreed.

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

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

Some hon. members: Agreed.

The Chair: Thank you, colleagues.

I thank you for your work on this. I want to remind colleagues that next week we consider the Yale treaty. We have set out a schedule for this. Thank you for that. I think we'll meet as a subcommittee in the next day or two or next week. We would like to consider what we're going to do beyond that.

Ms. Crowder.

● (0935)

Ms. Jean Crowder: Mr. Chair, I know that we had a discussion about supplementary (A)s. I understand that our last Friday is coming up, so our ability to hear the minister on supplementary (A)s is running out.

The Chair: Let's discuss that at the subcommittee. I shouldn't speak on behalf of the committee, but I think it is important for the subcommittee to meet on that.

The meeting is adjourned.

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