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Chair

Mr. Blake Richards

Standing Committee on Aboriginal Affairs and Northern Development

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● (0900)

[*English*]

The Chair (Mr. Blake Richards (Wild Rose, CPC)): Welcome, everyone. We have a lot of Yukoners, who have come out today to attend and we appreciate it. Thank you for being here.

Before we get started with our first witness of the day, the premier, I'd like to welcome everyone to the meeting this morning. This is the 36th meeting of the Standing Committee on Aboriginal Affairs and Northern Development here in Whitehorse.

I thought I would just quickly let everyone know how a parliamentary standing committee hearing works. We have a very full day today, and we hope everything will go quite smoothly. We'll have to work at keeping on time. I'm sure that not all of you spend your days with your eyes riveted to CPAC watching how Parliament and its committees function, essentially what we will do today, but just so everyone is aware of how a meeting works—and you may have a schedule—we will have panels of individuals who will provide opening statements to the committee, and then each committee member will have time allotted equally to ask the panellists questions or make comments. We'll move from one to the other in that fashion during the day.

If anyone requires translation, we have access to that. When the hearings are in session, people aren't able to take pictures or make recordings.

Other than that, we thank everyone for coming today and we will get started so that we can keep on track.

I'd like to welcome as our first witness this morning, the Premier of Yukon, the Honourable Darrell Pasloski.

We will now turn the floor over to you, Mr. Premier, to make some opening remarks.

Hon. Darrell Pasloski (Premier of Yukon, Government of Yukon): Good morning.

I'd like to thank you, Mr. Chair and members of the Standing Committee on Aboriginal Affairs and Northern Development, for your invitation to appear before you today. I'd also like to acknowledge that we are gathered today on the traditional territory of the Kwanlin Dun and the Ta'an Kwach'an Council.

I'd also like to introduce the Minister of Energy, Mines and Resources, the Honourable Scott Kent, and our official, Julie Stinson.

We're here today to convey our support for the passage of Bill S-6 as it pertains to the proposed amendments to the Yukon Environmental and Socio-economic Assessment Act, YESAA. We believe after this bill is passed, there is work to be done here in the territory among—

A voice:*Dzenu shäwkwathän.* Good afternoon, everyone. This is a traditional welcome to our land. We appreciate the standing committee coming here to listen to Yukoners. We have some very important things to say, and we'd like to share a couple of songs with you. This is our traditional ceremonial way.

[*Musical presentation*]

● (0905)

The Chair: Thank you very much for the welcome. I'm sure all committee members greatly appreciated that.

We'll move back to the premier. You can recommence. We'll allow you your time for your opening remarks.

Hon. Darrell Pasloski: Thank you, Mr. Chair. I thank the drummers as well for their welcome.

Mr. Chair, we're here today to convey our support for the passage of Bill S-6 as it pertains to the proposed amendments to the Yukon Environmental and Socio-economic Assessment Act, YESAA. We believe that after this bill is passed, there is work to be done here in the territory among first nations and the Yukon government.

As you will no doubt hear today, Yukoners are proud capable people. We like to resolve our own issues as much as possible. We like to work things out Yukoner to Yukoner, government to government. Today I hope we can broaden your appreciation of the Government of Yukon's perspective regarding the benefits of amending this act. I hope to share with you a path forward that I believe advances all interests.

Last year marked 10 years since the devolution of responsibility for lands and resources from the Government of Canada to the Government of Yukon. Devolution, or evolution as I like to call it, marked a turning point in Yukon's modern history. In that pivotal moment, we set out on a road to self-determination and managing our own resources.

The benefits of devolution are tremendous. In our view, what is good for Yukon is good for Canada. When the Yukon Act came into effect on April 1, 2003, Yukon gained law-making authority with respect to the vast majority of our natural resources. This has enabled us to develop sustainable management regimes, working cooperatively with first nations and industry. Since 2003 we've experienced steady prosperity, and private sector contributions to our economy have soared. Our population has increased for the 10th consecutive year.

Over the same period, Yukon's leadership and governance capacity has grown alongside our population. The 20th anniversary of the Umbrella Final Agreement was marked in 2013. The Umbrella Final Agreement, UFA, is a framework for individual Yukon first nations to negotiate their land claim agreements. To date, 11 of Yukon's 14 first nations have modern-day treaties and self-government agreements. This represents almost half of the modern first nation treaties and self-government agreements that exist in the entire country today.

That growth in governance capacity has also informed the modernization of our regulatory regime. For the past 10 years, Yukon has enjoyed a reputation as having one of the most advanced regulatory systems in Canada. Yukon's resource economy has grown since devolution, with the mining and mineral exploration sector continuing to expand and develop.

That said, it is becoming increasingly clear that changes to the legislation before you today are essential in order for Yukon to remain a competitive place to do business.

As you likely know, YESAA is the implementation of chapter 12 of the UFA and the final agreements. Yukoners worked hand in hand for years to create the legislation that came into force on May 13, 2003. Federal, territorial, and first nation partners all play important roles in ensuring that projects undertaken in Yukon are in accordance with the principles that foster economic benefits. Each and every order of government helps appoint the board, acts as a decision body, and informs every assessment. As partners, we ensure protection of the ecological and social systems on which communities, their residents, and societies in general depend.

The proposed amendments to YESAA will, in our view, improve environmental and socio-economic outcomes. Since it came into force, some Yukoners, including some first nations, have expressed concern about the narrow scope of activities that YESAA looked at when considering the possible cumulative effects of projects. These amendments help address those concerns.

Under the proposed legislation, assessors will now consider the socio-economic and environmental effects that are likely to occur from projects, both those that have occurred and those that are going to occur. Taking into account the effects of potential activities is a positive step forward in our environmental stewardship and demonstrates our commitment to Yukon communities.

This act applies throughout Yukon as a single-assessment, neutral process conducted at arm's length from governments. Over the last decade, this process has demonstrated a high level of transparency, with decisions and actions made available to the public through the Yukon online registry system.

However, like most new legislation YESAA requires some, mostly minor, amendments. These mostly minor amendments will enable YESAA to continue to serve our territory well into the future. When Canada pursued amendments to the act, it engaged with the Yukon government, the Council of Yukon First Nations, individual Yukon first nations, and the Yukon Environmental and Socio-economic Assessment Board, YESAB. The changes that have been tabled are a result of the close work of these parties, as was mandated by the YESAA five-year review process.

● (0910)

These changes were also informed by the federal action plan to improve northern regulatory regimes. During the review phase, Canada asked the Government of Yukon to provide input into several amendments that focus on improving the overall efficiency and effectiveness of the assessment regime.

I cannot and I will not speak to first nation views on consultation. To do so would be disrespectful of first nation leaders, who will share or have shared their own views with you. However, I can and I will speak for the Yukon government. In our view the Yukon government was adequately consulted during this phase, and our feedback and our comments were taken into consideration.

Together, these changes stand to benefit Yukon because they focus on the following areas: clarification of roles and responsibilities, cost-effective and efficient processes, and the value and timeliness of the assessment process. It is also essential that Yukon remain competitive with other jurisdictions while aiming to protect and promote the environmental and socio-economic well-being of the territory and its people.

Although in the past YESAA has worked well for Yukoners, we believe these proposed amendments are necessary to remain competitive. The amendments outlined in Bill S-6 update the requirement that only the federal government can fulfill. YESAA is, after all, federal legislation.

It is also important, however, that Yukoners resolve concerns among themselves as far as possible. The last time I met with the chiefs, I was clear that I wanted to focus on those issues that we can control. I stand by that statement, and I think Bill S-6 offers us just such an opportunity.

Yukon government and first nations have a long history of working together to resolve issues that arise from federal actions and legislation. We did it with the devolution transfer agreement and the oil and gas accord. In both of these cases the federal government did its part, and leaders here in Yukon did our part to iron out differences that held up success. We let the federal legislation or action stand and we negotiated bilateral arrangements that made them work for us as Yukoners.

Today I'm proposing that Yukon leaders once again take up that challenge. I have heard and understood the first nations' concerns with these amendments. Let's be leaders in our own house and negotiate a bilateral accord on implementation that resolves these issues. We've done it before and we can do it again. If there are concerns about policy direction, or capacity, or delegation, let's agree on how those functions will be implemented on the ground. Working government to government is not new to us in Yukon; it is our preferred way of doing business.

We appreciate the federal leadership shown on this matter. We would like to thank our member of Parliament Mr. Ryan Leef, our Yukon senator Hon. Daniel Lang, aboriginal affairs and northern development minister, the Honourable Bernard Valcourt, and the former minister, the Honourable John Duncan.

Now is the time to come together as leaders, as chiefs and premier, and as neighbours to find a way to make these amendments work in a way that fits with our values.

In conclusion, Mr. Chair, I believe that the changes Canada has proposed to this legislation will ensure that Yukon continues to be a progressive and responsible place in which to invest and do business and an even better place in which to live, work and play, and to raise a family. I encourage Canada to pass these amendments and would ask the chiefs to sit down as partners in this territory to make our own way.

I thank the committee members for their time. I'm going to ask the Minister of Energy, Mines and Resources to say a few words.

● (0915)

The Chair: Thank you.

I neglected to introduce the two other officials from the Government of Yukon. Perhaps, before your minister provides a couple of remarks, I should introduce him: the Honourable Scott Kent, Minister of Energy, Mines and Resources. We also have on the panel this morning Julie Stinson, the director of the executive council office.

The floor is yours, Minister Kent.

Hon. Scott Kent (Minister of Energy, Mines and Resources, Government of Yukon): Thank you very much, Mr. Chair.

I too would like to thank the committee for travelling north to Yukon today to hear the concerns of Yukoners with respect to Bill S-6.

The YESAB has some personal connections for me. I was one of the original board members. I actually sat on the executive committee from 2004 to 2007 with, among others, Chief Sidney of the Teslin Tlingit Council, who I understand will appear before you later on this morning.

This legislation is certainly about more than just mining projects, although those get an awful lot of headlines and traction here in the territory. Energy projects, agriculture, forestry, transportation, oil and gas, essentially anything that requires a licence or a permit has to go through the environmental assessment process. I understand that about 220 projects per year are assessed by the board so far at two of the levels: the designated office evaluation and the executive committee screening. We've yet to see a panel review in the territory, but for the most part, the majority get done at that designated office evaluation level.

When it came into effect in the early years, YESAA was widely regarded as one of the most progressive pieces of environmental assessment legislation and process in the country, and a lot of that is owed to the timelines and the certainty that it brought. In more recent years though, the reputation has slipped somewhat, and I think there is an opportunity for us to address the licensing and assessment of these projects in the territory through some of the amendments that are proposed here in Bill S-6 as well as through some of the work the Yukon government is doing with respect to water licensing and the quartz mine licensing.

One of the documents we provided to the committee is the 2013 report of the Yukon Minerals Advisory Board. This is a board of individuals appointed by the Yukon government and involved in the mining industry. They produce an annual report, which we table in the Yukon Legislative Assembly. I'd like to read into the record the conclusion of their report, from the second paragraph on page 7:

> In 2013 however, as reflected in this report, YMAB chose to focus on what industry has determined is the key issue negatively impacting the industry; the deterioration in the efficiency and reliability of the assessment and licensing of mining projects in the territory.

It goes on to say:

> The system has become more costly, cumbersome and protracted and the Yukon's mineral industry is developing an increasingly negative image as an attractive investment destination.

It goes on to conclude that paragraph:

> There is a clear urgency for the Government of Yukon to act.

● (0920)

The Chair: I'll ask that you wrap up as soon as possible. We're trying to keep on time.

Hon. Scott Kent: Absolutely.

Just so we can get to questions, to close that out then, if you turn to page 6 in that report, two of the recommendations are reflected in Bill S-6. These are on the adequacy review timelines for YESAA and the Yukon Water Board, as well as on YESAA reassessment process clarity.

I'll conclude my remarks with that and welcome questions from members of the committee.

The Chair: Thank you very much.

I do apologize, and I will inform everyone that may have to happen on occasion today. I suspect it may happen more often with members than with panellists, but we do have very strict timelines we have to keep so we are able to hear from everyone we possibly can today. I appreciate everyone's understanding and patience with that, and I'll do my best to enable everyone to give their full remarks.

We have about 25 minutes remaining for the panel, so members will have about four minutes each.

We will start with Mr. Bevington.

Mr. Dennis Bevington (Northwest Territories, NDP): Premier, you talked about the importance of the relationship between the Yukon government and the Yukon first nations governments. My understanding is that some of these very controversial amendments that came forward came from your government to the federal government. Was there a process in which you consulted with the first nations on these amendments prior to submitting them to the federal government?

Hon. Darrell Pasloski: For everything we submitted to the federal government through the five-year review and through the two years subsequent to that during which there was a request based on Canada's action plan to improve northern regulatory regimes, we shared all of our comments with first nations. Any comments we provided to the federal government we also shared with first nations. There was full disclosure as to what our recommendations were.

Mr. Dennis Bevington: When it comes to making decisions in Yukon, you've made a choice that you would prefer to see binding policy direction from the federal minister to the YESAB. That was one amendment that came forward. I know it was a very controversial amendment in the Northwest Territories as well.

Why would you look at this as something you'd want to put forward at this time?

Hon. Darrell Pasloski: Policy direction ensures a common understanding between the government and the board really to help reduce uncertainty and delays. Policy direction would have to be consistent with YESAA, would have to be consistent with the Umbrella Final Agreement, would have to be consistent with individual land claims and with other Yukon legislation. Policy direction is common in other jurisdictions, and we in fact have the ability to give policy direction now through the Yukon government under the Yukon Waters Act.

Policy direction would only be given, I believe, after consultation with the YESAB. Any policy direction must pertain to the exercise and the performance of board powers, duties and functions. Policy direction cannot change the meaning of the law. It cannot change the assessment process itself. It can't expand or restrict the powers of the board or interfere with active or completed reviews.

Mr. Dennis Bevington: Thank you. I have one more question I'd like it get in.

In a statement in the legislature, you said, “I stand on the side of ensuring that we have legislation that is consistent with Nunavut, Northwest Territories and the other provinces in this country.”

Don't you feel that the three northern territories are unique in themselves? What was the purpose of that statement? Are you suggesting that somehow Yukon has the same type of arrangements with its first nations as Alberta or that it is in a situation to provide direction in a way similar to the way we would do so in the Northwest Territories?

Hon. Darrell Pasloski: I don't want to make this all about resource extraction and the mining industry, because as Minister Kent mentioned, YESAA is much more than that.

The mining industry is a global industry, and those projects can look anywhere in the world. For us to be attractive, we need to be consistent. We need to have assessment processes that are consistent with those of other jurisdictions. Having those allows us to be competitive, allows us a greater chance of seeing investment dollars come to Yukon. When they do, the millions of dollars invested in our communities result in jobs—

● (0925)

Mr. Dennis Bevington: Aren't you putting the relationship with mining companies ahead of the relationship with your first nations?

Hon. Darrell Pasloski: That investment—

The Chair: Let me say I'm sorry to both of you, but unfortunately, I have to cut it off there so that we can move to the next member.

We'll move now to Mr. Leef.

Mr. Ryan Leef (Yukon, CPC): Thank you, Premier, Minister, and Ms. Stinson, for joining us this morning. Indeed, thank you to all Yukoners who have come here today to hear a long day's testimony on this important piece of legislation.

Premier, here is a follow-up to Mr. Bevington's question. He was talking about the desire for some level of parity with Canada for the Yukon government in this piece of legislation, and indeed of all Yukoners, that we have some level of equality in the playing field around our development regime. It doesn't necessarily mean, when we're asking for parity, that we're not recognizing that this legislation is unique. In fact, the development of YESAA specifically excluded Yukon's adopting the CEAA regime.

Would you care to continue your comments on how we can retain parity but at the same time retain Yukon's uniqueness with respect to our environmental regime?

Hon. Darrell Pasloski: Thank you, Mr. Leef. The fact that YESAA is a creation out of chapter 12 of the Umbrella Final Agreement really speaks to this as being something that has in fact evolved as a result of the Umbrella Final Agreement and the final agreements and self-government agreements that came subsequent to it. It is the work of first nations, the federal government, and the Yukon government together that has created this process, which is unique.

As we have said many times and as Minister Kent mentioned, when it came out a decade ago it certainly was forward-looking and was embraced by the rest of the country as some of the best legislation out there. Through time we now see, through a five-year review and an assessment of northern regulatory regimes, that there is an opportunity to make it better to allow us to remain consistent with other jurisdictions.

Again, I believe doing so is very important in order to attract investment dollars to our territory. They create opportunities for Yukoners to have jobs and successful businesses and they preserve hope that our kids can stay here in this territory to work and raise their own families.

Mr. Ryan Leef: You spoke in your introductory remarks about devolution and the advancement—you called it evolution—of our northern governance.

I heard in your comments some language around a bilateral accord with Yukon first nations to implement the pieces of this legislation. Can you expand on that for us, please? It's an interesting proposition.

Hon. Darrell Pasloski: That's it exactly. This is federal legislation. What I am encouraging and what I've said is that we support this legislation going forward, but I think there's work we can do in the territory.

As leaders in this territory, we've done it in the past. I use the oil and gas accord and the devolution transfer agreement as examples of how Yukon leaders have sat down and found a way forward based on that legislation. I believe there is the opportunity now for leaders to sit down and find out how, on the ground, we can implement these amendments that would go forward with Bill S-6.

Mr. Ryan Leef: Can you briefly outline the current makeup of the Yukon Environmental and Socio-Economic Assessment Board and the executive committee, please?

Hon. Darrell Pasloski: This guarantees first nation participation in this process forever. There are seven members in YESAB. Three of them are on the executive committee; one is recommended by the first nations, one by Canada, one by Yukon. There are a total of four additional members, two of whom are first nations appointments. First nations appointments contribute—

● (0930)

The Chair: I'll have to cut you off there. I'm sorry, Mr. Premier, but we do have to keep to a very tight timeline today in order to accommodate everyone we'd like to hear from.

Hon. Darrell Pasloski: I understand.

The Chair: We'll move now to Ms. Jones.

Ms. Yvonne Jones (Labrador, Lib.): Thank you, Premier and Minister, for your presentations this morning. It's nice to see so much interest in this bill from Yukoners and first nations. We're happy that we could be here today to hold these hearings.

First of all, you said that these recommendations evolved as a result of the final agreement of YESAA, a process that you called unique, which is what we've heard from many people across Yukon. We've also heard that it is a northern regulatory process that works.

That being the case, why would your government want to entertain changes, which are felt by first nations people to be eroding the current legislation, removing powers in a jurisdiction that they may have previously had? Why would you want to change something that is so unique and that is working in Yukon?

Hon. Darrell Pasloski: The first part of the answer to that question is that there was a mandated five-year review. That began in 2008 and concluded in 2012. Through that process there were 76 recommendations. There was unanimous support for 73 of the 76 recommendations, which is truly outstanding. There was no agreement that there had to be agreement on all of the recommendations, but that's a pretty outstanding number.

There was then the review request by Canada as part of their action plan to review northern regulatory regimes. I think what's important to what you're saying is that I disagree about the erosion that you say first nations believe could occur. There's a very important part of YESAA that is not in Bill S-6, because there are no amendments to that part of the act. I am talking about section 4 of YESAA, which clearly states:

> In the event of an inconsistency or conflict between a final agreement and this Act, the agreement prevails to the extent of the inconsistency or conflict.

I believe there is no infringement on all the rights, and that—

Ms. Yvonne Jones: Well, let me ask you this. Of the 76 recommendations that are there, first nations and Yukoners, along with the Yukon government and the Government of Canada, support 72. There are four outstanding that are controversial. They feel that because they have a tri-governmental agreement, really the Yukon government and the Government of Canada cannot make these changes unilaterally without their support.

Your government in Yukon signed on to that land claims agreement. Do you agree with that provision? If so, are you prepared to say to the Government of Canada today that those four clauses that are controversial and that have not been sorted out to the satisfaction of all three parties must be postponed, delayed, or amended so that all three parties that originally signed this agreement can go forward in harmony with the changes? Are you prepared to do that?

The Chair: There are about 35 seconds left.

Hon. Darrell Pasloski: For the record, there were 76 recommendations that came out of the five-year review. You're referring to four recommendations that came after the five-year review, not the same ones that weren't agreed upon in the five-year review.

Ms. Yvonne Jones: Yes.

Hon. Darrell Pasloski: As I've said, we support these amendments. We feel the Yukon government has been adequately consulted, and that our recommendations were in fact considered prior to the legislation's tabling. We believe that these amendments are good for all Yukoners.

Ms. Yvonne Jones: So the answer is no.

Hon. Darrell Pasloski: I've also said I believe there is an opportunity for Yukon first nations and the Yukon government to now sit down and work on the ground on the implementation.

The Chair: I'll have to stop you there. Thank you very much.

Next on my list I have Mr. Strahl, but I understand that Mr. Strahl is ceding his time to Mr. Leef.

Mr. Leef, the floor is yours.

Mr. Ryan Leef: Thank you, Mr. Chair.

Back in 2012 the Yukon government signed a historic resource revenue-sharing agreement with the Government of Canada. Since that point there's been joint investment in projects like the Centre for Northern Innovation in Mining, and additional support for land-based training, the caring for the land program, and additional educational and literacy types of programs to make sure that Yukoners have opportunities when there are jobs available in the territory.

As Minister Kent pointed out, there has been some depreciation in attraction for the investment climate in Yukon. He referenced the YMAB report.

I'm just wondering if you can expand a little bit on how this entire parcel of investment is part of the opportunities we're trying to generate for Yukoners, not just a legislative piece but a program-based piece, and what the governments of Yukon and Canada are doing to make sure Yukoners have those kinds of opportunities available to them.

● (0935)

Hon. Darrell Pasloski: I believe that the federal government and indeed this territorial government are looking at investments on a strategic level. We believe it's not the government's job to be the economy, but to, through strategic investments in infrastructure, whether it's hydro, roads, bridges, or telecommunications, investment in education, investment in training through CNIM, or the updating of regulatory and permitting opportunities, collectively put Yukon in a place that allows it to really be attractive for responsible investment.

Again, drawing back to the focus I have, we're looking for responsible investment to build an economy and to create jobs and opportunities for Yukoners.

Hon. Scott Kent: To follow up on what the premier mentioned, in the recent Fraser Institute report, Yukon was rated number one in the world for mineral potential. While we're still in the top 10 in a survey related to investment attractiveness, we have slipped in the past few years, indicating that there is more work to be done not only on the regulatory side but also just following up on what the premier mentioned, on training and infrastructure development and other aspects. YESAA is a key part of the regulatory and licensing framework here, and we feel that these amendments will help to make those improvements so that we can attract those investment dollars to our economy.

Mr. Ryan Leef: One point of concern that first nations have raised has to do with the delegation of authority down to the territorial level. Again I want to reference the bilateral accord offer you're making here today. I'm wondering if you could touch on that piece and try to paint a better picture for the public who are here and listening today. How do you envision any delegation of authority that would move down from the federal government to the territorial government, working with our northern governance regime and with the relationship that's absolutely necessary between the Yukon government and Yukon first nations?

Hon. Darrell Pasloski: Let me just start by saying there is no delegation contemplated at this time either by the federal government or by the territorial government. I have been on the public record as well saying that if in fact that were to go forward, we would consult with first nations prior to delegation.

Delegation in itself would really allow for administrative efficiencies, but the authorities would be very limited. I've also mentioned this before: the meat in the sandwich is the regulations and the federal government cannot delegate the regulations. There are such things as activity thresholds. I think it's very important that we're clearly on the record as saying there is no delegation contemplated at this time.

The Chair: Thank you, Mr. Premier.

We will now move to Ms. Hughes. I believe you may be sharing your time with Mr. Bevington. I'm not sure who's going first.

Mr. Bevington.

Mr. Dennis Bevington: You talk about the relationship with the mineral industry, and I want to get back to this relationship, because it's really important.

In Canada right now the greatest impediment to development is generally the relationship that industry has with first nations. How do you see that the actions you've taken, which may end up with court action, as was the case in the Northwest Territories, over the so-called superboard, are going to give you the certainty to raise your profile on the international level, in terms of mineral development in Yukon, when you've gone through these types of relationship-killing exercises in the last year or two?

Hon. Darrell Pasloski: I would say that the relationship between industry and first nations in this territory is pretty strong. Certainly we point any industry or any investors who come to this territory in that direction right off the bat. We say that if they're interested in a specific area in the Yukon territory, the very first thing they need to do is sit down with the first nations in that area and begin to have a conversation with them. I think that's very important, and that is essential on a go-forward basis.

As I have said, I think there is an opportunity for first nations and for leadership to sit down now and to find a path forward regarding how we implement these amendments on the ground in Yukon. We've done it in the past, and I believe we can do it again.

● (0940)

Mrs. Carol Hughes (Algoma—Manitoulin—Kapuskasing, NDP): I think one has to keep in mind that it's obvious there was no fair process on this piece. They laid out all their cards during the five-year review and you didn't. I think that is the problem. That is why we are where we are today.

If you would have provided the information on the amendments you wanted to see in the bill prior to tabling them with the government, I think we may not have been here today and the process probably would have been different.

I think we have to look at whether it was actually a fair process and whether you put all your cards on the table prior to the five-year review process being completed.

The Yukon government is the decision-making body for the majority of projects carried out in Yukon. The proposal to exempt projects from assessment for renewal or amendment is qualified with the additional requirement to test whether these projects have changed significantly according to the decision-making body. The bill gives no direction on how this will work. Do you not think these broad, sweeping provisions give too much discretion? How will proponents and first nations be assured that these decisions will be fair? Have you contemplated the policy requirements for all types of projects?

If you can't finish answering that question, I would ask that you table the answer. Thank you.

Hon. Darrell Pasloski: I'll start off by saying that the comment you started with was absolutely false. The Yukon government shared with first nations all of its recommendations and the comments it provided to the federal government beginning all the way back in 2012. That statement is completely inaccurate.

When it comes to renewals, to be consistent with the way other jurisdictions do things, I do not think that simply renewing or amending a licence should trigger a review. It's also very important to clarify that the decision-making body determines whether or not a project requires assessment. If it's on settlement land, the first nation would decide that.

This would be determined, quite simply, through reviewing the act and the regulations. That would determine whether or not another review was required. Otherwise, we have simple—

The Chair: I'll have to stop you there, unfortunately. Thank you.

Our last member is Mr. Strahl.

Mr. Mark Strahl (Chilliwack—Fraser Canyon, CPC): As you can tell, Mr. Chair runs a very tight ship.

It's good to be here in Yukon to conduct in one day the equivalent of two weeks of hearings we would have in Ottawa, considering the number of panels we're having.

I want to go back to policy direction. We've seen four examples of policy direction in other northern regimes, including the Mackenzie Valley Land and Water Board under the Mackenzie Valley Resource Management Act in the NWT. In each case, policy direction was used by a Liberal government minister to clearly communicate expectations based on interim measures and agreements with first nations. There was a requirement that notification be provided to both the Manitoba and Saskatchewan Denesuline regarding licences and permits, that instruction be provided to the board regarding its obligation under the Deh Cho interim measures agreement, and that the board ensure that it carried out its functions in cooperation with the Akaitcho Dene First Nation and its pre-screening board.

Certainly the examples of the Liberal government using this had to do with protecting first nations rights. I'm a little perplexed when I hear people concerned about policy direction when it has only ever been used to protect first nations' rights with these boards.

Maybe you could comment on how you think policy direction could be used here in Yukon and on why you support that part of the bill.

Hon. Darrell Pasloski: Again, I believe that policy direction provides that opportunity to ensure that there is a common understanding between the board and the government, and it does help reduce uncertainty and delays. Policy direction must be consistent with the UFA, with YESAA, with individual land claims, and in fact, all Yukon legislation. As I've mentioned, it's common in other jurisdictions.

Policy direction cannot change the assessment process itself. It cannot expand or restrict the powers of the board and policy direction cannot interfere with active or completed reviews. To your point, Mr. Strahl, it has been used in the past really to provide additional consultation or to protect the rights of first nations.

Mr. Mark Strahl: Absolutely.

I did want to talk as well, and Minister Kent mentioned it, about how this is important in terms of regulatory efficiency, not just for resource development but for public infrastructure, highways, and the like. Do you see the amendments as a positive step that will improve processes and provide a general public benefit? Maybe you could describe how you see that helping on the ground.

● (0945)

Hon. Scott Kent: Sure. My other portfolio of responsibility is Minister of Highways and Public Works. Certainly this process is something that the Yukon government has to go through as well with many of the projects that we're undertaking with respect to highways or aviation infrastructure, those types of things.

I think these amendments that are being proposed will benefit projects across the board. This isn't environmental assessment legislation, as I mentioned earlier, strictly with respect to the mining industry. There are a number of other industries as well as public infrastructure. We've seen electrical energy projects by our crown corporation, the Yukon Energy Corporation, go through the assessment process as well. Anything that we can do to ensure that we protect and respect the environmental integrity with respect to these assessments is important, but making it as efficient as possible is also important.

Mr. Mark Strahl: Thank you very much for coming today.

The Chair: That will conclude our first panel.

I do want to thank Premier Pasloski, Minister Kent, and Ms. Stinson for being here with us on behalf of the Government of Yukon. We appreciate your understanding and patience with the timeframe. As Mr. Strahl mentioned, the committee directed that we would hear from as many people as possible today and be as inclusive as possible, so it's my job, unfortunately, to be the bad guy who has to cut people off occasionally. I know it is not always easy and I appreciate your graciousness in that. You have set a fine example for how the day will go.

Thank you very much for your time today.

I would now ask that the next panellists move forward as quickly as possible.

I will suspend the meeting.

● _____ (Pause) _____

●

● (0950)

The Chair: I'll call the meeting back to order, and we will welcome our next panel here this morning.

With us we have from the Council of Yukon First Nations, Ruth Massie, grand chief, and Daryn Leas, legal counsel.

From Little Salmon Carmacks First Nation we have Chief Eric Fairclough.

From Teslin Tlingit Council we have Carl Sidney, chief , and Tom Cove, director of the department of lands and resources, as well as James Harper, representative.

From Woodward and Company we have as representative, Leigh Anne Baker.

From Tr'ondëk Hwëch'in First Nation we have Chief Roberta Joseph.

From White River First Nation we have Chief Angela Demit and Janet Vander Meer, lands coordinator.

We'll start from the top and go in the order we have in front of us, beginning with the Council of Yukon First Nations.

Grand Chief Massie, the next seven minutes are your time.

● (0955)

Grand Chief Ruth Massie (Grand Chief, Council of Yukon First Nations): Good morning. My name is Ruth Massie. I'm the grand chief of the Council of Yukon First Nations.

Thank you for the opportunity to present our views on Bill S-6 to the standing committee, and thank you for your willingness to travel to Yukon to hear all of us.

All Yukoners and interested parties should have the opportunity to make submissions to this committee. This committee owes it to Yukoners, given the importance of the proposed legislation.

You will hear from a number of Yukon first nations today, including many self-governing first nations with constitutionally protected land claim and self-government agreements. These agreements recognize their authority as governments.

CYFN and all 11 self-governing first nations are unanimously opposed to four provisions that are part of Bill S-6. We also unanimously recognize the importance of having a YESAA process that will promote sustainable economic and community development.

As part of that, we also need certainty that projects will not compromise our rights and interests. As currently drafted, Bill S-6 does not achieve this balance. In fact, the discussion and concerns about these amendments have already brought a level of uncertainty within industry that never arose during the YESAA five-year review.

During this review, all levels of government—federal, first nations, and Yukon—worked together in accordance with our treaties to improve YESAA. Bill S-6 has two types of amendments, those that came before the five-year review and those that Canada introduced unilaterally.

The changes that come from the five-year review represent a compromise that was developed through many hours of discussion. In some cases the changes do not represent our preferred approach, but we continue to support the amendments because we reached a common understanding with Canada and Yukon, and we honour that agreement. The amendments we oppose were introduced unilaterally by the Government of Canada after the federal minister terminated the five-year review discussions. Some of these were proposed to Canada by Yukon. Neither Canada nor Yukon ever raised these issues for discussion during the five-year review. If they were so important, why were they not raised?

I'm going to summarize our opposition to the four proposed amendments and describe the changes we are requesting that the committee recommend and that the House of Commons approve.

Because the government failed to meet its constitutional and common law duties to consult and accommodate, and to date has not met the requirements of the honour of the crown, we strongly urge this committee to address our requests in your report to the House of Commons to implement those recommendations.

We oppose giving the minister full power to issue binding policy direction to the YESAB as proposed in clause 34 of Bill S-6. We request that the committee recommend that clause 34 be removed.

On delegation of powers, we oppose giving the minister the power to delegate his powers, duties, or functions to the Yukon government minister as proposed in clause 2 of Bill S-6. We request that the committee recommend that clause 2 be amended by deleting the proposed section 6.1 wording.

On timelines, we oppose the establishment of beginning-to-end timelines for assessments conducted under YESAA.

On exemption from assessment for project renewals and amendments, we oppose the proposed exemption from assessment for renewals and amendments of licences and permits as proposed in clause 14 of Bill S-6. We request that the committee recommend that clause 14 be removed.

● (1000)

CYFN and Yukon first nations spent 20 years negotiating these agreements that achieve the objective of collaboration and partnership. We will not stand by while Canada chips away at our agreements.

On December 1 in the House of Commons, Minister Valcourt encouraged us to use the courts to address our concerns stating, “If the first nations claim that we have failed in our duty to consult, the court will determine the issue, and they are welcome to use the courts.”

It is not our preference to commence court action to address our concerns. In addition to being costly and protracted, court action would damage relationships among the parties and damage economic development in Yukon in our future. Our preference is reconciliation.

The federal government's approach on Bill S-6 is a roadblock to reconciliation. Participants in mining, tourism, and other industries are concerned about how Bill S-6 might adversely affect the future for resource development in Yukon. They have echoed our call to the federal government to work with us to find solutions to the concerns we have raised.

Thank you for the opportunity to speak to the committee.

The Chair: Thank you, Grand Chief Massie.

We'll move to Little Salmon Carmacks First Nation, Chief Eric Fairclough.

Chief Eric Fairclough (Chief, Little Salmon Carmacks First Nation): Thank you very much.

I'd like to introduce myself. I have been the chief of Little Salmon Carmacks First Nation since 2012. I have been a member of the legislative assembly for over 15 years before that, and I served as chief between 1990 and 1996. As such, I am familiar with the final agreements.

I want to note that we are aware of and support the other first nations' statements here today. The Yukon first nations reiterate that the proposed four amendments undermine the spirit and intent of chapter 12 of the final agreements. If the four amendments proposed by Bill S-6 are proclaimed, the crown will have breached its constitutional duties owed to Yukon first nations.

The Yukon senator and member of Parliament have pointed out that section 4 of YESAA provides that in the event of an inconsistency or conflict between the final agreement and YESAA, the final agreement will prevail to the extent of the inconsistency or conflict. Section 4 does not address our concerns about the potential breach of our rights. Further to that, we do not understand why our senator and member of Parliament oppose Yukon first nations' and many Yukoners' views on the four objectionable amendments.

First, it's important to understand that chapter 12 outlines the general structure of YESAA and its functions and powers to guide the development of YESAA by Yukon first nations, Canada and Yukon. This means that chapter 12 and its objectives inform the development of the act and its regulations, but chapter 12 does not comprehensively define the structure, function, and powers of the YESAA process. The parties defined the YESAA process in government-to-government negotiations during the development of YESAA. The agreements reached in those discussions can't be changed unilaterally under the constitutional structure of Canada. We assert that the federal government does not have this legal authority.

Second, YESAA originates from and is rooted in our land claim agreements. It manages the use and the development of lands, waters, and resources in Yukon. As a result, implementation of YESAA may affect the exercise of aboriginal treaty rights. In this case, the crown has not acted in accordance with its constitutional duties owed to Yukon first nations. The crown has breached its duties to work with Yukon first nations and take steps to accommodate our concerns. The crown has not acted honourably or fairly. The crown has breached its constitutional duty to act in the honour of the crown. The crown's proposed amendments would serve to infringe on our aboriginal treaty rights, including the rights for independent assessment of projects, or the right for comprehensive reviews for projects in accordance with chapter 12. Canada's proposed amendments would adversely affect the integrity, independence, and effectiveness of the YESAA process.

Despite the concerns raised by Yukon first nations, federal government officials have not engaged in any discussion in good faith with Yukon first nations to address our concerns related to the four proposed amendments. We worked together collaboratively to draft the act and regulations. We need to do the same on any amendments.

For example, in April 2014, Canada specifically requested our input into the suitability of the proposed timelines. We provided written responses opposing the concept of beginning-to-end timelines, and also provided rationales for why the proposed timelines were too short. In May 2014, Canada decided to further shorten the timelines for all assessments, exactly the opposite of what first nations had recommended. Canada was unable to provide a rationale for why it not only failed to accommodate our concerns, but in fact took action in the opposite direction. The federal government would breach its constitutional duty to uphold the honour of the crown if it proceeded unilaterally with the proposed four amendments that do not arise from the collaborative five-year review.

Let's set the record straight. We have listened to the debate in the House of Commons, to the statements made by the ministers responsible, to our own member of Parliament, and to the premier. We are frustrated by the lack of understanding and respect to our treaties shown by them. We need to correct some of that record.

● (1005)

Fact: unlike the processes used for developing YESAA and completing the five-year review, the Government of Canada has not used a collaborative approach to developing the proposed changes to YESAA. In fact, twice we were promised that a joint working group would be established to provide departmental officials with the required information for the development of legislative drafting instructions. It is a fact that a working group was never established, and we were never asked to provide input on the development of drafting instructions for the four amendments.

Fact: the court has been clear that the context of the treaty must be given a large, liberal, and contextual interpretation of the goal of reconciliation. We actually support many of the amendments in Bill S-6, which clearly came from the collaborative five-year review. We do not support Bill S-6 unless the four problematic amendments introduced unilaterally by Canada are removed. In committee discussions on March 24, Mr. Ryan Leef stated that when he met with first nations directly, we stated that we supported “98% of the legislation”. We have never made such a statement.

Fact: contrary to the assertions of Aboriginal Affairs and Northern Development Canada, none of the four amendments was part of the original draft bill that Canada shared with the first nations in June 2013. We did not see these proposals until late February 2014. Canada and Yukon had many opportunities to raise the concepts of policy direction, delegation of powers and timelines, and exemptions for renewals and amendments during the collaborative five-year review, but they never raised the issues at all. When YESAA was developed, it was to replace the Canadian Environmental Assessment Act in Yukon with a made-in-Yukon approach that addressed the treaty requirements. The objective of maintaining a distinct regime defined by our treaties must be paramount over any unilateral objective to harmonize across the north and throughout Canada.

Thank you for the opportunity for us to speak here today to correct some of the information and inaccuracies.

The Chair: Thank you, Chief Fairclough.

Next we have the Teslin Tlingit Council.

Chief Sidney, you have the next seven minutes.

Chief Carl Sidney (Chief, Teslin Tlingit Council): On behalf of my elders, council, and people, I thank the Tr'ondëk Hwëch'in and the Kwanlin Dün first nations for hosting this important meeting in their traditional territory.

[*Witness spoke in Tlingit*]

My name is Carl Sidney. I am the chief of Teslin Tlingit Council.

The Teslin Tlingit Council signed its final and self-government agreements with Canada and Yukon in 1993. We joined with other first nations in implementing our agreement starting in February 1995. We have recently celebrated 20 years of government-to-government relations guided by our agreements.

We thank the committee for coming north and providing us the opportunity to share our thoughts on Bill S-6. There are many written reports and documents filed with you by the Teslin Tlingit Council and other first nation governments. I am not repeating those details, but it is important for your committee to consider those submissions.

Let me bring you a personal and grassroots perspective. Our first nations people have long been stewards of land, air, and water. A respected Teslin Tlingit elder, Virginia Smarch, described first nations peoples as being part of the land and part of the water. In fact, we all are. It is this ancient belief that has formed the core of who we are as Tlingit people and defines our relationship with mother earth.

Industry and development come and go, but we are here forever and we carry that sacred responsibility. YESAA is connected to those beliefs and values through our agreements and should not be amended without our consent. We entered into the agreements as a way forward as an expression of who we are as people. An essential part of that vision was the recognition of and respect for our land, our water, and the air we breathe. They are a part of us and we are part of our environment for all time. It is our collective responsibility as a treaty party to ensure these unique relationships will be part of our future.

In 2005 I was one of the appointed founding members to the Yukon Environmental and Socio-economic Assessment Board. Together the board spent much energy in the implementation of YESAA by involving the citizens of Yukon at every stage. It is this kind of cooperation among Yukoners led by an independent board comprised of Yukoners that was the way YESAA was put into effect and has worked perfectly well.

The amendments in Bill S-6 imposed by Canada at the last minute undermine what we have created together. It is critical to success that we continue to work together as was the vision under our agreements. Canada's stated intention in entering into final agreements was to create certainty about the use and ownership of Yukon land and natural resources. Substantial aboriginal rights, including title, were exchanged for constitutionally protected treaty rights. That was a high price to pay to achieve certainty for all Canadians and the Yukon first nations who have signed agreements and have paid it in full.

In the face of the violations of our final agreements through these amendments we must protect the spirit, letter, and intent of those agreements. The Yukon first nations and their citizens understand that they are a dynamic part of the Yukon society and economy. It was and is our vision to play a leading role in our collective Yukon future.

Together we represent directly and indirectly through our investments in excess of $1 billion in value, and annual revenues in excess of $300 million. We are definitely involved and concerned with Yukon's future and its economy.

Local and global investors are already diverting investments away from Yukon due to uncertainty of litigation and the questionable law and policy decisions of Canada and Yukon. A range of legal options will be open to first nations if these amendments are passed as proposed. Litigation will take place over a number of years undermining Yukon's economy as Yukon is seen as too risky and too uncertain.

We anticipate that individual projects and proponents will be challenged when the projects are being assessed inadequately. Industry and other investors will be bystanders waiting for the results of legal disputes to be worked out in the courts that the governments of Canada and Yukon have invited.

● (1010)

We are aware of and share in the risks and uncertainty of resorting to courts. However, the breaches of the current Conservative government in Ottawa, supported by the Yukon Party government in Yukon, are so severe we fear that we will have no other option.

We and other Yukon first nations need to continue to strive for respectful, effective relationships with industries throughout Yukon, and encourage sustainable development and positive growth for our citizens and all Yukoners, but to achieve our vision and respect our beliefs and values, we must ensure that our agreements are fully understood and recognized.

Teslin Tlingit Council urges this committee to take the steps available to it to recommend removal of the offending amendments. We further call upon all members of Parliament to take the steps available to avoid this increase in uncertainty and related harm to Yukon and to Canada's economy. Teslin Tlingit Council remains willing and available to work with Canada's representative to prepare improvements to the YESAA.

In accordance with the process settled in our final agreements, we call on you, as representatives of the crown, to act honourably as the law and our treaties require.

Gunalchéesh.

● (1015)

The Chair: Thank you, Chief Sidney.

From the Tr'ondëk Hwëch'in First Nation we have Chief Joseph for the next seven minutes.

Chief Roberta Joseph (Chief, Tr'ondëk Hwëch'in First Nation): First of all, I would like to take the opportunity to thank the Standing Committee on Aboriginal Affairs and Northern Development for coming here to Yukon.

I would also like to express my appreciation to Kwanlin Dün and Ta'an first nations for allowing us to be here in speaking to this monumental event.

I'm Roberta Joseph, chief of the Tr'ondëk Hwëch'in in Dawson City. I want to talk to the committee about the process Canada, Yukon, and first nations used to develop YESAA and how that differs from the Bill S-6 process.

I want you to understand that things were done differently in the past and they can be done differently now. Not only that, they must be, in order to honour our treaties.

In 1998 Tr'ondëk Hwëch'in signed a modern land claim agreement after over 25 years of negotiations. The crown got what it wanted: clear title to over 95% of our traditional territory. Why would the TH sign an agreement where we kept less than 5% of our traditional territory as settlement land? We relied on processes like YESAA and land use planning to guarantee participation in planning and management on non-settlement land, where we exercise our rights to hunt, fish, and gather.

The Supreme Court of Canada recognized these processes as key features of our final agreement. In the Little Salmon/Carmacks case, Justice Binnie noted that first nations got “a quantum of settlement land...access to Crown lands, fish and wildlife harvesting, heritage resources, financial compensation, and participation in the management of public resources.”

Participation in the management of public resources is critical. YESAA was central to the final agreement bargain, and so was being involved in its development.

Section 12.3.2 of the final agreement directed the CYFN, Canada, and Yukon to negotiate guidelines for drafting YESAA. Because the development assessment process is so important, Yukon first nations, Canada, and Yukon went beyond section 12.3.2. The parties established a tripartite working group to develop YESAA and its regulations. We worked collaboratively with Canada and Yukon throughout YESAA's development, right up to its approval in Parliament. Canada found ways to support collaboration instead of putting up roadblocks to working together.

Collaboration continued after YESAA came into force in 2005. Section 12.19.3 directed the UFA parties to review YESAA after five years. Once again, Yukon first nations were actively involved. Some of the Bill S-6 amendments are reforms that we worked on during that five-year review.

We are here today because that respect for our final agreement process is gone. The original YESAA was developed collaboratively over several years. The amendments from the five-year review were negotiated, but when Canada introduced four surprise amendments at the last minute, there was no negotiation at all. Canada acted unilaterally.

To be clear, collaboration between three orders of government was good enough when we created YESAA. Government-to-government negotiation was good enough during the five-year review as well. We didn't agree on everything, but we followed the final agreement instructions and came up with reforms that we could all live with. Most of those did not require changes to YESAA but have already been implemented through administrative actions and changes.

For the few recommendations that required amendments to YESAA, we expected Canada to respect its constitutional duties and treaty requirements to collaborate with us in accordance with chapter 12. Instead, Canada unilaterally tacked on four substantive amendments: delegation, policy direction, timelines, and renewals. Canada ignored its constitutional duties and the collaborative practices imposed by the treaties in section 12.3.2.

Another section, 12.3.3, provided a default in case the parties couldn't agree on drafting guidelines. Under section 12.3.3, Canada can go ahead with drafting, but it has to consult with Yukon first nations during the drafting. In TH's opinion, consultation under 12.3.3 is the second-best option. We would rather participate in instructing the drafters, but we at least have a final right to proper consultation while the drafting is still going on. Of course, the crown has a constitutional duty to consult with TH and where appropriate, accommodate our concerns when it amends YESAA.

● (1020)

Consultation didn't happen. Instead Canada took the third option, surprising us with amendments and an already drafted bill stamped as secret. They wouldn't let us take copies out of the meeting room, and if we weren't at the meeting in person, Canada never provided us with a single copy.

That's not participation under section 12.3.2. It's not consultation under section 12.3.3. It's just forcing it down our throats. It violates our final agreements and is illegal under the common law.

Many Yukon officials have stood in front of this committee and talked about the thousands of hours of consultation that went into Bill S-6. Do not be misled.

It's true: we spent years participating in the five-year review with federal and territorial officials.

These amendments never should have been included in Bill S-6. We join other witnesses who are urging you to strip those changes out. We are not in support of the Yukon member of Parliament on Bill S-6 and would like to see this matter tabled in the House.

Thank you.

The Chair: Thank you, Chief Joseph.

We'll now move to the White River First Nation, Chief Demit, for the next seven minutes.

Chief Angela Demit (Chief, White River First Nation): [*Witness speaks in Northern Tutchone language*]

I am Chief Angela Demit of White River First Nation.

Mahsì t'sin'ii to Kwanlin Dün and Tr'ondëk Hwëch'in first nations for our coming to their traditional territory.

Mahsì for the opportunity to present our views about Bill S-6 to the standing committee.

White River First Nation is a Yukon first nation that does not have a final land claim agreement. We are therefore one of the first nations who have never extinguished our aboriginal rights and title to our lands and waters. We participated in meetings with Canada about the changes to YESAA. Through that experience we have understood that the changes being proposed by Canada have much more to do with an agenda made in Ottawa than with the recommendations that came out of the YESAA five-year review process.

The process was agreed to by all parties to the UFA, including Canada. All Yukon first nations, including White River First Nation, invested in the review process and agreed upon a number of recommendations to improve the development and assessment process under YESAA. The recommendations were based on our experience of the YESAA process in Yukon in its first five years.

The changes to YESAA now proposed by Canada came from outside the five-year review. I hope you will listen carefully to our concerns.

I will start by saying that there are a number of amendments that White River First Nation wanted to see, but which Canada chose not to act on and which are not present in Bill S-6. The most important of these for White River First Nation is the definition in YESAA of "territory", which for our nation is defined as the border boundary outlined in the UFA.

Our traditional territory goes beyond the UFA boundary, and as a result, large areas of our traditional territory are excluded from the consultation process under the YESAA. The UFA was never intended to be a binding document, and we do not agree that the map in the UFA represents our territory.

We have made our concerns known for many years and we are disappointed that Canada did not take this opportunity to remedy the situation. It is important to us to make it clear on the record that White River First Nation continues to strongly object to the definition of "territory" in YESAA.

Like many other Yukon first nations who are speaking to you today, we feel that there are four amendments of particular concern which are a profound intrusion of the federal and territorial governments into the YESAA process. A core value of the YESAA process is that it is a process that is at arm's length from government. As a Yukon first nation, we can only have confidence in the process when we believe it is independent.

The first is that Canada is proposing that the federal minister can give written policy direction to the YESAA board regarding any of the board's powers, duties, and functions under YESAA, and the board must abide by them. In our view, this power will completely undermine the board's ability to run an independent process free of political interference from the minister. It will also undermine the predictability of the process for all parties.

The second amendment that concerns us would allow the minister to delegate any of his powers, duties, and functions under YESAA to the territorial minister. The federal minister has many powers under YESAA, for example, the power to change the number of assessment districts, to approve the budget for the board, and approve of or reject time extensions for assessments. Giving these powers to the territorial minister makes the YESAA process extremely vulnerable to local political pressure. White River First Nation strongly objects to this.

● (1025)

The third amendment we urge you to reject is the imposition of timelines for YESAA assessments. The board currently administers rules for timelines which are appropriate to the YESAA process and to the specific circumstances of the Yukon. We see this proposal as a heavy-handed imposition of Canada's development objectives on the Yukon.

The fourth amendment that we do not wish to see brought into law would give discretion to the government decision-makers, most likely a territorial official, to allow a company to avoid a YESAA assessment in the case of a project amendment and permit renewal. This would create a great deal of uncertainty for White River First Nation when participating in a project assessment process. If a project can be changed or extended beyond the original proposal, we will not know all of the potential impacts when the project is finally assessed. This poses a serious threat to the protection of our aboriginal rights and is unacceptable to us.

I urge you to respond to our concerns and recommendations so that the amendments do not become law. I further urge you to recommend that this government scrap Bill S-6 and continue to consult with the first nations of Yukon to achieve a proposal that all parties can support. This is what reconciliation is all about.

In closing, White River First Nation is a Yukon first nation which has never extinguished aboriginal rights and title to our traditional waters and lands. The YESAA five-year review includes recommendation 58. This recommendation recognizes the needs for all parties to deal with issues specific to Yukon first nations without final agreements. White River First Nation has many outstanding and unique issues in the application of YESAA, as we are a first nation which did not enter into final agreements under the UFA.

Mahsi cho,T'sin'ii for being able to provide our presentation today.

● (1030)

The Chair: Thank you, Chief Demit.

We'll now move to questioning from the members.

As we did in the previous panel, I think we'll allow four minutes for each member.

Our first member will be Mr. Bevington.

Mr. Dennis Bevington: Thank you to all the first nations here, and Grand Chief Massie.

I've had opportunities to discuss these issues with you in the past. Some of the things you've brought up today, Chief Demit, I'd certainly like to understand better: the amendment that you see is not in the bill, the definition of “territory”, and whether we'll see a copy of the proposed amendment that we can bring forward....

Also, I'd like to understand a bit about the level of support from the other participants. Was the Yukon territorial government against this amendment? Was it fully supported by all of the first nations?

Grand Chief Ruth Massie: I think it was a statement rather than an amendment.

Mr. Dennis Bevington: It was indicated that this was one item that had come up in the five-year review that was not accepted by the Government of Canada.

Grand Chief Ruth Massie: Out of the 76 amendments, there were 72, but when it came to addressing this one, it was a statement. I don't think it came across as one of the amendments.

I believe there were four amendments outstanding at the end of that five-year review, which took about five years to begin with, maybe even longer.

Ms. Janet Vander Meer (Lands Coordinator, White River First Nation): Hello. I'm Janet Vander Meer of White River First Nation.

That is an issue that is active right now, the definition of our traditional territory. We see it very differently from the definition under the UFA and as recognized in the YESAA. That's something we're working on with the other first nations, the territorial government, and the federal government.

We want it to be very clear in our presentation that this is an outstanding issue. It's not an issue that's going to go away and it's an issue that needs to be dealt with. If there are amendments to the act and the traditional territory is not accepted, in the view of White River First Nation, how do you implement the act? We just want to be very clear about this and put it on the table today.

Mr. Dennis Bevington: The performance of this government has been not to have a lot of amendments, and looking forward, this bill will likely pass as is. I'm really hoping we can do something with it, but if it's passed, what's the potential for litigation and how can we avoid this?

Mr. Tom Cove (Director, Department of Lands and Resources, Teslin Tlingit Council): If I may, if the bill passes as is, the potential for litigation is a virtual, absolute certainty and is a great concern to Teslin Tlingit Council, other first nations, and a lot of Yukoners, and to investors outside the Yukon who have an interest in investing further in natural resource development, but in many other ways as well. It's of great concern and it is a virtual certainty. I'm not exactly sure, but the last time I looked I think there are five law firms already hired to prepare the work that's necessary in anticipation of this bill going forward. That's a lot of momentum in that direction.

In a moment, I'd like to call on Teslin Tlingit Council's law firm, represented by Leigh Anne Baker, to give everybody an understanding of how this is likely to roll out in a most candid way. I think Yukoners need to know. We know there's an audience out there today. Canadians need to know the level of—

● (1035)

The Chair: Unfortunately, Mr. Cove, I have to stop you there. We are at the expired time for the member's questions.

We'll now move to Mr. Leef.

Mr. Ryan Leef: Thank you to all our first nation leadership for providing testimony today. We appreciate it. *Gunalchéesh*.

Grand Chief, I want to ask you a couple of questions. I apologize for not getting specifically to everybody because of the limited time.

The premier this morning talked about his interest in engaging a bilateral accord with Yukon first nations to talk about the implementation on this piece. Could I get some of your comments on the perspective that the premier has offered?

Grand Chief Ruth Massie: Well, Chair, I was a little bit surprised to hear that, but I welcomed hearing that. We haven't had that discussion. The premier has met with our leadership before when we have had our leadership.... That is one road that we have encouraged him to go down, to start the reconciliation. We also asked him to address Bill S-6. If we're not going to come to agreement, it's a little rough to get started on reconciliation if we are not going to agree. He mentioned the consultation over those four amendments. He did not discuss those amendments with us, and neither did you. It came to us in a draft.

If we want to go down the road of reconciliation, our first nations are willing to do that. Up until now, we've spent many years negotiating our agreements to come to an agreement.

Mr. Ryan Leef: That's a fair point.

Grand Chief, you did a good job outlining the concerns that you have. I know the committee will be seized with your outline on those pieces.

I want to ask you quickly about some of the pieces in the bill itself that you might find positive. Clause 9, in particular, around the cumulative effects section that's enhancing environmental protection also broadens the aspect of interests of all Yukon first nations. There are a few other clauses in here that ensure inclusion, in particular proposed new section 88.1 that talks about extending authority so that Yukon first nations can indeed impose more stringent conditions on when decisions are made.

I was wondering if you could comment on a couple of those clauses.

Grand Chief Ruth Massie: When we went through the five-year review, there were 76 recommendations, and 72 of them ended up in the bill. Most of them are administrative. We did agree with that. Where are the four that didn't come to agreement? We ended up with four proposed amendments that we didn't even hear about. They were in the bill when it came across my desk.

Mr. Ryan Leef: Grand Chief, on that, I have a deck in front of me from November 26, 2013, that has that spelled out. That was provided to Yukon first nations from Aboriginal Affairs and Northern Development. It spells those out. Then a draft copy of the bill in secret form was provided. Of course, you may know that Parliament and the department are not allowed to provide a copy of the bill to retain until it's presented to Parliament or to the Senate. But indeed we do have a deck from 2013 that includes those amendments in it.

I want to ask you one specific question on the delegation piece. The premier said that no delegation is contemplated at the time he committed to consultation with the Yukon first nations.

The Chair: Unfortunately, Mr. Leef, I have to stop you there. Maybe you'll have an opportunity to ask questions in a further round.

We'll move now to Ms. Jones.

Ms. Yvonne Jones: Thank you for your presentations this morning.

I can tell you that I found a lot of the information you've given us very disturbing. Also I heard very unfortunate characterization of the relationships between your three governments in working towards this particular bill, especially when you expose to us things like commitments around working groups that did not get honoured, amendments that were unilaterally tabled by the Government of Canada and Yukon, the fact that you gave up traditional settlement lands because you had confidence in the YESAA process that is now being changed, and of course, most important, your allegation that Canada is ignoring its constitutional duties and treaty requirements to your first nation government.

First of all, with respect to the comment by the minister that if you don't like this, you can bring it to the courts, I think the Government of Canada needs to be very guarded in those kinds of comments. As we know, aboriginal governments have won many cases on constitutional challenges in the courts, and it's not the way we should be moving forward with legislation.

What legal options do you see? Obviously, your preference is to resolve those issues without having to pursue them in the courts. I'd like for you to expand on that and expand on what type of litigation you would have to bring forward, which would be unfortunate in this case.

● (1040)

Mr. Tom Cove: I think that's part of the reason we asked Leigh Anne Baker to attend, to contribute to that very briefly.

Ms. Leigh Anne Baker (Representative, Woodward and Compagny LLP, Teslin Tlingit Council)): Thank you.

My name is Leigh Anne Baker, and I'm legal counsel with Teslin Tlingit Council.

To answer the question here, you know we go back to the point that litigation is not our first option, and it's not our first choice for moving forward and finding solutions to these amendments, but if this bill passes, the likely outcome will be litigation from one or more Yukon first nations. That might be litigation for breach of the treaty itself.

YESAA is no ordinary piece of legislation. It exists because it's a chapter in the final agreement. It's a chapter that promises a made-in-Yukon environmental and socio-economic development process. It promises participation to Yukon first nations. Chapter 12 needs to be respected and followed when making any changes or proposing changes to YESAA.

In addition to potential litigation for breach of the treaty itself, we are also looking at the fact that the bill as drafted can lead to inadequate and challengeable assessments. This means there could be an increase in litigation on a project-by-project basis as the assessment process itself fails to live up to the promises made to first nations in the final agreements.

Yes, it can be seen as a cornerstone that protects other rights in the final agreement, such as harvesting rights off of settlement land.

In order to avoid litigation, we're proposing that the government come back to the Yukon and back to Yukon first nations to follow the road map and the promise of chapter 12. This means interpreting the final agreements with the goal of reconciliation in mind. We keep hearing this from the court. The goal is reconciliation, not to have increased litigation. It's not to have a government telling us, “If you don't like it, you can sue us”. It means honouring the final agreements and bringing the amendment process back to the table with Yukon first nations.

Thank you.

The Chair: Thank you. Unfortunately, your time has expired.

We are moving back to Mr. Leef now for the next four minutes.

Mr. Ryan Leef: I'll start where we left off, Grand Chief.

You heard the premier say earlier this morning that on the one point of concern about delegation of authority, no delegation is contemplated at this time. The federal government cannot delegate any of the regulations, and the premier has committed to consultation with Yukon first nations if and before any delegation would be contemplated. Is that not some assurance or satisfaction for your concern about the delegation piece?

Grand Chief Ruth Massie: I would like our technical adviser to answer that question, but quickly, no, that hasn't been our experience.

I'll hand this over to Mr. Leas.

Mr. Daryn Leas (Legal Counsel, Council of Yukon First Nations): Thank you. I'll make some quick comments.

To follow up on the grand chief's and the other chiefs' comments, yes, it's a positive step that other governments are recognizing the deep issues first nations have with respect to the amendments. Ideally, this discussion should have taken place a year ago. Instead, we have damaged relationships and threats of litigation, which don't benefit or help anybody.

Certainly we have been very clear on what we see as the appropriate amendments for those four issues. It is great to have an offer from the territorial government to engage in bilateral discussions, but we would need Canada there as well.

A band-aid fix for our concerns on a federal statute and how it is implemented in Yukon is not a satisfactory solution. The solution is to get it right the first time and avoid going to court, or avoid accepting invitations to go to court to get it right.

● (1045)

Mr. Ryan Leef: Grand Chief, in respect to the policy direction concern, Bill S-6, under proposed subsection 121.1(2), is explicit in stating:

> Policy directions do not apply in respect of any proposal for a project that, at the time the directions are given, has been submitted to a designated office, the executive committee or a panel of the Board.

With that in mind, what specific concerns do you have about binding policy that you envision the minister's having authority over that would affect the independence of the board, respective of the fact that the YESAB and the executive committee are made up of a good percentage of Yukon first nations?

Grand Chief Ruth Massie: I'll let our technician answer that question as well.

Mr. Daryn Leas: One of the key points of YESAA is that it was intended to be independent from all the parties. It was intended not to be an agency of government in which assessments were carried out in that manner prior to YESAA being in place. It was a fundamental discussion by the tripartite working group that Chief Joseph has referred to. We want it at arm's length from first nations governments, from the federal government, and from the territorial government.

We see written instructions as undermining that principle. It brings potential concerns about the credibility and integrity of the assessment process.

Mr. Ryan Leef: You would agree, of course, that by no stretch of the imagination can the minister make policy direction that is binding with respect to an assessment itself.

Mr. Daryn Leas: Sure, but the minister can provide instructions by way of that provision in the statute, if it is passed, dealing with cumulative impacts and the scope of assessments, which effectively change the ground rules of all assessments. Certainly we understand that a minister is not going to issue a policy direction about a specific assessment, but when in fact he or she can change the ground rules of assessments in Yukon, that's our concern.

The Chair: Sorry, Mr. Leef, but your time has now expired.

We'll move to Mrs. Hughes for the next four minutes.

Mrs. Carol Hughes: I know there isn't a lot of time, so I'll try to move this along more quickly.

The Prime Minister had indicated with the apology and then again at a subsequent meeting that he needed to forge a new relationship with first nations. From what we can see in the amendments that are being put forward, do you feel that this is forging a new relationship with first nations at all?

I came here and I was astounded by the lack of snow you have here. I know how warm it was two years ago, so with climate change and the impact that these amendments could have if the minister has that ability....

Again, I think we also have to look at the fact that, when it comes to the negotiation part, the relationship is between the crown and the first nations, not the territorial government and the first nations.

I am just trying to get some sense from you, some comments on climate change, the problematic areas of this bill here, and whether or not this is forging a new relationship.

Chief Eric Fairclough: No, what he's basically trying to do is pick away at our final agreement and water it down. How does that improve relationships with first nations? It's the same with the Yukon government in recognizing this is happening. How does that improve relationships with first nations? When it comes to the mining industry, for example, the reason Yukon is so low is that poor relationship that has taken place.

I want to remind people that the federal minister did come to us at one time saying he was absolutely embarrassed that the federal government had not successfully implemented a modern treaty agreement. Then his actions here are to pick away and water down first nations final agreements. It doesn't make sense.

● (1050)

Mr. Daryn Leas: Certainly, there's not much I can add. I think Chief Fairclough stated it eloquently.

We cannot continue to have implementation of land claim agreements by way of litigation. I think the point should be raised that Yukon first nations negotiated for decades and never once did we go to court during the course of those negotiations. In the last 10 years we've been to court almost every year on implementation matters. That's extremely frustrating. People invested years, millions of dollars, and made significant compromises with respect to aboriginal rights, titles, claims, and interests, and this is where we are.

It's a sad reflection. At the end of the day, those land claim agreements were the basis of the foundation for a new relationship. We're still waiting to develop that relationship and it's getting tougher and tougher, and harder and harder, as relationships continue to deteriorate.

I want to state that we still remain optimistic and hopeful, and stand by those agreements, that one day there will be a full realization of the rights and benefits that benefit all Yukoners under those agreements.

The Chair: You have 40 seconds.

Mr. Dennis Bevington: I have just a quick comment because of the time we have.

This government operates a bit on fear. When they came to the Northwest Territories to change the Mackenzie Valley Resource Management Act, they used the same argument that we're bush league when it comes to dealing with the mining industry and that we need to improve our processes. They pointed at Yukon over and over again. I heard these comments and if you want to google *Hansard*, you'll see them from your own MP about how well Yukon was doing—

The Chair: I'll have to stop you there, unfortunately, Mr. Bevington.

I guess everyone will have to try Google. Exactly.

Our final questions for this panel will come from Mr. Seeback.

Mr. Kyle Seeback (Brampton West, CPC): Chief Massie, you were talking about how one of the objections has to do with significant change or reassessment on a project. When you look at the existing legislation, just renewing a licence or a permit is enough to re-trigger an environmental assessment. I think that's part of the issue we've heard from industry.

I think you object to significant change, but do you see there being any middle ground between those two positions? From my perspective, when I look at something like that, requiring a reassessment just for a renewal creates a lot of uncertainty on a project. It also increases costs and doesn't, quite frankly, make a lot of sense to me. Do you see that there's any sort of middle ground on that type of amendment?

Grand Chief Ruth Massie: I think, right now with the assessments, it's already happening. We have a lot of proposed projects on the go and industry has come to the first nations to make sure that they are complying with our agreements. When the board gets together, the independent board, we do have representatives from first nations sitting on that board. They make their decisions.

It's the same for first nations doing a project. We go through the assessment process too. We don't always get it right, but it gives the board the opportunity to stop the clock and say that this needs to get fixed, or whatever. We're not always going to get it right, but we sure like to try.

Mr. Kyle Seeback: That would be the same with this change. The board would still make the decision. Whether or not the change or the amendment has been significant to require a new assessment, the board's still going to make the decision.

Grand Chief Ruth Massie: Yes, they are.

Mr. Kyle Seeback: You think the board's making the right decisions now, so why do you think the board would not be making the right decisions with the new legislation?

Grand Chief Ruth Massie: I think it's when binding policy and direction is coming from the minister that's driving the agenda. They can oversee the board, and that's a big fear for us. We don't have that interference now, and that political interference is potentially there with these amendments going through.

Mr. Daryn Leas: As a quick comment, it wouldn't be the board that makes that decision; it's the decision body. That's significant.

I just want to pass it over to my colleague Jim Harper, who has dealt with these issues.

● (1055)

Mr. James Harper (Representative, Teslin Tlingit Council): Good morning, Mr. Seeback. My name is Jim Harper. I'm a lawyer, and I live in the centre of Yukon in Pelly Crossing.

I'm the chief legal adviser to the Selkirk First Nation, where we've had an operating mine that's been through several amendments through the YESAA process.

I want to say two points in answer to your query.

First, in my view, the renewal clause in the bill, the one we're speaking about, is terribly drafted. I've looked at it six times and don't know what the heck it means and how to implement it. That's its own reason to reconsider.

Second, in the amendment case, when we started with what's known as the Minto mine—you'll hear from Capstone this afternoon as part of the chamber's presentation—they went from 1,500 tonnes a day in a $25-million mine to what is now a $200-million-plus capital investment, and we're onto phase V/VI of the expansion. It's not appropriate to leave it to the decision body, which in this case is primarily Yukon, with respect to the mining activities. Otherwise the water board is going to...and Selkirk, right? Those are the parties to the situation. You can't—

The Chair: I'll have to stop you there, Mr. Harper.

That will conclude our time with this panel.

Thank you all very much for being here. Thank you for your testimony and your answers to questions.

We'll suspend the meeting now and set up for the next panel.

● _____ (Pause) _____

●

● (1105)

The Chair: I'm going to call the meeting back to order.

We'll get started with our second panel of the day.

From the Champagne and Aishihik First Nations we have Chief Steve Smith, who is accompanied by Brian MacDonald, legal counsel, and Roger Brown, manager of environment and natural resources, Department of Lands and Resources.

From the First Nation of Na-Cho Nyäk Dun is Deputy Chief Millie Olsen. Ray Sabo, manager of lands and resources, is accompanying her, as well as Matthias Zinsli, the environment officer, lands and resources.

From the Kwanlin Dün First Nation is Chief Doris Bill.

From the Vuntut Gwitchin First Nation is Deputy Chief Stanley Njootli Senior, accompanied by Pauline Frost, a representative with him as well.

We will move now to the opening statements from our witnesses.

First up is Chief Steve Smith, for the next seven minutes.

Chief Steve Smith (Chief, Champagne and Aishihik First Nations): Excuse me, I'm the last on the list of speakers.

The Chair: According to the list I have, you are first. If you'd like to pass the floor to somebody else to begin, that's fine, but I do have you first.

Chief Steve Smith: Sure.

The Chair: Who is seeking to be first?

Chief Bill, the floor is yours.

Chief Doris Bill (Chief, Kwanlin Dün First Nation): Thank you.

Mr. Chairman and members of the committee, I appreciate your invitation to speak at today's public hearing regarding the proposed amendments to the Yukon Environmental and Socio-economic Assessment Act.

As the chief of the Kwanlin Dün First Nation, I would like to say welcome to our traditional territory, which we share with Ta'an Kwach'an Council.

No one can deny Yukon first nations negotiated their agreements in good faith, and as part of those agreements we established our right to be included in decisions that affect Yukon, especially when it involves land, water, and our people.

As you have heard from others, one provision contained in our final agreement requires the establishment of an assessment process that addresses the unique circumstances of Yukon according to principles that have been clearly defined in the final agreement.

While the minister insists the YESAA amendments will bring YESAA in line with other northern jurisdictions, I would like to point out that each territory is distinct in its own way.

Yukon is not the same as the Northwest Territories and Nunavut. Northerners know this very well and have continuously asked that Canada stop lumping us together.

As you have heard, self-governing first nations are concerned that providing the federal minister with authority to unilaterally issue policy direction undermines the autonomy of the board.

When we negotiated our final agreements, we ceded title to over 90% of our traditional territories. ln exchange, our agreements give us the opportunity to be active participants in managing public resources. YESAA was a big part of that.

Our communities, elders, and negotiators always envisioned an environmental and socio-economic assessment process that was independent of political interference from any government: federal, territorial, or first nation. We fought hard for that when we worked collaboratively with Canada and Yukon to develop YESAA. All three parties agreed to follow the principle of establishing an independent board.

To get that independence, we agreed that the board's role on assessments would be limited to recommendations while the governments would retain the ability to make decisions. That was the compromise that Canada and first nations agreed to. We cannot let that bargain be eroded by Canada giving itself the authority to impose its policies on the board.

Providing a single party with authority to direct the board is fundamentally inconsistent with any legislation that stems from our tripartite treaties. While the treaties obligate Canada to enact YESAA, it does not own YESAA and cannot choose to dictate its own policies on the independent assessment body.

The treaties established a mechanism for the parties to collectively refine YESAA and provide guidance to the board. That process was the five-year review, and it could be any subsequent review conducted by the three parties. That process was and is the right mechanism to provide policy direction because any guidance would come from all parties to the treaties.

As you have heard, the five-year review included agreement on 72 of 76 recommendations. At least 42 of these recommendations relate to administrative and policy function of the board including changes to the board's policies, rules, administration, and activities. The board has been actively working to address these recommendations. The collaborative approach in the five-year review is a proven and effective way to address policy matters for the board.

The concept of the federal minister issuing binding policy direction is particularly problematic when we consider that the direction would apply to projects and assessments on our settlement lands. lt is completely contrary to our treaties that the federal government would have unilateral authority to impose policies that may affect land over which it has very limited authority.

● (1110)

In closing, our agreements are as much about building relationships as they are about the settlement of past injustices. When the federal government embarks on one-sided changes to legislation that stems from constitutionally protected treaties without collaboration or true consultation with first nations, it makes one wonder how strong government-to-government partnerships are.

I will quote Kwanlin Dun elder Judy Gingell, who was a member of the delegation that travelled to Ottawa in 1973 to deliver "Together Today For Our Children Tomorrow", the document that started the negotiation process for the Umbrella Final Agreement and subsequent final agreements with each first nation government. She told industry, "Today development that does not include first nations, and does not consider first nation interests, means you will end up in court. We will defend what we have worked to achieve."

As Yukon first nations, we are united in our concerns and we are seeking resolution that in some way will get the process back on track. Would court action be our first choice? Obviously not. We are here. Our preference is to use every avenue available to us and mechanisms clearly defined in our negotiated and constitutionally protected agreements, and respectfully, this parliamentary hearing. Yukon first nations have negotiated their final agreements by relying on a relationship based on respect, honesty, and trust. Why is Bill S-6 imposed outside of those principles? The approach creates and fuels animosity for all Yukoners. The exploration spending predictions for 2015 already reflect that uncertainty.

I thank you for this opportunity. *Mahsi Cho. Gunalcheesh.* Thank you.

● (1115)

The Chair: Thank you, Chief Bill.

We'll move next to Deputy Chief Millie Olsen.

Mrs. Millie Olsen (Deputy Chief, First Nation of Na-Cho Nyäk Dun): Good morning. My name is Millie Olsen and I am the deputy chief of the First Nation of Na-Cho Nyäk Dun.

Our newly elected chief, Simon Mervyn, is not able to attend today due to a scheduling conflict and has asked me to represent our first nation at this hearing.

As one of the first signatories of a first nations final agreement, we have celebrated almost 20 years of self-government here in Yukon.

I want to begin by thanking you all for taking the long trip to Whitehorse to host these presentations. I want to recognize that we are here today presenting on the traditional lands of the Ta'an Kwach'an and Kwanlin Dün first nations.

We have already witnessed a few presentations, and I can assure you that all the Yukon first nations unanimously oppose certain provisions included in Bill S-6.

It is of major importance for us to leave future generations with agreements and processes that will ensure the protection of the water, lands, and wildlife while providing for economic opportunities in Yukon. To achieve this goal, all three levels of government will have to work together, and the base for this mutual trust needs to be improved moving forward.

I want to speak to you now in more detail about our concerns about the beginning-to-end timelines that are proposed for assessments. There is no evidence that these proposed timelines will benefit assessments or proponents in Yukon. Unlike many assessment processes in Canada, YESAA has always had timelines. Canada and Yukon requested provisions for timelines when we worked together to develop YESAA, and first nations agreed to this concept. As required in the legislation, the board established timelines for all steps in the assessment process before it began its first assessment. Almost all assessments have been completed within these established timelines.

Some mining proponents in our traditional territory have been vocal in promoting the need for timelines. As with most assessments, YESAA has met the existing timelines for conducting assessments on these projects. Even though in some cases the proponents made substantial changes to their proposals partway through the assessment process, the assessments would have met the timelines proposed in Bill S-6, too.

The timeline proposals in Bill S-6 would bring no real benefit to these companies, but they can harm the assessment process. Beginning-to-end timelines as proposed in Bill S-6 threaten to interfere with a process that works. Most risky is the application of those overarching timelines to the review of adequacy of applications. Adequacy review often takes several iterations and the current timelines restrict the time available for assessors to review each iteration.

YESAA currently has timelines for assessors to review each iteration. This approach encourages proponents to prepare comprehensive applications that minimize iterations. Proponents who prepare adequate applications quickly are rewarded under the current process because they can proceed quickly.

On the other hand, the Bill S-6 approach of applying a beginning-to-end timeline will reward proponents who prolong the adequacy review phase by using up time with multiple iterations. The approach will penalize assessors and reviewers like first nations because it will shorten the most important public review phase, infringing on our right for comprehensive reviews of projects.

There are big risks for proponents, too, if the beginning-to-end timelines influence the ability of assessors to finish adequacy reviews. If assessors do not have adequate applications, they will more frequently be led to make recommendations that projects be rejected or referred to higher levels of assessment.

During the engagement sessions, officials from the Department of Aboriginal Affairs had assured us that they were not contemplating the inclusion of the adequacy stage in these maximum timelines, but they changed this at the very last minute.

Finally, I want to highlight that the process for seeking extension for timelines as proposed in Bill S-6 is cumbersome and likely to create further delays in assessments. Extending timelines would require approval of the Minister of Aboriginal Affairs and Northern Development or the federal cabinet. Unlike many assessment processes, we have timelines in YESAA that work and we should not interfere with those.

Before I conclude, I would encourage you to read the 2013 report from the Yukon Minerals Advisory Board. This committee is made up of members who either represent or work for industry. This committee claims that it is unique in the sense that it can communicate directly to cabinet ministers of the Yukon, rather than sending information through departments.

● (1120)

Within this report, you will find that the recommendations this committee put forward are almost a carbon copy of the four contentious amendments that my colleagues have spoken to here today. They represent their recommendations that protect their interests in the industry. Why do we have a system in place where government acts on the requests of industry, but cannot take the time to work with local governments to plan the future for our citizens and resident Yukoners?

With that I would like to express my appreciation to sit before you today and hope that the recommendations all of our first nations collectively put forward will help you and your colleagues make the right decision on Bill S-6.

Mahsi Cho.

The Chair: Thank you very much.

We'll move now to Deputy Chief Stanley Njootli, Senior, from the Vuntut Gwitchin First Nation.

Mr. Stanley Njootli Sr. (Deputy Chief, Vuntut Gwitchin First Nation): [*Witness speaks in Gwich'in*]

Mahsi Cho. Thank you.

I'm Stan Njootli, deputy chief, from Old Crow.

I will read a statement for the record and probably make my own statements after that.

The Vantut Gwitchin government supports the position expressed by other Yukon first nations and CYFN in today's proceedings. With limited time, I will speak specifically about our collective concerns with amendments to YESAA that allow for delegation of authority and exemption from assessment.

The first proposed change to YESAA would allow the federal minister to delegate authority to the Yukon government. This amendment would establish a bilateral federal-territorial process for distribution of responsibilities and powers under YESAA. It excludes Yukon first nations from the discussions and is contrary to the nature of decision-making envisioned in our modern-day land claims agreement.

Mechanisms that have been used in the past to define distribution of power include our final agreements that were directly negotiated by the three parties and in devolution transfer agreements in which Canada, Yukon, and first nations negotiated a devolution protocol accord to establish negotiating principles. The distribution of powers and responsibilities among federal, territorial, and first nations governments can only be resolved through discussions among all the parties. It must not be handed to a single party or a single person, in this case the Minister of Aboriginal Affairs and Northern Development of Canada. It also must not be constrained to distribution among only two of the three parties that are involved in this agreement.

I want to provide some detail about our concerns with clause 14, proposed subsection 49.1, in the bill that provides a general exemption from assessment when an authorization is renewed or amended unless, in the opinion of a decision body for the project, there is a significant change to the original project.

As stated in the final agreement, one objective of YESAA is to provide for comprehensive and timely review of the environmental and socio-economic effects of any project before the approval of that project. Achieving this objective is not related to whether an authorization is renewed or amended. It is about the scope of a project and the effects that may have been considered in previous assessments. Federal, Yukon, and first nations governments are prohibited from issuing permits or licences to projects unless they have been assessed under YESAA.

For renewals and amendments, if it is decided that the project has already been assessed, then no further assessment is required. These provisions already exist. The Bill S-6 approach on the other hand proposes to create a general exemption that lacks the test of whether the scope of the project was considered in previous assessments and whether the effects have been previously assessed. Under this general exemption, projects that will have significant adverse environmental or social effects, including those that affect other modern-day treaties or land claims agreements, could proceed without assessment or appropriate mitigation. These provisions will also create extremely challenging tasks for the assessors and the proponents as they are forced to consider the effects of a project for long periods. Some projects could be 100 years or more. Not only is this impractical and likely to result in failure to achieve the objectives of chapter 12, but it will have the unintended consequences of delaying projects because of the increased likelihood of designated offices bumping assessments to executive committee level, or it could result in a determination that the project should not proceed due to significant adverse impact.

To conclude my comments about the proposed exemptions from assessment, I want to highlight that Bill S-6 conflicts with the recommendations from the five-year review that has already been implemented and is proving effective. The YESAB made changes to its policies with respect to the scope of a project it considers in its assessment. By unilaterally initiating this proposed amendment, Canada is reneging on the agreements we reached during the five-year review.

● (1125)

In conclusion, I would like to share my perspective on the importance of YESAA to the Vuntut First Nation. The Vuntut First Nation was among one of the first first nations to sign final agreements with the federal government. From these agreements, the Vuntut First Nation formed its own government.

What I would like to see, between me and you, is that you come to Old Crow and we do a wilderness trip. We'll go on the river and see what it's like there, how pristine that river is. We drink water from that river. Fifty years from now, I want to see the children of this community walk down to that river and drink that water. I think this assessment should allow that to happen when they assess projects that are going to affect that pristine area on the Porcupine River.

I'm inviting you this summer on a boat trip. What do you think about that?

The Chair: Well, thank you very much. That's very much appreciated.

Thank you for your comments as well.

We'll now conclude the panellists with Chief Steve Smith.

Chief Steve Smith: Good morning, Mr. Chair and fellow committee members.

I thank you for the opportunity to speak to the committee this morning. The Champagne and Aishihik First Nations fully support all statements made by the Council of Yukon First Nations and other first nations partners at the table today.

I'd like to open by telling you that my father was Elijah Smith. It was he who, some 43 years ago, presented the original Yukon land claim to then prime minister Pierre Trudeau. He was the driving force behind the negotiation of our land claim and self-government agreements. He served for six years in World War II. It was that experience which taught him that confrontation is always the last resort, and that negotiation and compromise have to be the preferred methods to settle grievances. This is the sentiment that Yukon first nations have always held when reconciling our claims. This ideal is something that we hope Canada and Yukon would subscribe to as well, not always having to settle disagreements in court.

Bill S-6 is a roadblock to reconciliation. The unconstitutional bill demonstrates the federal government's unilateralism and lack of understanding of the relationships that arise from the final agreements, the federal government's failure to abide by the collaborative development assessment regime mandated by the final agreements, and the federal government's indifference to fostering productive and collaborative treaty relations with Yukon first nations. This is fundamentally unacceptable.

Our final agreements entailed a promise. They are modern treaties protected by section 35 of the Constitution. They are vehicles of reconciliation between first nations and Canada. The final agreements look backward to address historic grievances, and they also look forward to the future, towards evermore cooperative and collaborative relationships between Yukon first nations, Yukon, and Canada.

The final agreements represent a significant compromise, and they create a new constitutional arrangement in Yukon. Yukon first nations abandoned their claim to aboriginal title over 90% of their traditional territories, an area of almost 484,000 square kilometres roughly the size of Spain, in exchange for the commitments made in the final agreements. That was an enormous compromise.

The establishment of an independent development assessment regime created through negotiation and collaboration between first nations, Yukon, and Canada was one of the treaty commitments in the final agreements. YESAA was the means by which that commitment was fulfilled. YESAA is mandated by, and founded in, the final agreements. It is not an ordinary piece of federal legislation. It emerged from the constitutional compromise that underpins our final agreements

The final agreements required first nations, Yukon, and Canada to negotiate guidelines for drafting YESAA. We did so. We drafted the legislation and regulations together. Establishing YESAA was a success and a demonstration of the cooperation and reconciliation that our agreements demand.

YESAA is a made-in-Yukon law designed to meet the needs of Yukon first nations and Yukoners alike. It is unlike other assessment legislation in Canada because it is guided specifically by treaty obligations.

The federal government had an obligation to enact YESAA, but the federal government does not own YESAA. YESAA is not legislation that Canada may simply alter as it wishes. The federal government cannot unilaterally modify YESAA for its own benefit, or to suit its own preferences.

As we have said, we do not oppose all of the provisions of Bill S-6, but we oppose it unless the unilateral federal amendments to YESAA that undermine the spirit and intent of the final agreements are removed. The details of the changes we expect were identified in Chief Massie's opening remarks today and in our written submission.

By empowering itself to issue binding policy directions to the board, Canada would overturn the careful balance struck during the treaty negotiations and the subsequent constitutionally mandated negotiation of YESAA. By appropriating powers that imperil the board's independence, Canada imperils reconciliation.

In the final agreements, the parties agreed on the constitutionally protected framework for the creation of development assessment legislation in Yukon. Such legislation is to be drafted based on guidelines negotiated by parties, or failing agreement on guidelines, following consultations with first nations. Canada has failed to do that.

● (1130)

In short, Bill S-6 demonstrates Canada's disregard for its treaty commitments.

For development in Yukon to be successful, it must be sustainable. It must have social licence. It must have Yukon first nations' and Yukoners' support.

The final agreements and YESAA are designed to ensure sustainable development by, among other things, ensuring trust in the assessment process that leads to development. First nations trust the YESAA regime because they are co-creators and because they have the confidence that the assessment process is independent. By unilaterally amending YESAA in violation of its treaty commitments, Canada undermines first nations' trust in the YESAA process. This will undermine the promise of the agreements and threaten the ability of first nations to support development in our traditional territories.

Recent court decisions, such as the Peel land use planning case in the Yukon Supreme Court, the Tlicho injunction over changes to the land and water boards in the Northwest Territories earlier this year, and the Mikisew Cree case on the federal omnibus bills C-38 and C-45 demonstrate what happens when our treaties are threatened. That serves no one's interest.

In conclusion, the final agreements will never fulfill their purpose of reconciliation if the federal government persists on its path of unilateralism and disregard for the views of its treaty partners. Our treaty is as much about building relationships as it is about the settlement of past grievances. When Canada unilaterally undertakes major changes to treaty-mandated legislation without collaborating or even truly consulting with first nations, it inflames grievances and strains relations.

By going it alone, Canada has left the honour of the crown behind.

I would like to thank the committee members for their time today.

Kwä`nä`schis.

● (1135)

The Chair: Thank you very much.

We'll move now to questioning from members.

For the first four minutes we have Mr. Bevington.

Mr. Dennis Bevington: Thank you, again, to the chiefs for participating in this hearing.

I apologize for its being so condensed that we really can't give you the justice that is due to your issues, which are quite obviously so important.

To Chief Bill and the others who spoke to the unilateral policy decisions, you see the Yukon territorial government going along with this abrogation of territorial authority. I think back to the Mackenzie gas project. I was on the Mackenzie Valley Environmental Impact Review Board at the time. A year and a half before any trigger to the assessment board, the manipulation was already taking place with our board. Now that you have the ability to unilaterally put in policy decisions prior to major assessments, it's a shocker to think what that could mean to the process that you enter into going forward. You only have to look at the record of what happened with the Mackenzie gas project.

Has the Yukon territorial government sat down with you and talked about why it has agreed to this type of abrogation of territorial authority?

Chief Doris Bill: Not from our end.

Mr. Dennis Bevington: Has there been no conversation on this?

Chief Steve Smith: We have had a couple of conversations, but they were more sharing pieces. They were not what we would term consultation in the strict legal definition of "consultation". The territorial government has come and presented its case.

At one of our initial meetings, the premier stated that the Yukon government did not put forward any recommendations, and later we learned that two of the recommendations were propositions by the territorial government to the federal government with regard to the four.

Mr. Dennis Bevington: You make so many valid points here about these four particular amendments. The timeline additions and the general exemption, there is a record within environmental assessment as to the difficulty to initiate those things. How can we better expose these issues to the population of the territory and generally to Canadians? There are serious implications for the future of these three territories.

Can anyone comment? I am just struck with what you have said already.

Chief Doris Bill: We have wanted the committee to come here; Yukon first nations made that request when we were down in Ottawa. We would have liked to see this committee sit a lot longer to hear from the people in this room, to hear from the people outside of this room, to hear about the implications of this bill on our communities, on our land. We do not take this lightly.

We will fight it at all costs. We believe that Yukoners deserve a say in what happens here.

The Chair: Thank you.

The member's time has expired, so we'll move to Mr. Leef.

Mr. Ryan Leef: Thank you to all of you for your well-organized presentations. It was great for each of you to address individual points in your areas of concern.

My first question will be for Chief Bill in respect to the unilateral binding policy direction. This concern was raised earlier this morning. I just want to clarify if it's your understanding of the bill that any binding policy direction cannot be applied to any existing or completed project.

● (1140)

Chief Doris Bill: I'm going to defer that to one of our technicians.

Thank you.

Mr. Roger Brown (Manager of Environment and Natural Resources, Department of Lands and Resources, Champagne and Aishihik First Nations): Hello. I'm Roger Brown for Champagne and Aishihik First Nations.

We acknowledge that the bill does say that, but that's not really the overall issue that we have with this. Again it boils down to one government dictating to an independent board its policy directions.

I want to emphasize that first nations are also highly invested in the Yukon economy and we are proponents as well. We have development corporations that have an interest in and aspirations to develop projects. When we are trying to develop projects that may have life spans of 10, 20, or 30 years, it's a concern to those investments when the project assessment process can be fettered at the whim of government, depending upon the government of the day, whether it's delegated to a territory or if the federal government maintains those binding policy direction opportunities.

We have real, legitimate concerns even from the business development side on the binding policy direction.

Mr. Ryan Leef: Okay.

You raised the piece on delegation of authority. I'm sure you heard the premier's testimony this morning where he clearly explained that no delegation of authority at this point is being contemplated and he firmly committed that any delegation of authority would be undertaken with consultation of Yukon first nations.

He also discussed a bilateral approach to the implementation of this. I'm just wondering if I can get your comments. I asked the last panel this very question. I'm just wondering if I can get your comments on that proposal by the premier.

Chief Steve Smith: Thank you for that.

We did hear the premier present us with a bit of an olive branch, but the olive branch is a little bit late.

We would have liked to see a trilateral accord set up among the federal, territorial, and Yukon first nations governments to deal with any of these issues that are presented to YESAA. The bilateral accord is good, but it falls short because it lacks the inclusion of the federal government in the picture.

Mr. Ryan Leef: We heard that in the previous testimony. Would it be your recommendation then to extend that to a trilateral approach?

Chief Steve Smith: Our recommendation is that the government first table the current bill and remove the four contentious issues. Then we can start talking about a trilateral accord that will deal with development in the territory.

Mr. Ryan Leef: In respect to the bill, we obviously talk a lot about collaboration, which is very important.

The bill embeds that in particular clauses. Subclause 31(1) refers to “Section 112 of the act is amended...the approval of the ministers and first nations....” The continuing subclause reflects on acts of parliament, territorial law, or first nation law. Some of those pieces of collaboration and recognition for first nations law and first nations governments and first nations approval is very much embedded in this bill.

Have you seen those subclauses, and what are your comments on those?

The Chair: The time has expired, but I could allow a very brief response, if someone wants to briefly respond.

Mr. Roger Brown: I think we would choose to table an answer for that and allow other questions to occur.

The Chair: Thank you.

Ms. Jones is next, for the next four minutes.

Ms. Yvonne Jones: I thank all of you for your presentations. They were very interesting and certainly in line with other presentations we've heard from other chiefs this morning, which I guess for us reiterates the serious nature and concern of the clauses in this bill that we're dealing with.

First of all, on the bilateral or trilateral approach, it's my understanding that there are trilateral approaches called land claims with three governments. What we're seeing here is the unilateral process that is omitting first nations government, and we cannot overlook that.

The consistent message that I've heard in all of this, which I find very disturbing, is that we have with YESAA a made-in-Yukon approach or law. We have heard people say it's very distinct. We even heard the premier say this morning that it is unique. When I look at that, I ask, why change it? It's held in such high esteem. It seems as if the changes are unilateral by the federal government, supported by the Yukon government, and they have complete disregard for any treaty commitments they've made.

You've told us this morning that there are first nations who actually gave up ownership of land because they had complete trust in this process and how they could still have fair control and fair input into the process. Can you tell me how the changes in this bill are going to have an impact on how you do business in your communities? Can you tell me what process you have now to kind of ratify any compromises you made in good faith and in trust with this government, which have now been broken?

In your presentation you said you really felt that the trust has been broken. It's going to have an impact on how you do business in your land because you had confidence in a process that is going to be changed by the federal government. Do you want to expand on that for me?

● (1145)

Chief Steve Smith: We spent 20 years developing our land claim and a further 10 years developing the YESAA process. We went into it in good faith and with the notion that if there were going to be substantive changes to any one of the parts of our land claim agreement, Yukon first nations would be consulted. Many times you hear both federal and territorial leaders speak to the fact that they have consulted with Yukon first nations and that there were a lot of hours and a lot of money spent on the consultation process. However, four of the most contentious amendments were brought in, as you heard earlier, very secretively. It was stamped as secret. We weren't allowed to share it with anybody else. We had to leave all of the documents at the meeting. This was a last-minute approach and was something which, for us, really muddied the waters in terms of having real trust in the process. When we talk about our fundamental issues with regard to the land claim—having stuff brought before us, tabled to us—the Yukon government said that it was adequately consulted and then went on to say that it shared the information with Yukon. That's not consultation.

The Chair: Sorry, I'll have to stop it there. We're past time.

We're moving next to Mr. Strahl, for the next four minutes.

Mr. Mark Strahl: Certainly the minister, in his speech and when he appeared before this committee to discuss Bill S-6, obviously fundamentally disagrees that Bill S-6 violates the Umbrella Final Agreement, and he laid out the sections that he believes give the government the authority to proceed with the four amendments we're talking about.

The chief just mentioned the consultation. I guess I'm a little confused because on the four amendments, I have a list here: video conference on the responsible resource development in the north initiative, December 2012; teleconference with CYFN on way forward on amending YESAA, April 2013; mail out to CYFN, Yukon first nations, YESAB, and Government of Yukon of first draft legislative proposal and request for written comments, May 2013; discussion on funding with CYFN, June 2013; consultation session with CYFN, Yukon first nations, YESAB, and Government of Yukon, July 2013; consultation session with CYFN, Yukon first nations, YESAB, and Government of Yukon on comments received and AANDC's response, November 2013; mail out to CYFN, Yukon first nations, YESAB, Government of Yukon and industry of revised draft legislative proposal and requested written comments, February 2014; consultation session with CYFN, Yukon first nations, YESAB, and Government of Yukon on revised draft legislative proposal, February 2014; another similar consultation session, April 2014; again, May 2014; written responses sent, June 2014.

Then I go to funding for stakeholders on these four amendments: Council of Yukon First Nations, $19,637; Champagne and Aishihik First Nations, $9,403; Teslin Tlingit Council, $13,868; Selkirk First Nation, $1,733; Tr'ondëk Hwëch'in, $7,688; Ta'an Kwäch'än Council, $9,403; Kluane First Nation, $10,864; Kwanlin Dun First Nation, $4,403; Liard First Nation, $5,622; White River First Nation, $7,807; Gwich'in Tribal Council, $10,000; Tetlit Gwich'in Renewable Resource Council, $7,290, and that's just specifically on this issue, on these four amendments.

Certainly when this was before the Senate, the critic, Liberal Senator Grant Mitchell said:

> There has been, I think, quite adequate consultation. It's complicated up there in these territories. You have federal, territorial and Aboriginal interests. Some interests are more defined than others because in many cases they are defined by land claim developed treaties or land claim settlements. In other cases, those have yet to be accomplished. So it is very complex, and the fundamental core of this bill gets to that and is an effort to make all of that better and to make processes in the North better.

Certainly, there's a wide range of views on what constitutes consultation. Maybe if there's any time left, I wonder if there are any comments on whether or not $98,000 and a dozen meetings over the course of a year and a half constitute consultation. I'm a little confused there and would like your comments on that.

● (1150)

The Chair: There's about 10 seconds.

Mr. Roger Brown: All I can really say is we've definitely got quite a nuanced and detailed response to that long list there, in terms of the consultation record. Champagne and Aishihik would be happy to table a response to that effect.

The Chair: Thank you. We appreciate that. You can certainly do that through me, with a copy to the clerk of the committee.

We will now move to the next round of questioning, and that would come from Ms. Hughes, for the next four minutes.

Mrs. Carol Hughes: I was going to ask some questions in French, but out of respect for everyone—everyone—who has come here today.... I think it is just unbelievable to see a room this full at a hearing. I don't think I've ever seen that, so I want to congratulate everyone who's here.

You talked about pristine wilderness. You talked about the sensitive landscape. I think I know that this is what you're trying to preserve. You want to make sure that your economy is going prosper, but in doing so you also need to make sure that the legislation and the policies that are in place are the ones that are the best for your community, not just for first nation communities, but for Yukon as well. I want to congratulate you for all the work you've done so far.

When we look at the relationship, I think you have come such a long way with the relationship that's been built here, and over the years we know that's been problematic, both under Liberal and Conservative governments. I think it's very unfortunate that we are where we are today with these amendments that were tabled.

Mr. Leef talked about this deck that was presented in December 2013, I believe it was. Maybe you could explain to me, was this a concept or were there actually details involved? When did you actually get the details of the concept?

Mr. Roger Brown: The short answer is that during the November 26 meeting we had a very generalized description of the concept being tabled. It wasn't until February 26 that there was a table drop of the specific details of many of the provisions we're opposed to, including the delegation of authority and the binding policy direction matters.

If I may take a bit of time, perhaps I'll just respond on the whole consultation record.

We started back on December 12, 2012. That is when we were notified by fax about a meeting that was following on the next day, within less than 24 hours. We attended that meeting. The only indication was that Canada would be pursuing changes to the YESAA. There was no content whatsoever to that effect.

On February 21 we received a letter from the deputy minister promising the development of a working group. That working group was never established. Our expectation was a tripartite process. By May 30 we had received a letter with a draft bill. We were quite surprised to see a bill in draft form. We thought we would be doing that together. During that meeting there was some offer of funding for the process, and none of the provisions that we're opposed to in the current Bill S-6 were tabled at that time.

Getting back to the point, I'll make this short. It was not until February 26, 2014, that we received the details. Concerning the funding that has been referred to, we had provisions to spend it by the end of the fiscal year. That gave us 22 days, really, to respond to the draft bill. It must be said concerning most of the money we were provided with through agreement in the summer of 2013 that we spent a lot of time using that money to analyze provisions of a draft bill that simply didn't have any of these matters. I'll just leave it at that.

● (1155)

Mrs. Carol Hughes: In 25 seconds, all I want to ask is, should there be time allocation on a bill such as this one? What is the rush? Shouldn't we get it right?

Mr. Roger Brown: The short answer is yes.

The Chair: Thank you.

For our final slot for questioning for this panel, we turn to Mr. Leef.

Mr. Ryan Leef: I asked the minister last week, in specific reference to the binding policy direction embedded in the legislation, whether it would interfere with assessment. I think we've already answered this question, from your perspective, and know that it's not interfering with assessments.

The minister went on to affirm that the binding policy direction :

> [I]n regard to policy direction, any policy direction first would have to be consistent with the land claims agreement and legislation, in this case the Umbrella Final Agreement and the Yukon Environmental and Socio-Economic Assessment Act.

I know this question was posed specifically in the Senate hearings to Daryn Leas, who was providing technical advice. We talked about the implications for land claims and whether or not they would prevail over territorial legislation. He testified in the Senate:

> It is true our land claim agreements would prevail over federal or territorial legislation.... [T]hose amendments technically are not affecting the final agreement, or maybe even the fact that the final agreement is going to prevail....

How much confidence do you have, under section 35 of the Constitution Act, under the UFA, under each self-government agreement, and indeed under the proposed sections embedded in Bill S-6 at this current point that refer back to each and every one of those agreements and from the minister's own comments to the committee, that the Umbrella Final Agreement will prevail in respect to these amendments?

I'm sure anybody who is technical is going to respond to that.

Mr. Brian MacDonald (Legal Counsel, Champagne and Aishihik First Nations): Thanks, Ryan.

I'm not going to get into the comments that were.... I think Daryn spoke.... Well, I'm not going to speak to that stuff.

Generally, what we have demonstrated here is a concern for the processes and the ways the agreements are interpreted. When we get into the discussion about consultation, it is not just, “Here's the information”; I think you have to look more deeply. That's why we speak to the concept of deep consultation. It's about a dialogue.

The agreements say that there should be sufficient form and notice of the issue to be consulted on, sufficient time to respond, full and fair consideration of the response. What we're trying to demonstrate through this discussion is that these didn't occur, and that is the treaty. The treaty is about that relationship and being able to do that.

Would I say this is consistent with it? No.

Mr. Ryan Leef: On one hand we have content, and on another hand we have process. First and foremost, the content needs to be solid so that we don't have a degradation of our environmental regime here in Yukon and so that our socio-economic considerations are well invested. You're making the point that process can in some forms and fashion affect that. I appreciate your point.

I wonder, though, would you not consider the bill—and I think there's value for the public to understand this piece.... It is an unusual step to provide a bill in its draft form, in secret form, so that you can actually look at it ahead of time. There's not joint drafting of a federal piece of legislation, but the minister cannot disclose it before it is tabled in Parliament.

Would you not consider the bill itself as brought forward a sufficient forum to understand exactly the direction you're going in, in light of the fact that the deck really did spell out those four pieces in it? Then it moved in a subsequent meeting to the actual legislation.

You had an opportunity to look at it. Is that not a sufficient forum?

● (1200)

The Chair: Time is actually about to expire, but given that this is our last round of questioning, I think it would be appropriate to allow a brief response.

Mr. Brian MacDonald: I will be brief.

This piece of legislation was born out of a trilateral process. Drafting instruction even started through that trilateral process. The origin of it was about the relationship, and three parties worked together in drafting the original bill. To suggest that it is a unique.... It is unique, and so I think that going forward they should have anticipated that the amendments would also be done and carried out under the same principle. I don't think it's sufficient to say, "We met our obligation and now we can carry on unilaterally in this process." I don't think that's what chapter 12 contemplated.

Mr. Ryan Leef: Thank you for that.

The Chair: Thank you to all of our panellists on this panel and the others this morning.

We'll now suspend our meeting briefly to allow members and the committee staff to have a quick bite to eat, and we'll return for our afternoon session.

● _____ (Pause) _____

●

● (1300)

The Chair: We'll call our afternoon session to order now.

With us for the first 45 minutes this afternoon will be the Yukon Environmental and Socio-economic Assessment Board. We have Wendy Randall, chair and executive committee member, as well as Tim Smith, executive director.

We will start with some opening remarks and then we will have some questions from members for the remaining time.

Ms. Randall, you'll be making the opening presentation, I assume. The floor is yours.

Ms. Wendy Randall (Chair and Executive Committee Member, Yukon Environmental and Socio-economic Assessment Board): Thank you, Mr. Chair.

I would also like to thank the committee for inviting me to appear before them today as they study Bill S-6.

My name is Wendy Randall and I was appointed chair of the Yukon Environmental and Socio-economic Assessment Board just over two months ago. lt is an honour to speak to this committee about this complex and comprehensive piece of legislation that is so important to Yukoners.

I will try not to take up too much of your time. I'm simply going to provide an overview of the Yukon Environmental and Socio-economic Assessment Act as well as the role of the Yukon Environmental and Socio-economic Assessment Board. For the committee's consideration, I will also speak to the fundamental purposes of the act and then either I or executive director Tim Smith will be available to answer questions.

Chapter 12 of the Umbrella Final Agreement and Yukon first nations final agreements called for the creation, through federal legislation, of an assessment process applicable to all lands within Yukon. Over a decade later, in November 2005, the Yukon Environmental and Socio-economic Assessment Act with its regulations came into force and became the federal statute setting out this process.

The board was established under YESAA, and consistent with the Umbrella Final Agreement, is an independent, neutral, arm's-length body responsible for the administration of the assessment responsibilities of YESAA. The board comprises a three person executive committee, one member of which is also chair of the board. There are four other members at large, for a total of seven board members. The Council of Yukon First Nations nominates three of the board members; the Yukon government nominates two board members, and the Government of Canada also nominates two board members. All board members are appointed by the federal Minister of Aboriginal Affairs and Northern Development Canada.

YESAB is made up of six community-based designated offices and a head office in Whitehorse, which houses the executive committee. The designated offices are responsible for conducting the majority of assessments known as evaluations. They have completed close to 2,000 designated office assessments to date.

The executive committee conducts assessments known as screenings of larger, more complicated projects. Screenings of six projects have been completed with a seventh that is currently in the adequacy review stage. To date there have been no reviews conducted by a panel of the board.

It is important to note that YESAB is not part of government. We are not a regulator. We do not issue permits or authorizations, and we do not make final decisions on projects. We are an independent board that conducts environmental and socio-economic assessments and makes recommendations to decision bodies. Those decision bodies are the three orders of government that have control over land and resources in Yukon, so federal, territorial, and first nation governments.

As chair of the board, I feel it is appropriate for me to convey to this committee the purposes of the act as they were contemplated by the three parties that originally drafted the legislation, those parties being the federal government, the Yukon government, and the Council of Yukon First Nations.

If you were to talk to the parties who created YESAA, they would tell you that it was almost a miracle of drafting to obtain consensus from such diverse sets of needs and interests, and yet they did. At the front of the Yukon Environmental and Socio-economic Assessment Act is section 5. It sets out the purposes of the act agreed to by the parties.

I believe this section is important for the committee to think about during their study of Bill S-6. The purposes of the act as set out in YESAA are unique to Yukon. They are bold. They are comprehensive, and some have potentially competing interests. The board and staff must ask ourselves every day if what we are doing and how we are doing it is in keeping with the purposes of this legislation.

The purposes of the act are as follows:

(a) to provide a comprehensive, neutrally conducted assessment process applicable in Yukon;

(b) to require that, before projects are undertaken, their environmental and socio-economic effects be considered;

(c) to protect and maintain environmental quality and heritage resources;

(d) to protect and promote the well-being of Yukon Indian persons and their societies and Yukon residents generally, as well as the interests of other Canadians;

(e) to ensure that projects are undertaken in accordance with principles that foster beneficial socio-economic change without undermining the ecological and social systems on which communities and their residents, and societies, in general, depend;

● (1305)

(f) to recognize and, to the extent practicable, enhance the traditional economy of Yukon Indian persons and their special relationship with the wilderness environment;

(g) to guarantee opportunities for the participation of Yukon Indian persons—and to make use of their knowledge and experience—in the assessment process;

(h) to provide opportunities for public participation in the assessment process;

(i) to ensure that the assessment process is conducted in a timely, efficient and effective manner that avoids duplication; and

(j) to provide certainty to the extent practicable with respect to assessment procedures, including information requirements, time limits and costs to participants.

As you can see, we must balance the diverse needs of all participants in the process, including stakeholders, Yukon first nations, and proponents. YESAA is made-in-Yukon legislation that Yukoners are very proud of.

Thank you, Mr. Chair. I hope this has provided some helpful context for committee members.

The Chair: Thanks, Ms. Randall.

We will now turn to questions from the members. We'll probably have time for about six minutes per member, at this stage.

We'll start with Mr. Bevington.

● (1310)

Mr. Dennis Bevington: Thank you for the presentation, Ms. Randall and Mr. Smith.

You gave us a profile of the board. One of the issues that have engaged us here is policy-making. You have a whole number of things that you have to match up to in terms of that description. How is your policy formulated to date? How do you set the rules of engagement for the board?

Ms. Wendy Randall: The board is responsible for the overall assessment framework of YESAA. We have a number of policies. We have rules that we can make under our legislation. Rules are primarily with regard to timelines and processes for assessments.

At the beginning, at the implementation of YESAA initially, and then further down the road when we did a review of the designated office rules, we did that with a pretty broad public consultation. We consulted with Yukoners, proponents, environmental groups, Yukon first nations, and anyone who had an interest in the YESAA process, to try to gather people's interests and hopefully come to some way of representing those in our policies and processes.

Mr. Dennis Bevington: Do you have policy vis-à-vis the actual development of the terms of reference for projects? Do you have a framework that you use, and how was that developed?

Ms. Wendy Randall: Unlike some of the other jurisdictions, we do not have a terms of reference process under YESAA, if that's what you are referring to. We do have guidance for proponents, for both designated office assessments and executive committee level assessments.

Mr. Dennis Bevington: How have those guidance rules been set since inception?

Ms. Wendy Randall: Currently, those are primarily set through the overall assessment framework as directed by the board, again with much public consultation with people who are involved in the process.

Mr. Dennis Bevington: You are saying that there are a number of areas where policy is used on the board, where there are rules, procedures, and terms that you will bring to bear. Is that a fair assessment of what you do?

Ms. Wendy Randall: Yes, that is correct.

Mr. Dennis Bevington: Has your board taken a position on any of these issues that are in front of us, the four major issues we face here that are the controversial issues going forward?

Ms. Wendy Randall: The board's role is to implement the legislation that is in front of us. Whatever that legislation may be, it will be our role to find a way to implement it. That is how we see our role.

Mr. Dennis Bevington: Basically, you are in front of the committee here simply for information on how the board operates. Is that correct?

Ms. Wendy Randall: Yes. I was asked to appear in front of the committee.

Mr. Dennis Bevington: Fair enough. That keeps you in a neutral position.

I am just trying to find out how you can relate, then, to the questions that are in front of us, how we can extract from you some information about how.... Did you have timelines in the previous...? Do you operate under any kind of timeline at the present time?

Ms. Wendy Randall: Yes, absolutely. We have timelines for all our processes. The designated office assessments, the executive committee screenings, and the panel reviews currently have timelines that were developed, as I mentioned earlier, through the consultation we've done with regard to our rules.

Mr. Dennis Bevington: Do you see that the amendment being put forward will radically change how those timelines are set?

Ms. Wendy Randall: It will change it in a number of ways. There will be timelines that are legislated now as opposed to being in our rules. There will likely be challenges with implementing particularly the timelines at the executive committee screening level. We will be hard-pressed to find ways to make that happen.

● (1315)

Mr. Dennis Bevington: I was very impressed with the quantity of projects your board has worked its way through. It's quite remarkable that you do as many as you do. You said that you do these mostly at a regional level, that most of them are through simple screening, office screening you call it.

Ms. Wendy Randall: It's called a designated office assessment. Those are the bulk of the assessments that are done. We've only done six other assessments that are screenings at the executive committee level.

Mr. Dennis Bevington: Would placer mining come up to that executive screening level at all, or would it remain generally at that... because that seems to be one of your largest customers.

Ms. Wendy Randall: That's at the designated office level.

The Chair: Thank you, Mr. Bevington.

We'll move now to Mr. Leef for the next six minutes.

Mr. Ryan Leef: Thank you, Ms. Randall, for appearing here today and congratulations on your appointment to the board.

I'm going to ask you a question in particular reference to some of the changes that have moved into Bill S-6, outside of previous YESAA legislation.

In clause 10, proposed subsection 43(2) reads as follows:

> If the proponent fails to provide the required supplementary information within the period prescribed by the rules, the designated office, executive committee or panel of the Board may suspend its assessment activities until the proponent provides that information—

How is that different from what currently exists under the legislation?

Mr. Tim Smith (Executive Director, Yukon Environmental and Socio-economic Assessment Board): There are some subtle changes that will be brought about by such an amendment, in particular, the ability or authority to discontinue assessments when a proponent is unable to or does not provide a response to an information request within a prescribed period of time. We see this providing greater certainty within the act.

Mr. Ryan Leef: Regardless of defined timelines, should there not be sufficient information, can the executive council or the screening-designated offices effectively stop the clock and require the proponent to provide additional information?

Mr. Tim Smith: Yes. In terms of suspending an assessment pending a response to an information request, there is little change from current practice. We currently generate statistics. For the committee's benefit, a summary of those statistics is available on YESAB's website. The statistics are divided into both assessment time and proponent time. Where the proponent is taking time to respond to an information request, of course that is not calculated as part of the assessment timeline or the timelines being proposed in Bill S-6.

Mr. Ryan Leef: Thank you.

The premier was here this morning and I think the phrase he used was that the meat in the sandwich is the regulations. I know we're here to seize ourselves of the specifics of Bill S-6 itself, but an act is followed by regulation. I'm just wondering if there are any changes in this act that are leading us toward regulatory development and providing greater certainty and continuance of environmental and socio-economic integrity.

Are you able to speak to any of that "meat in the sandwich" conversation which the premier referred to this morning?

Ms. Wendy Randall: I'm not clear on what you're asking me, actually.

Mr. Ryan Leef: Effectively he was saying that we have the act, but next it's going to be the regulations and the regulations will speak to some of the things that we're speculating about at this point. We're making some speculation on what could occur and what can't occur, which will be tightened up by specific regulations.

Ms. Wendy Randall: The regulations primarily speak to triggers for assessment. If the regulations are being reviewed, that's where this will be discussed, I assume—what the triggers are either to have an assessment or to determine the level of assessment.

Mr. Ryan Leef: Would that speak to the one outstanding piece of the "significant change" definition? The timelines in Bill S-6 are referring to an assessment as not being required unless there is significant change to a proposal. If you're defining triggers in the regulations, would it start to define what might trigger "significant change"?

● (1320)

Ms. Wendy Randall: It could. I just don't feel comfortable speaking to what the parties may or may not decide to do with the regulations.

Mr. Ryan Leef: Okay. But that question, I presume, could come up. I'm certainly not asking you to say that this is exactly how they're going to be defined, but that option is at least open in that process. Is it, or do you not know?

Ms. Wendy Randall: That may be one avenue to look at it, sure.

Mr. Ryan Leef: Okay. Thank you.

Can you again just reiterate the board membership and the executive committee membership for me?

Ms. Wendy Randall: There are seven members of the board. Three are the executive committee, and one of the executive committee members is also the chair of the board. Then there are four other members at large.

Mr. Ryan Leef: Those board appointments are made by...?

Ms. Wendy Randall: The Council of Yukon First Nations nominates three of the board members, the Yukon government nominates two board members, and the Government of Canada also nominates two board members, all board members being appointed by the federal Minister of Aboriginal Affairs and Northern Development Canada.

Mr. Ryan Leef: There's an additional change in Bill S-6 in respect to extension of time limits. There's an initial provision that sets out that there can only be time limit extensions for a maximum of two months, taking into account circumstances specific to a proposal for a project, and then a subsection that follows that allows a recommendation to be made to further extend those time limits for any period.

That, I presume, would have been put in to anticipate much larger-scale projects that might come forward for which the timelines in the bill right now would be impossible to meet.

The Chair: Unfortunately, time has elapsed. Maybe on a further round you can get a response to that question.

Ms. Jones is next up.

Ms. Yvonne Jones: Thank you, Mr. Chair.

I thank you, Ms. Randall and Mr. Smith, for your presentation today.

This morning we heard from a number of other presenters. One of them, Chief Steve Smith, said that this particular bill is a made-in-the-Yukon law. He went on to say that the northern regulatory process works.

Would you agree with that statement as it relates to this legislation, not to the amendments, but the original bill?

Ms. Wendy Randall: Yes, that certainly is made-in-Yukon legislation, and I believe it works quite well. I believe that, as with many pieces of legislation, there are always things that in practice we can do to improve it.

Ms. Yvonne Jones: Deputy Chief Millie Olsen also made a statement this morning that there is no evidence that these proposed timelines will benefit assessments or proponents in the Yukon. Do you agree with that statement?

Ms. Wendy Randall: I'm really not comfortable commenting on someone else's opinion.

Ms. Yvonne Jones: Let me ask you this way. The bill as it is right now will take away decision-making power by the board and its officers and the ability to provide time-limit extensions to project assessments and will give that authority to the minister. Do you have any concerns or observations that you want to share with our committee concerning how this might affect the process within your organization and how it might affect those proponents who are coming forward?

Ms. Wendy Randall: I think it will be a challenge for the board to work through different ways. If these changes go forward in the legislation, we will have to find ways to make this work. Timelines would be one requirement in the legislation, but as I suggested in my presentation to the committee on the purposes of the act, those are also things that we need to accomplish when we undertake our work.

Section 42 sets out the things we need to consider when we do assessments, so we have a wide range of things that we as an organization need to accomplish when we do assessments. Some of these changes will definitely require us to re-look at how we're doing some assessments.

● (1325)

Ms. Yvonne Jones: In the past, your group did assessments on a number of different files, as you have indicated to us already. Do you feel that the current timelines in place and the current scope in which your committee has been able to work have been to the detriment of any of the proponents, have slowed activity, have shown a decline in how economic development works or a failure to look at the environmental and social impacts in any way?

You have a history of working under the old legislation, and while there may have been ways to improve it, do you see anything that we are dealing with here today that is going to make your board more effective or more efficient in the work you do?

Ms. Wendy Randall: We have 10 years of experience conducting environmental assessments on projects, from very small projects to very large projects. We have flexibility now in timelines that we have established under our rules, which for the most part, I feel, work fairly well.

Certainly there are areas in which things can be improved. We have proponents. We have first nations. We have other groups with sometimes different interests who feel there could be improvements made. I'm unsure until I see how these changes would play out or be implemented whether they would accomplish that or not.

Ms. Yvonne Jones: I can certainly understand why you would be very guarded in your responses, simply because of the task that your board has. But if you have a process that for the last 10 years has worked, in which you have controlled the timelines as a board and have been able to set those timelines to the satisfaction of proponents and the board itself in carrying out the work you're mandated to do, how do you...? Now the power is going to be turned over to the minister to set those particular guidelines. Does that impose restrictions upon the work you do, and is it going to affect proponents who will come forward having to have social and environmental impact assessments done?

Ms. Wendy Randall: A couple of areas in which I think changes will be required in our process concern the timelines. Our designated office assessments currently take an average of 52 days. The proposed timelines are 270 days.

Those are the majority of our assessments. Currently we have the public and the first nations asking for extensions to public review processes on a regular basis. Because we have very tight timelines on those designated office assessments, we are quite conservative in providing extensions to them. So I see that with this much longer timeline for designated office assessments there will be more opportunities for extensions to projects. I'm not sure that was the intent of the legislation, however.

With regard to executive committee screening, certainly for large projects, if we're including the adequacy review stage in that 16 months, we will need to look at a different way, likely, to conduct some of the larger, more complicated screenings. That may mean exploring anything from—

The Chair: I'll have to stop you there. We're quite a bit over time.

We'll move to Mr. Strahl next.

Mr. Mark Strahl: Thank you, Mr. Chair.

I wanted to talk about the amendment in Bill S-6 that allows for board members' terms to be extended. Perhaps you could speak to cases in which that has been an issue before; or is this a forward-looking amendment that says that if a review is under way and a member's term is about to expire...?

Has it happened in the past, that this has affected reviews, and do you see this as a positive change?

Ms. Wendy Randall: This was an issue that was raised in the five-year review. There was a concern that, for instance, if an executive committee screening were under way, or perhaps a panel of the board, and a board member was either conducting that executive committee screening or sitting on that panel when their term expired, it left a sort of void as to what we do. Are we appointing someone new, either in the middle of a process or somewhere down the line near the end of a process?

My understanding is that the legislation will now allow that board member to continue with that project until it is finalized.

● (1330)

Mr. Mark Strahl: Now, you mentioned timelines. You said that you are currently conducting reviews in a shorter time period than is envisioned by the amendments in Bill S-6. Am I correct on that, for the most part?

Ms. Wendy Randall: That's a designated office....

Mr. Mark Strahl: Okay.

Do you see that as being a particular concern? Is that going to put undue pressure on you? Or is it like, again, this is already happening, so it puts it in legislation but in practice you're already meeting those shorter timelines?

Ms. Wendy Randall: It will require us to look at our rules again because these timelines are different from what is in our rules. These processes are different from what is in our rules. Part of that will be how we conduct these designated office assessments, if that's what we're speaking to—the ones that are averaging just over 50 days now and the proposed 270 days that's in Bill S-6. Then that will certainly provide participants in the assessment process at the designated office level a lot of room to discuss how they think those assessments should happen, the level of public participation and first nations participation, and the timelines around that.

We currently pride ourselves on meeting and beating timelines—the ones that we have—so this will undoubtedly add a level of pressure for us to extend timelines.

Mr. Mark Strahl: We talked this morning about significant change quite a bit. Have there been instances where a designated office or the board itself has reviewed projects where it's simply a renewal, that sort of thing? I'm trying to get an idea of the concern there as well.

I know you don't want to get into the politics of it, but have there been cases where you grade...? Does YESAB have its own determination as to what level of review is required already? Would this Bill S-6 amendment take that out of your hands and make that decision for you? What do you do now when you're getting a simple renewal versus...? We heard about a massive expansion at a mine. Obviously, they're treated differently, but maybe you can walk us through that process.

Ms. Wendy Randall: I guess the best way to answer that is that ultimately decision bodies under this proposal under Bill S-6 will be making a determination of whether a new assessment is required. So until they sort out what that means in practice, it's just impossible for me to comment on how operationally that would work.

Mr. Mark Strahl: How does it work currently? If you get—

Ms. Wendy Randall: Well, currently at the designated office level we have a flow chart. So there's a way a project comes in. There is a certain amount of days set to review the information on that project, to do an adequacy determination and request further information. If it's a more complicated or comprehensive project, we can extend some of those timelines. We go into a second almost parallel process for more complicated, larger projects. At the designated office level, right now, we have everything from very small projects to...that come into mines.

We currently have a process in our rules that accommodates those differences in projects.

The Chair: Okay.

We'll move next to Ms. Hughes.

Mrs. Carol Hughes: Thank you very much.

My understanding right now is that the board is autonomous. Based on the concerns being brought forward with this bill and the need to recognize first nations input on this as well, I'm just wondering with the changes being made to the bill, is this not speaking to the autonomy of the board in question?

Ms. Wendy Randall: I don't feel it's really my place to make a determination on the autonomy. The hallmark of the YESAA legislation has been its independence and its neutrality. The first purpose of the act that I talked about in section 5 speaks to that. It says “ to provide a comprehensive, neutrally conducted assessment process applicable in Yukon”.

It will of course be imperative to ensure the independence and neutrality of YESAB and that it's maintained in order for us to retain the trust of decision bodies and Yukoners.

● (1335)

Mrs. Carol Hughes: Considering that Casino is actually the largest mining project in Yukon's history and that the adequacy review is important to make sure that the proponent has provided sufficient detail to make it possible to assess, I would like to ask concerning other current projects that are under review how, if new rules were in place, the adequacy review for any current project such as Casino would be affected.

Ms. Wendy Randall: My understanding is that, if a project has already been accepted, it would continue under the process it's currently in.

Mrs. Carol Hughes: That's if it is being accepted, but if the project is being amended, would the assessment review process be amended as well? It's my understanding that under this project, if a project were amended at some point there wouldn't be an assessment or a need for a review of it. Is that not correct?

Ms. Wendy Randall: I'm not clear what you're asking me, actually.

Mrs. Carol Hughes: If the scope of the project changes, would there be another review for the assessment? Would another one be—

Ms. Wendy Randall: It depends. Our assessment covers off the activities and effects of the project as submitted and assessed. Then regulators provide authorizations, licences, and permits based on the scope of that project and that assessment. If the project changed and there were different activities with potentially different effects that had not been assessed, as things now stand those activities might or might not under the regulations trigger a further or a new or a smaller assessment on those activities. It depends on what it is.

Mrs. Carol Hughes: Do you agree that projects that at this point have taken the longest in assessment processes are those that didn't have enough information?

Ms. Wendy Randall: I think it's more complicated than that. There are thousands and thousands of pages of technical information required for complicated projects. Also, sometimes issues come up that Yukoners feel very strongly about. Some significant public concern, perhaps, is raised. There can be a number of reasons that timelines are extended.

Mrs. Carol Hughes: In establishing beginning-to-end timelines, this could speed up through the assessment process, but this will result in rushed assessments that will not fully address potential environmental or socio-economic impacts. These are some of the concerns that are being raised.

What is your view? Do you agree that establishing beginning-to-end timelines may speed these projects through the assessment process and could result in rushed assessments that will not fully address potential environmental and socio-economic impacts?

Ms. Wendy Randall: I don't think we as a board have that option. The act tells us that we must do a comprehensive environmental and socio-economic assessment, and then it may tell us what the timelines are. We will need to find a way to make that work.

As I indicated before, this may mean that some assessments will look different from the way they look now. The process may have to change. We may have to contemplate the AIR or EIS processes that some other jurisdictions use—a sort of pre-process before the adequacy process.

Mrs. Carol Hughes: Again, it won't be Yukon-made anymore?

Ms. Wendy Randall: I don't know what you mean by Yukon-made. We will need to find ways to make whatever we are dealt with —

Mrs. Carol Hughes: YESAA was made-in-Yukon, made-by-Yukon, and made-for Yukon. Now we're having to readjust the whole process, right?

Ms. Wendy Randall: We may have to look at the process, particularly for larger, more complex projects.

Mrs. Carol Hughes: That's good.

The Chair: All right.

Our final questioner will be Mr. Seeback.

Mr. Kyle Seeback: Thank you.

When you were mentioning YESAA section 5, I took a chance to quickly look. One portion that jumped out at me in the context of what I've been questioning about today is paragraph 5(2)(i), which says, “to ensure that the assessment process is conducted in a timely, efficient and effective manner that avoids duplication”.

I don't know whether you have that text or are familiar with it. I think I quoted it fairly accurately.

When we look at something in the context of significant change, has the board or a designated office encountered a situation in which there clearly hasn't been a significant change, yet there had to be another assessment?

● (1340)

Ms. Wendy Randall: I don't know. I can't honestly answer. Perhaps, I don't know.

Mr. Kyle Seeback: Mr. Smith, you seem to want to answer.

Mr. Tim Smith: I think this morning there was a comment that alluded to a change in policy or practice of YESAB with respect to how we bound projects temporally.

Certainly in the past it had been YESAB's practice to impose temporal boundaries on a project consistent with the longest permit cycle. It is conceivable that there were occasions when that may have resulted in very similar projects being assessed iteratively. This was an issue that arose during the five-year review.

Recently, YESAB has made changes in its practices to allow for a different approach to temporal scoping of projects, one delinked from permit cycles. It would be based on the information that a proponent has available that can provide support up to the life cycle of a project. We feel that this will address many of those concerns about iterative reviews of very similar projects.

Mr. Kyle Seeback: Would you agree that this is a circumstance in which the legislation is putting in place, in a legislative context, what the board is already trying to deal with in an administrative or regulatory context?

That seems to me to be what you just said, that you recognized that there was an issue and that you're trying to find ways to make those changes yourselves.

Ms. Wendy Randall: That was one very specific issue with regard to the temporal scope of a certain type of project. My understanding is that in the suggested changes in Bill S-6, the scope of the change is not that narrow.

So yes, that's one example that would probably fit in with that change. As for other areas that would fit in with it, we don't know.

Mr. Kyle Seeback: If a project that does not have a significant change has to have another assessment due to renewing a permit, do you think that is in violation of paragraph 5(2)(i), which says that you want it to be done in a manner that avoids duplication?

Ms. Wendy Randall: I'm again uncomfortable with being asked for my opinion on these sorts of things. We would like to spend our time doing environmental and socio-economic assessments on projects that will yield value from the assessment. If there are projects in which it is not providing value, then it's not a good use of anyone's time.

Mr. Kyle Seeback: In the example I heard earlier, in which a mine went from—I forget what he said—1,500 tonnes a day to something significantly in excess of that, it makes a lot of sense to me to look at having an additional assessment. But when you're just looking at renewing a permit and nothing is really changing, to me it seems to violate paragraph 5(2)(i) to have another assessment that is duplicative.

● (1345)

Ms. Wendy Randall: Sure.

Mr. Kyle Seeback: I'm not afraid to give my opinion, and understandably so.

Ms. Wendy Randall: YESAB's role isn't really to have a political opinion on this legislation. We're here to speak to—

Mr. Kyle Seeback: Of course, no. I'm not trying to ask for a political opinion. I'm just....

Some hon. members: Oh, oh!

Ms. Wendy Randall: We're here to speak to the way the implementation of these changes may affect YESAA—as far as we can see. Many of them are so broad and not defined that it's hard for us to even speak to some of those potentials.

The Chair: Sir, there are a few seconds left. Would you make it brief?

Mr. Tim Smith: Very quickly, let me reiterate that the discretion as to whether a project would require an assessment rests largely with the decision body and not with YESAB itself.

The Chair: Thank you.

Thank you both for being here and for the information you provided.

We'll suspend the meeting briefly now and set up for our next panel.

The meeting is suspended.

● _____ (Pause) _____ ●

● (1400)

The Chair: I'll call the meeting back to order.

Let me ask that the room be a little quieter, please. We'll restart with our second panel of the afternoon.

We have with us from Kaminak Gold Corporation Allison Rippin Armstrong, vice-president of lands and environment. We also have with us from the Yukon Chamber of Mines, Brad Thrall, president; Samson Hartland, executive director; and Ron Light, vice-president of Capstone Mining Corp.

Welcome to all of you.

We'll start with you, Ms. Rippin Armstrong, for the first seven minutes for your opening remarks.

Ms. Allison Rippin Armstrong (Vice-President, Lands and Environment, Kaminak Gold Corporation): I would like to thank Kwanlin Dün First Nation and Tr'ondëk Hwëch'in council for welcoming us into their traditional territory.

Mr. Chairman and honourable members, thank you for the invitation to appear before the committee to speak to Bill S-6, concerning proposed amendments to the Yukon Environmental and Socio-economic Assessment Act. We appreciate the opportunity because, as a Yukon success story, Kaminak wants to ensure that we are governed by an accessible and stable regulatory regime.

My name is Allison Rippin Armstrong, and I am vice-president of lands and environment with Kaminak Gold Corp. Kaminak is a Canadian exploration company that has owned and explored mineral properties in all three of Canada's northern territories. We are currently focused on exploring and advancing the Coffee gold project located in central Yukon within the traditional territory of Tr'ondëk Hwëch'in.

Kaminak is committed to being a good neighbour to all stakeholders, including Yukon first nations, and to that end has engaged local first nations at every stage of the Coffee gold project. Kaminak continues to work closely with our local first nations leaders and communities to minimize project impacts and to create innovative educational and employment opportunities for first nation citizens. Going forward, Kaminak remains committed to being an industry leader in aboriginal engagement.

Kaminak supports regulatory reform that creates efficiencies, stability, and predictability in assessment and regulatory regimes. Stability and predictability create certainty that influences our investment decisions as a company and also attracts outside investment in our company and in the Yukon territory. That being said, Kaminak is concerned that the process through which YESAA is being amended is creating increased distrust between governments and uncertainty in the assessment and regulatory process for current and future projects in Yukon.

Specifically, the YESAA five-year review resulted in a number of recommendations, most of which were supported by the parties involved in the review, including Yukon first nations. We understand that some of the proposed amendments do not accurately reflect comments and recommendations raised during the five-year review, and as a result, instead of celebrating a historic alignment between the governments and Yukon first nations on most of the proposed amendments to YESAA, Yukon first nations have expressed a common position that they intend to take the federal government to court, if Bill S-6 is passed as proposed.

Kaminak is very concerned about this development, because court cases create assessment and regulatory uncertainty in addition to extraordinary delay, all of which erodes investor confidence.

Investment in mineral exploration and development is very mobile, and Yukon and Canada are competing in a global market. While investment in a low sovereign-risk country such as Canada is attractive to many investment institutions, the reality is that the mineral exploration industry has never been more globalized.

Since 2009 Kaminak has spent $91 million on exploring the Coffee gold project. Recently, Kaminak completed a preliminary economic assessment and transitioned into feasibility, which we aim to complete at the end of this year. A positive outcome could see Kaminak entering the assessment and permitting phase by mid-2016 and on track to build a gold mine by 2019-20.

Our Coffee gold project has yet to enter the YESAA process. If Bill S-6 is passed and challenged in court, the Coffee gold project and our presence in Yukon is uncertain. Kaminak urges the federal government to resume discussions with the first nations to work collectively toward reaching consensus on the proposed amendments to YESAA and avoid a court challenge.

Mr. Chairman and honourable members of the committee, thank you for the time and opportunity to share our views.

● (1405)

The Chair: Thank you very much for your remarks.

Mr. Thrall, I assume you will be presenting on behalf of the Yukon Chamber of Mines. The floor is now yours.

Mr. Brad A. Thrall (President, Yukon Chamber of Mines): Thank you.

Good afternoon, Mr. Chair and members of the parliamentary standing committee. Thank you for the opportunity to provide testimony today on this important legislation.

I'm here today as president of the Yukon Chamber of Mines, as well as in my position as the executive vice-president and chief operating officer of Alexco Resource Corp. With me today, aIso representing the Chamber of Mines and our industry, is Mr. Samson Hartland, who is a director of the chamber, and Mr. Ron Light, vice-president of the chamber and general manager of Capstone's Minto mine.

Let me begin by saying that the Yukon Chamber of Mines and the mining industry in the Yukon support a robust environmental assessment process. Our comments today reflect our belief that the proposed amendments to the Yukon Environmental and Socio-economic Assessment Act will improve the areas of most concern to our industry with respect to the YESAA process.

I would like to address two important proposed sections in this bill that we feel will have the most benefit to mine operators and developers, namely project reassessment, proposed section 49.1, and timelines, proposed section 56.

Let me first start with Alexco's experience in the YESAA process and how it relates to our operations in the Keno Hill silver district. Alexco is a public Canadian mining company. Our primary asset is the Keno Hill silver district located in the traditional territory of the First Nation of Na-Cho Nyäk Dun.

To speak first on project reassessment, the nature of almost all mining districts and operations is that mine plans and ore bodies will change once they go into production according to changes in commodity prices, exploration results, and other cost and operating variables. These changes are generally consistent with current operations, such as an extension of the timeline for the operation of existing facilities or the expansion of current facilities. But under the current YESAA legislation, even if new activities are very similar in nature, new assessments are generally required.

ln the case of Alexco and Keno Hill, we have undergone the YESAA process 10 times over a variety of activities in the past eight years, for activities that are very similar in nature yet have already been assessed. For example, Alexco recently underwent a YESAA designated office assessment for the addition of another similar narrow-vein ore body sitting directly adjacent to and beneath our existing milling facility, a facility that had already been in operation for three years and was in full compliance with all operating permits and licences.

Despite this, the use of the mill for a further period beyond five years was included as part of the assessment for a new underground mine adjacent to the mill, along with the assessment for a new dry stack expansion tailings facility, a facility that had already operated successfully for the past three years.

We have also been required to go back through the entire environmental assessment process, simply to maintain a care and maintenance water licence, to extend the operating period of water treatment facilities from five years to 10 years. These facilities had again successfully operated for several years, but the simple extension of plant operating time required a new assessment.

Similar examples of project reassessment have been experienced at other operating and development projects in the Yukon, including Capstone's Minto mine and Golden Predator's Brewery Creek mine. These are clear examples in which a reasonable decision body could have easily determined that these are not material changes to a project and should not require an additional assessment of the project, and they underscore the importance of proposed section 49.1, project reassessment.

With respect to timelines, we support time limits that include both the adequacy and assessment stages of the YESAA process. Over the past five years, Alexco has undergone a YESAA process four times, specifically for mine development and mine operation purposes.

The adequacy review period of the YESAA process for our latest mine addition has increased fourfold compared with the time required to assess the first new mine and mill in the district. Meanwhile, the overall time required to complete the YESAA process from beginning to end has systematically increased by approximately two and a half times. Currently, the adequacy stage is not included in binding timelines, and our experience has been that this period continues to grow in length and that the adequacy period is used to conduct the assessment outside of the designated timelines.

The current uncertainty in reassessments and continued extensions of the time required for a YESAA assessment have a negative impact upon our ability to efficiently plan and operate our business. By extension, it impairs the competitiveness of Yukon, as a jurisdiction, to assert certainty in mine development and production processes and to attract scarce investment capital.

● (1410)

Finally, Mr. Chair, let me make some remarks on the broader context of the mining community in the Yukon. Nearly all mining operations are developed in a series of phases. In our experience as well as that of other operators and developers in the Yukon, YESAA is not conducive to or aligned with the normal mine operating requirements of sites that are already in operation. At some stage, all current and future mines will undergo normal changes in operations, and the inclusion of these amendments will be important to all current and future operators.

I thank you for your time. I would like to turn over the balance of our allotted time to Mr. Samson Hartland.

The Chair: Mr. Hartland, you have about a minute and a half remaining of the time.

Mr. Samson Hartland (Executive Director, Yukon Chamber of Mines): Thank you, Mr. Thrall.

Good afternoon, Mr. Chair and members of the parliamentary standing committee.

I'd like to follow up Mr. Thrall's comments with some aspects and perspectives with respect to intergovernmental relations.

The Yukon Chamber of Mines enjoys a positive, constructive relationship with all levels of government. Working with federal, first nations, and Yukon governments, the Yukon Chamber of Mines contributes by ensuring that technical and industry expertise is provided to all parties when working towards creating socio-economic opportunities for communities and Yukoners.

Currently, the Yukon Chamber of Mines is working towards the production of an aboriginal consultation and engagement guidebook for proponents, in partnership with the Council of Yukon First Nations, the Government of Canada, and the Yukon government. This work is being undertaken in order to provide clarity on the consultation and engagement requirements of a proponent when looking to conduct activities that occur on traditional territory of Yukon first nations.

The Yukon Chamber of Mines has provided its long-standing support to the settlement of the Umbrella Final Agreement. As Yukoners, we believed that the UFA would provide certainty for industry and was the next step in respect to the evolution of first nations governments. However, as an industry organization we would be remiss if we did not articulate a concern from industry that the erosion of intergovernmental relations among parties to the UFA over Bill S-6 is creating a level of uncertainty that affects the attractiveness of Yukon as a jurisdiction to invest in.

As the trusted voice of mining in Yukon, representing a membership of more than 400, we urge all levels of government to move towards respectful dialogue and to work towards a way by which we can provide socio-economic opportunities for communities and Yukoners while respecting the environment in doing so.

Thank you.

The Chair: Thank you very much.

We will now move to our questioning from members. I think what we'll do is go with about six-minute rounds on this segment as well

First we have Mr. Bevington.

Mr. Dennis Bevington: Thanks very much, Mr. Chair, for your generosity.

Thank you, presenters. I think that what you've said is very valuable to the deliberations here. I hope it carries forward.

Mr. Thrall, you talked about the assessment process.

You have to do the socio-economic work. Environmental assessment in provinces would likely not be part of an environmental assessment act. It's part of the Yukon assessment because the Yukon is a territory, like the Northwest Territories. As territories, we don't have the same wherewithal to make the economic deals with resource developers that people have in provinces.

Do you see where I'm going with this? The socio-economic part of the environmental assessment is stronger here simply because this is the only opportunity Yukoners have really to interact with the mining developers on a legitimate and structured basis to talk about socio-economic issues.

Would you care to comment on that?

● (1415)

Mr. Brad A. Thrall: My comment would be that most companies operating in the Yukon have an ongoing dialogue with communities and first nations and many stakeholders outside of the YESAA process. I agree that the YESAA process has an important consideration with respect to socio-economic matters, but I would also suggest that most companies that operate in the Yukon in this day and age have those relationships outside the process as well.

Mr. Dennis Bevington: Do you see that the process requires information on the side involving YESAA? If people are going to make a judgment about the socio-economic benefits of a mining operation, they're going to need more than just the environmental portfolio of the mine or the environmental impacts of the mine. They're going to need to understand how those mines are going to interact with the communities. They're going to have to understand how the mine plan works with the working population of the territory.

These are things that are extremely important, I'm sure, to people who live in the Yukon, as they are in my experience in the Northwest Territories.

When you set timeframes for environmental assessment and you have these more complex socio-economic issues that you must actually work out, do you see that dynamic as a reason that these projects sometimes take a little longer to take effect through the process?

Mr. Brad A. Thrall: Again, I think our experience within the Keno district and Alexco has been that over time, over the last several years, the legislation itself hasn't changed. What we have seen change are the timelines themselves and the fact that a lot more detail is being brought forward into the adequacy phase of the assessment.

Again, we certainly understand that some projects are larger in complexity than others and will take more time to do an effective assessment on, but we support the timelines to ensure that the adequacy process is not used as the assessment tool itself and that it's included in the overall timelines.

Mr. Dennis Bevington: In that process, if you don't get the answers you're looking for through enough information and time, do you think sometimes assessors might want to push it up to the next level and open up a larger assessment? If you're dealing with a short timeframe for an office submission and you don't get the information you need, then you may want to look at pushing it up the ladder to a more "executive" situation. Could timeframes therefore actually cause a leap in the height of the environmental assessment?

Mr. Brad A. Thrall: Well, I certainly think if the proponent comes forward with a complete package of information and the assessors are qualified as well, there's no reason that assessments can't be effective and be completed within the proposed timelines.

Mr. Dennis Bevington: How do you think we should deal with this? I open it up to Mr. Thrall and Ms. Armstrong.

Do you really see that the government should hold back on this bill until it gets some kind of agreement that can work between the parties?

Ms. Allison Rippin Armstrong: We believe the bill should be held back until there is agreement. We would like to see the federal government come back to the table, talk to the first nations, and resolve these four outstanding contentious amendments.

Mr. Brad A. Thrall: I think the position of the Yukon Chamber of Mines is that we support passage of this bill as it sits. We believe it's in the best interests of the industry we represent, so we do urge passage.

The Chair: We'll move to Mr. Leef next.

Mr. Ryan Leef: Thank you, witnesses.

Ms. Armstrong, my question will be for you. You urge that the bill be set aside and that the government come back to the table with Yukon first nations to talk about their concerns. I think they made their concerns pretty clear this morning. Their position was that the four clauses be entirely removed. From that point of view, I'm not entirely sure there's a lot of room to talk about those four pieces. It seems to me they'll be satisfied if those four pieces are completely removed.

Also, when I look at the Yukon Minerals Advisory Board report, they rendered a fairly scathing assessment in 2013. They said they've chosen "to focus on...the key issue negatively impacting industry; the deterioration in the efficiency and reliability of the assessment and licensing of mining projects in the territory."

They've highlighted that the "proponents' experience securing approvals has worsened dramatically", and "[G]radual deterioration in the interpretation and administration of existing laws and regulations by government agencies [is creating] uncertainty... affecting capital investment". They also talk about the deterioration of the investment climate in the Yukon.

One of the signatories to that was Eira Thomas, who is the CEO of Kaminak.

I guess I'm wondering, in light of the fact that Yukon first nations' position is pretty clear on the timeline assessment piece, whether it would be your position now that we just remove the timeline assessment piece entirely, and that would allow us to move on.

● (1420)

Ms. Allison Rippin Armstrong: Our position is that if the government isn't going to come back to the table to address the four contentious amendments with the first nations, they should be removed from the bill.

Mr. Ryan Leef: I know you've made your position on that question clear, Mr. Thrall, so I won't repeat that question.

Mr. Hartland, with respect to the mining industry, you indicated that it represents over 400 employers in this territory. Would those include Yukon first nation mining companies as well?

Mr. Samson Hartland: That's correct. Our membership is representative of a wide cross-section of individuals, everyone from a prospector doing work in the creek all the way up to workers in fully producing mines as well as levels of government and first nation development corporations in between.

Mr. Ryan Leef: Mr. Thrall, you spoke about engagement at the community level not just for first nations but for all Yukoners. I'm wondering if you have any anecdotal experience generally speaking about the IBAs that have been initiated in the territory, which benefit communities broadly and our territory on a wide basis.

Mr. Brad A. Thrall: I certainly would, but with your indulgence, I'd like to pass that to Mr. Light because of his operating experience.

Mr. Ron Light (Vice President, Capstone Mining Corp., Yukon Chamber of Mines): This is Ron Light. Could you repeat your question, please, Mr. Leef?

Mr. Ryan Leef: I'm wondering if you could highlight anecdotally, without getting into specifics, at least some of the IBAs that benefit Yukon communities and indeed the entire Yukon, and give us your sense of the cooperative and direct working relationship that exists outside of government, just between Yukon mines and the communities in which they work.

Mr. Ron Light: I think as the only operating mine in the Yukon right now, last year we spent $45 million in the Yukon alone. We have what I would consider a well-established working relationship with the first nations whose land we work on. We do get into the community for community updates. We support employment and training. We also step outside of that. In 2012 we opened an office in Whitehorse so we could get to the broader Yukon community.

The downside as I see it is that permitting timelines continue to grow. To piggyback on what Mr. Thrall said earlier, our latest application took 150 days from project submission to the declared adequacy. It took another 210 days to have a decision document. That was the YESAA part alone, which is paramount to the work of other regulatory bodies and which resulted in a local contractor in Yukon reducing its manpower at our Minto Mine from 101 employees in 2013 to 53 in 2014 and, further, to 37 as of this date.

● (1425)

Mr. Ryan Leef: In respect of that point, with the global climate in terms of investment, the portion highlighted by YMAB, and your own testimony today, if absolutely shelving the timeline piece were on the table for this committee, what impact would that have on employment and the economy in the territory, in your estimation?

Mr. Ron Light: I think as long as we can shorten timelines, the employment will continue to grow since mines will continue to operate. Right now we're spending money on the Yukon College foundation to improve the ability to supply homegrown tradespeople and miners, but we have to have a place for those tradespeople and miners to work. Extended timelines are going to push them out of the territory, and we need to keep them here.

The Chair: We'll move to Ms. Jones for the next six minutes.

Ms. Yvonne Jones: Thank you, all, for your presentations today. I must say we've had very interesting dialogue with all the presenters.

Ms. Armstrong, I come from a riding that is of course very heavily industrialized. There's a lot of mining activity and a lot of first nations and Inuit land claims and treaty agreements. I know that respectful relationships drive the economy, protect the environment, and make all people proud of where we come from, so I'm happy to hear your support today for first nations people, because it's on their land that you work, and I think respect is very important.

On the timeline piece, the mining association is saying that timelines have affected your companies. I won't argue with that. I'm sure there are all kinds of processes that get dragged out for longer than we would like sometimes. If this bill is not fixed and all three governments that are signatories to it cannot come to consensus, we could very well see things go to the courts. How is that going to affect your mining operations and jobs in this area?

Mr. Samson Hartland: Thank you for the question, Ms. Jones.

I think there are probably some good examples to use here, such as the Brewery Creek YESAB submission from a number of years back. This was a producing mine from 1996 to 2002, and it closed due to low gold prices. When they tried to bring it back online in 2009, they acquired all the licences and permits and undertook extensive exploration.

Now, as part of that, they did partner up and have an agreement in place—

Ms. Yvonne Jones: Mr. Hartland, I have to interrupt you. I'm sorry.

You're telling us today that because of the YESAA process and the timelines associated with that, minor changes within your company meant having to go through extensive processes of assessment. You say those delayed your operations and caused job losses and layoffs for Yukoners.

If the Government of Canada does not resolve this issue to the satisfaction of all governments involved, the first nations have already said they will seek litigation, and they will go to the courts. How is that going to affect mining operations in this area? That's what I want to know.

Mr. Ron Light: That's going to draw things out even longer. It's going to result in more layoffs, more mine closures, and the end of mining in Yukon.

Ms. Yvonne Jones: Exactly.

My question today is why the Chamber of Mines would not be supporting the first nations governments in trying to resolve this issue before it gets passed through the House of Commons. I'm surprised that you would take the view you do on how it's going to impact the economy, the companies, the jobs, and the mining industry but not be encouraging the Government of Canada to get to the table with first nations and resolve this issue.

Mr. Samson Hartland: With all due respect, Ms. Jones, that was a part of our presentation. We did speak to the importance of intergovernmental relations. We spoke to the importance of respectful relations among all levels of government, but at the same time, just to be clear, the Chamber of Mines is here to speak on the merits of the bill that are specific to operating in Yukon's climate.

You've gotten a bit of a taste of the technical and industry perspectives on experiences with YESAB. When we talk about intergovernmental relations, we are simply a mining organization. We understand mining, and that's what we're here to present to you today.

As for intergovernmental relations, you guys are the experts. That's why there are levels of government that have spoken to this today. We just want to be able to provide input that provides benefits to all Yukoners.

● (1430)

Ms. Yvonne Jones: I respect that, but we have a situation here. I think the bill can be amended with the cooperation of the Government of Canada and the Government of the Yukon and first nations governments so that it will work for everyone. I really feel that if this cannot be resolved, it's Yukoners who are going to lose out. They're really going to lose out. What do you do in a situation when you have legislation being forced on you?

You are a mining association representing mining companies, one of which, as we heard here today, would prefer to see all groups back at the table and have this resolved, because they know what it's going to mean for their investments and for the timeframes around their mining operations. I would have thought it would be the same case for all other mining operations or business development projects in this area. Do you see a way of resolving this issue among the parties involved and coming to language that everyone can agree upon before the bill passes through the House of Commons?

Mr. Samson Hartland: I refer back to our opening comments with respect to the fact that we have spoken to how the parties do need to work in respectful ways towards arriving at solutions that provide socio-economic opportunities for Yukoners.

It's certainly not our place to say how doing that should be gone about. We're speaking to the merits of the bill as presented, and we're speaking to the importance of the timelines and the reassessments.

The Chair: Mr. Strahl, you're next.

Mr. Mark Strahl: Thank you, Mr. Chair.

Again I want to focus on this annual report of the Yukon Minerals Advisory Board from 2013. This question will go to Ms. Rippin Armstrong.

Page 5 of the document says:

> YMAB puts forth the following recommendations to [Yukon government] as they are achievable and can result in immediate positive impacts in the next three to six months.

One of them is on "Adequacy Review Timelines for YESAA and the Water Board" and states:

> Short timelines for adequacy reviews must be set for YESAA and for the Yukon Water Board.

Under "YESAA Re-assessment Process Clarity", the report states:

> The process to determine whether a YESAA re-assessment is required when an authorization is renewed or amended needs to be clarified. A more transparent decision-making process is also needed, particularly with respect to how and when these determinations are made by Decision Bodies.

Again, as Mr. Leef said, the report talked about "the deterioration in the efficiency and reliability of the assessment and licensing of the mining projects in the territory" and the "decline" in Yukon in terms of the jurisdiction's ranking as a desirable place to do mining.

Everything I read there was signed off on by Eira Thomas, Kaminak Gold Corp. She wanted the Yukon government to put in adequacy review timelines and YESAA reassessment process clarity in three to six months. Certainly, that would not allow for the level of consultation that we have provided for the last 18 months.

Why did Ms. Thomas and Kaminak want these changes so badly in 2013 and why, now that they are before you in terms of legislation, is there this sudden "where did this come from"? I can tell you that it came from people like those at Kaminak who asked for it. Why the flip-flop on the part of Kaminak? Why are they now saying that what they wanted just two years ago is outrageous at this point?

Ms. Allison Rippin Armstrong: Thank you, Mr. Strahl.

There is no flip-flop. Kaminak has not made any flip-flops. Eira Thomas was only one signatory to that document. Eira Thomas is the president and CEO of Kaminak. Kaminak, as one of the companies working in the Yukon, absolutely participated in recommendations for improvements.

It was the job of the Yukon government and the job of the federal government to then take those recommendations into consideration and consult with the first nations. That was not—

● (1435)

Mr. Mark Strahl: Okay. Let's talk about that, then. If now it's the mining companies like Kaminak that have asked for adequacy review, significant change in policy direction, etc., if that's what industry has asked for, how do you think...? I see no way forward, after the discussion today, where they're consulting further. The positions are either "remove it from the bill" or...that's all there is.

Do you envision a consultation process that would allow this bill to get buy-in with the four amendments? Or are you saying to remove the four amendments because if we consulted from now throughout the next mandate of the next government, you don't see a way that these four provisions would be accepted or could be tweaked in any way? There's been a discussion to remove them entirely.

How do we go forward from those two really incompatible positions other than to just strip them out of the bill?

Ms. Allison Rippin Armstrong: Thank you, Mr. Strahl. Kaminak has met with the Yukon first nations. We met with the Council of Yukon First Nations and with many of the individual leaders, some of whom are here today. We are actually surprised.... We think that if the parties came back to the table there could be a resolution to at least the two amendments you're referring to on the timelines and the adequacy review and renewal.

We are confident, based on our conversations with the first nations that—and you heard them today—they do welcome the opportunity to come back to the table and have discussions. So I don't think you heard this morning that.... I was here all morning and I did not hear that it's "either remove them or we go to court". That's not what I heard.

Mr. Mark Strahl: Mr. Hartland, can you talk about the different offices? Has the Yukon Chamber of Mines seen different assessments or different procedures in place depending on which designated office may or may not consider an application from a mining company?

Mr. Samson Hartland: Yes, absolutely. I think that if you were to ask any proponent where they would like to have their application vetted, they would have preferences when it comes to offices, because there is a lack of consistency, a lack of consistent, clear, and transparent application of YESAA, from one district office to another. This is one of the important aspects of the reason why the Yukon Chamber of Mines is here supporting the bill as it is today. I could go on further, but I think that pretty much encapsulates it.

The Chair: Thank you.

I'm glad you chose not to go on further because time has expired on this round.

Voices: Oh, oh!

The Chair: We will move to Ms. Hughes for the next six minutes.

Mrs. Carol Hughes: Thank you very much.

I think this is quite interesting, because we've had panels of 12 where they've only had an hour, and then we've had small panels where we've had an hour, so I think we wish that we would have had more time to hear from first nations as well.

Ms. Armstrong, I think you've really put it on the table in saying that we need to take this back and we need to have an agreement. The principle of it is that there has been no discussion on those four issues—decent discussion—to try to find common ground on it. I think that's extremely important.

Mr. Thrall, you've talked about how it's important to mining, and I can tell you that, yes, sometimes mining thinks they're doing the right thing. I come from Elliot Lake. I can tell you that the Occupational Health and Safety Act came about because of people who stood up and said, "This is wrong and we need to find common ground on how to make sure our people are going to be safe."

That is basically what these communities are doing as well. They're saying that we have to look at the social and the economic impacts of this. If there is an issue with the length of the assessment.... Because from what we can understand, if I remember correctly, YESAB has basically indicated that they had come into a disagreement, maybe, on the timelines.

That's one. I'm sure there may have been some other ones, but on the major ones.... For example, I know that Casino.... We're talking about tailings ponds here. We know what happened in B.C. I can tell you what tailings ponds have done in Elliot Lake as well, and how they had to look at remediation of that part when the mines closed down. I understand that when Casino went forward that there were 400-plus questions that YESAB had to ask in order for that project to move forward.

I think what we are looking at is the fact that the government and the territorial government went to the table and said they were ready to do the review. People put their cards on the table and said, "Here are our amendments and here's how we can try to fix this." Seventy-three of them out of the 76 were accepted, but the problem is that the other ones came in after the fact with no detail.

I think the people want to work together and want to make sure that business and their communities thrive, and they want to make sure they can protect their environment.

I do have a couple of questions. You've indicated that there are two changes that are of most benefit, that you think would be most beneficial to you. What are your views on policy direction and delegation of authority, which are part of this bill? Is it of little benefit? Is there a lot of benefit? Or do you have a statement on that at all?

● (1440)

Mr. Samson Hartland: Recognizing the sensitivities around those two specific amendments that you've asked for a position on, we spoke to it a bit earlier, obviously, about the delegation of binding policy direction. With respect to that, that responsibility and that power already exist within the board. That already exists within YESAB. They have the ability to develop their own policy for implementation and for clear, concise, and consistent application of applications throughout all the DOs.

That said, though, going back earlier, we do recognize that these amendments are sensitive, and we want to be respectful as part of our comments, so that's the reason why we've not been speaking to it specifically today.

Mrs. Carol Hughes: I have to kind of question of that. The fact of the matter is that there was a review process in place. It was meant to address maybe some of....

As you know, things change over five years. You may have an adjustment that needs to be made because you want to expand the mine or you want to do something else. Five years have gone by, so you do have to look at whether or not you need to have an assessment, at what is going to be the impact. I think that's what people are saying needs to happen.

If you're saying that those need to be adjusted, I'm sure that the conversation...because this is what it's all about. Should there have been a conversation about these major changes that are being made in order to ensure that there would be common ground in order to try to prevent any negative impacts from happening on both sides?

Mr. Samson Hartland: You're asking a pretty politically loaded question, right? You're asking as legislators whether we should be thinking like legislators and coming up essentially with a game plan as to how—

Mrs. Carol Hughes: No, what I'm asking about is the impact that this is going to have on your business. On one side, you're saying that this is going to be good for you and the impact will be good if it's in there, but on the other side, as you stated just a while ago, the impact will be negative if it is passed because of the fact that it's going to go to litigation.

Mr. Samson Hartland: You've perfectly articulated how industry is between a rock and a hard place.

Mrs. Carol Hughes: So your recommendation is that they try to find common ground very soon so they can pass it.

Mr. Samson Hartland: I think that's pretty much fair. Exactly what was said—

Mrs. Carol Hughes: Or that they remove those four pieces from Bill S-6 and then deal with those three pieces so that the rest can go forward.

Mr. Samson Hartland: That's not what we said.

Mrs. Carol Hughes: How much time do I have? Fifteen seconds?

Oh, sorry, but maybe, Mr. Light, you can respond to this in writing if you'd like.

The Chair: I think I'm going to have to cut you off. There's no way you'll get a question and a response in that time.

We'll move to Mr. Seeback.

Mr. Kyle Seeback: Thank you, Mr. Chair.

Mr. Thrall, you were talking about a project with 10 reassessments. I've had the opportunity to talk to the board before, and I asked if they were aware of any projects that had to have a number of reassessments when there wasn't necessarily a significant change. They didn't seem to recall any specifics on that, but I think your evidence today is that this actually in fact does take place.

Would you say that it takes place often? How often are you finding that taking place?

● (1445)

Mr. Brad A. Thrall: I would clarify that not all of those 10 assessments were reassessments in the sense of what we are talking about today. Some of those were in fact new projects, and it was appropriate to go back through the process.

But our experience has been that we've had more than one example—several examples—of simply wanting to extend the timeline of an existing licence. We've had to go through, on our most recent one to include the mill as part of an assessment.... That mill was already permitted for 10 years. There was no proposal to do anything different with that mill other than to put additional ore through the mill, but it was determined that the mill itself, the timeline of the mill, would then be included as part of the assessment for a new ore body.

Those are the types of examples. I think I also spoke to another example, where we simply asked to extend the timeline of our care and maintenance licence. That was the licence that covered water treatment plants. We wanted to simply extend that from five years to 10 years, and the result was that the entire licence was opened up for a reassessment. In fact, what came out of that was a recommendation for a significant amount of additional work and requirements on our part—things that were never proposed in the first place.

Mr. Kyle Seeback: I take it that you wouldn't consider the examples you just mentioned significant changes.

Mr. Brad A. Thrall: Certainly not, and again, I wouldn't classify as "significant" just continuing to do what you're doing today for a further period of time.

Mr. Kyle Seeback: In the previous panel, the board suggested that they've implemented their own process to deal with this kind of reassessment on non-significant matters. Would you agree with that or not?

Mr. Brad A. Thrall: I couldn't comment on the detailed discussions and those types of things that happened at the board level of YESAB. I do understand that those are topics, but I guess I'm not privy to the exact details of what those discussions are and how they're going to deal with these types of examples.

Mr. Kyle Seeback: But you would think, or your position is, that the "significant change" aspect of these bills—one of the four things that has been requested to be removed—is something that's necessary for the industry.

Mr. Brad A. Thrall: Certainly it is. I think it's important to point out that I and certainly Mr. Light are speaking on behalf of an operator or of companies that have already been in that mode of operating. A number of companies are not yet into that phase and may not necessarily appreciate the importance of these amendments until once they do get into that phase of production. That's why it's Mr. Light and I who are speaking to these amendments, because we have so much direct experience with the fact that once you're into an operating mode, that's where these issues, if you will, really arise, and the challenges that they face.

Mr. Kyle Seeback: My concern is this. Two panels ago I asked a question, I believe to Chief Massie, about the current system. They said they want "significant change" removed. I asked what the common ground was between "significant change" and the current system and where they saw room to move. I didn't get an answer.

Sort of along the lines of what we heard previously from Mr. Strahl, where is the movement when the answer is "take it out"? That doesn't seem to me to deal with the problem.

Mr. Brad A. Thrall: I would agree that if that weren't in there, then we would see more of the same, if you will, with interpretation by different designated offices and different views of what "significant" means. Certainly with the status quo, as we see it today, I think we know what the results of that are. That's the issue that Mr. Light and I talked about today, how we see these timelines just continuing to grow longer and longer.

● (1450)

The Chair: Thank you very much. I will....

Did you have a point of order?

Mr. Dennis Bevington: On a point of order, Chair, we still have 10 minutes left. We have enough for a couple more interventions if these groups are with us until three o'clock.

The Chair: We do have a schedule to try to keep to, of course, and we have to set up for the next panel as well.

Mr. Dennis Bevington: We have 15 minutes in between this panel and the next panel.

The Chair: We've been through all the members, but if there are one or two additional members who wish to speak—

Mr. Dennis Bevington: This is a very important discussion here.

The Chair: —we can certainly entertain that. My apologies; I didn't realize we had the extra time in between.

Do I have any members who wish to ask additional questions?

Mr. Dennis Bevington: I'd like to continue on this vein that we've been on, which I think is fairly—

The Chair: Well, I'd have to see some consent here from the committee to have additional questions.

Could I have maybe one from each side, possibly? Having said that, I can give you an additional five minutes on each side.

Mr. Bevington, and then we'll see who else: Mr. Leef and Ms. Jones—

Mr. Dennis Bevington: I'll give you two of mine.

Ms. Yvonne Jones: We're sharing.

Mr. Dennis Bevington: Fair enough. We're all in a big happy family here.

It's interesting how we're now focusing on these four amendments, because that's what we're here for. Really, everything else we haven't heard any discussion on. What we're getting down to now is whether we can see that the mining association would support removing two of these amendments, and whether the conversation could start up pretty quickly around first nations with the other two amendments.

The amendments are different in that the two amendments we're talking about, which really affect long-term power relationships in the Yukon, are the unilateral policy decisions and the delegation of authority. These are things that affect land claims directly and that are significant because they have a long-term process. If we're talking about the timeframes for assessments, you know that this subject will be coming back on the table in the next five years and we can have another discussion about it. It's the same thing with whether or not you have the reassessment of a project. You can talk about that again. But when you're talking about power, when it comes to the relationship between aboriginal government and public government, these are very serious topics. Those two amendments are really troublesome for first nations, I believe, because of that fact.

Could you see that being the compromise that could be struck?

Mr. Samson Hartland: Just to be clear, at the chamber organization that lobbies on behalf of our membership we're always about compromise and consensus building. That said, certainly we're not in a position to speak to the legislative abilities of the discussions around this moving forward. We just want to be able to provide value today on topics that we have experience with. That value comes in the timeline and reassessments. That's what we've come here to speak about today, and that's where we can provide value.

As for how to get the bill passed, it's above our pay grade, unfortunately.

Ms. Allison Rippin Armstrong: Can I answer Mr. Bevington's question as well?

The Chair: That will be at his discretion, of course. He did want to provide some time to Ms. Jones.

Mr. Dennis Bevington: That's fine.

Ms. Allison Rippin Armstrong: I just wanted to say that I think it's an excellent question. I think it's unfortunate that it got asked of us and not of the Yukon first nations this morning.

The Chair: I'll turn for the remaining two minutes to Ms. Jones.

Ms. Yvonne Jones: Thank you.

It's too bad we have to clew up, because I think if we could come to some consensus on how to go forward it would make things a whole lot easier for everyone. When the grand chief presented this morning, one thing she said was that their preference was reconciliation, talking a solution and not implementing one, whether it be unilaterally by the Government of Canada or by first nations government.

First of all, as the Chamber of Mines, don't you agree that respectful relationships with first nations people and governments are key to any development projects you want to do in the Yukon territory and in their lands? If you agree with that statement, putting all politics aside and just using good common sense, why would you not want to recommend that there be a solution that can be worked out through talking and discussion before this bill goes through the House of Commons?

I have to ask that question, because if you feel that way, it's the respectful way to do business.

● (1455)

Mr. Samson Hartland: Absolutely, and that was articulated in our opening comments.

Ms. Yvonne Jones: Well, then, I'll ask the question that was already asked of you by me and by others today. Are you prepared to recommend to our committee today that there be further consultations between the Government of Canada and the first nations to work out the details of those four recommendations that are holding up the bill at this stage? Are you prepared to support that?

Mr. Samson Hartland: That's not our area of expertise.

Ms. Yvonne Jones: Again, it's common sense when you want to do business in the land that is owned by someone else.

Mr. Samson Hartland: What you have to understand is that we're talking about the Umbrella Final Agreement here, right? The Umbrella Final Agreement we are not a party to—

The Chair: Make it quick, because the time has expired.

Mr. Samson Hartland: Okay.

The Chair: All right.

Mr. Leef, for the final five minutes.

Mr. Ryan Leef: Thank you, Chair.

Indeed we're onto the fruitful piece of the day's meetings. I appreciate that some of the questions have put you in a position between a rock and a hard place. Nonetheless, it's important that the committee ask them.

I'm going to paraphrase a bit of everything we've heard today. Invariably the committee will go back to Ottawa and carefully review all of the testimony, because there has been a lot. I've been taking notes as diligently as possible to make sure I have an accurate reflection of what's been said.

I do know that Yukon first nations are still here and are indeed engaged in this discussion and are listening to this. I think right now they're absorbing what you've articulated and they will indeed have an opportunity to comment on it. I think all committee members look forward to that.

I think the grand chief presented her concerns well today. I think all the chiefs did. They outlined them clearly for us to review. They very clearly articulated that the clause on timelines, the clause on adequacy, the clause on binding policy direction, and the clause on delegated authority should all be removed. In fact, Deputy Chief Olsen, on the issue of timelines, said they wouldn't provide any benefit to industry. We're hearing very polarized comments on that one piece.

In summary, I didn't hear—although, I think we'd love to hear it, if it were expressed—an invitation to meet and talk about those four pieces again. I did hear very clearly talk about removal of those four pieces. Ms. Rippin Armstrong said she has indication that there is a possibility to discuss those four pieces.

Ms. Rippin Armstrong, what level of indication have you received that first nations are indeed very interested in discussing those four pieces? Are there specifics that you can recommend to the committee? I do appreciate it would have been a great question to ask the first nations. I'm sorry that we don't have the opportunity right this second, but I think we can afford that, because they are listening, so we'll get some comments on this.

From your point of view, as an industry stakeholder in this, what have you heard that would indicate there is definitely room to move on the timeline and adequacy pieces, that you could help us with?

Ms. Allison Rippin Armstrong: Thank you, Mr. Leef.

It's not so much that I've heard specifics about whether there would be a willingness to move on certain things. But I have heard through numerous conversations, even this morning—and I've been here since 8 a.m.—that the preference is for reconciliation. The preference is to address this.

We've had ample time to have longer discussions since there are only three of us in this one-hour slot. In the previous presentation this morning, the panels had very little time. They put forward their positions and repeatedly this morning, when the first nations were being asked questions, their answers were cut off before they even had a chance to respond. I think we missed out on a lot of really valuable conversation this morning because of the timeframes.

I have loads of examples in my book of questions being asked and then the response being “no time for response”, and then, “Thank you very much. We have to move on”. It's not my place..., and it's unfortunate, but I think you missed out on opportunities to hear those answers expanded upon this morning because of the timelines.

● (1500)

Mr. Ryan Leef: I think the committee generally directs witnesses that if they are not able to give a fulsome response and there are additional pieces to answers, they are always invited to follow up with written submissions, which will be valuable. Then we're able to really look through them as we go. It's tough to simply keep track of everything that's been said today. Nonetheless, there have been very valuable things. We appreciate your input on this, and the recommendations from each of you. We certainly look forward to looking everything over.

My time has probably expired, Chair.

Thank you all for your input.

The Chair: Thank you, witnesses.

Certainly I will reiterate the point that was just made, that the committee welcomes written submissions at any time. They can be sent in via me to the committee. Anyone who has suggestions is welcome to do that.

We will now suspend briefly to set up for the next panel and then carry on from there.

The meeting is suspended.

● _____ (Pause) _____

●

● (1515)

The Chair: We have with us at this point, from the Klondike Placer Miners' Association, Stuart Schmidt, the president, and Randy Clarkson, the executive director. We also have, as an individual, David Morrison, who is retired and who is the former president and CEO at Yukon Energy Corporation.

We will give each of you an opportunity to make opening remarks and then we'll follow those with questions from the members. We'll start with the miners' association.

Mr. Schmidt, I assume you'll be making the presentation, so the floor is yours.

Mr. Stuart Schmidt (President, Klondike Placer Miners' Association): I will, thank you. I'll try to get started right away because seven minutes goes by pretty quickly.

Good afternoon, Mr. Chair. My name is Stuart Schmidt. I am president of the Klondike Placer Miners' Association. With me is Randy Clarkson, the executive director of the association.

Legislation concerning YESAB is very important to our industry. We have experienced a great deal of frustration with this process, and we feel that improvements to the process would benefit all Yukoners. The KPMA represents over 100 family-based mining operations in the Yukon as well as many service industries and suppliers. We've been working here for over 130 years as a private sector generator of wealth.

Our industry cumulatively produces over 60 million dollars' worth of gold every year and at least 2.5 times that in spinoff benefits. These are important to the people of the Yukon.

Only water and gravity are used to concentrate placer gold particles. No chemicals, such as mercury or cyanide, are used. No rock acid drainage or other chemical leaching problems occur as a result of placer mining. We are very aware of the importance of environmental stewardship, and we have respect for the land from which we make our living.

Without exception all Yukon placer mines are privately financed operations, and the majority are family owned with many generations working together. This is one of the reasons we can keep operating throughout market cycles even when the stock market is compromising the ability of public companies to operate. This is also one of the reasons we are able to speak freely to you today as we do not have shareholders who worry if they see controversy over legislation in the Yukon.

I employ 24 people, and 11 members of my family and extended family depend on mining for their incomes. Many of my employees have children and families they also take care of. This situation is typical of Yukon placer mines.

Even before the advent of YESAB, our industry had become heavily regulated over the last 20 years with regulations covering all facets of mining from water use, water discharge, stream reclamation, and terrestrial reclamation. The placer industry has more experience with YESAB designated offices than does any other industry or working group in the Yukon. Thirty-eight per cent of the assessments of designated offices have been for placer mines.

There are four parts of this proposed legislation that are controversial.

One is reassessments of project renewals, proposed subsection 49.1(1). For all of our water licences and land use licences that we have already been assessed for, we will need to go through another assessment at renewal. Very minor amendments will also be assessed. Somehow we need to address this issue of assessing the same project multiple times.

Number two is timelines. Placer projects are at the designated office level, so we shall comment on timelines for this level. Since the implementation of YESAB, our timelines for licensing have increased substantially. Since the placer resource is often more difficult to delineate and explore than hard rock resources are, we need to be agile in how we approach our work. Timelines proposed in this legislation are too long for placer mining and could be much shorter. We also think this is an important area for discussion.

Number three is policy direction. We believe that someone should be able to give direction not just to the YESAB board but, somehow, to the designated offices. The designated offices must be accountable for the recommendations and for their information requests. I came across this issue when I asked the head of a designated office who I could appeal an information request to and I was told, “You may not appeal this to anyone. I am the authority here.” All of us are accountable to someone, somewhere. In the case of a politician, it is the electorate. If you're a gold miner, you must pay your bills and follow the rules. Somehow someone needs to be able to give the designated offices direction to ensure consistency and to ensure that they are not bringing their personal bias to this very important job that affects everyone in the community they live in. We believe this is an important area that needs to be dealt with.

Number four is delegation to the minister. This, again, is a very controversial issue. Devolution and the voice of local government, both first nations and Yukon government, make sense to us, so we believe in local decision-making. We supported devolution of the once federal responsibilities to our elected Yukon government, and we feel this was an important milestone for the people of the Yukon. That's all I'm going to say about it until you ask me more questions.

Number five—here I'm adding points to these controversial issues, because there are other issues that simply aren't covered by this bill—is a lack of procedural fairness. This is an additional issue that we did bring up with the Senate. There's a lack of procedural fairness in the YESAB process. YESAB designated offices' procedures for seeking views and information do not follow the rules of natural justice. There are no opportunities for proponents to address last-minute interventions, and most interventions come at the last minute. Once the “seeking views and information period” is over, the proponents need a reasonable amount of time to respond.

● (1520)

A further one is our number six. YESAB is not restricted to receiving only the evidence gained in the information response and in seeking views, period, but routinely solicits information from other sources and other projects without our knowledge or giving us a chance to respond. This is why we never know what to expect in YESAB recommendations. They often come out of the blue.

Number seven is that the decision bodies are not allowed to consider evidence that was not presented during the YESAB assessment. The proponent needs to be able to answer questions and exchange views with the decision body. YESAB is not always accurate. We're only human. We make mistakes. If further questions occur at some point, they should be answered, just like you should be able to ask more questions of the first nations tomorrow if they feel that they didn't get enough information today.

In conclusion, the work we do in the Yukon is simple and straightforward. Our environmental liability is low. When we ask that improvements be made to this legislation, we are not asking that the environment be sacrificed in any way. We are simply asking that we not be sacrificed in the name of legislative arguments and to make environmental screening appear good on paper.

The more onerous this system becomes—and it's rapidly becoming more onerous—the more difficult it is for small companies like mine to work. More and more, we are forced to hire professionals to help us find our way through the system. Our industry is under a regulatory burden that has little to do with real environmental protection and everything to do with a system that needs direction from someone, somewhere.

It is our sincere hope that this committee leaves here with a greater understanding and a determination to find a way through the morass of differing opinions, remembering all the while that there are people on the ground trying to maintain their livelihoods, earn a living, and contribute tax dollars to both the federal and the territorial governments.

We are the ones struggling with this system. Ask your presenters how many times they have gone through the process when they present to you their opinion on this system. Many would change their views of YESAB if they had to experience being the proponent. We are not legislators, nor do we pretend to have a comprehensive understanding of the agreements between first nations and the Yukon and federal governments.

Please help us deal with this difficult situation we find ourselves in.

Thank you for the opportunity to present our views regarding the proposed legislation.

● (1525)

The Chair: Thank you very much.

Mr. Morrison, you have some time for opening remarks as well.

Mr. David Morrison (Former President and Chief Executive Officer, Yukon Energy Corporation, As an Individual): Thank you, Mr. Richards.

I'm happy to be here today. Thank you for the invite. Over the years, I have spent a great deal of time involved in the YESAA process. Today I want to talk primarily about the ex-com—or executive committee—process, so I think you have a bit of both sides of it here with my friends from Klondike Placer Miners' Association.

I'm here to talk about what I see and what my experience is in terms of the amendments related to the YESAA process as a whole. Before I start into what I would call the technical part, I want to preface my remarks by saying something about what I see as the issues.

One of the things that I think has been a benefit in terms of having YESAA—and this is my experience—has been that we've been able to work through large projects. I'm not telling you that there haven't been bumps in the road. There have been a lot of bumps in the road, and there are a lot of things about the YESAA process that I would like to see improved, but in any event, from my perspective, there are parts of the YESAA process that have improved over the years. Whether it's through how YESAA's own internal processes, or rules, or operating rules have changed, I've seen some improvements. We've had some good experiences through the YESAA process, and we've had some costly experiences in the YESAA process.

But whether we get to a point through your work such that we have amendments that we go forward with, I want to talk for a minute about the fact that this YESAA process lives and works here in the Yukon, we all live and work here in the Yukon, and the projects that we do are here in the Yukon. It has to work for all of us. If there are significant differences of opinion on issues, we have to find a way to sort them out, because trying to go through an assessment process and then all the various regulatory processes that we find ourselves subject to is a long and detailed process. If we have certainty around the fact that those processes work, we at least have that comfort, but if we don't have that certainty, then this process doesn't work any of us, and it has to work.

Let me talk about timelines for a quick minute. I believe strongly that there have to be some timelines. Having said that and having told you that I want to talk about the ex-com process, in my previous life we went through three ex-com screenings. That's probably more than anybody, but I might be wrong. Beginning to end, individually, they lasted 10 months and three days, one year and two months, and one year and 12 days. From my perspective, I think the 16 months is a good timeline. It gives people enough time to get their work done from an assessment process view, and certainly the projects that I'm talking about were not small projects. They were big projects.

Part of the process when you look at timelines is that we're talking about assessment timelines and people are talking about project timelines. There's often a big difference. Even if I go through a process—let's pick the middle road and say that it was one year to get from assessment beginning to assessment end—only if that assessment end finishes in May or June do I really get to start a project. If my 12 months end in September or October, I won't be doing anything until May or June of the next year.

Timelines sound simple and they sound easy, but it's really necessary to be clear on them when you're starting to work on projects that are worth hundreds of millions of dollars or tens of millions of dollars. It's an imperative, because you're at risk when you talk about the costs and the budgets for those projects.

● (1530)

The other area that I think is important to talk about is adequacy. Adequacy has to be defined, and it needs some clarity. Now, as to whether or not it's included, I'm not going to debate that. But the problem with some of the pieces of the legislation that companies have a difficult time with is that there's not enough clarity and definition around adequacy.

The last area I want to talk about today is cumulative effects. We've added the term "likely to be carried out" to the legislation, but for the life of me, I don't know what that means. Likely to be when? That's really important. How do you as a proponent deal with cumulative effects that might happen five years down the road? I don't know how you deal with that in an assessment process, because I don't know how you have information to deal with it. That needs some clarity and some definition as well.

The final piece is maybe tied to timelines, but it's really about finishing the YESAA process. When I talk about timelines, 16 months or whatever number people settle on, that for me is one thing, but I think having the ability, under that 16-month period, to put some fences around times of stages is also important. I'll give you the example of what we went through in those three projects. The time to go from a draft screening report to a final screening report was 62, 76, and 82 days, and 76 or 82 days, to go from writing the draft screening report to the final screening report, is just a lot of time when you're trying to get to a project and move it forward. When you have a draft screening report, you have the vast majority of the work done.

I'd put some fences around the stages within the timeline periods. As well, I think we'd all benefit from clarity on a couple of those issues: adequacy and cumulative effects.

Thank you.

The Chair: Thank you.

We'll move now to questioning by members. We'll do six-minute rounds again.

Go ahead, Mr. Bevington.

Mr. Dennis Bevington: Thanks, Mr. Chair.

Thanks to our witnesses today.

Mr. Schmidt, you have a very interesting industry. Of course, it gets lots of publicity.

Mr. Stuart Schmidt: Unfortunately. It's not very good publicity, I don't think.

Mr. Dennis Bevington: Fair enough. But in terms of the industry itself here, you say it's about 100 families.

Mr. Stuart Schmidt: Yes.

Mr. Dennis Bevington: Are there people who come in on occasion to try to come into the industry?

Mr. Stuart Schmidt: You mean, like, actors?

Voices: Oh, oh!

Mr. Dennis Bevington: I meant—

Mr. Stuart Schmidt: Yes, there are. There are, but it's a very low turnover, extremely low. Many of the people who have been in the industry have been in it since their parents were in it, or they've been here for many years.

● (1535)

Mr. Dennis Bevington: Do you get the occasional bad apple showing up?

Mr. Stuart Schmidt: Of course.

Mr. Dennis Bevington: How does that play out?

Mr. Stuart Schmidt: How does it play out in any industry when someone shows up and does things that aren't good for the environment, the industry, or society in general? Hopefully they get hauled away to jail at some point if they're bad enough, right?

Mr. Dennis Bevington: Yes.

I see that in 2013 you had 50 placer applications in the Yukon. That's a great volume of work, actually, even at a very abbreviated level, to get through any kind of bureaucratic process. It's a lot of difficult work. You have to do the same for everyone. You can't treat one person differently from another. If you have somebody new in the industry here and somebody who has been there a while, they're going to end up in the same process.

How would you shorten the timeframe, or how would you shorten the workload, in doing an assessment of placer mining when you have somebody new coming on the block?

Mr. Stuart Schmidt: I don't think the assessors really take into account whether someone is new or not.

Mr. Dennis Bevington: Exactly.

Mr. Stuart Schmidt: Everybody is treated the same, of course, and that's only fair and right.

Mr. Dennis Bevington: It means that the people who have been there longer sometimes have a little extra paper burden. Even though they're trustworthy and they know what they're doing and they have all the tools and equipment and the knowledge to do it exactly right, you still have to question them like you'd question somebody new showing up.

Mr. Stuart Schmidt: That's true. The questioning is consistent, but none of the questions are really designed, I think, to sort out a bad apple, or someone new from someone old.

Mr. Dennis Bevington: Okay, but they're to determine that each person who's going ahead with a project has met the minimum basic criteria that are required.

Mr. Stuart Schmidt: It should be based on the project itself and not the person.

Mr. Dennis Bevington: Sorry, that's what I meant.

Mr. Stuart Schmidt: Yes. It's based on the project. We have no argument with that. Of course that's the way it should be.

Mr. Dennis Bevington: You say it's been a difficult time. Would you say that the cost of doing the environmental assessment work has now made any part of the industry not viable?

Mr. Stuart Schmidt: We can afford the actual cost of doing the work, though it's very hard to find someone to shepherd it through the system. Many of us find it very difficult to shepherd these things through the system ourselves.

I can give you an example. Years ago, when YESAB first came in, I gave up on trying to do it myself. I just got too angry and frustrated. They're very busy right now, YESAB, and so are the people who take these things through the system.

My son-in-law and I decided to do a road application ourselves, because what could be so complicated about a road application, really? We made the initial application, went over the route and everything like that, and presented it to YESAB. They came back with an inadequacy form and said they needed more information. One of the things they wanted to know was all the routes that were no good that we'd rejected. Well, of course we didn't look at routes that were no good. We looked for the most logical, easy, and stable place we could find to build a road.

Mr. Dennis Bevington: Okay. Fair enough. So you—

Mr. Stuart Schmidt: I just get totally frustrated when people ask me to tell them about all the places that were no good to build a road. I mean, it's just....

Mr. Dennis Bevington: It is a process that can be frustrating, and that's what we're hearing from you.

Mr. Stuart Schmidt: Yes.

Mr. Dennis Bevington: But it's not a process that has stopped anybody yet from placer mining.

Mr. Stuart Schmidt: It can stop people for a season of placer mining, certainly, because you can get held up in the adequacy review.

I can give you direct examples from my own experience. I had a licence renewal in a place that I had been mining for many, many years. I went for a normal licence renewal, and all of a sudden YESAB wanted me to do a heritage overview study, which would delay the whole thing for a whole other season, really, because of our seasonality up here and the short working season we have.

We went to the heritage branch and said, look, YESAB's asking us for a heritage review. The heritage branch said, no, we already have the heritage review. It was done by a hardrock company two years ago: we have all the information. YESAB already had the information too. This is part of our frustration.

Mr. Dennis Bevington: I'm running out of time here, so I have to ask you a question now.

Mr. Stuart Schmidt: Go ahead.

Mr. Dennis Bevington: You know, you rely on local people understanding how to do your job. Now you're going to have a minister of the Canadian government giving policy direction to the board that makes decisions about how your job gets done.

Wouldn't you rather see that happen with the board, with the Yukon people, rather than somebody in Ottawa?

● (1540)

The Chair: Time has expired, but I'll give you a very brief response.

Mr. Stuart Schmidt: I thought that's what this was about. I could be mistaken, but I thought this was about the delegation of direction —

Mr. Dennis Bevington: No. This is about unilateral direction from the Minister of Aboriginal Affairs to—

The Chair: We'll have to stop it there, because we can't get into a two-way conversation after the time has expired.

We'll move now to Mr. Leef.

Mr. Ryan Leef: Thank you, Mr. Chair.

Thank you to each of you for your comments.

Mr. Morrison, I appreciate your references to the cumulative effects. We've certainly been positioning the cumulative effects angle as a value piece in this bill, because it's providing additional environmental protection and preservation over the course of time. But you did highlight that some of that needs to be defined in a clearer fashion.

Would you anticipate, then, that this is something that YESAA itself would seize itself with in consultation with key stakeholders, first nations and industry, around how you go about setting out what cumulative effects can look like so that you can determine what could potentially happen five years down the road?

Mr. David Morrison: Thanks, Mr. Leef.

Yes, I think that's certainly a logical possibility of how it could be clarified. To me, the clarification needs to provide two benefits, if you will. It gives the benefit to the proponent that they know what the clear definition is of cumulative effects and what the expectation is when they are preparing a YESAB application. It also then, on the other side of the coin, gives that same clarity to assessors so that, to speak to where Stuart might get frustrated, everybody's playing on the same level playing field. Both sides of the equation understand what the cumulative effects are that need to be considered, and then how they are to be assessed.

I think YESAA, in consultation with stakeholders, could easily do that.

Mr. Ryan Leef: Thank you for that comment.

Mr. Schmidt, thank you for your testimony. Anecdotally, you've provided some really tangible examples from your experience of where delays can occur at the district office level. You mentioned that you think somebody should be able to provide policy to the district office, as well as to the board, to ensure consistency in the application. Of course, in part this binding policy piece from the federal minister to the board is designed to provide that consistent application of policy. The one thing I think has gotten the message out a little bit, which does warrant clear communication, is that the binding policy direction envisioned by Bill S-6 with respect to the federal minister's role is not allowed to interfere with any project currently under way or completed. What you're talking about, what is envisioned, is really an administrative type of thing.

Can you speak to whether, if administrative consistency and policy direction were provided at the district office level, that would in turn benefit your ability to work, and, indeed, your ability to adhere to the environmental and socio-economic preservation that we demand in this territory under YESAA?

Mr. Stuart Schmidt: I'm not sure I understand your question 100%, but whether I do or not, I have a lot of comments.

Going back to the local designated offices, I believe someone needs to be able to give them direction. Right now, as a politician, you're given direction every four years. As a board member of the main YESAA board, you're given direction every four years, because otherwise you won't be reappointed. First nations won't appoint one of their appointees or the federal government won't reappoint one of their appointees if they're not doing their job properly. But at the designated office level, once you're hired, you're just there. You might have personal biases for or against the industry. You can have all kinds of viewpoints that colour the way you do things and the number of questions you ask and what you consider adequate or not. Someone, somewhere, or some government or governments should be able to give some sort of direction to the designated offices to maintain consistency among offices and to maintain fairness.

● (1545)

Mr. Ryan Leef: Thank you.

Really at the heart of this legislation, YESAA and Bill S-6, is to ensure that we maintain our environmental integrity in this territory and that we maintain our socio-economic responsibilities with that. Those two things involve some very different measures, but both are equally important.

Can you perhaps describe, say, from an industry point of view, how committed to ensuring environmental integrity the people you work with in the placer mining industry are? Do you have examples of that? Also, how committed are you to making sure you participate in the socio-economic responsibilities we all have in our regions and in the territory?

Mr. Stuart Schmidt: Okay.

The placer industry, itself, as I mentioned earlier, is very different from other industries up here or in different areas of the mining field, as we don't use chemicals or don't create acid rock drainage or anything like that. Most of the people live on the land. They are out there for more months of the year than they are anywhere else, whether it be in town or outside, as we say up here in Yukon. You do get quite fond of the environment you live in. It's your home. A placer mine is really a home for eight months of the year. Families are there and everyone's there. We find ourselves in the situation of trying to prove that we're concerned about the environment, but we are, of course, concerned about the environment that we live in, just as any other Canadian should be. Where you live is where you live.

We think we're not hurting the environment. Finally, out of frustration from the concerns with YESAB and other regulatory bodies, I hired a biologist for a year to spend some months in the mining field. She would get up at three o'clock in the morning and be out in the field, because we have the long daylight, of course. Then you have the birds and everything out, and the bears and the moose are out very early in the morning, so if you get out there at 10 o'clock, you're too late. She spent months going out in the field at three o'clock every morning cataloguing wildlife and the use of ponds and mined-out areas by wildlife, and comparing it to that in the pre-mined areas.

The Chair: I'll ask you to sum up very quickly.

Mr. Stuart Schmidt: Okay. What she found was that, in many respects, the post-mined areas, the areas after mining, were more productive, with more biological diversity than the pre-mined areas. That's not to say that pre-mined areas aren't valuable too, or that unmined areas aren't valuable too. The whole countryside is valuable, but this is to illustrate that we're not destroying the environment irrevocably.

The Chair: Thank you.

We'll move now to Ms. Jones.

Ms. Yvonne Jones: Thank you very much, Mr. Chair.

Thank you for your presentations today.

I have a statement that I want to put on the record before I get into my questions. It's from an earlier debate as to whether we throw out the four contentious recommendations that are in this bill or leave them. I think there is an opportunity to sort through those recommendations to the satisfaction of the three levels of government and the parties involved. I want to point out that in the presentations this morning Grand Chief Massie did say in her presentation that their “preference is reconciliation”, and that it would be the process they would prefer to undertake.

I also have a quote from Chief Fairclough. He says that concerns were raised by Yukon first nations to federal officials and that they “have not engaged in...discussion in good faith with Yukon first nations to address our concerns”. They are obviously wanting to do that. There is a desire to do that.

The other quote I would give you is from Chief Bill, who also outlined that first nations “have negotiated their final agreements...on a relationship based on respect, honesty, and trust” and who asks why Bill S-6 is allowed to work “outside of those principles”, when that “creates and fuels animosity for all Yukoners”.

I wanted to put that on the record simply because I have sensed, in listening to the presentations today, a tremendous willingness to work towards a consensus and a collaborative relationship here to define the terms and principles of the bill in a way that all levels of government can relate to. I just wanted to outline that.

My question is first of all to you, Mr. Morrison. I was interested to hear that in your experience in the last 10 years in dealing with YESAA you have seen changes for the best. Through practice, I'm assuming, through using the process, all parties have been able to define better understanding and better ways to move forward. For a lot of the things that we're dealing with today, especially timelines, do you feel that they can be resolved and worked out through dialogue within the YESAA process and do not have to be legislated by the Parliament of Canada?

● (1550)

Mr. David Morrison: Thank you.

Let me answer the last part of your question first, and then come back at it. I think a lot of things can be worked out. As your preamble statement indicated, I think, there's a willingness here from people to make sure that this process works for everybody going forward. I think I said that as well.

It's not for me to tell governments—the three governments—what should be in legislation, what should be in regulations, and what should be in the operations manual of an assessment organization such as YESAB. As I indicated to Mr. Leef, I think YESAA could in fact figure out what clarity definition is required around “cumulative effects”, and that was the basis of my comment previously.

From the starting days to now, I think YESAB has itself found ways to improve its operations in different areas, such as just getting experience with ex-com submissions, if you want to talk about that. When you go from doing none to one, that's a big leap. When you go from one to three, that's another big leap. But when you get to five, you're starting to get your legs under you and it enables an organization like that to fine-tune it.

But as for what should be in legislation and what should be in rules, I'm not qualified to comment about that. Timelines I think are necessary. From my perspective, how you resolve that issue is really left to the governments that are involved in this process.

Ms. Yvonne Jones: If I may, I'd be interested in having your view on the other pieces. One, of course, is with regard to the timelines and how adaptable we are in ironing out our own problems without having everything legislated.

When you go forward to YESAB—we're discussing mining right now—isn't the other piece that it's only one part of the process in permitting and licensing for a mining operation? Maybe Mr. Schmidt could answer this as well. Aren't there other processes through the Yukon government and through other entities that would all be compiled to make up that particular timeframe for the company to get from point A to point Z?

Mr. David Morrison: Well, I'll give you a very brief comment. In addition to going through an assessment process—I'll use the Mayo B hydro project as an example—we would go through a public utility board hearing. We went through a water board hearing. I don't know how many permits we would have had to get to do that work, but it would have been in the tens of numbers.

The regulatory processes overlay and come after that, over and above what the YESAB process does. That's a whole other subject in terms of how complicated the system can be. I know that we're only talking about YESAB today, but the system has a full regulatory piece on top of the assessment, and it can be very complicated.

The Chair: Stuart, if you can make it brief, it would be appreciated.

● (1555)

Mr. Stuart Schmidt: I shall try.

Absolutely, YESAB is the first part. Then there's the decision document from the Department of Energy, Mines and Resources. Then there's the water board. From our perspective, YESAB is the one that potentially takes the longest and can be the most difficult path to go down. The results of the YESAB assessment and recommendations highly colour what your decision document will be and what the water board licence and the land use permit will look like. It's a very time-consuming part of the process, and it's a very critical part of the process right now.

The Chair: Thank you.

We'll move now to Mr. Strahl.

Mr. Mark Strahl: Thank you very much.

I want to focus on and get a little more information about the designated offices. This is something that's come up in the last couple of panels.

I've certainly heard your frustration on how one designated office may have a completely different interpretation of the rules and regulations and may request completely different things from one proponent than another would. Have you experienced that?

The previous panel said that certainly if you ask the mining companies they'll say that they have definite preferences as to which designated office sees their file. Similarly, do you find that variation? If so, what does that inconsistency cost your companies? How does that negatively affect your ability to do business in the territory?

Mr. Stuart Schmidt: Well, part of the problem we're facing is that some designated offices don't understand as well as others do the regulations that regulate placer mining. Some designated offices therefore don't understand the regulations we've been operating under in the past. They might recommend things and advise things to government that are either redundant or just outside the regulatory framework.

What's happened is that this has resulted in some mines not opening. One particular mine that I'm thinking of applied for their water licence well over a year ago. It was a licence renewal. They'd been operating for nine years. They had been operating, at the time of their application, eight and a half years, so they applied well before their licence was due to expire. Surprise: they got a whole bunch of recommendations that....

First of all, in seeking views and everything—it was an adequacy period, to begin with—they got a whole bunch of leading questions, leading them to have to do a whole bunch of environmental studies that they were very nervous about doing and didn't know where to begin. The long and short of it is that they shut down their mining operation for a year. This is a sizable operation, employing probably 15 or 20 people, carrying a debt load and everything. Last fall they decided they couldn't do their fall stripping, which meant they couldn't do their 2015 mining, because they didn't know whether they'd get a water licence, or get one that allowed them to work economically. That was all based on YESAB.

I mean, the only reason they were worried about what their water licence would look like was that it would depend on what the YESAB document would look like and what the decision document would look like. Now, finally, at this late date, they got their decision document. It isn't a very nice one, because it reflects YESAB recommendations. They're definitely not going to be mining this year, because they didn't do their fall stripping and their preparation work. Really, mining takes years of planning ahead, because of the permafrost and everything, to be able to do it in an economical fashion.

They're out of business for a year. This represents three families. It's one family with kids who are married and have children and everything like that. They're well known to people in Yukon. They're very responsible miners. They're very well educated. The proponents are super good at going through the system and everything like that, and here they've been derailed from their mining operation for a year. I also know of others like this.

To us, it appears to be all of sudden changing the rules of the game in midstream, right? It's a bit of a crapshoot in terms of what designated office you get and what they might come up with.

● (1600)

Mr. Mark Strahl: We've heard certainly opposition, from the opposition and others today, to the solution to that being policy direction from the federal minister. Do you see another way forward to getting that kind of consistency outside of policy direction? What is the solution? If we've identified a problem, and the solution that has been proposed is being rejected by some, is there another solution to that?

To me, shutting a mine for two years is not good enough. We need to improve that.

Mr. Stuart Schmidt: There are a couple of things. First, we have to admit that all people can make mistakes, so people in a designated office can make mistakes too. There has to some way for people, maybe at the main YESAB board in Whitehorse, to be able to look at a designated office decision and say, “Hold it, guys. You messed up. You didn't really know what you were doing here. We'd like to correct that.” It would be great if something like that could happen.

In my ideal world, probably because I believe in local control of things and I think this whole idea of designated offices is about local control, I would have the people who work in the designated office elected every four or six years, just like city council is elected for a small community. They would truly represent the people locally. At least go through some kind of review process with the main YESAB board every four to six years to review what they've been doing and how they've been doing it. Somehow we need to get more responsibility and local control, perhaps, in this idea.

I don't know; I'm not an authority on this.

The Chair: Thank you.

We'll move now to Ms. Hughes.

Mrs. Carol Hughes: Thank you very much.

I do want to add some things to the record, Mr. Chair.

First of all, with the comments made by Mr. Leef earlier about the first nations saying that they weren't prepared to negotiate or had asked to be part of the conversation on the four amendments to see if there could be consensus, I'd like to refer you to a letter from the Teslin Tlingit Council, dated March 17. They state that they “... remain committed to resolving these conflicts with Canada outside of the courtroom. Canada must provide us with the opportunity to do that by withdrawing Bill S-6 and by directing Canada's officials to work with our officials to find remedies that do not conflict with the Teslin Tlingit final agreement.” Furthermore, in a letter on June 24 the TTC indicates that “Canada has the opportunity to make the changes to these proposed amendments that can contribute to a more robust Yukon economy and make the territory a preferred place to invest. We would like to help Canada do that.” They would also like to send a delegation to meet with the Prime Minister. This was a letter to the Prime Minister and to Minister Valcourt.

I also want to read out a letter from the Champagne Aishihik First Nation, as follows:

[*English*]

> We have consistently sought meaningful engagement to negotiate these matters but Canada has yet to demonstrate it will give full and fair consideration of the views of Yukon First Nations. We continue to be stonewalled with clear signals that these amendments are not up for negotiation.

They go on to say the following:

> Nonetheless, we have offered practical solutions to these concepts that do not necessitate legislative action but could be addressed by other means, and in some cases, point back to the better thought out solutions already agreed to under the Five Year Review. To date, we have been incredibly frustrated that our reasonable requests and observations have been treated with little, to no, regard.

That letter is dated March 26, 2015.

I also want to put into the record a letter that we received. Dated March 26, it was actually sent to the clerk for the committee here. It's from the Yukoners Concerned group. It states:

[*English*]

> I have lived in Yukon for 30 years surrounded by the most resilient, innovative and progressive people. We worked together in good faith to create the YESSA Act. The First Nations of the Yukon are part of the land, part of the water and we all have a duty to our ancestors to protect it for all our children's sake.
>
> I and many other Yukon people stand behind the Yukon First Nations opposition to the Bill S-6. We are not going back to colonial rule, we are fed up with our First Nation friends and neighbours having to go to court to protect our rights. There is no going back when we all have had the taste of the promise of self-governance.

I just thought it was important to put this on the record.

One thing we also have to recognize is that when Yukon land claims and self-government legislation was going through Parliament in June of 1984, the Reform-slash-Conservative Parliament voted against it, including Minister John Duncan and actually our colleague Mr. Strahl's father. This is what actually gave effect to these agreements that we're talking about today.

I'm just wondering if this is where the government is trying to go and if they're trying to chisel away at what is before them just because they didn't like it way back then. We have to keep in mind that in 1974, the unelected Conservative Senator Lang was one who was actually against this as well. We have to remain concerned about why we are where we are today.

I don't know if I have any time left, Mr. Chair.

● (1605)

The Chair: You still have a little over two minutes.

Mrs. Carol Hughes: Two minutes? That's good.

Based on the information that I've provided and that you've provided to us, when we look at the policy direction, would you agree that it should be through consent by all parties in order to do a final agreement?

As well, I'm wondering whether KPMA is concerned that their industry will suffer with treaties not being respected. Because this is what it's all about: it's about treaties being respected and making sure that we can all move forward together.

Mr. Stuart Schmidt: I'm concerned about suffering no matter what happens, because if the treaties aren't respected and we go to court, we suffer. If some of these changes, and perhaps more changes to YESAB, aren't made, we also suffer.

I don't know what I would recommend except to say that I would be happy to sit down here. I think one thing that's perhaps been lacking is industry's technical support for the negotiating sessions or the consultative sessions between first nations government and the federal government on this subject. Even though industry, of course, does not belong at the negotiating table, they could be there as technical support to help everyone understand the problems better. I believe if everyone understood industry's problems better, then some resolutions would come to this.

I chastise all the governments for not solving this.

Voices: Oh, oh!

A voice: Amen.

The Chair: Now we'll move to Mr. Leef for the next six minutes.

Mr. Ryan Leef: Thank you, Mr. Chair.

Mr. Smith, I appreciated your comments towards the end there. You made some valid points, and they're well taken.

I'm not sure if you were present this morning when the premier talked about finding a path forward and, indeed, extended an opportunity to engage in bilateral discussions to work on the engagement of Bill S-6. He certainly promoted the passage of the bill, but he recognized clearly that continued consultation and greater work could be undertaken on this bilateral piece. The position of Yukon first nations is that their preference would be a trilateral discussion to that end, and we certainly take that consideration under direct advisement here as a committee.

You posited that industry would bring value to the table from a technical point of view and would allow your concerns to be understood more clearly. Taking that route, are you confident there might be some solution to these four outstanding pieces?

Mr. Stuart Schmidt: I hope so. I asked people to continue talking. It's always good to talk instead of going to war. Why not talk right up until the last minute, if we can?

I don't know enough about how this all works with legislation, how proper consultation works, and how it would have to be done, but I'm sure if there's a real will on the part of all the parties concerned, some sort of resolution could be found and Bill S-6 could go to the House of Commons.

That would be my absolute preference. I would love to see things go to the House of Commons. Maybe we can even make it better than it is right now through further consultation. I'm sure many people in industry would be more than happy to sit down and act as technical help for these discussions.

● (1610)

Mr. Ryan Leef: Thank you for that. Indeed, that's exactly the task of the committee, to seize itself with reviewing the bill through the stakeholder and witness testimony we've heard from all Yukoners today. It's been very positive and good for us to hear all the perspectives. Those points are well taken.

When we look at the evolution of this bill, there certainly has been feedback and advice from industry over the course of many years, some of which has stemmed from the five-year review. Some of these frustrations have carried on.

Can you refresh my memory? I know the chamber of mines had submitted its position on this to Yukon first nations. I should have asked them if they had received a response, but I didn't. Did the Klondike Placer Miners' Association forward anything to Yukon first nations and generate any sort of back-and-forth discussion to pre-empt its own side discussion on these things, so each one clearly understood its position, or not?

Mr. Stuart Schmidt: I'm sorry to say we didn't.

Mr. Ryan Leef: That's fair enough. You've highlighted that this could be an opportunity for that piece, and of course I do know that Yukon first nations are listening to the comments you're making here today, and I'm sure they appreciate that perspective.

Mr. Morrison, when we look at the executive committee piece that you worked through three different times, you did talk about the need for timelines. What are we talking about with respect to timelines? You mentioned that sometimes tens of millions of dollars are at risk when these timelines aren't clearly defined. Can you perhaps expand on why those tens of millions of dollars are at risk, and what happens in that regard if timelines are stretched?

Mr. David Morrison: When projects are developed and taken through to a decision point, you have a budget, a timeline, and a certain set of risk analysis that's been done around assessment and regulatory risk. When these things start to drag out, they have an impact on those things. As a project moves forward, if it doesn't start when it's supposed to, costs go up. If it's delayed, as Mr. Smith talked about, there are decisions or there are recommendations in the screening reports that go forward to regulators. Those add costs, not only because of the added time but also because of what's in the decisions made during that time. When you leave everything open-ended, how do you have some clarity around when you're going to start, how you're going to contract, and what those bids are going to be? The bids you got a year ago are no good 18 months out. You're starting all over again, and you're competing in a different environment. That can add significantly to a project.

You don't think these things add money to projects, but they add a lot of money to a project.

The Chair: I'll have to stop you there.

We'll suspend briefly to set up for our next panel.

Thank you very much to our witnesses on this panel. I appreciate your information and your testimony.

The meeting is suspended.

● _____ (Pause) _____ ●

● (1620)

The Chair: I call the last session of the day to order.

In our last group for the day, we have with us Amber Church, conservation campaigner from the Yukon chapter of the Canadian Parks and Wilderness Society; Felix Geithner, director of the Tourism Industry Association of the Yukon; Lewis Rifkind, mining analyst from the Yukon Conservation Society; and Karen Baltgailis, who is appearing as an individual.

We'll move to the opening statements. I will have you make the statements in the order that I've just introduced you, and then we'll move to questions from members. The first statement will come from CPAWS' Yukon chapter.

Go ahead, Ms. Church.

Ms. Amber Church (Conservation Campaigner, Canadian Parks and Wilderness Society, Yukon Chapter) : Thank you.

I'd like to start by thanking the committee for travelling to Yukon and taking the time to hear from Yukoners on this important bill.

CPAWS Yukon works with aboriginal and public governments, local organizations, businesses, and citizens to ensure the natural wealth we enjoy today is available for our children tomorrow. Here in the territory we have about 280 members from all walks of Yukon society who demand responsible development that will benefit sustainable communities nestled in healthy, ecologically rich environments. We are currently active participants in land use planning, energy consultations, outreach to and engagement of the public in sustainability initiatives, and of course YESAA.

Our organization has some serious concerns about four sections of the proposed amendments to YESAA that are included in Bill S-6. I imagine you've probably heard about some of these earlier today, but I will reiterate them.

With regard to the concept of “significant change” as outlined in proposed subsection 49.1(1), CPAWS Yukon feels that the term “significant change” is both too vague and too subjective. We are concerned that once the project's initial phase has undergone assessment, additional phases, such as major expansions or cumulative minor expansions, could be exempted from screening by YESAB. This amendment increases the challenge of assessments, as not all impacts can be foreseen at the time of the project's initial application phase and may result in negative impacts to the environment, the economy, and Yukon communities.

Our second set of concerns deal with the amendment to the timelines, which are included in proposed subsections 56(1), 58(1), and 23(2). These proposed changes would shorten the timelines for environmental assessments, making it difficult for the YESAA board and staff to meet their duties and obligations. This may ultimately result in the rushing of complex assessments, which will put our environment and communities at unnecessary risk.

Under current legislation, all documentation submitted by the proponent must have undergone an adequacy review before the clock starts ticking. The changes proposed in Bill S-6 start the clock as soon as documentation is submitted by the proponent, before an adequacy review has taken place. This amendment poses the risk of significantly reducing the time available to conduct a thorough adequacy review, a critical step to the overall assessment process.

Our third set of concerns deals with the binding policy direction as indicated in proposed section 121.1. We feel that this proposed change appears to be at odds with the intent of the Yukon devolution agreement, which transferred powers from the Government of Canada to the Yukon government.

Further, and probably more significantly, we feel that these amendments jeopardize the independence and impartiality of the assessment process in Yukon and have the potential to permit political interference in what is currently an independent body. YESAB was founded to be a transparent and public process through which all stakeholders are provided the opportunity to learn about and to submit comments on projects proposed in Yukon. The ability of the federal minister to dictate future binding policy directions has the potential to undermine sound environmental stewardship through the systematic stripping away of previously held standards for assessable activities.

Our fourth set of concerns deal with the delegation of federal powers as outlined in proposed section 6. This proposed change does a disservice to the honour of the crown as a signatory of the Umbrella Final Agreement, the UFA, which originally prompted the creation of YESAA. The UFA is a political document between the Government of Canada, the Government of Yukon, and Yukon first nations, and, as such, has always been viewed as a tripartite agreement between these three levels of government. This proposed change could be interpreted as the federal government abandoning its constitutionally entrenched responsibilities under the UFA by delegating federal obligations to Yukon.

Finally, we would like to note that YESAA is a made-in-the-Yukon piece of legislation, and we feel it addresses a set of unique Yukon perspectives that should be honoured and preserved moving forward, not cast aside in the name of conformity.

Thank you so much for the opportunity to speak.

● (1625)

The Chair: Thank you.

We'll move next to Mr. Geithner for seven minutes.

● (1630)

Mr. Felix Geithner (Director, Tourism Industry Association of the Yukon): Good day, members of the standing committee, and thank you for allowing me the opportunity to speak with you.

My name is Felix Geithner. I'm a tourism operator and a member of the board of the Tourism Industry Association of the Yukon, also known as TIA Yukon, which represents over 400 tourism businesses in the territory. I've been asked by the board to speak to you on behalf of the tourism industry today about Bill S-6.

First, let me tell you a bit about tourism in Yukon. Tourism is a major driver of Yukon's economy. According to the 2013 Yukon business survey, tourism generated approximately $250 million in 2012 and constituted almost 5% of Yukon's GDP that year. Tourism visitation has grown by an average of 3% per year from 2004 to 2012, with 2013 being the best year on record for tourism visitation. With this fall's announcement of an additional $3.6 million over two years from the federal and territorial governments to go towards a tourism marketing campaign, we expect visitation and tourism revenue numbers to increase even more in the coming years.

It's important for you to get a snapshot of how important tourism is to Yukon's economy. Far too often, people downplay the importance of tourism because its successes are difficult to measure and its profits are scattered throughout a multitude of businesses and sectors. With mining, it's so much easier to draw a line from A to B to show exactly where the money is coming from.

Even when people stop and think about the word “mining”, the mind conjures up images of gold and silver, diamonds and riches, and exploration with cash as the reward. The word “tourism” makes people think about exploring. Not many people think about the monetary value of tourism, but they should. When you add up the revenue from airlines, hotels, car rental agencies, wilderness guiding operations, outfitters, museums, aurora-viewing businesses, plus a big percentage of restaurants, retail shops, and other more indirect sources, tourism stands out as a cash cow, one that if properly cared for will produce forever.

Tourism is a big business in Yukon. It's a slow-growing, steady economy for us that's needed in the territory when Yukon's mining industry goes through one of its bust cycles, as has been the case in the past three years. It makes no sense to make changes such as the ones proposed in Bill S-6 unless one knows for a fact that they will not be detrimental to Yukon's tourism industry and are certain to benefit Yukon's mining industry. TAI Yukon calls both these points into question.

In the letter that TAI Yukon wrote to Yukon's MP, Ryan Leef, dated November 21, 2014, we expressed our concern that one of our partners, the Council of Yukon First Nations, was not properly consulted on all points during this process, especially given that YESAA is the cornerstone of the Umbrella Final Agreement. In fact, most of the Yukon public and key stakeholders of the business community, such as TAI Yukon, were not consulted on the bill prior to its introduction. In our letter, we also stipulated that taking land use planning decisions away from the territory will ultimately give tourism operators in Yukon less of a say over land use issues where resource extraction interests conflict with the interests of tourism businesses. These issues continue to trouble the tourism industry.

The most pertinent question isn't why Bill S-6 should be prevented from being passed, but why it was ever put forward in the first place in its current form. On April 22, 2010, Yukon Senator Dan Lang addressed a crowd of potential investors as the keynote speaker at the Yukon Forum in New York. According to a news release on the senator's website, Senator Lang praised the Yukon Environmental and Socio-Economic Assessment Board. He described YESAB as “implementing responsible environmental and social guidelines while providing certainty to investors”.

● (1635)

Even when the senator introduced the bill four years later on June 10, 2014, he acknowledged that Yukon's regulatory system has been a model for the rest of the country. The reason he provided for introducing a bill that proposed sweeping changes to a fundamental part of this regulatory regime was the need to involve and maintain a competitive and predictable regulatory system that remains competitive internationally.

Taking something that is a model for the country and giving it a drastic overhaul requires more than an inside design job. Throwing black paint at a white house isn't a renovation; it's a mess.

The extent of the mess this bill has created reached all new levels on November 28, 2014, when the president of the Casino Mining Corporation in Yukon wrote about “Bill S-6 and the negative impact this is having on the territory's mineral industry”. The Casino Corporation believes that if YESAA has the full support of all levels of government, it will provide greater certainty for the mineral industry.

From TIA Yukon's perspective, Bill S-6 is a shoddy piece of legislation that sows discord rather than the certainty it sets out to create. More than this, the proponents of this bill have set an adversarial tone in Yukon with Yukon first nations and a number of key organizations and businesses through their attempt to ram it through without adequate consultation. Consultation requires two-way communication. If one party doesn't believe that there was adequate consultation, then there was not adequate consultation.

To get a sense of the tone being set by the government in the House of Commons with regard to this bill, one needs only to listen to Alberta MP John Barlow, who sits on the Standing Committee on Aboriginal Affairs and Northern Development. On March 11 Mr. Barlow said:

> We have to take some very aggressive steps to get Yukon back to where it was before and regain that success as a resource extraction economy.

TIA Yukon believes that Bill S-6 and these aggressive steps should be abandoned by the Government of Canada in favour of meaningful discussions and collaboration with Yukon first nations and all sectors that constitute Yukon's business community, including the tourism industry.

Thank you.

The Chair: Thank you very much.

Our next presenter is Mr. Rifkind.

Please begin your presentation.

Mr. Lewis Rifkind (Mining Analyst, Yukon Conservation Society): Good afternoon, and welcome to Yukon. My name is Lewis Rifkind and I'm the mining analyst for the Yukon Conservation Society.

I would like to acknowledge that we are on the traditional territory of the Kwanlin Dun and Ta'an Kwach'an first nations.

The Yukon Conservation Society, or YCS, is a grassroots environmental non-profit organization, established in 1968. Our mandate is to pursue ecosystem well-being throughout Yukon and beyond, recognizing that human well-being is ultimately dependent upon fully functioning and healthy ecosystems. We have about 250 members and are currently active participants in land-use planning issues, energy consultations, outreach and environmental education, Yukon Water Board hearings, and Yukon Environmental and Socio-economic Assessment Act applications.

We regularly participate in the YESAA process. There isn't a month that goes by that YCS does not submit comments on a wide variety of projects. I checked over past records, and during 2014, I submitted to YESAA on behalf of YCS comments on 18 unique projects, and I’m but one of four employees at YCS who submit comments. We like to think our comments are helpful and informative to the YESAB staff so that the recommendations they prepare on projects ensure that impacts to the environment are minimized.

As you have probably heard before, we are concerned about four changes being proposed in Bill S-6. Our concerns are as follows. Clause 14 of Bill S-6 proposes adding the following after subsection 49(1):

> 49.1 (1) A new assessment of a project or existing project is not required when an authorization is renewed or amended unless, in the opinion of a decision body for the project, there is a significant change to the original project that would otherwise be subject to an assessment.

The term “significant change” is too vague and subjective. YCS is concerned that under this change, projects would be assessed once and then major expansions or cumulative minor expansions such as a mine developing further open pits or an oil company gradually drilling more wells within its existing lease area would not undergo the additional environmental assessments necessary to identify and develop mitigation for economic, environmental, and societal impacts. This is not acceptable.

Second is modification to the time frames in clauses 16 and 17 and subclause 23(2) in Bill S-6. I won't read the wording, but YCS is of the opinion that these proposed changes would shorten the timelines for environmental assessments. Under current legislation, the clock starts ticking only once all the documentation submitted by the project proponent has been reviewed and is deemed adequate. Bill S-6 would start the clock as soon as documentation was submitted by the proponent, not after an adequacy review had been completed.

The proposed changes would run the risk of reducing the time available to conduct a thorough adequacy review. This review is critical to ensuring all appropriate documentation has been submitted prior to the assessment commencing.

The third concern of YCS regards policy direction. Clause 34 of Bill S-6 would add the following:

> 121.1 (1) The federal minister may, after consultation with the Board, give written policy directions that are binding on the Board with respect to the exercise or performance of any of its powers, duties or functions under this Act.

This proposed change would seem to undo the intent of Yukon devolution, whereby responsible government was transferred to Yukon territorial legislature and away from Ottawa. Furthermore, the proposed change undermines the very foundation of YESAB as a transparent, public process through which all stakeholders are provided the opportunity to learn about and submit comments on projects proposed in Yukon.

Given that the nature of future binding policy directions from Ottawa is unknown, will there be any consultation with Yukoners prior to orders being issued from Ottawa that will have economic, social, and environmental implications for the people and the environment in Yukon?

YESAA is meant to be arm’s length from interference by politicians, proponents, and special interest groups. Let's keep it that way.

A fourth concern regards delegation of the federal minister's powers. Bill S-6in clause 2 would replace section 6 of YESAA with the following:

> 6.1 (1) The federal minister may delegate, in writing, to the territorial minister all or any of the federal minister's powers, duties or functions under this Act, either generally or as otherwise provided in the instrument of delegation.

This proposed change does a disservice to the honour of the crown as a signatory of the Umbrella Final Agreement, from which YESAA was created. The UFA is a political document between the Government of Canada, the Government of Yukon, and Yukon first nations as represented by the Council of Yukon First Nations. This has always been seen as a tripartite agreement between these three levels of government.

This proposed change could be interpreted as the federal government abandoning its constitutionally entrenched responsibilities under the UFA by delegating federal obligations to the Yukon Government. This is unacceptable.

● (1640)

As a helpful suggestion, YCS respectfully suggests that Bill S-6 could include a clause that lays out a periodic review of the YESAA legislation. This will ensure that YESAA is reviewed on a regular basis, such as once a decade, and is amended when necessary in an up-to-date and timely fashion.

Thank you for the opportunity to submit these comments. If you have any questions, of course I'm available.

The Chair: Certainly. Thank you very much.

The Chair: Our last presentation will be from Karen Baltgailis.

Following your presentation, we will go to questions.

Ms. Karen Baltgailis (As an Individual): Hello.

Thank you to the Kwanlin Dün First Nation and the Ta'an Kwäch'än Council for hosting these hearings in their traditional territories.

Thank you to the standing committee for the invitation to present.

I was executive director of the Yukon Conservation Society from 2006 to 2014. Before that I was their forestry coordinator. During my time with the conservation society I participated in many YESAB assessments and took part in the YESAA five-year review.

My interest in presenting as an individual stems from the fact that Yukon first nations final agreements are the law for all Canadians. They are embedded in the Canadian Constitution. The Yukon Environmental and Socio-economic Assessment Act is one of the most important tools for implementing the final agreements. As you've heard here from so many first nations today, the Government of Canada is breaking Canadian law by unilaterally imposing four contentious amendments upon YESAA.

Like most of the speakers you've heard today, I oppose the following four changes to YESAA that are proposed in Bill S-6, the four changes that are so contentious. Of these four proposed amendments, to my knowledge, the public consultation for the YESAA five-year review only consulted about timelines, none of the others. As well, the consultant's report suggested longer timelines for assessments. The consultant's report did not recommend legislated timelines. Therefore, none of these changes to YESAA can validly be considered to stem from the five-year review.

I will briefly comment, just like everybody else, on each of the four proposed amendments.

Allowing the Government of Canada to delegate its powers to the Yukon government is not consistent with the Government of Canada's fiduciary duty. The Umbrella Final Agreement and individual land claims agreements were signed by all three parties. It's not consistent with the honour of the crown for Canada to abdicate these responsibilities. Furthermore, as a less directly involved government, one would hope that Canada would be less susceptible to local political motivations for approving projects, and should provide a more unbiased approach to assessments.

Allowing the Minister of Aboriginal Affairs and Northern Development to provide binding policy direction to the YESAA board is a very disturbing proposal. YESAB is meant to be an independent body, not subject to the political goals of the federal minister. The minister could influence things like timelines and what is considered an assessment. Looking at the four contentious changes proposed by Canada to Bill S-6, one can predict that this kind of policy direction would likely be aimed at weakening YESAA.

Regarding the proposed legislated timelines for assessments, as you know, some of the assessments that go through YESAA are extremely complex. To do its job, YESAB needs the time to comprehensively review projects, get expert advice, and solicit more information from the proponent. First nations and the public also need time to do research, possibly engage experts, and respond.

It appears to me, from looking at the YESAA website, that the timelines proposed in Bill S-6 for executive committee screenings would reduce the executive committee screening from a maximum of approximately 30 months to 16 months—so about half the time. There's of course the risk that as a result there would be inadequate assessments. Furthermore, the board's policies and guidelines already include timelines for assessments. YESAB has the knowledge and experience to determine appropriate timelines. In my opinion, the federal government does not.

The proposal that no new assessments would be required for the renewal of projects, or amendments to permits and licences, if a decision body deems there are no significant changes is frankly frightening. I'll give you an example of the kind of situation that this change could make possible. It's an issue that is very top-of-mind for Yukoners right now.

Let's say an oil and gas company underwent an environmental assessment of a drilling program that did not include hydraulic fracturing. Later they want to amend the project to include this controversial process. The Yukon government could decide that no new environmental assessment was required, and the Yukon public would never even know. The impacts of fracking from the project might never be assessed.

● (1645)

But even if a project hasn't changed really significantly and the company is applying for a renewal of a permit, the environmental and socio-economic conditions surrounding the project may well have changed due to things like climate change. There may be changes to wildlife populations in the area for completely other reasons. Water quality impacts, cumulative assessments—all of those things need to be looked at even if a project doesn't involve significant changes.

Furthermore, just even extending the time period of a licence does imply significant changes to the project. With a mining project, for example, there are more tailings, more water impacts, more waste rock to dispose of, and so on. Of course extended time periods for projects need to be assessed.

In conclusion, I'm concerned that a number of organizations that had important information to contribute were not able to present to these hearings. For example, I understand that Mike Smith from the Assembly of First Nations was not given an opportunity to present, although he wanted to. He was one of the negotiators of Yukon land claims. He would have been an expert witness who would have made an important contribution.

I was also surprised that the Yukon Fish and Wildlife Management Board was not allowed to make a presentation as a land claims mandated body. Furthermore, the grassroots organization Yukoners Concerned About Oil and Gas Exploration and Development was also denied the opportunity.

I have to wonder what other well-informed and relevant people and organizations were also excluded from the process.

I appreciate the standing committee making the effort to come all the way to Yukon to hear from Yukoners. I have to admit that I'm a little nervous that these eleventh-hour consultations may not have a lot of meaning, when Bill S-6 has already had two readings. I very much hope that this standing committee will prove me wrong and that you will advise the Government of Canada to uphold the laws of Canada by dropping the four controversial amendments to YESAA.

Thank you.

● (1650)

The Chair: Thank you.

I will point out, just for your information, that this is typical of what committees do. After the second reading of a bill, the study is done, so this is a typical process in that regard. But I do appreciate your comments.

We will move to questioning from members, with five minutes for each member.

We'll start with Mr. Bevington.

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

Thank you for the testimony today from the witnesses.

I want to talk a little bit about the federal government's attitude about Yukon and just get your reaction to it. Here's the Honourable Bernard Valcourt speaking about the changes or the amendments that are going forward:

> The government had already proceeded with changes to the Nunavut and Northwest Territories regulatory regimes, and it is important for all northerners, wherever they are in the north, to benefit from the same legislative framework....

Then, in an answer to Mr. Leef on the delegation authority, he stated the following:

> This amendment is consistent with other northern legislation, namely the Mackenzie Valley Resource Management Act and the Nunavut Planning and Project Assessment Act, where these provisions exist.

So really, what the government is saying here is that we need to have a cookie-cutter approach to northern development.

I just find this bizarre, knowing the north—knowing Yukon and what kind of arrangement it has going, knowing what the Northwest Territories is composed of, which is seven different aboriginal governments that all have regional authorities. Then we have Nunavut, a single government based on a land claim. Do you see any relevance to Yukon in what the government's talking about here, that we should have the same system for these three territories?

I'll just let you all answer that.

Ms. Amber Church: I would agree with you. I'd say no. We have different devolution agreements. We have different first nations. We have the Umbrella Final Agreement, which is different from what we have in the NWT or what we have in Nunavut.

At the moment, YESAA addresses a set of Yukon-specific issues. The north is not consistent. The eastern Arctic is very different from the west. We can't just cookie-cutter it. We have different impacts going on. We have different industries coming in. It is important that it be suited to our home territory.

Mr. Felix Geithner: I guess I could answer this by a question from my side, right? For me in Yukon, the YESAA is a strong and very important piece of what works in Yukon and possibly in the rest of Canada. It's a strong example of how these kinds of issues of assessment processes for the region, for first nations, and for everything involved can be dealt with.

Really, here's my question in regard to what you're saying. Is there maybe an interest for generalization in certain processes that work in other areas, such as the Northwest Territories, Ontario, or even Quebec? Is this an attempt to generalize and simplify a well-running system that works in Yukon, one that has a strong hold and has its purpose, in an attempt to simplify and make it more adjusted to maybe what the most common directions are in the federal legislation?

● (1655)

Mr. Lewis Rifkind: Yes, the comments you've quoted are a bit disturbing. We tend to regard this move to try to standardize environmental assessments, not just across the north but in Canada, as almost a race to the bottom. You find a jurisdiction that has, from the environmental point of view, the worst or lowest form of assessment and then try to apply it across to other jurisdictions.

It's not very helpful in protecting the environment. Actually, I would argue that it does a disservice to industry as well, because if you don't have decent environmental assessment, you're going to have horrendous issues later on, which companies are often on the hook for, especially when we come to projects that go wrong, whether it's mining, or forestry, or whatever.

Ms. Karen Baltgailis: Well, you can tell that Lewis and I worked together for many years, because he took the words right out of my mouth about a race to the bottom. YESAA is made-in-the-Yukon legislation that is unique in regard to our particular needs. I think it's working really well, and it works better all the time. The YESAA board has been very responsive to the recommendations for changes that came out of the five-year review. I've seen assessments get better and better through the years that I've participated in them.

The Chair: Thank you.

We'll move now to Mr. Leef.

Mr. Ryan Leef: Thank you very much.

I appreciate everybody's input.

Of course, part of the challenge that we're hearing is that we're seized with this as a committee to weigh things out. On one hand, we have your testimony, Ma'am, where you're talking about YESAA getting better and better, but then we have a YMAB report that talks about the assessments getting worse and worse. We're seized with deciding on whether they are getting better and better or worse and worse. From an industry perspective, they're getting worse and worse; from your perspective, they're getting better and better. That presents an unique challenge for us considering what is actually going on.

On the timeline piece that was brought up, we spoke to the chair of YESAB this morning. She indicated that the average timeframe to complete a review right now is about 57 days, and the timeline is going to move to about 270. That raises a concern, in the sense that what it might do is actually invite greater consultation and more input on a project, and then that would intensify the need for YESAB, or a district office, or the executive council to have the capacity to deal with all the input that's coming in. She felt that there was going have to be some adaptation on YESAB's part to work on that, with in fact the lengthening of the time period.

On one hand, if it's lengthened and we get more input, more feedback, and more stakeholder investment, that should be viewed as a good thing. The capacity and financial piece for YESAB is outside the scope of the bill, but certainly can be addressed by the federal government and the partners involved. Industry has said that the adequacy review right now is being used to conduct the assessment outside of the timelines and that's posing some direct challenges for them.

If YESAB right now is completing these projects in 57 days and then is allowed to extend them to 270 to invite greater stakeholder input, wouldn't that be a good outcome? The chair said that she's not sure that it was the intended outcome, but wouldn't it be viewed a good outcome to have more community engagement and more community input on projects? I think keeping it down to 57 days is great, and if it stretches longer, this provides them the time to provide the broad consultation that everyone is talking about.

Mr. Rifkind?

Mr. Lewis Rifkind: I'm going to say that it depends.

It depends on the type of project. What I find, when commenting on projects, is that one tends to see the same groups or individuals submitting on, for example, placer mining applications, or within a traditional territory. On extending the timelines on certain types of projects, I don't know if it would get more people or more groups submitting—or shortening it, for that matter.

The vast majority of projects that go through YESAB are quite minor from a development point of view, whether it's small mining operations or small hard rock mineral exploration types of projects. Our concern in regard to the proposed amendment is about when we're talking about big projects, such as, let's say, the Casino mine, which is a hugely complicated project. By starting the clock ticking, we could be in a situation where we have thousands of pages of documents to go through, and if a proper adequacy review isn't done, we're going to be dealing with a case where YESAB could potentially be making decisions with inadequate or incomplete information, because the clock has to tick.

● (1700)

Mr. Ryan Leef: Right, and YESAB talked a bit about that this morning in terms of making sure they have a fiduciary duty to do that and achieve that. There are of course provisions in the bill to allow extensions of those time limits to carry on. There is a stopgap measure in place if projects are very complex, such that they can be extended. You're aware of those sections.

Mr. Lewis Rifkind: Yes. For some of the complicated projects, I would argue that the extensions might not be enough. I'm going to offer an example—

Mr. Ryan Leef: They can be indefinite, though.

Mr. Lewis Rifkind: There are timelines, I believe, where projects eventually expire. Is that not correct?

Mr. Ryan Leef: No. The minister can extend those timelines for up to two months on the first additional piece and then they can be extended indefinitely from that point.

Mr. Lewis Rifkind: That might be a good thing, because if a project goes through without adequate adequacy being done.... If I can refer to the project that was known as the Carmax Copper Mine that went through YESAB with everybody screaming and kicking, it got rejected by the water board because it was deemed that not an adequate enough assessment had been done by YESAB.

The water board was not comfortable with the process, and they killed the project outright. It would have been much better for it to have been completely done at the YESAB stage and to either have been stopped there or have had enough adequacy done so that it was complete by the time it reached the water board. It wasted everybody's time and a huge amount of money. The water board chairman was fuming.

Mr. Ryan Leef: That's a fair point—

The Chair: We'll have to stop there. That's the time.

We'll move to Ms. Jones.

Ms. Yvonne Jones: Thank you all for your presentations.

It seems there are so many questions left to ask and so little time, but you've certainly given us more to think about, and I appreciate that.

I'll just start off by saying I represent an area not unlike the Northwest Territories in eastern Canada and Labrador. I know the importance of development initiatives. I know they always work better when there's full consultation, agreement by all governments, and respect for first nations, and when input from environmental and conservation groups is listened to and acted upon. At the end of the day, doing so saves everyone a lot of grief and a lot of money, especially industry investors, so I understand fully where you're coming from and your concerns today.

I agree that you can't rush complex assessments. We can all cite examples right across the country of environmental and social monitoring and assessment of projects being rushed so that they have lacked some of the information that was required to make good, sound, reasoned decisions. Many of the assessments were deemed to be inadequate in some ways, but projects moved ahead. We've all seen that. We can cite dozens of examples, I'm sure.

We want to make sure that does not happen in the Yukon. I think that is what I've liked about the model that has been in place. I think for the most part we've heard very good feedback about the YESAA process, from all the people I've heard speak about it, with the exception of the Mining Association of Canada, which had some concerns around timelines, which I think could be easily sorted out with some dialogue and discussion.

My question to you would be on two fronts. One, when we talk about significant change, whether it goes forward for an assessment or not, it is not defined within the act that we're dealing with. How do you define it? Has anyone told you what a significant change constitutes? We would not know. We can all guess. That's about all I, as a panellist, can do right now.

The other piece has to do with the independence of the YESAA process. Right now when you look at these changes from an industry perspective or an environmental perspective or a first nations' perspective, you can say either that it works or that it doesn't work, depending on the government of the day. Governments change. Not all governments are going to have the same will and mandate. Some will be pro-development; some will not. Some will be pro-environment; some will not. What I see now is an independent body that deals with those issues outside of what the principles and philosophy of the government of the day are, whether in the Yukon or in Canada.

I'd like you to comment on those two pieces for us, if you could.

● (1705)

Ms. Amber Church: First regarding your question about “significant change”, it's not defined in the act at the moment. I have to say that the term “significant change” means different things to different people. My definition is probably different from even, say, Lewis's, or the definition of somebody from the Klondike Placer Miners' Association or from that of a citizen pulled off the street. Without a proper definition, it's incredibly hard to comment. We would really welcome knowing what that means, because it's very hard to tell right now.

Ms. Yvonne Jones: I hear you.

Ms. Amber Church: Then to the point on the independent body, I think YESAB has been successful partly because it is independent, and so Yukoners trust it. Let's face it, whatever political party you're in, there are going to be portions of the population that don't trust you. That goes for NGOs as well, and it goes for industry as well. But Yukoners can feel some trust that as an independent body, it is taking it outside of a political context and agendas. If you remove that independence, or even the perception of that independence, you hamper that process and people's faith in it. I think that then destabilizes the relationship further on, because if people can't trust the decisions, that's going to hurt industry more and it's going to hurt the economy more and it's going to hurt the Yukon public more.

The Chair: We've reached the time there.

We'll move to Mr. Strahl.

Mr. Mark Strahl: Thank you, Mr. Chair.

Mr. Geithner, you mentioned in your opening statement that if one of the parties says there was not adequate consultation, then consultation was not adequate.

To take that to its logical conclusion, do you not envision that test being impossible to meet in some situations when an organization or party that simply didn't want something to proceed could just say consultations were inadequate and, therefore, as you said, that means there wasn't adequate consultation?

In effect, that statement provides a veto to one of the parties in the discussion. Is that what you meant when you said that? I think that would be a very unique position for government to take.

Mr. Felix Geithner: It would be, for government to take. That's correct. In my position though, I'm looking at both sides. If you look at the Canadian government versus first nations government, part of the discussion here and the final agreement is on whether these agreements are honoured in the process. This is the biggest discussion point involving first nations. I'm just speaking as a third person. That's why the comment was made.

Mr. Mark Strahl: I guess I would just say that the duty to consult and accommodate as necessary has never been defined as an open-ended process in which one party can declare that just as a matter of fact they haven't been adequately consulted. A test has to be made there.

I did want to talk more about policy direction, worries about which were raised by everyone. Policy direction, as I understand it, may only be given with respect to the exercise or performance of YESAB's powers, duties, or functions under the act and cannot be used to change the environmental assessment process itself. It cannot impede the board's ability to perform its legal duties, or expand or restrict the powers of the board. Also, because the board is an independent body, policy direction cannot interfere with active or completed reviews. In addition, policy direction cannot improperly fetter the board's ability to exercise discretion when conducting assessments and making recommendations.

We've learned today that all policy directions are subject to certain limitations. First, they're subject to the application of section 4 of the act, which states that first nations final agreements will prevail in the event of an inconsistency or conflict. Therefore, any policy direction issued must be consistent with the Yukon Environmental and Socio-economic Assessment Act, the Umbrella Final Agreement, and the individual land claim agreements.

Further, there are four examples only of when policy direction has been provided. I mentioned these earlier today. All of them have been to protect the rights and interests of first nations requiring that notification be provided to both the Manitoba and Saskatchewan Denesuliné regarding licences and permits in a given region, providing instruction to the board regarding its obligations under the Deh Cho interim measures agreement, and ensuring that the board carries out its functions and responsibilities in cooperation with the Akaitcho Dene First Nations at its pre-screening board. That was done under a previous government.

So I guess I'm a little bit perplexed given the parameters under which policy direction can be given, given the supremacy of the final agreement, given the laws of the land, as well as the fact that this has only ever been used to protect the interests of first nations, that here seems to be a condition of “if that, then this”. There seem to be several steps down the road that people are taking when the facts seem to indicate that this has only been used to protect the interests of first nations in the past. Maybe I could get some comments on that?

● (1710)

Ms. Karen Baltgailis: I would say there is a lack of trust about what these policy directions are going to be used for. That lack of trust is not surprising considering that there are four amendments to YESAA that the first nations have big problems with, which they did not receive notice about until very late in the process. So is it surprising that people don't trust policy direction coming from the federal government?

Ms. Amber Church: I would add that just because that's how it's been done in the past, that doesn't always mean that's how it will be implemented in the future. That is another part of the lack of trust issue.

Mr. Mark Strahl: But the issue in respect—

The Chair: Sorry, but there are only about five seconds left, so you won't have time for an additional question.

We'll move on to Ms. Hughes.

Mrs. Carol Hughes: Thank you very much.

First of all, I do want to correct the record. A while ago I mentioned 1984 with regard to the Yukon land claims and self-government legislation. But 1984 was when my daughter was born: the legislation was in 1994.

Thank you very much for being here.

My first question is for you, Karen—if you don't mind “Karen”; I would have a hard time saying your last name.

Ms. Karen Baltgailis: That's fine.

Mrs. Carol Hughes: It's my understanding that you actually went to court on behalf of CPAWS, or with—

Ms. Karen Baltgailis: It was on behalf of the conservation society, but with CPAWS and the first nations.

Mrs. Carol Hughes: Yes. Could you tell me why you had to go to court on this? What was the final deal at the end of the day? Who won?

Ms. Karen Baltgailis: Actually, the situation was surprisingly similar to the present one. Yukon government, after letting the land use planning process go on for years and years, sort of sprang out at the very end with a new land use plan that had not really been consulted upon properly with first nations and the public. The Supreme Court of the Yukon ruled in favour of the First Nation of Na-Cho Nyak Dun, the Tr'ondëk, CPAWS, and the Yukon Conservation Society in saying that government acted improperly.

Basically they could not proceed to implement their unilaterally developed land use plan, which is similar to the unilaterally developed four contentious amendments.

Mrs. Carol Hughes: We see that they didn't abide by the final agreement, and that is exactly why you found yourself where you were.

I know that court case after court case has been won against the federal government. Just in B.C. alone, I believe, there were 12 cases last year, and first nations won 10 of them. So I can see the apprehension on this specific piece.

We hear over and over again that we're doing this to protect the rights of first nations. Don't you think that's a little bit colonial and paternalistic?

● (1715)

Ms. Karen Baltgailis: I think the first nations can decide for themselves what rights need to be protected.

Mrs. Carol Hughes: Earlier on today, I believe in the last panel, Mr. Morrison's last comment was with respect to the cost of projects that are being delayed. I would tend to believe that first nations know first-hand, if not more than everybody else, how difficult it is and how costly it is when projects get delayed. I think they would understand that, given the fact that they're having a hard time getting schools built, and water treatment plants. When they finally do get an okay to go, they get only part of the money. They have to wait maybe another year.

Could you maybe elaborate a little bit on how they should maybe understand the process on that?

Ms. Karen Baltgailis: I agree with you. And I think you elaborated on that really well yourself.

Voices: Oh, oh!

Ms. Karen Baltgailis: I do have a comment, though, about the issue of delays through the environmental assessment process. I would say, on this concern about the adequacy review, that I think it's incumbent upon proponents to come up with all the full information about the project right away. That would really shorten the process for them.

Mrs. Carol Hughes: Thank you very much for that.

As well, we heard by way of a letter to the AANDC minister from the Yukon Chamber of Commerce, which is a diverse organization that represents a wide range of business operators in the Yukon, that they are not supportive of binding policy direction and delegation of authority, because they do not respect the treaties.

I'm just wondering if you can elaborate further, if you also agree, on how it may impact businesses. We know how much it impacts tourism as well.

The Chair: It will have to be a brief response.

Mr. Lewis Rifkind: Yes.

I think anytime you have uncertainty you have an impact on business; I assume this is where the direction is going. We all want certainty. I mean, we're not stupid; we know that business creates wealth. It creates jobs. But it has to be done right.

Anytime you get into these legal shenanigans, which could be on the horizon, there will be delays, there will be problems, and a lot of industry might look elsewhere. Even the conservation society does not want that.

The Chair: We'll move for our last round to Mr. Leef.

Mr. Ryan Leef: Thank you very much.

We've been reading some things into the record. Some folks have been able to testify and others aren't able to be here. I'm going to read into the record a letter from the Village of Mayo. They are writing and specifically supporting the four amendments proposed in Bill S-6.

The first piece I'll talk about, which touches on what Mr. Strahl was concluding with when he ran out of time, is around the policy direction and your comments on the trust piece. As well, without putting words into his mouth, I think that Mr. Strahl was just about to conclude that the parameters are very prescriptive in the legislation. There isn't a great deal of latitude that the minister has in prescribing policy direction.

The trust comes from the strength in the law itself, which is prescriptive in nature, about what the minister can do in terms of that policy direction. Indeed, that is what the community of Mayo reports here. It says, “Any policy direction given would have to be consistent with YESAA, the Umbrella Final Agreement, individual land claim agreements or other Yukon legislation.” They go on to continue to support the delegation of authority and timelines and provide some context to each of those pieces.

I want to ask Mr. Rifkind a quick question with the time I have left. It's around the specific “significant change” piece you talked about. I appreciate, on an initial glance, that it's vague. But is it necessarily vague? As Ms. Church pointed out, people have different perspectives on what “significant change” is, but projects will as well, and so will certain ecosystems and certain regions. In one area, a definition of “significant change” could be too broad for a very particular ecoregion. Something very, very small could be a significant change in a sensitive area, whereas in another area it could be absolutely nebulous.

We run a risk of having a really prescriptive definition of “significant change”, where we envision “significant” being rather large on a grand scale. That could actually be detrimental to the review of that project in the protection of the environment, because “significant”, in certain areas, could be very small in nature. Would you agree with that concept? Then, from that point, perhaps you could give us a recommendation on how you would go about defining “significant change” such that it doesn't paint us into that corner, whereby we can reflect that small changes can be significant as well.

● (1720)

Mr. Lewis Rifkind: Yes. Look, I work in the nuts and bolts of mining applications and YESAB stuff. One thing that does seem to work is that when you look at the type of class activity in mining—class 1, class 2, class 3, and that sort of stuff—you get triggers happening.

This happens in YESAB as well. You move so many cubic metres of dirt, and boom, you trigger something. You use so much water and you trigger that sort of water licence. It's something that people can get their heads around. If you're a proponent and you're going to move 30,000 cubic metres of rock, you're going to have to fill out these forms and those permissions. That provides certainty. People go in and say that if they're going to expand and going to move this much rock beyond what they did before, they're going to be triggering a YESAB type of trigger.

That, in our opinion, is the way to do it. If you start getting into this nebulous world of, “well, the ecosystem here isn't sensitive”...I mean, who decides that? We'll be arguing forever.

Mr. Ryan Leef: I think in the legislation the decision body decides that. I guess my point would be that half of that trigger, in some locations, could be significant. Yes?

Mr. Lewis Rifkind: No, with all due respect.

On the idea of having these triggers done by the decision body, we could get into situations where we have governments, for argument's sake, that could be quite pro development. They will decide that you aren't triggering and you don't need to do another assessment. It could work the other way too. Supposing you get a very environmentally friendly government in power, they could then say that the slightest thing has a negative impact. Having clear definitions, which, I would argue, could be based on the amount of dirt you're moving, provides certainty to all parties.

Mr. Ryan Leef: That's a fair point. I appreciate that. It's an interesting discussion. I have a background in conservation law enforcement, where we clearly recognize that sometimes the slightest of moves is very significant in a particular region. I guess you're presenting a bit of a trade-off here, in that if you have this trigger, in some cases it could risk that out, while in the vast majority it might not.

Mr. Lewis Rifkind: Yes. By providing firm numbers or firm amounts, you do provide certainty, and you get around a lot of this stuff. I mean, we can't even agree on what the definition of "consultation" is. Once you start throwing numbers out there, things get a bit firmer.

The Chair: I'm going to have to stop it there.

Thank you. That closes off our panel and our hearings for the day.

I want to thank everyone who attended today, both those who attended as witnesses, as these and some others have, and those of you who came as observers. We very much appreciated everyone's cooperation and patience in trying to make the day run smoothly.

I want to have all of you join me in acknowledging all the staff of the committee, who were very helpful in making this day happen. They really did go above and beyond to make this day run smoothly for us, so we say thanks to them.

We also thank the Best Western Gold Rush Inn for all their accommodations for us today.

I want to remind everyone that if anyone has anything they feel they want to add in terms of perspective, or further opinion, or suggestions for the committee, you are certainly always welcome to submit a written brief to the committee, which we will gratefully accept and which all members will take into consideration as well.

Thanks to all of you today.

With that, the meeting is adjourned.