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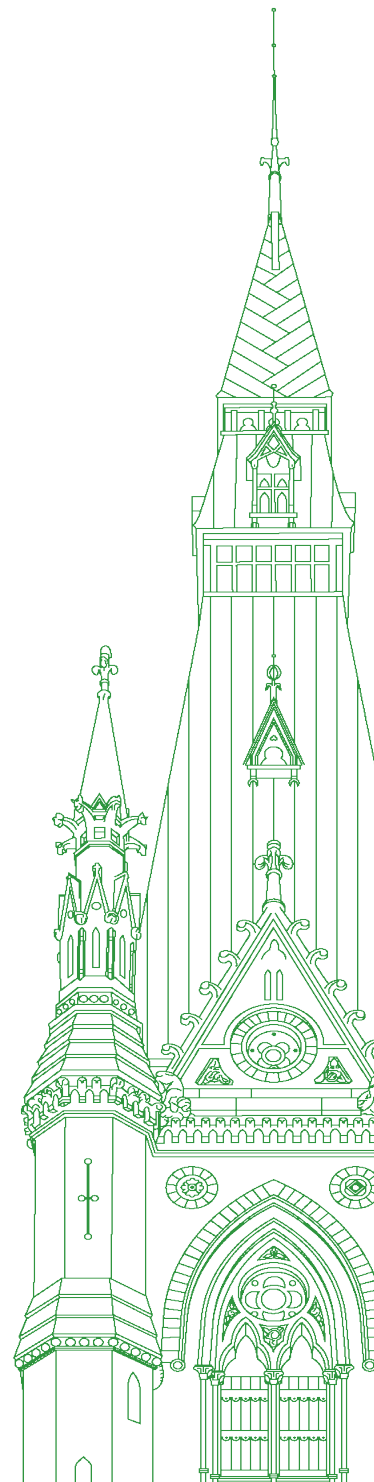
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Chair: Mr. Patrick Weiler



Standing Committee on Indigenous and Northern Affairs

Wednesday, June 12, 2024

• (1635)

[English]

The Chair (Mr. Patrick Weiler (West Vancouver—Sunshine Coast—Sea to Sky Country, Lib.)): I'd like to call this meeting to order.

Welcome to meeting number 114 of the House of Commons Standing Committee on Indigenous and Northern Affairs.

I want to begin by recognizing that we meet on the ancestral and unceded territory of the Algonquin Anishinabe peoples. As always, I express gratitude that we're able to do the important work of this committee on lands they've stewarded since time immemorial.

Pursuant to the order of reference of Wednesday, June 5, 2024, the committee is commencing consideration of Bill C-61, an act respecting water, source water, drinking water, waste water and related infrastructure on first nation lands.

Before we begin, I would like to ask that all members and other in-person participants consult the cards on the table for guidelines to prevent audio feedback incidents.

Please take note of the following preventative measures that are in place to protect the health and safety of all participants, especially the interpreters.

Use only the approved black earpiece. The former grey earpieces must no longer be used. Keep your earpiece away from all microphones at all times. When you're not using your earpiece, please place it face down on the sticker placed on the table for this purpose.

I want to thank you all for your co-operation.

Today's meeting is taking place in a hybrid format.

In accordance with the committee's routine motion concerning connection tests for witnesses, I'm informing the committee that all witnesses have completed the required connection tests in advance, I believe. There may be a couple we will have to work through, as well.

Before we turn to our witnesses, I want to address something that Dr. Powlowski brought up at the last meeting about some of the challenges we're having with the sound for interpreters. It was brought up at the Liaison Committee earlier today. I understand that it is something that the House of Commons administration is going to be looking at in detail over the course of the summer. Hopefully, we'll have some ways of remedying some of the challenges that

we've experienced in the last few weeks—at least once we return in the fall.

I'm going to leave a little bit of time at the end of the meeting for us to do some important business, to pass the budget for this committee so that we can move ahead with what we need to properly do this study.

With that, I would like to turn it over to our witnesses who are here today.

From the Department of Indigenous Services, we have Joanne Wilkinson, senior assistant deputy minister, regional operations sector; Paula Hadden-Jokiel, assistant deputy minister, regional operations sector; Nelson Barbosa, director general, community infrastructure; and Rebecca Blake, acting director, legislation, engagement and regulations.

From the Department of Justice, we have Douglas Fairbairn, senior counsel, legal services, Department of Crown-Indigenous Relations and Northern Affairs and Department of Indigenous Services; as well as Lee-Yong Tan, legal counsel, legal services, Department of Crown-Indigenous Relations and Northern Affairs and Department of Indigenous Services.

There will be up to five minutes given for opening remarks, after which we will proceed to the rounds of questions.

With that, I want to welcome you all.

First, we'll have Ms. Wilkinson to deliver a five-minute introduction.

The floor is yours.

Ms. Joanne Wilkinson (Senior Assistant Deputy Minister, Regional Operations Sector, Department of Indigenous Services): Thank you very much, Mr. Chair.

I'd also like to acknowledge that we are having this meeting on the unceded and unsurrendered traditional territory of the Algonquin Anishinabe people.

Thank you on behalf of my colleagues, as well.

[Translation]

I am here with you today to talk about Bill C-61, An Act respecting water, source water, drinking water, wastewater and related infrastructure on First Nation lands on first nation lands.

Thank you for giving my colleagues and me the opportunity to provide you with some information on this proposed legislation.

Everyone in Canada should have access to safe, clean and reliable drinking water.

[English]

First nations communities do not have legally enforceable safe drinking water protections similar to what is in place currently in provinces and territories.

In 2013 the Safe Drinking Water for First Nations Act was created to enable the development of federal regulations to support first nations' access to clean, reliable drinking water and effective treatment of waste water.

However, first nations shared several concerns with this act, including the lack of adequate, predictable and sustainable funding; the lack of recognition of aboriginal rights; the potential infringement of aboriginal and treaty rights; the lack of protection of source water; and insufficient engagement on issues that directly affect first nations.

As part of the 2021 Safe Drinking Water for First Nations Class Action Settlement Agreement, Canada committed to making all reasonable efforts to develop and introduce new proposed legislation in consultation with first nations to replace the repealed 2013 act.

Following the repeal in June 2022, Canada enhanced its engagement by working directly with first nation rights holders, including modern treaty and self-governing first nations, and first nation organizations, including the Assembly of First Nations and the first nations advisory committee that was created subsequent to the litigation settlement, to advance development of new proposed legislation.

• (1640)

[Translation]

Aligned with the United Nations Declaration on the Rights of Indigenous Peoples, Bill C-61 was developed through engagement that put First Nation voices at the forefront.

Since summer 2022, hundreds of engagement sessions have taken place virtually or in-person, with groups of first nations or individual first nations, based on partner preferences.

Two consultation drafts of a legislative proposal were also shared with all first nations communities and posted online to support broad public review.

Through ongoing engagement with first nation rights holders and first nation organizations, key priorities for new proposed legislation were identified including recognition of rights; sustainable funding for drinking water and waste water services; source water protection; and the need for ongoing engagement on water issues that affect first nations.

[English]

Since the summer of 2022 Canada has also engaged with provinces and territories on the multi-jurisdictional issue of source water protection, a key priority identified by first nations.

Provinces and territories expressed mutual interest in safe and clean water, while emphasizing the need for continued respect for provincial and territorial jurisdictions.

In addition, an expanded Assembly of First Nations-Canada dialogue table was created in the late fall of 2022 with the purpose of accelerating collaborative work to develop the proposed legislation.

The leadership and guidance provided by the co-leads—former national chief of the Assembly of First Nations, Phil Fontaine, and the newly elected grand council chief of the Anishinabek Nation, Linda Debassige—have been instrumental in advancing the legislation before you today.

This partnership continues in tandem with the parliamentary process. Bill C-61, the proposed first nations clean water act, aims to address key priorities raised by first nations by ensuring that first nations have reliable access to safe drinking water and effective wastewater services; affirming the inherent right of first nations to self-government, including jurisdiction over water, source water, drinking water, waste water, and related infrastructure on, in, and under first nation lands; ensuring consistency with section 35 of the Constitution Act, 1982, and the United Nations Declaration on the Rights of Indigenous Peoples, including through consultation on federal, regulatory and fiscal allocation decisions; establishing principles for decision-making, minimum national standards and a federal regulatory regime for water services on first nations' lands; and facilitating collaboration between first nations and federal, provincial, territorial and municipal governments on transboundary source water protection, including through a first nations-led water commission.

The proposed first nations clean water act represents a historic opportunity for rights recognition to address harms of the past and to help ensure that they never happen again.

With that, we are happy to answer any questions that the committee may have.

Thank you.

The Chair: Thank you very much, Ms. Wilkinson.

Next up, we have Mr. Fairbairn from the Department of Justice. You have five minutes for opening remarks.

Mr. Douglas Fairbairn (Senior Counsel, Legal Services, Department of Crown-Indigenous Relations and Northern Affairs and Department of Indigenous Services, Department of Justice): Thank you, Mr. Chair.

On behalf of the Department of Justice, I'd like to express my appreciation for being able to work on this groundbreaking bill with Indigenous Services Canada. We've worked through the drafting up to the current stage, and we are here to support Indigenous Services Canada and to help answer your questions as well.

Thank you, Mr. Chair.

● (1645)

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

With that we can go into our first round of questioning, a six-minute round.

First, we do have a couple of new members on the committee today. I want to welcome Mr. Kurek, Ms. Falk, as well as Mr. Scarpalleggia, who I know has put forward a water study of legend at the environment and sustainable development committee. I want to welcome all three of you here today.

Without further ado, I will pass the floor over to Mr. Melillo for six minutes.

Mr. Eric Melillo (Kenora, CPC): Thank you very much, Mr. Chair.

Thank you to the officials for being here to talk about this important topic of Bill C-61.

I just want to start off the top—and whoever wants to answer, please jump in—that there has been a lot of discussion about this legislation as being co-developed. The government has used that phrase. We've also seen in media and in comments beyond that that many first nations did not feel adequately consulted in the lead-up to this legislation.

I'm just wondering if you could speak to the consultation process that was undertaken to get to this point.

Ms. Joanne Wilkinson: Certainly. Maybe I can start, and others can fill in the gaps.

There has been consultation or engagement ongoing since 2018 on proposed changes to the act that was then in place. The intensified discussions, though, happened as a result of the water settlement—the litigation settlement. This included the work I mentioned regarding the dialogue table with the Assembly of First Nations.

Also, there were two consultation drafts released. They were sent directly to first nations chiefs and organizations. We also extended the feedback period for the first consultation draft based on feedback we received from folks saying there had not been enough time. The drafts were released publicly, as well, so there could be increased access for those who wanted to comment and provide feedback.

Mr. Eric Melillo: I appreciate that.

When you mention that, is it as simple as reaching out by email or phoning leadership in order to solicit that feedback, or is it different from that?

Ms. Joanne Wilkinson: I would say there is a mix.

There were certainly direct communications by email and phone calls made at various levels, through the minister and officials. Also, through our regional offices, we have existing relationships with regional organizations and chiefs directly on the ground. We presented at many different fora and gatherings of different sort—those types of things. We also worked with people who were directly impacted, like the first nations advisory committee.

Mr. Eric Melillo: Thank you.

Could you speak about how concerns over, or opposition to, certain aspects of the proposed legislation at that point were dealt with in your department?

Ms. Joanne Wilkinson: Yes. When you look at the development of the bill through its various stages—the two consultation drafts and, ultimately, the bill that was introduced—there are a number of areas that were strengthened based on feedback that was received.

We can go into a couple of examples. Maybe I'll ask Mr. Barbosa to share a couple of specific examples.

Thank you.

Mr. Nelson Barbosa (Director General, Community Infrastructure, Department of Indigenous Services): Thanks for the question. It's a pleasure being back.

The progressive nature of the consultation draft was substantive. To the question, where we saw the most substantive feedback from rights holders, I would certainly say it's not universal, but it is progressive. Where we saw a substantive uptake on changes included funding, which has been a significant point of conversation among rights holders since 2018. I would note that the draft bill discussed today has significant provisions related to providing the absolute best nature of funding certainty. I would also say that the proposed work of the first nations water commission was progressively raised. The language in Bill C-61 is progressive, as well.

As to our fairly significant language around substantive equality and providing services comparable to those in local municipalities, these are things that were demonstrated loud and clear for many rights holders and are entrenched in the draft bill being considered in front of this committee.

● (1650)

Mr. Eric Melillo: Thank you both for that. I appreciate that.

I want to speak about the water protection zones that are identified in Bill C-61 but not defined.

I think that's a clear distinction, and an important distinction. It's been left largely to future regulation on the part of the minister. I've heard some concern about how vague that could be.

I'm curious about whether there has been any pre-emptive consultation specifically on what that might look like—a definition of “protection zone”.

Mr. Nelson Barbosa: Thanks for the question.

With respect to the protection zone language, I would say that, in summation, maybe going back to the previous question, there were three large areas of focus by first nations. One was around rights. This is a rights-leading bill. The second is around funding. The third is the interplay of laws and jurisdiction that makes up the fabric of this country.

In relation to the protection zone, there are essentially three things happening in this legislation. The first, to your question, is the identification of what a protection zone is. Sources of water in this country vary greatly. In some cases, like in the Athabasca, they are very large. In other cases, they are much more geographically limited. The identification of a protection zone is something that's highly localized. Identifying what a protection zone is and the alignment of laws is a core part of this proposed legislation.

The second feature around the protection zones is largely around the participation of first nations and respective provinces and territories coming together to join agreements on protecting water. Water flows. Jurisdiction is finite. It has defined borders.

As Ms. Wilkinson mentioned earlier, there is a regulatory gap on reserve that should be bridged through the creation of essentially local laws. How those laws align to broader laws in a particular province and territory is critical in providing safe water for all Canadians.

So the protection zone really begins with, one, the conceptualization of what is the geospatial footprint of a protection zone, and then it moves toward—

The Chair: Mr. Barbosa, I'm afraid I'll have to ask you to wrap it up.

Mr. Nelson Barbosa: Thank you. My apologies.

The Chair: With that, we'll go to our second questioner.

Mr. Battiste, you have six minutes.

Mr. Jaime Battiste (Sydney—Victoria, Lib.): Thank you, Chair.

Thank you for your opening comments. One thing you mentioned in your opening comments is that there currently exists no protections for first nations water and regulations. This is something that first nations have had to deal with across Canada for generations. This is an important piece of legislation.

I have two questions on this. We have seen many times where industry has been a bad actor and has not always looked out for the best interest of their neighbours in indigenous communities, which has led to contamination and poisoning of the water. I know that we're going to hear testimony on this, but one of the sites in Nova Scotia, Pictou Landing, for more than four decades had their water poisoned by a lumber mill close by.

I'm wondering two things. One, how is this legislation going to protect first nations drinking water from pollution, from contamination? Two, what is the provincial role in this to ensure they're working collaboratively with the federal government? It was the provincial government who allowed the polluting of this community in Nova Scotia for many years. I'm wondering if you could speak a little bit about what this legislation does to protect that and how we can ensure that provincial governments follow suit.

Ms. Rebecca Blake (Acting Director, Legislation, Engagement and Regulations Directorate, Department of Indigenous Services): Thank you very much for the question.

In terms of the legislation and the source water protection that my colleague mentioned earlier, water flows, and it's a multi-jurisdictional issue. It's really about creating pathways, as water flows on to reserve land and off of reserve land, to ensure that the provinces, first nations and federal government are working together. It's not just Indigenous Services Canada. It's also other federal ministers coming together and using all those regulatory powers that exist in Canada to work with provinces, to coordinate those laws and support first nations on that safe drinking water.

I'd also add that there are regulatory-making abilities in the proposed bill itself on first nation lands. With those proposed regulations, they would go through the normal gazette process where everybody would be included, including provinces and territories. In addition to that, there are commitments for that ongoing consultation and co-operation with first nations, as the rights holders, to protect their drinking water.

Thank you.

• (1655)

Mr. Jaime Battiste: If no one else wants to add to that, I'm wondering if Justice could answer. As a federal government, we have a fiduciary responsibility to indigenous people. They believe, and I agree, they have an inherent right to clean drinking water.

How can we ensure through this legislation that for industry or provinces who are acting in bad faith and not upholding their fiduciary responsibilities to first nations communities, we have remedies, legal remedies, to protect this water?

Mr. Douglas Fairbairn: Certainly, sir. One of the features of this bill is, as has been noted, is the concept of a protection zone. Although this bill focuses on first nation lands, there is the ability of first nations and provincial governments and the federal government to set out a protection zone. It is supposed to be adjacent to first nation lands, but it can extend out from those first nation lands and cover source water and other bodies of water that flow into first nation lands. Through this mechanism of a protection zone—which would be designed and developed in concert with provincial governments, first nations and the federal government—we foresee the ability to help protect water beyond first nation borders.

Ms. Joanne Wilkinson: Maybe the other thing I would add—and I'm sure the committee has heard this in other realms, and we'll hear it in these deliberations as well—is that first nations expect a full seat at the table for these discussions. It is the intent of the bill that this take place. We certainly heard that loud and clear through the engagement process, and that's what we believe is here in the bill.

Mr. Jaime Battiste: I don't think I'll have the time to get this answered, but I'd love it if you guys put this in writing. I'm looking at the Assembly of First Nations' website, and they've had seven annual water symposia. I'm sure some of these were broken up during the COVID days, but we've had seven national water symposia where first nations were invited to give their feedback. How much are we building this legislation from the direct feedback that we've heard from first nations during those seven annual water symposiums?

Ms. Joanne Wilkinson: I don't have the list of the seven symposia with me, but we've certainly been working very closely with AFN and been present at all of those types of fora to have these discussions. As I said, we've been in a funding relationship with AFN since 2018 on engagement, and so we have been very engaged and very active in working with those who attend those symposia, because they include experts as well, right? There are a number of experts and others on the ground, whom I'm sure you will hear from later, but really tapping into that expertise has been critical to make sure that the implementation of the act can be well thought out in advance as well.

Thank you.

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

[Translation]

Mr. Lemire now has the floor for six minutes.

Mr. Sébastien Lemire (Abitibi—Témiscamingue, BQ): Thank you, Mr. Chair.

I was thinking of addressing this topic a little later, but I feel I must do so now: water falls under natural resources, which is a provincial jurisdiction.

On the subject of other possible agreements, subclause 25(1) of Bill C-61 raises a certain number of questions in terms of jurisdiction and encroachment into provincial areas of jurisdiction. The government should be questioned about the wording of clause 25, which allows Ottawa to enter into agreements directly with cities.

In my opinion, it would be inappropriate for such a thing to happen in Quebec. That said, has Quebec agreed to your bill? Does Bill C-61 take into account the Quebec government's National Water Policy? Has the Quebec government given you the go-ahead on this?

• (1700)

[English]

Mr. Nelson Barbosa: I think it's important to underscore when we're talking about the creation of a regulatory and legislative environment that we're talking about something called section 91(24) lands, which are Crown lands or reserved lands. In no way does this legislation impinge on provincial jurisdiction. The protection zones

are based on mutually agreeing collaborative process between first nations, the federal government and provinces and territories.

On feedback from provinces, including from Quebec, it was clear throughout the consultation process—which was oriented to first nations of course, but also provinces and territories—that existing jurisdictions that make up the laws of this country, including that of the Constitution, must be respected. This legislation doesn't expunge or impinge on that jurisdiction. However, if it's in the zone of bridging, as was mentioned, where there is a significant regulatory gap...and also opening up pathways for joint agreements that don't exist today to talk about how water is a source of many things, including clean drinking water, how is that being protected across multiple jurisdictions, including in the province of Quebec?

[Translation]

Mr. Sébastien Lemire: I also want to talk to you about the First Nations Water Commission, which is referred to in clause 39 of the bill.

When we work with certain commissions, we run into problems related to the very mandate granted to these commissions. Obviously, the devil is in the details. Will the First Nations Water Commission be structured like the Canadian Nuclear Safety Commission, for example?

We know that it's possible to set up a commission that doesn't have the power to propose solutions or other possibilities. This was in fact the case with the Chalk River site for nuclear waste. It's probably one of the worst places to store nuclear waste, especially since it's at the top of a mountain, upstream from the Ottawa River, or Kitchissippi, as the Anishinabe call it. There are already contaminants in the water. Now, this site will further compromise the quality of drinking water in the surrounding area.

Are we making sure we apply the precautionary principle to waterways that are upstream of cities, as is the case with the Chalk River site? Indeed, the cities of Ottawa and Gatineau, which are located barely 200 kilometres from the Chalk River site, take their water from the Ottawa River.

Indigenous knowledge of whether water is alive has also been ignored. Even consultation with indigenous people was botched. These Anishinabe communities even sued the Canadian Nuclear Safety Commission over its favourable recommendations.

It is in this context that I ask whether the First Nations Water Commission will follow a model similar to that of the Canadian Nuclear Safety Commission.

[English]

Mr. Nelson Barbosa: Thanks for the question.

With respect, I am not super familiar with the commission being the comparator.

What the legislation proposes with respect to the first nations water commission is, I think, threefold.

One is the aforementioned drinking water settlement agreement, committed to create an institution to support first nations in the administration of many affairs, including those itemized in this bill. I won't read through them, but they include regulatory and capacity supports.

The commission, in and of itself, needs to be co-developed and supported through consultation with first nations, so the legislation creates the space for that organization, and it alludes to what it can do. However, in essence what needs to be created is essentially that consultation process to create the commission itself.

Subsection 39(1) speaks about that process, and then the remaining paragraphs in subsection 39(1) speak to the potential parameters by which the commission could perform its functions, ranging from operations to maintenance, capacity supports, regulatory development et cetera.

In potentially passing this legislation, what would be created is essentially the venue for that dialogue.

[Translation]

Mr. Sébastien Lemire: I'd like to warn you about the appearance of conflicts of interest that we often see on these commissions. This has been the case with the nuclear industry, in particular. As we've seen, the Minister of Crown-Indigenous Relations was unable to apply the precautionary principle and the principle of prevention to an essential resource like water when it came to projects that posed risks to flora and fauna. In this case, it was the Ottawa River.

What's most important to note is that the mandate of these commissions means that ministers absolve themselves of their responsibilities, saying that they've entrusted this to an independent third party, such as the Canadian Nuclear Safety Commission. By having an independent commission, ministers are absolved of their responsibilities and accountability. Then they tell indigenous people to go to court. That's what happened with nuclear waste. I'm afraid a bit of the same thing will happen with a water bill.

Unfortunately, my time is up. Mr. Chair, could you show some leniency and give the witnesses time to provide me with an answer?

• (1705)

The Chair: Thank you very much, Mr. Lemire. Perhaps you'll have the opportunity to ask the same question in the next round.

[English]

With that, we'll go to our fourth questioner here, Ms. Idlout, for six minutes.

Ms. Lori Idlout (Nunavut, NDP): [*Member spoke in Inuktitut, interpreted as follows:*]

Thank you, Chair.

Thank you for coming to inform us on this Bill C-61, which is geared towards first nations. It's not geared towards the Inuit community.

[Technical difficulty—Editor]

The Chair: I'm sorry. We're going to have to pause for a second here. We don't have any interpretation.

[Translation]

Mr. Sébastien Lemire: I'll venture to speak for the interpreter.

I couldn't comment on the English interpretation of Ms. Idlout's words, but I heard the French interpretation, at first. After a sentence, however, the interpretation stopped, and then the interpreter had to carry out checks and tests. So I couldn't understand my colleague's intervention.

[English]

The Chair: Ms. Idlout, you can restart your time for the full six minutes.

Thank you.

Ms. Lori Idlout: [*Member spoke in Inuktitut, interpreted as follows:*]

Thank you for coming.

If I can, I'll start by saying this bill is geared to first nations. It's not geared to the Métis and it's not geared to the Inuit community. That is my understanding.

It will impact first nations governments. How many first nations government bodies will be impacted by Bill C-61?

Ms. Joanne Wilkinson: As my colleague described, it is geared to 91(24) lands. Generally speaking, it's for reserve lands. It's not meant to take the place of the broader federal Canada Water Act that was developed by Environment and Climate Change Canada.

You're right that it is specific to 91(24) lands.

Ms. Lori Idlout: [*Member spoke in Inuktitut, interpreted as follows:*]

How many lands will be impacted? How many bands will be impacted? That's what I want to know: how many? I'd like the numbers, please.

Mr. Nelson Barbosa: There are 634 first nations from coast to coast. A proportion of those are self-governing first nations, which have paramount laws around jurisdiction. In some cases, they include water. The rough number, just for frame of reference, is around 570 to 580 first nations communities. It's 634 less the self-governing first nations.

Ms. Lori Idlout: [*Member spoke in Inuktitut, interpreted as follows:*]

Thank you.

From my understanding, there are over 600 communities that will be impacted.

My question is how many supported this bill, Bill C-61. Out of these 600 first nations bands, how many have you heard from, looking at first nations entities? How many have you consulted with?

Ms. Joanne Wilkinson: I will start, and maybe my colleague can follow up.

We have engaged with all of them, so all nations were provided with both consultation drafts. We had lots of outreach with those that were interested in having discussions, as I mentioned, either alone or in groups, through organizations or through direct interaction with the nation itself.

Perhaps my colleague can share some details as well.

Mr. Nelson Barbosa: Certainly. Thank you for the question.

To build on my colleague's points, there were two consultation drafts that were shared publicly online—which is a first for this department—for all consideration and feedback. During the consultations, there were daily drop-ins for first nations.

We held direct consultation sessions based on requests from first nations coast to coast to coast. They were both virtual and in person, and that happened in a concerted way throughout the consultation process.

There was significant outreach, both direct and indirect and through written format.

• (1710)

Ms. Lori Idlout: [*Member spoke in Inuktitut, interpreted as follows:*]

Thank you for that.

I want to hear numbers. I want to hear how many first nations you consulted with. You talked about engagement. For me, it's not too clear.

I want you to explain, because the duty to consult is very important, and first nations people will be impacted. We need to know how many first nations bands and how many first nations you consulted with. I want to know the numbers of these.

Ms. Paula Hadden-Jokiell (Assistant Deputy Minister, Regional Operations Sector, Department of Indigenous Services): *Qujannamiik* for the question.

As my colleagues have outlined, there were a number of ways we did outreach with communities, but we also had over 181 first nations and first nations organizations that we met with or had direct correspondence with related to this bill.

Since 2018, we've provided over \$10 million to a variety of organizations to support engagement in the development of this bill, which included things like the symposiums that your colleague mentioned.

Thank you.

Ms. Lori Idlout: [*Member spoke in Inuktitut, interpreted as follows:*]

Thank you.

For my last question, while I have time left, we were told that the first nations have concerns. They had to sign an agreement and this agreement had a non-disclosure agreement.

Do you have to get first nations to sign on to this non-disclosure agreement? Is this true? What are the numbers?

Ms. Joanne Wilkinson: I think you may be referring to those who participated in the AFN dialogue table.

We did have non-disclosure agreements with those who were involved in the development of certain documents that required that, but we did not have the folks who were being consulted or engaged with on the ground sign those non-disclosure agreements.

Because it was public, there was no need for that to happen.

Thank you.

The Chair: Thank you very much, Ms. Idlout.

That concludes the the first round of questioning.

First up in the second round, we'll be going to Mr. Melillo for five minutes.

Mr. Eric Melillo: Thank you again, Mr. Chair.

I'd like to come back to the question of the protection zone that I left off at, specifically in clause 21. I'll ask our officials from justice for a comment here.

It says, "The Minister must make regulations defining 'protection zone'", and it goes on further to specify that "the Minister must consult and cooperate with First Nation governing bodies".

From the justice perspective, can you define what "consult and cooperate" would look like in your view?

Mr. Douglas Fairbairn: Yes.

One of the the key aspects of this bill is to ensure that there is input and continuous feedback from first nations with respect to a wide variety of things, but it includes the protection zone. There is case law that sets out consultation. Co-operation is a newer concept from the the UNDA, and we're still working through that as a federal government.

From the perspective of justice and ISC, I think it would mean there would be a need to get substantial input from first nations to ensure that any definition works for their particular needs. These protection zones can exist for any first nation lands, so there will be a need to work with any first nation that wants a protection zone. They may need to be tailored to their particular circumstances.

• (1715)

Mr. Eric Melillo: I appreciate that. The reason I ask is because it's one thing to say "consult and cooperate", but then, of course, the minister, at the end of the day, does have the authority to make those regulations. We've heard already, in terms of just developing this legislation, that although the government is saying that it had an extensive consultation process—and I don't dispute that—there are still many first nations that are saying that they were not adequately consulted. It's not a great start.

It's saying in Bill C-61 that the minister will consult and co-operate, but at the end of the day, the minister has the authority to make the protection zone on their own.

Is that correct?

Mr. Douglas Fairbairn: The minister would need to go through the whole consultation process before making the protection zone, so it wouldn't be a unilateral process. The minister would need to get that feedback from first nations.

Mr. Eric Melillo: What I'm getting at is that the consultation process is a bit fluid. It's not necessarily something that the minister must strictly adhere to, as we've seen just in the simple development of this legislation.

Mr. Douglas Fairbairn: I would say that the minister would need to sit down with first nations. It's not something she could simply do on her own or his own. There would need to be this buy-in from first nations because these protection zones are relevant to particular first nation lands and the circumstances may vary.

I think making a definition that tried to fit everyone without talking to the impact of first nations would not be successful. That's why we've tried to build in this idea about consultation and co-operation.

Mr. Eric Melillo: Absolutely, and don't get me wrong: I think the consultation aspect is very important. I'm definitely on board with that. Where I have concern is how extensive that consultation will be and if the minister theoretically has the power to check a box and say that they sent an email to a first nation and then can make that decision on what a protection zone is, because it says in regulation that the minister will make that determination.

Mr. Douglas Fairbairn: I think, given the trend these days, that there has been a concerted effort to ensure that first nation voices are heard on a wide variety of topics of—

Mr. Eric Melillo: I'm running out of time. Legally, is there a mechanism that can be embedded within that to ensure that the minister can't unilaterally make that decision on their own?

Mr. Douglas Fairbairn: You could put something in the legislation that potentially went beyond consultation and co-operation, yes.

Mr. Eric Melillo: Thank you.

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

We'll move on to our second questioner in the second round.

Mr. Scarpaleggia, you will have five minutes. The floor is over to you.

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): Thank you very much, Mr. Chair.

I'm very happy to be here today to discuss this legislation.

In order to understand the issues better and the solutions that are being brought by this bill, I'd like to focus a little more on practical outcome questions.

My understanding is that, at the moment, there are no legally enforceable drinking water standards in first nation communities. That's correct, but clearly the operators of the filtration plants must

be adhering to some standards. Would this vary by community, or would they be adhering to the national federal/provincial unenforceable water quality standards?

Mr. Nelson Barbosa: I think that there are certainly many fantastic operators who are operating very complex systems in many, if not all, first nations right now. The void is largely around enforceability of legislation and the regulatory gap in terms of standards and practices on water operations.

Typically, first nations follow Canadian drinking water guidelines or the guidelines of a given provincial jurisdiction like here in unceded Algonquin territory in present-day Ontario. They're very strident regulations and standards that govern water administration in the provincial context. There are many first nations that kind of mirror those standards and regulations in their particular communities. I think the biggest gap is around first nations' voice and control over law-making and regulatory ability on their lands, and also the lack of enforceability should there be issues related to the administration of water or water systems.

• (1720)

Mr. Francis Scarpaleggia: That's interesting. The operators have the choice of adhering to the same standards as a local municipality, or they could choose the Canadian drinking water guidelines.

I'm trying to understand the difference between this bill and the previous bill that was rescinded. How did the previous bill treat drinking water standards? Did it have a requirement that is maybe not as good as the requirement in this bill for creating and maintaining enforceable standards? What's the main difference between the previous Conservative bill and this one, other than the funding issue and recognizing the right to management of first nations' water, which is extremely important. On the standards issue, what is the difference between this bill and the previous bill?

Ms. Rebecca Blake: The previous bill from 2013 really focused on enabling a regulation-making framework, so it did not have specific standards in it. This bill does have specific standards for drinking water quality, water quantity and wastewater services as well, so that is a key difference.

In addition to the funding that you mentioned, rights' recognition is in this bill and not the previous bill, as well as the water commission for those wraparound support services that are in this bill but not in the previous bill. Lastly, those co-operation and consultation requirements weren't in a previous bill either in relation to that regulatory framework.

Mr. Francis Scarpaleggia: Thank you.

It's much stricter in terms of creating and maintaining standards.

To Mr. Lemire's point, you mentioned that this bill provides the right to engage with municipalities. Did I understand correctly? Is that what Mr. Lemire was saying, that through this bill the federal government can engage with municipalities, including in Quebec?

Mr. Nelson Barbosa: In essence, yes. What this bill does in the concept of protection zones—

Mr. Francis Scarpaleggia: Yes, protection zones....

Mr. Nelson Barbosa: —is to align laws that are laws both on and off reserve, which requires, obviously, a dialogue between first nations and provincial, territorial and municipal governments that administer those laws and systems.

Mr. Francis Scarpaleggia: I know that when it comes to financing infrastructure in cities in Quebec, a city needs to obtain approval—it's called an M-30 in Quebec—before any federal money can float to that municipality, but are there any restrictions within Quebec law that prevent a first nation or the federal government from consulting a local municipality in the way you've just described?

The Chair: I'm going to have to ask for a quick answer.

Mr. Francis Scarpaleggia: I'm sorry about that. Time flies. You don't realize it when you're asking the question.

Mr. Douglas Fairbairn: Sir, are you wondering if there's anything in Quebec law that prevents the federal government from consulting with Quebec municipalities?

Mr. Francis Scarpaleggia: Yes, in engaging with municipalities.

Mr. Douglas Fairbairn: I don't know Quebec law, I must admit.

Mr. Francis Scarpaleggia: But there's nothing you've heard of...?

Mr. Douglas Fairbairn: No, nothing I've heard of.

Mr. Francis Scarpaleggia: Thank you, Mr. Chair.

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

[Translation]

Mr. Lemire now has the floor for two and a half minutes.

Mr. Sébastien Lemire: Thank you, Mr. Chair.

Let me go back to the question I asked earlier.

Will the mandate of the First Nations Water Commission mean that, as in the case of the Canadian Nuclear Safety Commission, ministers will no longer be responsible for the actions of industries? If so, indigenous communities could find themselves, once again, in a risky situation where they may have to challenge the industries' failings alone in court.

Will the First Nations Water Commission have powers or a tribunal to apply sanctions?

In addition, will the First Nations Water Commission be free from all conflicts of interest?

[English]

Ms. Paula Hadden-Jokiel: We're certainly envisioning, and the input we have heard from partners is very much that the commission would be first nations-led and independent from the federal government. There would be funding provided. We would be a partner, but it would be first nations-led and first nations-governed. It's not an ISC commission. It's a first nations water commission.

The views and the input that we have heard to date are really around that serving as a centre of expertise to provide technical

guidance and support to communities, but what we've outlined in the proposed legislation is a commitment to co-operate and collaborate with first nations as the terms of reference get developed for that. There are no preconceived notions around what.... The mandate of that has not been finalized. That will be work that's done once the legislation is passed: It will be one of the first orders of business in terms of implementing.

• (1725)

[Translation]

Mr. Sébastien Lemire: So, as legislators, we have to trust the government. There is a consensus, however, that when First Nations have trusted government throughout history, it has often been to their great disadvantage.

The government will accumulate an enormous amount of information on water, based on data from the population. But who will own the data? Will the data be open? Will it belong to First Nations? Will it belong to the federal or provincial governments? Who will own the water? Will it be a question of shared jurisdiction, if it's open data?

[English]

Ms. Rebecca Blake: Thank you for the question.

Maybe just to add some additional pieces, because the commission does complement other elements of the proposed bill, including the rights recognition and the principles that are laid out in the bill, there are data sharing and data principles in the bill that would be guiding all decision-making throughout the whole bill, including the co-development of those terms of reference for the water commission, as well as any agreements to support the exercise of first nation rights. In terms of those first nation rights, it's really about recognizing first nation jurisdiction and their leadership and that their knowledge is theirs.

[Translation]

Mr. Sébastien Lemire: Thank you.

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

[English]

With that, we'll go to Ms. Idlout for two and a half minutes.

The floor is yours.

Ms. Lori Idlout: [Member spoke in Inuktitut, interpreted as follows:]

Thank you, Chair.

Chief Chris Moonias of Neskantaga Nation said after Bill C-61 was introduced that he did not get the chance to review it before it was tabled. He said that this is colonialism at its finest. How was this bill allowed to proceed without the consultation of one of the main plaintiffs on this Bill C-61?

Ms. Rebecca Blake: As contemplated in the 2021 settlement agreement, a first nations advisory committee was created. If you go through that agreement, it does have diverse first nations from all over present-day Canada represented on the committee, which was instrumental, as defined by its role in the settlement agreement, in informing the development of the proposed bill that is with you today. Similar to the dialogue table, which my colleague mentioned earlier, there was ongoing work with that committee to ensure that it lived up to the settlement agreement.

Ms. Lori Idlout: [*Member spoke in Inuktitut, interpreted as follows:*]

I would like an answer as to why Chief Chris Moonias of Neskantaga Nation was not presented with this bill before it was tabled.

Ms. Rebecca Blake: I appreciate the question.

It is a bit difficult for us to answer, as we are not the chief. It's ultimately up to first nations and first nation leadership to define their role in the development of that process. We take all input that we receive very seriously to move forward to strengthen the bill that you see with you today.

Ms. Lori Idlout: [*Member spoke in Inuktitut, interpreted as follows:*]

Did you give him an opportunity to review this Bill C-61?

The Chair: Give a quick answer, if that's possible.

Ms. Rebecca Blake: Yes, it was part of all of our outreach to every single first nation across present-day Canada.

• (1730)

The Chair: Thank you very much, Ms. Idlout.

Next we'll be moving to Mr. Melillo for five minutes.

Mr. Eric Melillo: Thank you Mr. Chair.

I want to come back to the protection zone again, then I promise I'll move on to another topic. I want to make sure that I was clear in my earlier questions—and I'll come back to the Justice official again if I can. With respect, I'm not interested in what should happen or anything like that, but rather what could happen with the current legislation that's drafted here around the protection zone.

I'm wondering if the minister could define what the protection zone would be without the consent of one of the parties—the first nation or the province or territory. Could that happen as it's currently drafted?

Mr. Douglas Fairbairn: It's always important that the minister's discretion is not fettered. If they have a legal ability to make a regulation, for example, that is a key consideration. What we've tried to do in this bill is to say that before making a regulation it's critically important to consult. That is a key factor that the minister would have to do before she even got to the regulation-making stage. In this bill she couldn't skip that.

Mr. Eric Melillo: That's understood. Thank you. I appreciate all of that, but you didn't answer the question: The minister could make that definition without their consent. I appreciate that.

Further, this is my last question on the protection zone, and this is for anyone who wants to comment on it. Are there any federal acts that achieve or at least aim to achieve what the protection zone would achieve currently in law?

Mr. Douglas Fairbairn: Are there other federal acts that are similar in that they provide a protection—

Mr. Eric Melillo: Do they or would they cover what the protection zone is aimed to cover?

Mr. Douglas Fairbairn: I'm not aware of acts. Canada has several federal statutes that deal with environmental matters on lands throughout Canada, but this protection zone is a fairly unique concept that we've built into this bill.

Mr. Eric Melillo: Thank you. I appreciate that.

I'm changing gears here as I promised. On the water quantity standard, I think it's important to ensure, obviously, that the quantity of water meets the needs of the community. I've heard concerns from some first nations about how those needs are defined, such as leaving out agriculture, as an example, in the standard. I'm curious how that list of needs was determined by the department.

Ms. Rebecca Blake: This was a key area of work with our first nation partners. As you'll notice from the first draft that was released publicly and is still online, as well as the second draft, and then what was introduced in Parliament, there have been substantial changes to those standard pieces that took direct input from first nations and applied them to the bill that's with you today.

Mr. Eric Melillo: Okay. Could you speak to how the quantity for current and future needs would be determined?

Ms. Rebecca Blake: Similar to the broader bill, the main guiding principle is about consultation and co-operation with the rights holders. That determination would be done directly with first nations communities, as we do recognize there are different needs from community to community, whether there be drought, for instance, or other factors at play in different regions across present-day Canada.

Mr. Eric Melillo: I think it's important to note, as well, that there are many first nations sharing the same source of water with non-indigenous communities.

Would those standards have any impact in cases of drought, or in situations that put extra stress on those systems, especially when they're being shared with other jurisdictions?

Ms. Rebecca Blake: I appreciate the question.

This gets into the agreement-making abilities outlined in the proposed act. The proposed act allows for agreements with multiple orders of government, in order to be as inclusive as possible of holistic approaches to different watersheds in different areas of present-day Canada. The idea is very much that different communities would come together to work on what works best in their area.

Mr. Eric Melillo: Thank you.

I think I have time for one more question.

Broadly, the bill uses the term “best efforts”, I believe, in eight different sections or subsections. Again, many first nations are raising concerns about that language, because it's very broad. I think we would hope the minister is always making best efforts in everything being done.

Why is that language so vague? Why was that language settled on?

• (1735)

Mr. Nelson Barbosa: There are multiple references, as you mentioned. I'd probably point to a couple of them.

Certainly, one of the core feedbacks we heard from partners is regarding funding predictability. My colleague from the Department of Justice talked about the role of ministers and, of course, the parliamentarians in this room in the appropriation of funds. How that works in a modern-day confederacy is important.

However, those best efforts, particularly in funding, are buffered by other things that talk about what makes water systems run. What are those true costs? How are those being assessed regularly? How are those being reported? At the back end of the legislation, you'll see reporting annually to parliamentarians, as well.

Best efforts isn't only about the language, then. It's about the intent of the subsections on funding and others, and ensuring it goes through the democratic process and is done in a transparent way.

Mr. Eric Melillo: Thank you.

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

With that, we'll go to Mr. Carr for five minutes.

Mr. Ben Carr (Winnipeg South Centre, Lib.): Thank you very much, Mr. Chair.

I have a question regarding the opening remarks by Ms. Wilkinson.

It's on what appears to be language from section 35, based on what I read in the legislation. It refers to the inclusion of affirming inherent rights “under First Nation lands”.

Can you elaborate a bit on what that refers to specifically when we talk about “under First Nation lands”?

Mr. Douglas Fairbairn: The idea is that water can be on first nations lands in the sense of a lake or a river. It can be under the lands as a reservoir. The idea is that first nations would have jurisdiction over not just the surface water—a lake or river—but also the water within the soil.

Mr. Ben Carr: Okay, I figured that was the case, but I wanted the clarification. Thank you.

Can you provide a practical example—if you have one specific to my home province of Manitoba, that's even better—of an issue that exists in a first nations community today that has not been resolved because of the absence of legislation, and that would otherwise be resolved if legislation such as this were in place today? Are you able to provide any type of example that comes to mind of something that is a problem in the absence of this legislation but, were it to be passed, wouldn't be a problem, and why?

Ms. Rebecca Blake: I appreciate the question.

Many of us benefit today when we get up in the morning, wash our faces, use the washroom and brush our teeth. All of these factor in water. As we know, with a lack of enforceable standards on first nations lands right now, it is difficult to ensure we can partner with first nations to make sure they have the same equity as everybody else in Canada.

By passing a proposed bill like this, there would be enforceable standards in place to ensure that.

Mr. Ben Carr: Thank you.

I have what may be a bit more of a technical question.

The legislation refers to “First Nations”. However, in the section that provides definitions of terms, “First Nations” is not in there. I presume we simply use the section 35 definition of “First Nations”.

I'm curious about when we refer to first nations in the bill. Does that mean first nations as members of a collective, first nations as governing bodies or each individual first nations person?

The reason I ask is that, if there is disagreement among first nations individuals in a first nations community governed by a first nations body, who is it the legislation is referring to in that instance? Is it the governing body that has the right, or is it the individual?

I hope that made sense.

Mr. Douglas Fairbairn: The idea is that the focus is on the first nations governing body. “First nations” may sometimes be used in the sense of the broader collective, the broader band. Rather than using the term “band”, it means first nations. The distinction would be that the governing body is essentially the council and the government, and the first nation is the collective of individuals making up the band.

• (1740)

Mr. Ben Carr: For the purposes of the legislation, essentially “first nations” would refer to the first nations governing body.

Mr. Douglas Fairbairn: Yes. Specifically, the first nations governing body would be similar to the council. Then the first nation is all of the people in making up the....

Mr. Ben Carr: Right.

I have one further question. We probably won't have time to answer it in depth.

However, let's imagine hypothetically that we have a first nations governing body that is supportive of a natural resources project. Let's call it a pipeline. If that pipeline and the approval of it was inconsistent with standards that were set out in this legislation, how might that be rectified?

Mr. Nelson Barbosa: May I just go back to the previous question?

There are a couple of defining terms on first nations governing bodies and first nations lands in the earlier sections that might provide some further light to your previous point.

On the question of where there might be conflicting laws, including those with regard to resource development, those are itemized in the clause called "Limitation", which talks about if there are conflicting laws. Should a first nation bring a law into force that may conflict with regulatory or natural resource laws that are itemized in this bill.... The limitations talk about the paramountcy of laws and which laws would prevail. This is standard practice in many pieces of legislation.

I think if the question is about where there is a conflict of laws, that's itemized in this bill as well. Is that your question?

Mr. Ben Carr: I'm out of time, so I'll pull you aside after and clarify. Thank you.

I knew it would take more than 90 seconds. Thanks.

The Chair: Thank you very much Mr. Carr.

That completes our second round of questions here.

I just want to put something out to the committee to see if there's consent for it: Could we have the next round be our last round and have five minutes for each party to ask questions, before we need to move into committee business to do a few things that we talked about earlier?

Some hon. members: Agreed.

The Chair: I see agreement, so we will move ahead with that.

First up in the third round will be Mr. Melillo for five minutes.

Mr. Eric Melillo: Thank you, Mr. Chair.

You're going to have to take tomorrow off.

I appreciate the opportunity to ask some more questions.

Mr. Jamie Schmale: Don't you only work three days anyway?

Voices: Oh, oh!

Mr. Ben Carr: *[Inaudible—Editor]*

Mr. Eric Melillo: Oh, oh!

All right. Get some order here, Mr. Chair. Come on.

I just want to quickly pick up on the best efforts because we ran out of time there. I'm just curious. If those words, "best efforts", are removed from the legislation, what sorts of impacts would that have?

It obviously depends on where they are. I know there's an instance where it mentions that the minister should make best efforts to consult. I think that would be a simple change, making it "the Minister must begin the consultation". I think that that's something that should be possible.

From your perspective, if that were to be removed, what general impact would that have?

Mr. Nelson Barbosa: That's a good question.

I'm going to go back to the funding one because it's the inference I made before. If it said that the minister must do X, Y and Z, that would require a fiduciary requirement for the government and for Parliament to appropriate funds relative to the agreement being provided. Instead of "best efforts" to do those things, publicize them and substantiate investment behind those studies.... If you remove those words, then parliamentarians must appropriate funds legislatively to do the aforementioned items.

Mr. Eric Melillo: I appreciate that.

I'll go back to protection zones. I'm curious about multi-jurisdictional areas.

I'll explain this a little more. I live in Kenora on Lake of the Woods. It's an international body of water. There are many first nations on the lake as well. I suspect that an area such as that could become complicated with Ontario, Manitoba and the state of Minnesota, as well as the first nations affected.

In terms of defining those protection zones, has there been consideration for situations like that where an international government could potentially be involved or have jurisdiction over some of that water in that territory?

• (1745)

Mr. Nelson Barbosa: In terms of what's embedded in the legislation itself, it does not consider international waters, including tributaries that may flow outside of Canada. It's within the confines of Canada's jurisdiction.

Mr. Eric Melillo: I appreciate that.

To go back to the definition of the water protection zone, in my last round, we confirmed that the minister could, theoretically, make decisions on defining that zone without the consent of the first nation and/or a relevant province or territory. It does seem problematic to me that that is the case.

Are there discussions or any desire on the part of the department to solidify that into a more specific agreement to ensure that there is consent from each of those three parties before such a zone could be defined?

Mr. Nelson Barbosa: I'm reading the consultation section that you're referring to, which is subclause 22(2), where it says "The Minister must consult and cooperate with a First Nation", etc.

Go ahead, Rebecca.

Ms. Rebecca Blake: That provision is in a broader context of the bill. In that broader context is rights recognition that requires a co-ordinated approach with provinces and first nations. Therefore, there is a requirement of agreement between those provinces and first nations. That just suggests reading them together.

Mr. Eric Melillo: I understand that broadly, but how is that requirement of consensus captured? How is that defined or solidified?

This is a perfect example. We're hearing that this bill has been co-developed and that there's broad support. However, my colleague from the NDP, and I and others have brought forward concerns that we've heard to the contrary of that.

How will that be actually defined and actioned in the way that it's intended to be? You're saying great things. I understand the sentiment, but the legislation seems to be contrary to that.

Ms. Rebecca Blake: I appreciate the question and clarification.

Agreements are one way to do it, where there would be signatories of the provinces as well as the first nations who are impacted. However, there are other ways too. It is a coordinated approach, and we do want to leave space for first nations as the rights holders with their own governance systems to ensure that those agreements are approached in a way that works for every party. An agreement is an example of that.

Mr. Eric Melillo: Thank you.

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

Mr. Scarpaleggia, you have five minutes.

[Translation]

Mr. Francis Scarpaleggia: Thank you, Mr. Chair.

I'm going to continue in the same vein as Mr. Melillo.

It's still not clear in my mind. Let's say the federal government and the first nation or first nations agree on the delineation of a protection zone. Will they be able to publish a document indicating what they think the protection zone should be, even if the province doesn't agree, hasn't given its approval or doesn't intend to act to protect the part it owns? If there were to be a recalcitrant province or territory, for example, this could be used as leverage. In other words, we couldn't force the province to protect the area under its responsibility, but we could publish a drawing of what the protection zone should be to protect the health of the first nation. Public pressure could then force the province to act.

Would this be a solution that would be allowed under the bill?

I don't know if you understand what I'm saying.

[English]

Ms. Rebecca Blake: Absolutely. I definitely appreciate the question.

It is aligned with the rights recognition components. Anything that would be on first nation lands wouldn't necessarily need agreement of the province. However, we do recognize that water flows, and so those pathways for that coordination are also provided for to help ensure that. First nations could pass a law on their first nation lands recognizing that this water flows, mapping their intake of water and their distribution of water as well.

• (1750)

[Translation]

Mr. Francis Scarpaleggia: So this map could include areas that fall under provincial jurisdiction, correct?

[English]

Ms. Rebecca Blake: Yes, as part of first nations planning—

[Translation]

Mr. Francis Scarpaleggia: That's fine. I have one more question for you.

When it comes to drinking water management in a first nation, most of the time, the crux of the problem is the lack of adequate funding to maintain the system. This is often where the problem lies, as we've seen in the past. There has already been underfunding, due, apparently, to an equation that hadn't been updated.

How can Bill C-61 ensure that the federal government will provide adequate funding to properly maintain the drinking water system? How can we ensure that there will be no funding gaps or shortfalls?

[English]

Mr. Nelson Barbosa: Yes. Thanks to the funding, there has been significant investment in the water space, including in operations. That was recognized by the Parliamentary Budget Officer a few years ago. But as it relates to Bill C-61, the funding framework that we had talked about previously outlines a number of things that must be considered as part of that framework, including the actual costs and the operations and maintenance of systems. It's considered in this bill under the financing section, as are many other things.

Mr. Francis Scarpaleggia: The requirement, that they gave all of this, right?

Mr. Nelson Barbosa: Yes. The funding framework really, in my mind, one, doesn't exist today. The consultation around what is the actual cost for a number of things that you itemize in this bill and creating that funding framework is kind of item one. Two is the minister's use of public reporting of that framework. Those are also conditions of the proposed bill.

[Translation]

Mr. Francis Scarpaleggia: I have one last question to ask.

Is this bill tied in with the Canada Water Act, and is there any overlap between the two?

[English]

Ms. Rebecca Blake: I appreciate the question. They are complementary in nature, absolutely. Our sister department, Environment and Climate Change Canada, is responsible for modernization of the Canada Water Act. Ultimately, though, they both touch water. They both have agreement-making abilities. This bill before you is really focused on first nations and first nations drinking water on first nation lands, but they are complementary in nature.

[Translation]

Mr. Francis Scarpaleggia: Thank you, Mr. Chair.

[English]

Ms. Joanne Wilkinson: I'll just add as well that we did have officials from Environment and Climate Change Canada engaged on the water agency and the Canada Water Act as part of the dialogue table I referred to earlier.

Thank you.

Mr. Francis Scarpaleggia: Thank you very much.

[Translation]

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

Mr. Lemire, you have the floor for five minutes.

Mr. Sébastien Lemire: Thank you, Mr. Chair.

I'd like to highlight the exceptional work of water system operators in indigenous communities. In fact, I'm floating the idea of having a provision in the bill to recognize the essential work they do. Too often, we take the water we drink for granted. It's a very precious resource.

If we indicated in clause 3 that drinking water and waste water services are essential, just like police services, would that guarantee first nations that services would be funded equitably, compared to services provided to non-indigenous communities?

[English]

Mr. Nelson Barbosa: Just so I understand the question clearly, if it's about recognition of the important work that operators do, I agree with you. Are you asking how we entrench that recognition in terms of a funding commitment?

[Translation]

Mr. Sébastien Lemire: It's more the drinking water and waste water treatment services that we could recognize as essential. Consequently, this would allow us to ensure that funding is equitable and comparable to services given to non-indigenous communities.

[English]

Mr. Nelson Barbosa: Yes. That's a great question. I think some of those provisions are enumerated in the funding commitment section. I think they're covered, but they're open to views, absolutely. Thank you.

[Translation]

Mr. Sébastien Lemire: Does the bill respond favourably to all the preliminary remarks made by the United Nations Special Rapporteur on the human rights to safe drinking water and sanitation, Mr. Pedro Arrojo-Agudo, at the conclusion of his visit to Canada, in Ottawa, on April 19, 2024? He had been highly critical of Canada on the subject of first nations. Is Bill C-61 intended to address this international criticism of Canada?

• (1755)

[English]

Ms. Rebecca Blake: I appreciate the question.

In the preamble of the bill, there is recognition and an acknowledgement of the United Nations' work in terms of the special rapporteur and his mandate. I will note, however, that the visit occurred after the introduction of the bill in Parliament, so we didn't have the benefit of that direct input at that time, but there is a reflection in the preamble.

[Translation]

Mr. Sébastien Lemire: Clause 2 of the bill defines first nations lands as lands reserved for first nations, but "They do not include

lands over which Aboriginal title is claimed by a First Nation or has been confirmed by a court."

Why make this distinction in a bill?

[English]

Mr. Nelson Barbosa: For clarity, on the technical side.... I understand what you're saying. Certainly, we've heard that consistently. I would just say that the parameters of this bill are clear, and they speak only to what are called section 91(24) lands, which are reserve lands for first nations. Those are the parameters to which this law would apply.

[Translation]

Mr. Sébastien Lemire: Regarding the general provisions, I'd like to ask you a question about clause 37, which deals with immunity.

In light of recent research on the impact of environmental factors and lifestyles on indigenous communities, how does the government address the liability of companies and organizations responsible for pollution, the use of hazardous chemicals and other practices that may cause detrimental epigenetic changes in individuals and their descendants, in Bill C-61? Are these responsibilities given to indigenous people, or does the government assume responsibility?

[English]

Mr. Nelson Barbosa: This legislation fits in a fabric of laws that exist in current-day Canada, and fills a gap that we've talked about before in terms of a regulatory gap on reserve and the recognition of rights. It's about the alignment of those things.

I think you're right. We all have a duty, as Canadians, to pass water that is both clean and safe on to future generations. A previous question was about enforceability. First nations could pass laws that create stricter and enforceable measures to protect the waters under their purview in, on and under their lands. That is a very opaque zone right now, and this legislation would knit that up.

[Translation]

Mr. Sébastien Lemire: I have one last question.

Would it be possible, from a first nations economic development perspective, for them to negotiate nation-to-nation, internationally, the ownership rights of water? Could they export water?

[English]

Mr. Douglas Fairbairn: This bill doesn't contemplate the export of water. There is federal legislation that deals with the bulk transport and export of water. This bill does not address that.

[Translation]

Mr. Sébastien Lemire: Thank you, *meegwetch*.

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

[English]

We'll go to our last questioner for the round and for the day today. We'll be passing the mic over to Ms. Idlout for five minutes.

Ms. Lori Idlout: [*Member spoke in Inuktitut, interpreted as follows:*]

Thank you, Chairperson.

I have a question regarding source water protection.

I have a concern, because we all know the system tried to eradicate indigenous people. Before colonialism came, we ran our own systems. We ran our water. This was all taken from us. I recognize this. We need to give this back to the people. There need to be more consultations regarding source water protection. This is my concern.

For example, if municipalities or provincial governments in Ontario or Manitoba don't want to let go of their jurisdiction regarding fresh water, how will this bill respect giving back this jurisdiction to indigenous communities? This is all part of reconciliation efforts.

• (1800)

Ms. Joanne Wilkinson: Maybe I'll start.

I will also acknowledge that this is a colonial tool in a colonial system. It will never be perfect in acknowledging what you're raising here. We heard that very loud and clear as well through the consultation and engagement processes.

The minister certainly has talked at length as well about this legacy and how it is embodied within a colonial system. That's part of why we worked very hard to break some of the traditional practices in government around the sharing of drafts, for example. That had not been done before—certainly in our department—in sharing drafts online, sharing those in advance of a bill's coming to Parliament, the sharing of those consultation drafts.

Certainly that consultation and engagement will be ongoing. We've talked a little bit about some of the clauses that say that the minister must consult, must engage and must co-operate with nations to move this work forward.

I hope that helps to answer the question.

Ms. Lori Idlout: [*Member spoke in Inuktitut, interpreted as follows:*]

I do want to believe what you are saying. I want to believe, but I've been told that Bill C-61 was tabled. You were invited by Chief Moonias. They requested the federal government to come to the Neskantaga community and present to the community on this proposed legislation. You did not go to the community to consult with the people.

We all know that Neskantaga First Nation has had to boil water for the last 28 years. They invited you to the community. You did not go to their community. I do want to believe you, but if you haven't responded to Chief Moonias, how can we believe that you will be delivering this? We need to bring back source water protection to indigenous jurisdictions.

Ms. Joanne Wilkinson: Thank you.

I can assure you we have not been invited to Neskantaga and not gone. I have not been invited and not gone. Our officials and the minister meet regularly with Chief Moonias. Certainly we continue to be open to having discussions with any chief and any expert, any individual who wants to continue to have these conversations.

Our team does meet on a very regular basis with Neskantaga on the water advisory and the connected issues within the community. It is a holistic approach that is needed there and that the department has responded to through Trust the Tap and those types of initiatives with the community.

I'm not aware of an invitation that has not been responded to. Certainly we'll go back and check with our officials to make sure that, if there is any outstanding correspondence or invitations, we respond immediately.

Thank you.

The Chair: Thank you very much, Ms. Idlout.

That concludes our third and final panel today.

I want to thank all of our witnesses for being here today and for their testimony as we start the study of Bill C-61.

That will conclude this portion of the meeting.

We are going to go from public to in camera for the next part of the meeting, so we will briefly suspend.

[*Proceedings continue in camera*]

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