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Wednesday 12 August 2009

Journal des débats (Hansard)

Mercredi 12 août 2009

**Standing Committee on
General Government**

Mining Amendment Act, 2009

Far North Act, 2009

**Comité permanent des
affaires gouvernementales**

Loi de 2009 modifiant
la Loi sur les mines

Loi de 2009 sur le Grand Nord

Chair: David Oraziotti
Clerk: Trevor Day

Président : David Oraziotti
Greffier : Trevor Day

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
GENERAL GOVERNMENT**

**COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES**

Wednesday 12 August 2009

Mercredi 12 août 2009

The committee met at 1103 in the Chapleau Recreation and Community Complex, Chapleau.

MINING AMENDMENT ACT, 2009

**LOI DE 2009 MODIFIANT
LA LOI SUR LES MINES**

FAR NORTH ACT, 2009

LOI DE 2009 SUR LE GRAND NORD

Consideration of Bill 173, An Act to amend the Mining Act / *Projet de loi 173, Loi modifiant la Loi sur les mines*, and Bill 191, An Act with respect to land use planning and protection in the Far North / *Projet de loi 191, Loi relative à l'aménagement et à la protection du Grand Nord*.

The Acting Chair (Mrs. Linda Jeffrey): Good morning. My name is Linda Jeffrey. This is the Standing Committee on General Government and I'm calling it to order. We're here to discuss Bill 173, An Act to amend the Mining Act, and Bill 191, An Act with respect to land use planning and protection in the Far North. Our first delegation—Mr. Ouellette?

Mr. Jerry J. Ouellette: Madam Chair, just before you begin, I'd like to move a motion.

I move that the committee hold clause-by-clause consideration of Bill 173, An Act to amend the Mining Act, on September 14 and 16, 2009, and that the deadline to file amendments with the clerk be September 8, 2009, 5 p.m.; and

That the committee hold clause-by-clause consideration of Bill 191, An Act with respect to land use planning and protection in the Far North, on September 23 and 28, 2009, and that the deadline to file amendments with the clerk be September 21, 2009, at 5 p.m.

The Acting Chair (Mrs. Linda Jeffrey): Any discussion?

Mr. Gilles Bisson: You won't be surprised that I'm still not satisfied with where this is going. I just want, for the record again, to be very clear. First of all, there are two bills, the far north planning act—we understand the government is trying to move amendments for it when the House returns. That's good; that's not a bad thing. But as you know, we're only at first reading on that particular bill and most of the amendments are actually going to come at second reading. So I think all we're really going to see at first reading, when it comes to amendments, are some general principles of what it is

that we want or don't want in the legislation from various parties.

The real crux is the issue of the Mining Act. Being asked, as the opposition, to present amendments to the Legislature by September 8 is difficult because we are still not finished our hearings. We'll be finished tomorrow. Based on what we hear from all of the presentations that we're going to get up until tomorrow night, Mr. Ouellette and I—and the government already has their amendments planned, I would imagine, because it's already in the legislation—are going to have to go back, talk to our staff, get legislative counsel to take a first draft at these amendments, then we're going to have to have discussions with the stakeholders and then bring them back for final draft to be able to present them. To do this before September 8 is extremely difficult. Again, for the record, I want to say that we understand that the government is going to get this bill. The question is, do we want the bill in its present form or do we want a bill that is missing the boat, I think, on a number of points?

You're going to get the bill before December. The House is going to sit until about the second or third week of December. All we're asking is, give us reasonable time to prepare amendments. If we were to use the same date that you're using for the far north planning act, I could vote for this motion because it would give us sufficient time to bring amendments forward.

So I would ask for a friendly amendment in order to move the date from September 8 to coincide with the date for amendments under the far north planning act. I would ask if anybody would be willing to support that friendly amendment.

The Acting Chair (Mrs. Linda Jeffrey): Further discussion?

Mr. Jerry J. Ouellette: So there's an amendment to the amendment on the floor, and the voting will be on the amendment to the amendment.

The Acting Chair (Mrs. Linda Jeffrey): Yes. Any further discussion? Seeing none—

Mr. Gilles Bisson: Recorded vote.

Ayes

Bisson, Ouellette.

Nays

Brown, Dickson, McNeely, Mitchell, Rinaldi.

The Acting Chair (Mrs. Linda Jeffrey): That's lost.

Now we're voting on the amendment put forward by—

Interjection.

The Acting Chair (Mrs. Linda Jeffrey): Just on the general. Mr. Bisson.

Mr. Gilles Bisson: Just a very quick point on the general amendment: I think this is rather sad. We have people who are here presenting. I'm going to say upfront, it's going to be hard to incorporate what we're hearing into amendments, given the short timeline, and I think this looks bad on the government. If you want a bill, which I want you to have, that deals correctly with the Mining Act—nobody is in disagreement—let's at least get it right. Let's not rush our way through this and make more errors so that at the end of the day we end up with a flawed bill.

The Acting Chair (Mrs. Linda Jeffrey): Now we're talking about the amendment read by Mr. Ouellette.

Mr. Gilles Bisson: Recorded vote.

Ayes

Brown, Dickson, McNeely, Mitchell, Ouellette, Rinaldi.

Nays

Bisson.

The Acting Chair (Mrs. Linda Jeffrey): That's passed.

CITY OF TIMMINS MINING ACT COMMITTEE PORCUPINE PROSPECTORS AND DEVELOPERS ASSOCIATION

The Acting Chair (Mrs. Linda Jeffrey): So, getting back to the business of our delegations: Our first delegation is from the Porcupine Prospectors and Developers Association. I understand that Mr. Calhoun is here. Could you come forward?

Mr. Calhoun, as you get yourself settled—it doesn't matter which mic you sit in front of—when you begin, if you could state your name and the organization you speak for. You'll have 15 minutes. I'll give you a one-minute warning if you get close to the 15-minute mark, and at the end there'll be an opportunity for us to ask questions. Whenever you're ready, please begin.

Mr. Robert Calhoun: My name is Robert Calhoun. I'm actually here representing two organizations today. One is the City of Timmins Mining Act Committee and the other is the Porcupine Prospectors and Developers Association.

I'm going to stick to my prepared notes, and even though it looks fairly lengthy, I have to do it in a font where I can read it without wearing glasses. Vanity sticks with me.

Good morning, Madam Chairperson, and committee members. I am Robert Calhoun, a member of the city Mining Act committee and a long-standing member and past president of the Porcupine Prospectors and Developers Association. I thank you for this opportunity to present to you today.

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The PPDA is a regional organization of prospectors, explorationists and mining industry members that can trace its roots back to 1939. Our main function is to advise and consult with Ontario ministries and departments on any issue that affects the progression from prospecting to mine development and closure. We generally maintain a membership of 120 individuals and 15 corporate members. We have been, by far, the most active regional association in Ontario, and are responsible for the establishment and structure of what is now the Ontario Prospectors Association.

The city Mining Act committee was formed to inform and express the views of city council, the economic development corporation, the chamber of commerce, and interested citizens.

There have been many statements on the age of the Mining Act in Ontario. The act was first put into place in 1873, and revised and rewritten on a regular basis, with the last major rewrite occurring in 1990, when the act was modernized to reflect the values of that time, with changes to protect surface rights holders and switching to a monetary system for maintaining title to crown land and mining rights.

The present mining industry is governed by the Mining Act and is now heavily impacted by the Endangered Species Act, the boreal initiative, and now the far north planning act and the Mining Act modernization. We operate with permits and guidance from the Ministry of Labour, the Ministry of the Environment, the Public Lands Act, the forest protection act, the Endangered Species Act and the parks act, among many others. We determined at one time that between the provincial and the federal governments, we deal with about 15 ministries when we are in the mining industry.

Our position on Bill 173 and Bill 191: Both acts have been written and put into place far too quickly, with many contentious issues not fully covered.

To this point, Bill 191, in our opinion, is so poorly written that it has to be withdrawn and rewritten to be clearer, and appropriate funding put into place to move forward on a reasonable timeline. The area that you are looking to block off, protect, in the far north—I'm diverging from my notes here—is actually bigger than the three Maritime provinces and a good chunk of Newfoundland. So it's a huge area, and we think that 19 pages is insufficient to lay down the ground rules for doing that planning.

The minister's statements on Bill 173 emphasize that the new act is a balanced approach. It is our opinion that the present act is not unbalanced. Public opinion is that the Mining Act is being rewritten to appease special interest groups such as cottagers and surface rights

holders in southern Ontario, and generally, interest groups who do not live in the north—the Mining Act is mainly a northern act—and will be little affected by the ramifications of the changes.

Specific issues that have been identified by our membership and the committee with Bill 173 are:

- free-entry restrictions and security of title;
- indiscriminate withdrawal of mining rights and mining lands;
- far too much is being shoved into regulations;
- exploration permits;
- the power of search and seizure exceeds necessity;
- downloading of the responsibility of consultation with First Nations communities;
- payment in lieu of assessment to maintain mining rights; and
- a prospector awareness program.

A colleague of mine has presented to you in two different locations, and he presented, I believe, on two of those issues in each of the locations. Today I will be talking about the payment in lieu of assessment work.

At the present time, prospectors and exploration companies are required to file assessment work satisfactory to the Ministry of Northern Development, Mines and Forestry to maintain their right to explore mining claims in Ontario. You will notice that I used the words “right to explore.” With this right to explore comes a responsibility as well. Upon completion of field staking of a claim and filing of the recording—this doesn’t roll off the tongue easily—with the MNDMF, the clock starts to tick on a two-year cycle in which the holder of a mining claim is required to complete exploration work on those claims in the amount of \$400 per claim unit. A claim unit is a block of land 400 metres square. This work ranges from airborne surveys over properties that are sufficiently large to do that, ground geophysical surveying, prospecting, geological mapping and, in some cases, lucky cases, diamond drilling. Each of these activities has a standard dollar value associated with it, and the government personnel who approve this work will question any filing that exceeds the standard and will only approve work they feel is of high enough quality. In the past, work was filed and it was not necessarily high-quality work, but that has changed with the changes to the Mining Act over the years. After the initial two-year cycle the time in which to file additional work is reduced to one year, and the dollar value remains the same.

All of these activities have one thing in common: It must be completed by a person or persons, thus creating jobs for the field personnel, office staff and, yes, for government employees. The field personnel are usually not local to the area in which they are working. What that means is that we could have claims here in Chapleau when we actually live in Timmins. Thus, we create additional employment within the regional communities for hotels, restaurants and rental equipment companies. Bill 173, however, proposes to allow the claim holder to pay a fee in lieu of this assessment work.

Although the wording is that it will be onerous, there are major flaws in this approach. The payment of a fee

does not create employment in any sector, and the only winner in this approach is the general ledger of the government. This fee will enter the government coffers and will not, we feel, flow directly back into the MNDMF budget. Additionally, no geoscience data is created and made public in an in-lieu system. Generally, companies are commodity specific in their exploration, and another company looking for another commodity may make use of the data that the previous company has generated. We feel that the people of Ontario are poorly served with this provision through lack of employment of highly qualified people and the service industry that services the exploration companies.

My second point is on the prospector awareness course that we are proposed to take. The new Mining Act will require that prospectors take and pass a prospecting course to be qualified to prospect in the province. When we read this the first time, we were somewhat shocked by it, and as we thought about it we wondered what it meant for our members. The awareness program is to make prospectors more sensitive to the rights of property owners, the rights of surface rights owners and the rights of First Nations. This does not sound bad, but it would suggest that prospectors over the last 200 years have not been sensitive to these issues—and to that I would disagree.

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The work of a prospector is to walk through an area, break rocks that he or she finds and take away a sample for testing. Occasionally the prospector will dig a small pit to expose more rocks, and these are generally hand-dug pits and do little or no damage. No rights have been infringed upon yet.

The prospector, if they are lucky, will find minerals that they feel require them to stake claims. The claim staking requires them to blaze trees and erect posts on which they place their tags to identify the mineral rights for the ground that has been acquired. The present act clearly—and I’m saying “the present act”—lays out where they can stake, how to stake in areas where someone else owns the surface rights and to report to that surface rights owner the fact that they have staked the ground before they continue to do any additional work. If they continue to work without notifying the surface rights holder, that work is not available for assessment work, so whatever they do, they can’t use it to keep the claim. Fairly sensitive at this point, no prospector has a desire to create a conflict with any surface rights holder because they will be coexisting for some time as the prospector completes work to file with the government. The present act clearly lays out that compensation is due to the surface rights holder, and these rules cannot be contravened.

As to the rights of First Nations, the government is obligated to make prospectors aware of these rights and to set the rules around these lands in consultation with the First Nations. The mining industry and prospecting in this province are highly regulated at this point. Requiring a long-term prospector to pass an awareness course seems to us to be unnecessary.

Bills 173 and 191 have been put into place long before they are ready. It is clearly done for political posturing and has nothing to do with full consultation with parties impacted by such legislation. These bills could be in place for 20 or more years. Is the government willing to be seen as a government who would rather do something quickly or be recognized as a government that has done the best possible effort?

In conclusion, the parks act is in place to protect parks, the environment act is to protect the environment and the Endangered Species Act protects endangered species. Why does Bill 173 penalize the mining industry and place roadblocks in the search for and development of new mines, a much-needed wealth generator for the province of Ontario? The future of Ontario, if this legislation is enacted, is basically this: The rocks that host the mineral deposits in Ontario do not stop at provincial boundaries. If this bill is not changed, the grass will be greener across the border and exploration funds will flow to other jurisdictions. Any further erosion of wealth generation in the province is a disservice to all Ontarians.

Thank you. I will be pleased to answer any questions, although when they send me out of town with a prepared statement, it always puts them in fear when I go on my own.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Calhoun, you left yourself 30 extra seconds, so that was very good timing. We have about a minute and a half or three quarters for each party to ask questions, beginning with Mr. Ouellette.

Mr. Jerry J. Ouellette: Thanks very much. I'm very much concerned about the awareness program, the sensitivity program, and the availability of where it takes place for individuals who have been prospecting for 40 years—I know individuals in their eighties who've been prospecting for 60 or more years—who have a desire to participate in that activity. I would agree that there is some concern. We want to make sure that, should this awareness program be available—where, for people to take it? The difficulty is—as, being a prospector yourself, I'm sure you're fully aware, although the committee members may not be fully aware—the secretive nature of the prospectors as individuals.

But my question would be more so as, as soon as you ask for consent to stake an area, what would that do to the availability to other prospectors finding out where you're staking your claims, and then how secretive would that be within an industry where being secretive is so important?

Mr. Robert Calhoun: You're quite correct in the fact that we are a secretive bunch, and if we have to ask permission first, that gives the present landowner the opportunity to go stake the land themselves, which they can do, and also, depending upon their sensitivity to our secrecy, they could make it aware to just about anybody. The city of Timmins is a good example. Some people say, "If you're in Timmins, you buy stock on rumour and you sell on news," because we run on Tim Hortons rumours; that's the way things go.

Mr. Jerry J. Ouellette: You need some form of protection for that concern—

Mr. Robert Calhoun: We do.

The Acting Chair (Mrs. Linda Jeffrey): I'm sorry, Mr. Ouellette, your time has expired. Mr. Bisson.

Mr. Gilles Bisson: I agree with your assertion in regard to prospectors' awareness. Also, the payment-in-lieu issue I think is important, because the problem with the payment in lieu is that really it's not only going to take work away from individuals in communities such as this and others; it's really going to give the larger mining companies an ability to hold land, pay in lieu the \$400 per year and have absolutely no geological work done, which doesn't add to our minerals database. So it's counterproductive; I agree.

However, on prospectors' awareness: In a lot of trades, when they go in and regulate a trade, they sometimes will grandfather. For example, when electricians were created some years ago, people who were in the trade for a certain amount of time got grandfathered; they didn't have to go through the apprenticeship training. If there was an amendment to grandfather those prospectors currently in the business and only make it a requirement for new prospectors, is that an amendment that you can support?

Mr. Robert Calhoun: Personally, I would support that. A lot of prospectors are out there with a lifetime prospecting licence at this moment, and I definitely wouldn't want to be the one telling them that I'm going to take that away from them.

Mr. Gilles Bisson: I want to know who's going to tell Don MacKinnon he's got to go for—I want to make the committee Chair responsible to go see Don MacKinnon and tell him he needs to take sensitivity training.

Mr. Robert Calhoun: That's not something you want to do on a regular basis.

Mr. Gilles Bisson: So an amendment that would grandfather existing prospectors is something that you could support.

Mr. Robert Calhoun: It would be something that we would support but we need to know who's going to give the courses and where they're going to be given. We need to know that. There is a part of the bill that says that you have to do that six months before your prospecting licence is renewed again, which is now on a five-year cycle; so you have to take this course more than once in your lifetime.

Mr. Gilles Bisson: But my idea in the amendment would be to include all—

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Brown, you are the next questioner.

Mr. Michael A. Brown: You made some good points.

I just want to point out to you that these hearings are about Bill 191 on first reading. This is a very unusual procedure for the committee to take or the government to take. This is the consultation before the consultation, in other words, because after second reading it is common practice to have a set of public hearings on Bill 191. We understand the important ramifications of this bill and we want to, as much as possible, get that right.

On the Mining Act, it is of course second reading, and we will be looking for amendments. All members of the Legislature will have about a month to prepare those amendments. That is a reasonable length of time in the way the calendars work in the Legislature.

I was also interested in your comments about prospector awareness. I'll be interested in what you think should be involved in that course. I recognize that you're saying that a lot of prospectors, as a whole, know about these things, but for people entering the business, what would your suggestions be, seeing as the world has changed? The reason we're doing this is because the world has changed, so maybe you could give us some ideas on what you think could be shared with new prospectors in the field.

Mr. Robert Calhoun: Making them aware that someone may own the land, making them aware that they have to go and check with the ministry before they go into an area just to make sure where they are. We do, as an organization, give a prospecting course on, "This is how you prospect; these are usually the rocks you're looking for," so to add on a portion of that where we're talking about the rights of landowners and the rights of First Nations wouldn't be all that difficult to do for somebody new coming in. But at the present time, to get a prospector's licence in Ontario, you basically walk into the ministry and tell them you want one. It's a lot like getting a fishing licence, although our wallet is getting thicker. When we go into the woods, we've got to have all these new licences with us all the time. We could very quickly come up with an addition to our present course, but we want to know who's going to give it and who's going to decide who passes.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. Calhoun, for being here today. We appreciate you making a deputation.

Mr. Robert Calhoun: Thank you.

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BOREAL PROSPECTORS ASSOCIATION

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is the Boreal Prospectors Association. Is Mr. Michael Fox here?

Mr. Michael A. Brown: Madam Chair?

The Acting Chair (Mrs. Linda Jeffrey): Yes, Mr. Brown?

Mr. Michael A. Brown: Just as we're getting ready for this, as the member for Algoma-Manitoulin, I would like to take this opportunity to welcome all the members of the Legislature and our committee staff to the fine town of Chapleau. Hopefully we'll get to enjoy some of the fine Chapleau hospitality as we go.

The Acting Chair (Mrs. Linda Jeffrey): Thank you for such a lovely location to have our hearings in. I think this is one of the nicest locations we've been in. It's very attractive.

Welcome, Mr. Fox. Thank you very much for being here. As I stated earlier, you will have 15 minutes. I'll

give you the heads-up if you get close to the end. Once you start, if you could state your name and the organization you speak for, for Hansard. You'll have 15 minutes, and afterwards, if you leave us sufficient time, we'll be able to ask you questions.

Mr. Michael Fox: Thank you. My name is Michael Fox. I'm the president of the Boreal Prospectors Association, which is the far north chapter of the Ontario Prospectors Association. I'm also a member of the PDAC aboriginal affairs committee and the vice-president of the First Nations Energy Alliance in Ontario, which is made up of First Nations energy proponents. I didn't realize that two other prospectors' associations were going to be here today, so I'm going to focus more on the far north and energy. All my views have been expressed through the PDAC submissions that have been done in Toronto.

I'm an economic advisor and an infrastructure specialist for First Nations up in the far north. I work with many of the First Nations communities, and as a practitioner, I'm trying to create new value, new projects, new assets, new revenue and new jobs for these communities. I understand the challenges in trying to do that, both on-reserve and off-reserve. You have to work with what you have. In the case of the far north, what you have is the mineral potential and also the energy potential. There aren't going to be any manufacturing facilities going up in the far north. Tourism is going way down. I've worked with a lot of the tourist outfitters up north and they're having a lot more challenges trying to get Americans in those beds in the outposts. In fact, in northern Ontario, the native tourism association no longer exists.

I wanted to go through the messaging that this Liberal government has given to First Nations across Ontario, and we took it to heart. In my presentation, I just did a slide deck for the members here. What we heard, as First Nations in northern Ontario—and I'm from the Hudson Bay coastline, just for the record. I'm from Weenusk First Nation, a place where polar bears roam. We're right in the middle of Polar Bear Provincial Park, so I understand the impacts of parks and the limits they have in terms of opportunities very, very well.

The Minister of Energy and Infrastructure stated in his ministerial directive that the Ontario Power Authority will revisit its IPSP, the integrated power system plan, with a view to establishing new targets in the areas of increasing its renewables and new transmission capacity, to deal with the limits that they have in terms of those lines, and to undertake a new, enhanced consultation process with First Nations, as well as looking at the "principle of aboriginal partnership opportunities" to be considered "in matters of both generation and transmission."

Out of that flowed the Green Energy Act, which I was a part of in terms of the founding members of the Green Energy Act Alliance. I've been following that process and we're continuing with that work, which is a piece of legislation that enables a lot more First Nations in Ontario to become part of the emerging energy sector.

The other messaging we hear is from the Ontario Power Authority. On page 2, the Ontario budget com-

mitted, as stated here, “to explore ways to partner strategically with aboriginal communities on potential renewable energy projects.... The province recognizes the importance of creating new opportunities for Ontario’s aboriginal communities in key sectors of our economy (including the energy infrastructure sector).”

With that, they are now creating programs and enablers such that the aboriginal are within the feed-in tariffs, which is the long-term energy contracts, which incentivizes communities to look at creating new energy projects in Ontario. As well, there’s the aboriginal loan guarantee by the Ontario Financing Authority. We had a presentation from them for energy projects. The Ministry of Energy is looking at an aboriginal energy capacity fund, again to allow communities to move forward on energy opportunities.

The Ministry of Northern Development and Mines just last year: a “new vision,” a “collaborative, coordinated and comprehensive approach,” with economic goals over 20 or 30 years in the future. “Aboriginal communities are increasingly looking for partnerships to create new employment and economic opportunities.” Think North: They had this series of tables across northern Ontario and it culminated in this big summit called Think North in Thunder Bay, held by Minister Gravelle under the northern growth plan initiative.

The other thing we heard is from the new Ministry of Aboriginal Affairs. The minister states that “strong and vibrant aboriginal businesses benefit First Nations, Metis and Inuit, and Ontario as a whole. The Ontario government has a balanced plan that will help build aboriginal economies, creating new industry, businesses and jobs that will sustain aboriginal people and communities into the future.” So they created the new relationship fund, which allowed communities to apply for study money, prefeasibility, feasibility, capacity building within the communities, and that includes probably the lion’s share of the far north communities looking for opportunities.

The Ministry of Natural Resources back in 2003 laid out its water power policy. In it, it stated right here as its policy intention aboriginal economic development. So it talks about how it wants to enable communities to participate in energy developments. It’s written in the policy itself that one of its principles is to allow that up to and particularly in the far north. In the northern rivers, Attawapiskat, Winisk, Severn and Albany rivers, the applicant of record for those northern rivers can only be an aboriginal community; it’s right in the policy. So there’s no other third party developer who can come in and apply for the sites; it’s only the community, which, with all the enabling legislation like the Green Energy Act, allows these First Nations to look at communities.

The other map I have in here was from the far north advisory council, which showed what kind of mineral activities were happening. I was sort of concerned by MPP Bill Mauro in his comments that I was reading in the transcript in Toronto that there was no economic activity in the far north. I was stunned that he actually made that statement, because of the billion dollars raised

through a junior exploration company, over half of that was spent in northern Ontario, and this map sort of represents that in 2007 and 2008. I was just blown away by that comment and very concerned.

So part of our job at the Boreal Prospectors Association and the First Nations Energy Alliance is to create capacity for these communities to be engaged in these sectors: minerals and energy. What else do you have in the far north? My community’s in a park; I know how difficult it is to create opportunities, to create jobs and create new businesses within protected areas. The only opportunities that I see that are viable are in the mineral sector and the energy sector. All the other ministries are helping to create a more enabling environment for First Nations, particularly in the far north, to get into the game as market participants. So I just wanted to point out this map.

I help communities put together applications—it’s a very onerous process through MNR—water power applications, so I gave you a map of all the applications submitted. There were 15 applications submitted to the Ministry of Natural Resources with a deadline of December 10, 2008. We have not heard one response from the Ministry of Natural Resources on these sites that we applied for. Within its own policy, it states that any applicant of record can only be a First Nation. Here’s MNR saying, “You guys can have these sites and create new economic opportunities,” you have Minister Smitherman saying, “We’re going to help you look at renewables and we’ll help you look at transmission lines,” and then we have MNR not touching our applications. Both wind power and water power applications were submitted; I just put the water power in here. These are the actual applications submitted. If you stacked the potential megawatts and we stayed within the current rule of a 25-megawatt limit within the northern rivers policy, it’s about 326 potential megawatts. At 326 times I would say \$4 million or \$5 million per megawatt, average industry, you’re looking at about \$1 billion of potential water power. And it’s going to be a question of scale, where if it’s going to be a cascading run of the river—we’re not talking about “bams,” or big dams. I’m not sure who states those things. I don’t think these communities want to have big dams but they’re looking at renewable energy opportunities based on the legislation.

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First-class wind in northern Ontario: The next map shows all the far north wind regimes. Everybody knows that first-class wind exists on James Bay/Hudson Bay and within the inlands. This map shows it. It’s MNR’s actual wind resource map. Again, no application has been touched. The Ontario Power Authority, ironically, is doing a far north wind study. Why, when MNR won’t touch our applications because of the Far North Act? We just don’t get the conflicting messages from this government.

I just showed other maps where communities are involved in transmission lines. Five Nations Energy is just beginning to look at renewable energy opportunities

along the transmission systems on James Bay. This map here, the northwest transmission expansion, is actually—sorry. Hydro One Networks plans to go from Little Jackfish, north of Lake Nipigon, all the way to Pickle Lake, which means it goes right through the far north area and involves Eabametoong and Mishkeegogamang, and it goes to an existing northern boreal initiative. It's a joint land use planning exercise for these two communities, and these communities saw the opportunity around hydro and applied for sites around the Albany River. It hasn't been touched, yet they're now looking at a transmission line going right through their territory by Hydro One Networks.

I show these other maps where the far north is, trying to demonstrate where new transmission that some of the provincial agencies are looking at goes right into the far north, yet they won't touch our applications. They won't enable us to move forward on renewable energy opportunities, which I just find perplexing.

So the broad policy statements I just showed in here to talk about conservation, economic and social: I just don't see the economic; I really don't know. And in this far north planning model that's been sort of shared with communities and the public around community land use planning, broad-scale planning, what's missing is, where is the project planning? When you look at enabling lines, you're looking at linear corridor studies, which is almost the same set of data that you have to collect when you're looking at land use planning. In order to trigger the money, either by government sources—because they want to make sure that you apply for the sites so that you have site control. That's what triggers the money. That's the first step, just like mining.

Within the energy sector and in crown land, when you're talking about renewable energy in northern Ontario, you're talking about crown land. When you're talking about crown land, you're talking about the Ministry of Natural Resources. And now, when you're talking about the Ministry of Natural Resources in northern Ontario, you're talking about the Far North Act, and it's a showstopper right now for our projects. Even the government funding said, "Do you have control of the site?"—which is an application. So I'm having a tough time talking to our chiefs, asking me where we stand with MNR, even though MNR has a renewable energy unit that's supposed to facilitate, but it's frustrating our projects.

So I think, going forward with the Far North Act, it's not enabling communities. It's not an opportunity-driven legislation. The way it's reacting to our projects, our applications, it's frustrating them, it's not facilitating them, even though they have policies that are supposed to enable communities to get involved in the energy sector. It's the same ministry.

People are going through the transcripts of 153 pages and people are talking about a scientific advisory council through this Far North Act. I think you should have an economic advisory council that includes the Ontario geological survey, the Ontario Power Authority and the

Hydro One Networks, so that they can do development planning, linear corridor planning. To do site investigations around hydro and wind takes a couple of years, and we lost a window of opportunity here in the summer because they won't touch our applications. I think with wind it's going to be the same thing. A flood of applications went into the James Bay area; they haven't processed one of them. It's very frustrating, to say the least. We have all this messaging from all the other ministries about creating opportunities, economic opportunities, for First Nations and we're acting upon them, and all the programs and supports, yet MNR—and I think it has a lot to do with the Far North Act—is not helping us at this point in time.

That's all I have to say.

The Acting Chair (Mrs. Linda Jeffrey): You've left us with about two minutes per party to ask questions, beginning with Mr. Bisson.

Mr. Gilles Bisson: I want to thank you because that was quite a good presentation. I think it sums up where we're at. The government has announced some measures that are great on the surface, but when it comes to the actual delivery are not really advancing the cause of economic development and prosperity for those living in the north and, quite frankly, for First Nations.

One of the things you're saying here, and I thought it was interesting, is that you're looking for an economic development council to be in the legislation that would be empowered to take a look at economic opportunities so that we can better identify what possibilities exist. Is that an amendment that you're asking for in the act?

Mr. Michael Fox: I have problems with the act in general because it's not enabling us. What I see is that the lion's share of the activity and funds today is being spent on scientific studies. I just came from Winisk a month ago—MNR wants 50 beds. The junior exploration companies follow the First Nations protocol when it comes to shutting down their operations during hunting season—and then we saw planes going around. Well, it wasn't junior exploration companies; it was the caribou study guys disrupting the hunting. I already know that studies are being conducted around caribou and wolverine. There's a whole suite of studies I can submit to you that they're doing, and I know those studies are the focus right now. I just think, where are the OGS studies for the economic evaluation of the potential in those areas?

Mr. Gilles Bisson: Just to be clear, you're saying, withdraw the act and come back at it.

Mr. Michael Fox: Yes.

Mr. Gilles Bisson: One of the comments that somebody else has made to me, and I thought it was interesting—you just touched on it now—is that the protocols are in place for mining companies and forest companies and energy companies that come in contact with First Nations, but those protocols aren't followed by provincial ministries: MOE, labour, MNR, MNDM. Can you elaborate a little bit more for the record?

Mr. Michael Fox: I think the Ontario geological survey, of all the agencies of Ontario, has probably had

the best track record of engaging First Nations in the far north and has done a lot of capacity and communications initiatives with communities to enable them to understand what a geological survey is and how to take advantage of those opportunities. I think the Ministry of Energy has done a lot in the last six months, through ministerial directives and other means, to get communities prepared around these opportunities. But the first starting point, again, when it comes to renewable energy, is crown land and—

The Acting Chair (Mrs. Linda Jeffrey): Thank you.

From the government side, Ms. Mitchell.

Mrs. Carol Mitchell: Thank you, Mr. Fox, for coming and making your presentation today.

You have spoken very eloquently about opportunities. Your focus has been on renewable energy, and you've talked about transmission. I wanted to give you the opportunity to speak specifically about the hurdles that you're facing in moving forward with renewable energy and transmission lines and where you see things going.

One of the things that I wanted to go into a bit more detail on is the opportunities. In order to ensure that they remain in place, we have to have a process in place, and community planning is a part of that. Do you not see that as part of the far north—and this as enabling legislation that will be able to put processes in place to open up the far north for opportunities?

Mr. Michael Fox: What I see now is that the priority is the scientific studies being done. Where the money is for the community land use planning, I have no idea. Where the money is for other infrastructure needs the communities have around all-weather roads and utility corridors—you're talking about 26 diesel-dependent communities. When you want to displace diesel, you've got to talk about renewable energy. When you talk about renewable energy, you've got to talk about crown land, and that takes a lot of collaboration with MNR. I just don't see that that's their priority right now. Evidence of that that I'm submitting is that we submitted our applications and they haven't moved on them.

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Mrs. Carol Mitchell: I understand that, and you clearly have laid out the vision that we share. Just so that you know, my riding produces 25% of the energy and I can tell you that all of the studies that are needed and the community participation and the processes in place will be what you need down the road as you see renewables come forward. I know that at this stage it must seem like a very frustrating experience but it does help to see development happen in the long run. I just encourage you to continue to work. We hear your concerns and we will take them back to all ministers. Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. Ouellette.

Mr. Jerry J. Ouellette: Thank you for your presentation. I've had the privilege to spend some time in Peawanuck. I'm going to ask you a number of questions because I know we have a limited amount of time. Some

of it will be to just kind of give an understanding to some of the committee members.

How many polar bear tags are there allowed in Winisk right now; do you know?

Mr. Michael Fox: Polar bear tags?

Mr. Jerry J. Ouellette: Yes. There used to be seven.

Mr. Michael Fox: I'm not updated on that.

Mr. Jerry J. Ouellette: That's okay.

Basically, the community there runs all its energy on diesel generators?

Mr. Michael Fox: That's right.

Mr. Jerry J. Ouellette: How do they get the fuel there and how long do these storage tanks and the units have to work? What this does is it gives the committee an understanding of the impact that wind power generation would have on that diesel current generation.

Mr. Michael Fox: The lion's share of the operating cost for diesel sets within communities—the only source power is fuel and they mobilize that on the winter roads, which the usage is shortening because of—

Mr. Gilles Bisson: You can't build a road through a park.

Mr. Michael Fox: That's right. Otherwise, you have to fly it in. If you have to fly it in, you're looking at between a 20% and 25% cost increase in those communities for fuel because everybody puts a surcharge on mobilizing this fuel in.

Mr. Jerry J. Ouellette: What is the cost of fuel there? Do you know?

Mr. Michael Fox: I can tell you, it ranges depending on where you are. People complain in Ontario about 5.7 cents a kilowatt. Up north it ranges from 25 cents to \$1.03 a kilowatt cost. We're looking for solutions and the solution is within renewable energy, but you've got to deal with Ontario. So we're challenged and we still continue to look for ways to find cost reductions, but it's tough because fuel doesn't go down. It always goes up.

Mr. Jerry J. Ouellette: So wind power would have a huge effect—

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. Fox. We appreciate you being here today.

CHIEFS OF ONTARIO

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is the Chiefs of Ontario, Chief Angus Toulouse. Is he here?

Mr. Gilles Bisson: Chair, just for the information of the committee, as we're waiting for Grand Chief Toulouse to come up, the case of Winisk is interesting because the park was created without the community's consent and the park ends up becoming a problem for them from the perspective of being able to access their traditional lands. So that's what he's trying to get at; it was done without their consent and they've had to live with the effects of that for the last 25, 30 years.

The Acting Chair (Mrs. Linda Jeffrey): Welcome, Chief. Good morning. Thank you for being here this morning. I know you came in a little bit late so I'm going

to do my preamble. You'll have 15 minutes to talk. I have a timer here. If you get close to the 15-minute mark, I'll give you the one-minute warning. Then, when there's time afterwards, if you leave sufficient time, there will be an opportunity for us to ask questions. Whenever you're ready to begin, if you could state your name and the organization you speak for, and you can begin.

Chief Angus Toulouse: Okay. My name is Angus Toulouse and I'm the Ontario regional chief in Ontario. I'm here today to speak on Bill 173, the Mining Amendment Act, and Bill 191, the Far North Act.

Bill 173 is an extremely important legislative proposal for the peace and prosperity of the province, for First Nations people and for all Ontarians. The urgent need to modernize the Mining Act is clear. The current state of provincial mining statute law is intolerable, as it fails utterly to take account of the pre-existing rights of First Nations people, rights which have been reaffirmed and further entrenched in the Canadian Constitution by section 35 of the Constitution Act, 1982. Just as importantly, First Nations rights are recognized as fundamental human rights under the United Nations Declaration on the Rights of Indigenous Peoples. This is a consequence of First Nations constituting peoples holding the right to self-determination within the meaning of international human rights law. A range of competing economic, constitutional and other imperatives comes together in contemplating the task of creating a mining regulatory regime.

First Nations are well aware of the economic significance of mining activities to Ontario's economy. According to MNDM, in 2008 Ontario led the country in mineral production, with an estimated \$9.6 billion in new wealth generation. Northern Ontario's 27 metal mines accounted for \$6.6 billion of this production.

Mining exploration is an important aspect of mining activity. Ontario continues to lead the country in attracting high-risk investment capital, with over \$667 million spent on exploration in 2008, and is forecast to lead the country once more in 2009, increasing its Canadian market share from 24% in 2008 to 28% in 2009.

The developments in aboriginal rights case law respecting the crown's duty to consult and accommodate, and the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, together present an equally important challenge in developing a new legislative and regulatory regime for mining activities in Ontario. This challenge must be met by the government of Ontario in order to uphold the rule of law. This will require ensuring that the new regime includes First Nations as equal partners in resource decision-making in their territories.

Mining legislation and regulations in Ontario therefore must (1) recognize First Nations' role in decision-making respecting the licensing and approval of development and in resource revenue sharing as an aspect of First Nations' rights to self-determination; (2) respect and accommodate First Nations' law respecting the environment as an aspect of First Nations' rights to self-determination; and

(3) respect and implement the crown's duty to consult and accommodate First Nations' rights under the constitution and the crown's obligation to obtain the free, prior and informed consent of First Nations in accordance with international law.

The critical mass of aboriginal rights litigation in every province and territory and the many Supreme Court of Canada decisions since 1982 clearly demonstrate the need for governments to take seriously the entrenchment of pre-existing aboriginal and treaty rights in section 35 of the Constitution Act of 1982. Section 35 is intended to incorporate a fundamental respect for the rights of aboriginal peoples, including our right to benefit and to have a say in how and when our traditional resources are to be developed, when development may affect our life and our ability to prosper. These are the questions that arise when the crown's duty to consult is triggered as a result of developmental proposals that may affect us as peoples and our rights as First Nations.

From our perspective, our constitutional rights as First Nations are but one aspect of our right to self-determination. Our right as peoples to self-determination is now clearly recognized in international human rights law by virtue of the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the UN General Assembly in 2007. The UN declaration recognizes our rights to benefit from resources in our traditional lands as an aspect of our right to self-determination.

The commitment of First Nations people to have our rights taken seriously is demonstrated by the hard-won and growing mass of case law supporting our rights to be consulted and to accommodate our rights to share in decision-making and benefits from our resources. Many of our leaders and citizens have made great personal sacrifices in pursuing litigation and peaceful protest actions. Our leaders and citizens have had to undertake such action when our rights have been dismissed, ignored or trampled despite constitutional protection and international human rights law protection. To preserve the rights of our children and grandchildren to prosper from our lands, we have peacefully asserted our rights. Our people have been willing even to go to jail when the peaceful assertion of our rights has been criminalized by the very governments required to respect those rights.

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The Constitution is, of course, the supreme law of the land, and section 35 speaks to the fact that Canadian law incorporates aboriginal rights and aboriginal law. The rule of law and the supremacy of the Constitution mean that the Constitution holds supremacy over criminal law and over provincial resource law and any licences issued under provincial law when these do not conform to the requirements of section 35. So when we correctly assert our constitutionally protected rights, we are not acting above the law; we are in fact ensuring that the rule of law in Canada is respected. Nevertheless, we all know that there can be differences of opinion about what those rights may be from time to time. That is one of the reasons why this legislation is so important.

Bill 173, as we understand it, is intended to establish a much-needed regulatory regime to ensure that First Nation rights are protected and to decrease the risk of conflict over mining rights in general. Bill 173 is intended to ensure there is dialogue to determine what the protection of First Nation rights requires throughout each stage of the mining cycle and before licences and permits are issued. This bill is intended to provide some certainty and consistency in the crown's performance of its duties to respect and protect aboriginal and treaty rights. These duties include its constitutional duties to consult First Nations and accommodate our rights when enacting and implementing regulatory resource regimes.

Bill 173 is in need of some improvements to achieve its objectives of respecting the rights of First Nations and ensuring peace and prosperity in Ontario. Properly implementing the principle of free, prior and informed consent, as recognized by international human rights law, in a joint First Nations-Ontario mining regulatory regime is the focal point of First Nations concerns with Bill 173 in its current form. The respective roles of First Nations and the minister in land use planning as it affects the regulation of mining in northern and southern Ontario is a key part of this concern, as is the lack of attention to the need for environmental assessment and protection measures. While much progress has been made, more is needed in the legislative framework and in the regulatory regime to follow.

In some respects, Bill 173 represents the provincial government's response to several months of discussions between provincial officials and technical representatives of the First Nations grand councils and PTOs in Ontario. The discussions between First Nation technical representatives and the provincial government cannot be considered "negotiations" of the legislative amendments, because First Nations did not consent to the final product and there were several deficiencies in the process leading to this bill that prevent it from being characterized as a consultation process. These deficiencies include the rushed timetable and limited resources that prevented each First Nation in Ontario from being able to properly consider the government's proposals and respond to them based on independent legal advice.

Nevertheless, the discussions that were held did provide some opportunity for the crown to explore and respond to those First Nation views that could come forward in the process. The process provided the government an opportunity to give some consideration to the kind of measures that may be required to protect aboriginal and treaty rights as well as First Nation rights under international human rights law.

Overall, considerable progress would be achieved in advancing improved protection of the aboriginal and treaty rights in provincial mining law if this bill is passed. For example, consultation requirements will be attached to licences for mining exploration. Under Bill 173, before such licences are issued, government officials must first consider whether regulations respecting aboriginal consultation—yet to be developed—have been complied

with. Further, all mining leases, including those already issued, will be made expressly subject to existing aboriginal and treaty rights, and the holders of mining leases will be expressly required to conduct themselves in a manner consistent with the protection provided existing aboriginal and treaty rights under section 35.

The bill anticipates that legislation, regulations and policies alone cannot prevent conflicts over mining issues with First Nations. Accordingly, the bill recognizes the need for conflict resolution mechanisms throughout the mining cycle. In all, there are 14 provisions that collectively require that aboriginal and treaty rights issues be contemplated at each point of the mining cycle. The regulations and policies to follow will be critical in ensuring that implementation of the legislation actually conforms to the requirements of the Constitution.

Despite these achievements, the end product falls short of the recognition of First Nation aboriginal and treaty rights that the First Nations in Ontario were seeking in the statute, and it falls short of constitutional and international law standards. Some examples of the bill's shortcomings from a First Nation perspective are:

(1) The bill does not require free, prior and informed consent by indigenous peoples prior to approval of mining development, contrary to the standard provided by the United Nations Declaration on the Rights of Indigenous Peoples.

(2) The bill does not explicitly mention the duty to accommodate, as an element of consultation, discussions and processes. We note, however, that Minister Gravelle did mention "accommodation" as an aspect of the duty to consult in his statement in the Legislature on May 5, 2009.

(3) The absence of the terms "aboriginal peoples" or "First Nations" in the legislation should be addressed. The bill consistently uses the term "aboriginal communities." This usage is legally imprecise, given that aboriginal and treaty rights are held by aboriginal peoples, not communities.

(4) The lack of complementary legislative initiatives to address aboriginal and treaty rights and consultation and accommodation under legislation dealing specifically with water rights and environmental protection: An important issue to decide in considering this bill is what legislative measures are needed in the Mining Act or elsewhere to reflect First Nations' environmental values. For example, although the "purpose" clause in section 2 identifies the minimizing of the impact of mining activities on public health and safety and on the environment, there are no specific guiding principles or statement of ecological or environmental values provided in the bill to guide decision-making to achieve this purpose. Another issue to consider is what consultation and accommodation measures in a mining context may require the accommodation of First Nations' environmental values in First Nations' traditional lands, consistent with the notion of reconciliation.

(5) Another deficiency that must be addressed in the proposed legislation is the distinction in treatment of First Nations in the north and south in access to partici-

pation in community land use plans and the ministerial discretion to override the outcomes of a community land use planning process. A related issue is the inadequacy of the existing community land use plan system as a mechanism to incorporate First Nations' perspectives into resource management decisions.

The joint process of dialogue between First Nation representatives and provincial officials that formed part of the provincial government's legislative development process was welcomed and appreciated by First Nations as an indication of the province's commitment to take section 35 rights seriously. Nevertheless, First Nations were not asked to consent, and we have not consented, to the specific provisions of this bill. Despite our remaining differences on requirements for free, prior and informed consent in accordance with the minimum standards set by the UN Declaration on the Rights of Indigenous Peoples, First Nations and Ontario have made considerable progress in jointly designing a respectful process of dialogue on important and complex matters of law and policy where mining development and First Nations' rights intersect.

Let me just finish with the last point here. The provincial government has committed itself to further discussions with First Nations' technical and political representatives to discuss the development of these regulations and policies. A letter signed by the Minister of Northern Development and Mines and the Minister of Aboriginal Affairs has been sent to the First Nations leadership in Ontario confirming this commitment.

I just had one little, brief comment on Bill 191. Do you want me to—

The Acting Chair (Mrs. Linda Jeffrey): You've exhausted your time, so maybe you can slip it into your answers to somebody, if that's possible.

Chief Angus Toulouse: Sure.

The Acting Chair (Mrs. Linda Jeffrey): But you're going to be leaving your written presentation with us, so it will be in Hansard, and members will be able to read your comments.

Our first questioner is from the government side: Mr. Brown. You have about a minute and a half.

Mr. Michael A. Brown: Chief Toulouse, would you like to tell us about Bill 191?

Chief Angus Toulouse: Sure. Bill 191 has been rejected by the Nishnawbe Aski Nation leadership. Moreover, they have demanded that the government of Ontario start fresh on a new government-to-government dialogue regarding a treaty-based governance approach regarding the lands of the far north. Clearly, the indigenous peoples who inhabit the far north have treaty rights regarding the control and development of such territory and are entirely justified in seeking more favourable legislation, as they see it, and to ensure that the legislative process is inclusive and respectful of their rights to be consulted and accommodated in accordance with international standards and emerging common law standards in Canada.

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Again, on these issues, I can assure you that all First Nations in Ontario are supportive of the aspirations of the

far north First Nation inhabitants, our brothers and sisters, to ensure that they are properly dealt with.

The Acting Chair (Mrs. Linda Jeffrey): You have 30 seconds left. No? If it's a quick yes or no, you can.

Mr. Michael A. Brown: Angus usually takes longer. I just want to reiterate what you mentioned at the end of your presentation on Bill 173, that in many ways, Bill 173 is enabling legislation that will be structured by the regulations that come out of it, and that the government's commitment is to work closely with the leadership and First Nations to resolve or work together with you on those regulations. So I'll just leave it at that.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Ouellette.

Mr. Jerry J. Ouellette: Thank you for your presentation, Chief Toulouse. We've heard a couple of things, and you specifically mentioned the need for prior consent on traditional lands. From a prospector's perspective, what should the ministry do? Do you envision the need for a—in the past, when I got my first prospecting licence, they issued maps that showed areas that you could access. Do you think the ministry would be wise in preparing maps that showed accessible staking areas and then consenting staking areas, just to remove or eliminate some of those areas of concern immediately?

Chief Angus Toulouse: If you're asking me, "Doesn't a claim of free, prior and informed consent essentially amount to a veto on development, and wouldn't such a requirement simply lead to more conflict, more delays and less certainty and less investment?", no. Depending on the design, again, of the overall legislative and regulatory regimes and the provisions for dispute resolution, I think if we were to have that understood—and what we're very aware of is that the federal and provincial governments and systems have intergovernmental relations and co-operation that goes on. There is essentially an effective veto in terms of the decision-making over the common areas of jurisdiction. As far as that goes, I understand that both federal and provincial governments have developed mechanisms and some kind of conventions that would resolve disputes without preventing development. Again, I keep insisting that the principle of free, prior and informed consent is simply a requirement for the kind of intergovernmental collaboration that needs to take place. As I pointed out, our pre-existing right to self-determination of First Nations, which includes the right to benefit from the resources that are in the far north in mining and so on, is one thing that we continue to insist on as implementation of our treaty rights.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Bisson.

Mr. Gilles Bisson: Just to pick up on Mr. Brown's point in regard to regulations, the reality is, far too often, regulations are drafted without real consultation with organizations that are affected. The real problem with regulation is that it only takes an order in council to change the regulation. There's no process for peer review, other than, it gets gazetted and you can comment on it

once the regulation is done. I prefer, personally, having a system where we put as much of this as we can in the legislation so that everybody knows what the rules are, and if there is going to be a change, there is some sort of public debate through the Legislature. I'm wondering if you would prefer to see more of it in the legislation rather than the regulation.

Chief Angus Toulouse: Absolutely. It would be much more beneficial, I believe, definitely for the First Nations, to include as much of it in the legislation.

The whole issue around the government's role in consultation and accommodation is something I think should be more clearly identified, even though I indicated and closed off by saying that we're going to continue to work towards the regulations in the same manner that some of the development took place, which is having our technical people working with the government people in terms of wanting to ensure that our claim for free, prior and informed consent, as much as possible, is addressed throughout the regulations and also the legislation.

Mr. Gilles Bisson: Do I have time for another question?

The Acting Chair (Mrs. Linda Jeffrey): No.

Thank you, Chief Toulouse. We appreciate you being here today. Thank you for your delegation.

Committee, this brings our list of delegations for this morning to a close. We'll be recessing and reconvening in 45 minutes. We'll be starting promptly at 1 o'clock.

The committee recessed from 1215 to 1304.

NORTHWESTERN ONTARIO PROSPECTORS ASSOCIATION

The Acting Chair (Mrs. Linda Jeffrey): Good afternoon. Could I call the Standing Committee on General Government to order, please? We're here to discuss Bill 173, An Act to amend the Mining Act, and Bill 191, An Act with respect to land use planning and protection in the Far North, and we're resuming our hearings.

Our first delegation this afternoon is the Northwestern Ontario Prospectors Association. Are you Mr. Hunt?

Mr. Dave Hunt: Yes.

The Acting Chair (Mrs. Linda Jeffrey): Welcome. Thank you for being here today. You have 15 minutes for your delegation. If you get close to the 15-minute mark, I will give you a one-minute warning. Whenever you're ready to begin, if you could state your name and the organization you speak for, and you can begin.

Mr. Dave Hunt: Okay. Thank you and good afternoon. My name is Dave Hunt. I'm vice-president of the Northwestern Ontario Prospectors Association. NWOPA, as we're called, represents the interests of prospectors and explorationists throughout northwestern Ontario. I'm also a director of the Ontario Prospectors Association, a fellow of the Geological Association of Canada, a member of the Prospectors and Developers Association of Canada, PDAC, and I've worked in the industry, both in the Ontario government and in exploration, for more

than 40 years. I've been a consulting geologist for the last 10 years.

The mineral exploration industry needs three things to be competitive. We need access to land, we need security of mineral tenure and we need a stable political and business environment.

PDAC estimates that all of the production-stage mining operations established in Ontario to date have occupied approximately only 0.03% of the surface area of the province; that's about 250 square kilometres. However, because mineral deposits are buried and statistically only one in 10,000 mineral occurrences ever becomes a mine, a large land base of favourable geology is necessary to ensure maximum chances of success. Exploration activity, up to the advanced project stage, has a very minimal footprint on the land.

Because of the small possibility of actually discovering a mineral deposit robust enough to eventually become a mine and to attract the significant investment financing required, explorers want to be sure that their mining rights are secure throughout the exploration and development process and that mining will be allowed to proceed if the project is successful, as long as legal and environmental requirements are met.

The high-risk financing required to bankroll mineral exploration and development is international in outlook. Money will flow where the risks are perceived to be lowest and the rewards greatest—anywhere in the world. Political or regulatory uncertainty will divert investment to more favourable jurisdictions, resulting in loss of jobs and wealth creation.

In the past several years I've trained a lot of young geologists, and one of the first things I tell them is, "Always make your descriptions complete. If you leave room for questions, those questions will always be negative." Both Bills 173 and 191 will rely very heavily on regulations for their administration. These regulations have not yet been written, and therefore we are being asked to comment here on very unfinished business. In addition, regulations under these acts can be revised and rewritten more or less at will, without legislative scrutiny. This is creating concern in the industry regarding what future conditions on exploration and mining might be imposed arbitrarily. Some of these issues are discussed below.

Map staking: Explorers in the province are evenly divided on the issue of map staking versus ground staking. Some prospectors and contractors make a significant proportion of their livelihood staking claims. This will disappear with the advent of map staking. There is also concern that staking as an entry-level position for future prospecting and exploration work will soon be a thing of the past. In addition, claim staking is a significant first foot on the ground for First Nations people to gain interest and experience in the mineral exploration business.

There is also a fear that map staking will allow big players to tie up large blocks of ground and sterilize it from exploration activity. It is not known if the assess-

ment regulations will deal with this issue, but the issue brought up this morning about payment in lieu of assessment work is critical in this issue. It would allow wealthy companies to tie up lots of ground and not explore it properly.

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Finally, map staking will depend on reliable high-speed Internet services, which are still absent from much of rural northwestern Ontario.

Work plans and exploration permits: Exploration permits are already standard practice for advanced exploration projects. However, work plans are a new concept in Ontario, and explorers have concerns regarding whether there will be adequate funding and manpower dedicated to ensuring the system runs smoothly and efficiently, without untimely delays; whether the work plan system will be flexible enough to accommodate rapid changes in exploration plans and funding, as projects develop; and whether the director of exploration system will turn MNDMF, I guess it should be now, from advisers and supporters, as at present, into policemen.

Those of us in the business know that the existing claims management system is often hopelessly bogged down and backlogged. We remember that the old MNR work permit system became completely inadequate over time because of lack of proper funding.

Maintaining best exploration practices: Under proposed Bill 173, prospectors will be required to pass a prospector's awareness course so that they will be familiar with ethics, stakeholders' rights, aboriginal consultations and best practices. This is all well and good, but 90% of exploration is not done by licensed prospectors but by line-cutters, geophysical operators, geologists, diamond drillers, field technicians etc., who often have a much greater impact on the public than do prospectors.

Also, the majority of exploration projects are supervised by geologists, and while the law states that geologists practising in Ontario must be licensed here and be familiar with Ontario regulations, ethics and best practices, this is not actively enforced, and many companies bring in supervisors and geologists from out of province or even out of country who are not familiar with provincial regulations. This has led to problems in the past and will continue to do so, if not addressed.

First Nations consultations: Consultations with First Nations have become almost a matter of routine for the exploration industry, especially as projects grow to advanced stages in the far north. Most companies realize that they must be good corporate citizens with local communities in order to be successful. Agreements with First Nations communities are also becoming one of the requirements to attract financing for exploration projects as they develop. Bill 173 formalizes these consultations within exploration plans and exploration permits.

Nevertheless, concerns remain that the government continues to shirk its mandate to consult with First Nations and come to overall agreements, as mandated by the Supreme Court, and continues to download these

activities onto industry. The consultation system remains somewhat haphazard, with little sign of improvement over the near term. I note, in the Thunder Bay paper, that the KI situation is starting up again.

First Nations consultations prior to claim staking will remain a non-starter in the industry because of confidentiality issues.

Bill 191, the Far North Act, intends to preserve 225,000 square kilometres of land that is already preserved by its isolation and low economic potential; allows First Nations to direct community land use planning but only under the fatherly direction of MNR; excludes exploration and mining, virtually the only realistic generator of employment and wealth for First Nations communities in the region, from the planning process; underfunds the scientific research, particularly in economic geology, necessary to minimize planning damage; has the potential to sterilize economically high-potential mineral areas and to prevent future development of transportation and service corridors through a patchwork of parks and community-based land use plans; and has the potential to create uncertainty and loss of investment in the mineral industry for up to 15 years, through a lengthy land use planning process.

This bill has been justifiably condemned by both PDAC and NAN. At one point, NAN had threatened to close down the north if the bill proceeded.

I have a couple of maps here, just to illustrate the size of 225,000 square kilometres. It's a huge area. It's nearly one quarter the size of the entire province. If you put that area in southern Ontario, it would sterilize the whole southern part of the province almost as far north as the New Liskeard area. It would be almost impossible, even if it's a network of connected sites, not to sterilize some ground of high mineral potential, even with the best advice and planning available.

Periodically, the Fraser Institute surveys mining companies as to the most favourable places in the world to explore and develop. In 2008-09, seven Canadian provinces ranked in the top 10 in the world. Ontario was number 10, but our closest provincial neighbours both ranked higher—Manitoba at number eight, and Quebec in first place. Quebec still builds roads to resources, while Ontario plans to sterilize one quarter of the province. Even though much of the financial community and a considerable portion of the exploration community are not yet aware of or familiar with Bill 173 and Bill 191, there are indications that financing is beginning to flow to Quebec projects over those in Ontario. Unless Ontario remains competitive with the rest of Canada and the world, our reputation as a choice place to invest in mineral exploration and development will surely decline.

The mining industry is the largest private sector employer of aboriginal people in the province. Ontario's mining industry generates \$10.7 billion in mineral production and tax revenues each year, and each mining industry employee accounts for \$660,000 of output annually.

Bill 173 and Bill 191 do little to encourage investment in Ontario's mineral industry. Indeed, the Far North Act

will be a major disincentive and will tarnish the entire province with its poorly considered policies.

Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. Hunt. You've left about two and a half minutes for each party to ask questions. Our first questioner is Mr. Ouellette.

Mr. Jerry J. Ouellette: Thank you very much for your presentation.

You talked about the map staking and the payments in lieu in order to tie up lands. I noticed in this morning's Thunder Bay Chronicle that over 2,900 hectares is being developed and creating investment in the western part of the province. Do you think that the current process has the opportunity to tie up as much land, by map staking and by payments in lieu of—or are there options there that they're going to do it anyway, regardless?

Mr. Dave Hunt: The impression I have is that map staking is going to be phased in over five years and there won't be a dual system. Once it's phased in, it will just be map staking. That's my take on things.

In the current system, there's no provision for payments in lieu of assessment work. You have to do the work or you lose the claims and they pass on to someone else.

Mr. Jerry J. Ouellette: In other words, it's a lot harder in the current system to tie up lands to minimize development by potential competitors.

Mr. Dave Hunt: Yes. You can't tie up lands and just sit on them for as long as you make payments on them.

Mr. Jerry J. Ouellette: So the park, the 225,000 square kilometres, as you so specifically demonstrated here, has a significant impact. What do you think that will do as it relates to investment in the mining sector in the province of Ontario? Will there be a holdback until the park boundaries have been decided, or do you think that it'll bring some certainty to the mining sector, to say, "Okay, this area is protected, and these areas are open and we can move forward on them"?

Mr. Dave Hunt: I'm not sure at which stage in the process the park boundaries would be finalized, or whether they wouldn't not be finalized until all the community-based planning is completed. The community-based planning is a long-term process.

I'm not sure what the time frame for the park is, but I don't think the financing is there or the time is there to—

Mr. Jerry J. Ouellette: Certainly, the uncertainty—

The Acting Chair (Mrs. Linda Jeffrey): I'm sorry, the time has expired. Thank you. Mr. Bisson.

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Mr. Gilles Bisson: Well, the payment in lieu is an interesting one, because I think in the end it will lead to certain individuals or companies holding on to land and doing really no geophysical work on that land. If that's the case, aren't we shortchanging ourselves as a province as far as potential revenue from what might be our mines? My question is, if you allow payment in lieu to stand the way that it is in the legislation, could it lead to

actually less exploration happening—less work on claims, I should say?

Mr. Dave Hunt: It could, if that was the case, yes, if certain big players tied up land and just sat on it.

Mr. Gilles Bisson: What's been the case in Quebec? Do you know? Do they have payment in lieu? I know they've got map staking.

Mr. Dave Hunt: I'm not sure. I haven't followed the Quebec—some provinces do have payment in lieu of assessment. I'm not sure what effect it has.

Mr. Gilles Bisson: Okay. Now I know a great research question.

On the issue of the prospector's awareness you pointed out—and I don't know why I didn't think of it, it's so simple—that after the claim has been staked out by the prospector and the claim has been sold to somebody, it's the geologist who runs the actual exploration. Yet there is no real requirement for them to take sensitivity training to properly know what the rules are, and as you pointed out, a lot of the geologists aren't from the area. What are you arguing? Are you arguing that they be given sensitivity training?

Mr. Dave Hunt: Well, I'm just pointing it out. I'm not sure what the solution is, but there are lots of players who work on a mineral property once it gets past the prospecting stage, as you say, and the opportunity to the mining company—it's out of his hands and it's into other people's hands.

Mr. Gilles Bisson: So to make the requirement of prospectors and not others who are the ones who are actually going to be doing most of the work that might be in conflict with First Nations or others—to exclude them from that is a bit of a problem, then.

Mr. Dave Hunt: I think so. I think it's kind of a hole in the legislation that's not solving the whole problem. And a lot of these other groups—diamond drilling, for instance, or mechanical stripping with backhoes and things—have a lot of a bigger impact on the local population and the landscape than any work that a prospector might be doing.

Mr. Gilles Bisson: Do I have time for one more?

The Acting Chair (Mrs. Linda Jeffrey): No. Sorry, you'll have to talk about it afterwards. From the government side: Mrs. Mitchell, are you going to ask a question?

Mrs. Carol Mitchell: Mr. McNeely. Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Mr. McNeely.

Mr. Phil McNeely: Mr. Hunt, thank you for a very good presentation here. Going back to page 4, "There is fear that map staking will allow big players to tie up large blocks of ground and sterilize it from exploration activity": Those are real fears for the people of the north.

Mr. Dave Hunt: Some of our members in NWOPA have that fear, yes, that big players, Chinese companies or something, could just stake up huge tracts of ground and sit on them until they decide to do something with them. It's not a fear of everybody's; I think there are a lot of people who just figure it would be too much trouble,

and it doesn't really happen in other provinces. It's not something that's a proven fear elsewhere, I don't think, but it's something that could happen.

Mr. Phil McNeely: And the second: The lack of high-speed Internet services for many individual prospectors is a concern for your organization.

Mr. Dave Hunt: Yes, especially for a lot of the older prospectors. Some of the First Nations communities and even places along the Trans-Canada here have barely adequate Internet and cellular communications, if any.

The Acting Chair (Mrs. Linda Jeffrey): Thank you very much for being here today. We appreciate your delegation.

WHITEWATER LAKE FIRST NATION

The Acting Chair (Mrs. Linda Jeffrey): Our next group is the Whitewater Lake First Nation, Chief Arlene Slipperjack.

Mr. Gilles Bisson: As the chief is taking her seat, I have an interesting point for some follow-up: There's been a delegation from China, from the government, that's gone up to Attawapiskat because they're interested in the Ring of Fire. One of the fears is that they could very well decide to use payment in lieu as a way of holding up land. Then what?

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. Bisson.

Welcome, Chief. Thank you for being here. As you get yourself settled, when you begin, if you could announce your name and the organization you speak for for Hansard. Then when you begin, you'll have 15 minutes. I'll give you a one-minute warning if you get close to the end. Afterwards, there will be an opportunity for us to ask questions of your deputation.

Chief Arlene Slipperjack: Okay. Due to the inconvenient time of the hearings—NAN chiefs are having their Keewaywin Conference, so I was not able to provide copies of my submission, but I will have them delivered to your office next week.

Dear committee members, my name is Arlene Slipperjack. I am chief of Whitewater Lake First Nation, one of the 49 Nishnawbe Aski communities. I have with me today Pauline Cornell of Whitewater. I would like to acknowledge this opportunity to officially record the position of the Whitewater Lake First Nation on the two bills before the committee. My oral presentation today will be based on a written submission, copies of which Whitewater First Nation will provide next week.

Whitewater is a member of NAN—that's Nishnawbe Aski Nation—Windigo Tribal Council, Chiefs of Ontario and the Assembly of First Nations. My position, taken by WLFN on Bills 173 and 191, is without prejudice to the position of these sub-regional and regional organizations.

Whitewater Lake First Nation is located approximately 70 kilometres or 45 air miles northwest of Armstrong, Ontario on Whitewater Lake. The community is accessible by float plane or boat in the spring, summer and autumn, and by ski plane and snow machine in the

winter. In other words, Whitewater Lake First Nation is a NAN fly-in community. There is no all-weather road access.

This is a shocking state of affairs given the relative proximity of the Whitewater Lake First Nation to Armstrong. It makes everyday life at Whitewater extremely difficult. The relative isolation of the Whitewater Lake First Nation has slowed down its social and economic development.

Our people have occupied this territory since time immemorial. When the federal government and the provincial treaty commissioners for Treaty 9 visited our area in 1905, we were lumped into a nearby larger band: Fort Hope. The same thing happened to other NAN communities, such as Summer Beaver. The mistake was based on faulty background information supplied by the Hudson's Bay Company and the Indian affairs agency of the day.

The failure to recognize Whitewater Lake First Nation as a separate Indian Act band had severe financial and other consequences for the people of Whitewater Lake First Nation. Whitewater is still involved in claims and other processes aimed at achieving band status.

In 1983, Ontario established Wabakimi park, a relatively small wilderness park largely to the south of the Whitewater Lake First Nation territory. In 1997, Ontario unilaterally expanded the Wabakimi park by sixfold, making it the second-largest provincial park in Ontario, second only to the huge Polar Bear park on Hudson Bay.

Wabakimi now covers much of our traditional territory. Our territory does extend north of Wabakimi and the so-called north area directly impacted by Bill 191. The expanded Wabakimi Provincial Park imposes severe restrictions on what we can do on our traditional lands. It is the subject of a park management plan to be controlled by others. We are informed that the park management plan remains incomplete. Nearly 12 years after the creation of the park, our request for proper consultation and accommodation and related resourcing in the planning process remains unfulfilled.

Whitewater Lake First Nation objected before the expansion of the Wabakimi. However, these objections were brushed aside. We expressed our concerns that the park would limit our traditional pursuits and would significantly limit our economic opportunities. Ontario acknowledged that there would be some restrictions on activities within the park but promised our people could continue with our traditional pursuits. Ontario has promised that our people would be able to develop other pursuits, such as tourism. Ontario stated that it recognized the park expansion was a major impact on the economic future of our members and stated it would work with our community to address several related issues, including the following:

- continued access to our traditional lands and the use of resources;
- identification and protection of sites with cultural, ceremonial and religious significance;
- provision of access;
- identification of and access to economic and employment opportunities;

- a role in the management framework of the park and decision-making process; and
- development of mechanisms for co-operation in conservation and management.

These commitments, made as far back as 1996, remain largely unfulfilled today. We do not feel that our rights and interests have been respected and protected.

Today, 104 years after the signing of Treaty 9 in 1905, Ontario continues not to fully recognize the community status of Whitewater. Ontario has benefited immensely from the treaty but begrudges our very official existence. In 1997, a mere 12 years ago, Ontario forged ahead with the Wabakimi Provincial Park expansion, ignoring our concerns and protestations. We are now in the desperate situation of being almost totally engulfed by the park. This has completely stymied our efforts to get involved in modern terms of economic development such as mining, forestry and hydroelectric projects. We cannot even get a road into our community. Recently, MNR questioned the legality of our community buildings on Whitewater Lake and threatened unspecified forms of enforcement. Is Ontario proposing to bulldoze our ancient community as the final step in its grand design known as the Wabakimi park? What has happened to Whitewater Lake First Nation is a dire warning for the many NAN communities that are about to be engulfed by the 225,000-square-kilometre protected area called for by Bill 191.

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The response of Whitewater Lake First Nation with the Wabakimi park should stand as a warning of the risks for the First Nations associated with parks and protected areas. They do not benefit First Nations. They choke off the future economic development opportunities. When they are created, they are portrayed by Ontario as benign but the reality is the exact opposite.

Bill 191: Whitewater Lake and many other NAN communities are now facing the biggest park or protected area of all, the infamous superpark of at least 225,000 square kilometres. This is about 10 times the size of Polar Bear Provincial Park, which is already the biggest provincial park in Canada. Based on the experience of Whitewater Lake First Nation and Wabakimi, the only reasonable conclusion for NAN First Nations is that the superpark should be viewed as an existential threat. This is not an exaggeration as Ontario is proposing to permanently freeze half of the traditional territory of NAN without reason and without meaningful discussion. Ontario is not prepared to ban logging in the iconic Algonquin Provincial Park, which is only a pleasant drive from Toronto, but it is more than happy to ban logging and all other forms of modern economic development in half of the northern part of NAN, an area equivalent to 30 Algonquin parks. Ontario is prepared to put aside 50% of the far north for caribou, polar bears and wolverines; however, Indian reserves do not even amount to 1% of the area. Whitewater Lake has nothing. Why the disparity in treatment? The only honest answer to this question should be deeply troubling to the committee and Ontarians.

The Supreme Court of Canada has been pretty clear-cut since the *Guerin* case in 1984. The Canadian governments owe a constitutional and fiduciary duty to consult and accommodate First Nations when a proposed policy or legislative measure threatens to affect First Nations' rights in a significant manner. When the proposed measure is likely to have a fundamental effect, the duty rises to the highest level, seeking the consent of First Nations before proceeding. The duty to seek consent was established in Supreme Court decisions such as *Delgamuukw*. The constitutional and fiduciary is tied to section 35 of the Constitution Act in 1982. The duty to consult, accommodate and seek the consent of First Nations as defined circumstances is supported by the 1997 UN Declaration on the Rights of Indigenous Peoples.

The fiduciary binds the provincial crown as well as the federal crown. This is particularly true in the case of Ontario and Treaty 9. Ontario pre-negotiated the terms of Treaty 9 with Canada before it was imposed on NAN First Nations. Ontario was represented by a commissioner in the treaty-making process and signed off on all the reserves. To this day, Ontario continues to pay the \$4 treaty annuity that goes to all Treaty 9 members. Ontario may have been the practical beneficiary of Treaty 9.

While the general consultation period before the tabling of Bill 173 was a positive, the bottom line is the content of Bill 173 is not consistent with the positions tabled by most First Nations. While there has been some pre-bill consultation, the bill has failed to accommodate most First Nations' positions in a reasonable way.

The consultation and accommodation process proposed by the government in Bill 173 does not meet the constitutional standard. The bill was tabled on April 30. There will only be five days of committee hearings, August 6 and August 10 to 13. The committee will be visiting Toronto and some mid-northern towns—Thunder Bay, Sioux Lookout—but no First Nations communities. The consideration of Bill 173 will be blended with Bill 191. The deadline for written submissions to the committee is September 4. Given this schedule, it is reasonable to assume that the government will move to pass Bill 173 into law sometime this fall.

The fact that the bill has a long list of amendments to the existing Mining Act, as opposed to a new, consolidated version of the Mining Act, makes it quite inaccessible except to mining law experts and other technicians. The cross-referencing required to the existing act makes the package impenetrable for most First Nations citizens and even governments.

The scope of the constitutional duty to consult, accommodate and sometimes seek First Nations consent depends on the nature of the government policy or legislative proposal. As described, Bill 173 clearly engages the provincial duty to consult and accommodate. Altogether different considerations apply in the case of Bill 191. Reasons are set out in more detail below.

Bill 191 is a fundamental threat to Whitewater Lake First Nation and other NAN First Nations. In brief summary, it does two things. First, it gives Ontario

control of land use planning in the far north area. Second, it imposes an interconnected protected area of a super-park of at least 225,000 square kilometres, an area equivalent to the Canadian Maritime provinces. This will ensure that NAN First Nations will remain part of the Third World forever.

Because of the absolutely fundamental nature of Bill 191's impact on First Nations rights and interests, it is clear that the provincial constitutional duty rises above mere consultation and accommodation. As a matter of constitutional law, the province must seek the consent of all NAN First Nations affected by the bill, including Whitewater Lake First Nation. This has to be spelled out. The province must go to each individual First Nation affected by the bill, have discussions, and then seek its consent. Each First Nation, including Whitewater Lake First Nation, has a veto over profound impact as a matter of Canadian constitutional law.

The actual process followed by the government on Bill 191 does not measure up to even the duty to consult and accommodate, let alone the legal duty that applies here; for example, the duty to seek consent. If the government proceeds on its present course, this means that Bill 191, even if passed by legislators, will be fatally flawed. It will be constitutionally invalid and a legal nullity.

In July of 2008, the Premier, out of the blue, announced an intention to create an interconnected boreal forest protected area of at least 225,000 square kilometres in the far north; that is to say, the northernmost part of the traditional territory of Nishnawbe Aski Nation.

The Acting Chair (Mrs. Linda Jeffrey): Chief, can I interrupt for a second? You have one minute left. Okay?

Chief Arlene Slipperjack: Okay.

On the contrary, First Nations inland, including Whitewater, are still deeply unhappy about the park's protected area imposed unilaterally in the province in the 1970s, 1980s and 1990s. The boreal super-park seems to result from behind-the-scenes discussions between the province and certain environmental non-governmental organizations focused on the boreal forest. The plan is to make the super-park official at an international climate change meeting in Copenhagen in December of 2011.

I shall move over to the conclusion. I had a lot I had to say, because it was based on my submission that I was going to prepare, but due to the NAN Keewaywin conference, I wasn't able to do that.

Anyway, in conclusion, Whitewater would like to acknowledge this opportunity to present to the standing committee. My words have been blunt but this is a measured and necessary response to the bills before the committee, especially Bill 191.

Bill 173, the Mining Amendment Act, contains some relatively progressive measures that in practice may make a positive difference, at least compared to the current Mining Act. However, there are significant problems that should be rectified before the bill goes further. In particular, regarding the free-entry systems that are still at the heart of the bill, the consultation rights are too vague and weak to be acceptable at this stage. The minis-

terial control and discretion for resolving disputes is not balanced. The relevant provisions should be revised with First Nations support to reflect real consultation, accommodation and, in some instances, consent. It is necessary to enshrine an acceptable system of revenue-sharing.

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Bill 191 is a disaster. It violates every important norm from the treaty relationship. The bill is premised on the provincial control of the entire off-reserve territory and establishes a back-breaking park of at least 225,000 square kilometres, one of the world's largest parks. The bill should be withdrawn and fundamentally modified. Thank you very much.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Our first questioner will be Mr. Bisson. You have about a minute and a half.

Mr. Gilles Bisson: How many years have First Nations been living in this territory?

Chief Arlene Slipperjack: For thousands of years. When I did research, it goes way back 6,000 years. My family—my grandfather, my great-grandfather, my mother's family, even us—were all born in Whitewater Lake.

Mr. Gilles Bisson: We have timelines that are imposed in order to deal with this legislation. You got 15 minutes to make a presentation. You had to rush through it. What's the big hurry?

Chief Arlene Slipperjack: The big hurry to do this?

Mr. Gilles Bisson: Yes. Why? Should we be in such a hurry?

Chief Arlene Slipperjack: I don't know why the government is in such a hurry to hear the hearings. We have a lot of issues at hand.

Another matter is, the government never gives us time to negotiate for a proper settlement. We're working on a memorandum of understanding. Last week, the MNR office told me, "Our process will be concluded as of August 7." I said, "We haven't even had a meeting yet." We were trying to do this memorandum agreement process with MNR and they wanted to conclude it—now they've extended it to August 27. We haven't even sat down to talk about anything and they've concluded it. That's the way the government treats us.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Brown.

Mr. Michael A. Brown: Thank you for taking the time to come and see us today. We really appreciate it.

I want to just ask a question of clarification. Have you been recognized as a First Nation by the government of Canada? I didn't quite follow you there. You said you were a part of another First Nation. Are you a separate one now? How does that work?

Chief Arlene Slipperjack: The federal government failed to give us our own separate band status, but at treaty time they told us we could live on our land forever, as long as the rivers flow and the sun shines. "You can live there and nobody will kick you off your land." Well, lo and behold, this Wabakimi park came down around 1995 and they legislated the boundary in 1997. They

wanted us off. We've lived there forever—my ancestors, my great-grandparents, my mother. We were all born there. It's our community. The government has always known of our presence there because they used to send planes to send us out to residential schools.

Mr. Gilles Bisson: They know how to find you.

Chief Arlene Slipperjack: Yes, they knew where to find us when it came to sending people off to school.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Ouellette.

Mr. Jerry J. Ouellette: Thank you, Chief Slipperjack, for your presentation. I very much appreciate hearing your very concerning perspective on the impacts that have taken place and what may impact as well.

I'm not quite sure I know where Whitewater is. I've been as far as camp 45, I've been to Osnaburgh, but I have not been to the Whitewater area. What side of the park is that located on?

Chief Arlene Slipperjack: We're smack in the middle of the Wabakimi Provincial Park. The lake west of us is Wabakimi. Whitewater is smack in the middle. North of us is Grayson Lake, and on this side is Whiteclay, and south of us is Smoothrock. The closest reserves are Mish in the west, Eabametoong way to the north, probably about—I don't know. I'm not sure how many miles that is: 100 kilometres or so. And then, down the river, on the Ogoki River is the Marten Falls reserve.

Mr. Jerry J. Ouellette: I know that Buchanan was trying to access some blowdown lumber in that area. When I speak to individuals with the former Buchanan company, they were very much wanting to turn over a lot of the community or the far north to the First Nations, because they knew as a business that they could deal with the First Nations communities so long as the government was not involved. Would that be a perspective that you feel would be something to move forward, or do you think—quite frankly, what I hear from a lot of the First Nations communities is that should the Far North Act pass in the form that it is, it would probably lead to a constitutional challenge by the communities in the Supreme Court of Canada.

Chief Arlene Slipperjack: Yes.

Mr. Jerry J. Ouellette: Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Thank you very much, Chief. We appreciate you being here.

Chief Arlene Slipperjack: I will provide you copies of my submission.

NISHNAWBE ASKI NATION

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is the Nishnawbe Aski Nation. Mr. Beardy? Would he be here? Could he come forward?

You're welcome to bring up people if you want to, if you want them beside you. Please feel comfortable in bringing forward your whole delegation.

Welcome.

Interjection.

The Acting Chair (Mrs. Linda Jeffrey): Oops. I know; they can be at the front of the room, but not at the table.

Are you Mr. Beardy?

Mr. Frank Beardy: I'm Frank Beardy, yes.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Is it just you who's speaking, or is anybody else at the table going to be speaking?

Mr. Frank Beardy: I'm going to ask people to speak.

The Acting Chair (Mrs. Linda Jeffrey): Okay.

Mr. Frank Beardy: I'm not going to determine who's going to speak. We travelled many hours, some of us, many miles, and expended a lot of money to be here. I would ask for the indulgence of the committee to overlook the 20 minutes that they've given us, because we are the people who will be directly impacted by this legislation and we want to say our piece to the committee.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Beardy, can I just give you some background? I'm not at liberty to give you more time. I'm just the chair of the meeting.

Mr. Gilles Bisson: Point of order.

The Acting Chair (Mrs. Linda Jeffrey): Can I just set this—and then I'll come back to you.

What I am directed to do is to give you 15 minutes to speak and then to offer time to the committee to ask questions of your delegation.

Mr. Frank Beardy: Okay.

The Acting Chair (Mrs. Linda Jeffrey): That is all I'm empowered to do. So I will go to Mr. Bisson for some additional advice.

Mr. Gilles Bisson: Madam Chair, as you know, this committee can do what it decides to do, and I would ask for a motion. I'm moving a motion that we allow NAN the time that they need to make their presentation.

The Acting Chair (Mrs. Linda Jeffrey): Any discussion?

Mr. Gilles Bisson: We may as well. This is their shot.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Rinaldi?

Mr. Lou Rinaldi: I would recommend that before we vote on that motion we qualify the time. I mean, whatever time they require—as you know, that's pretty open-ended. I don't think it's fair for the other deputants who were here for the whole week.

Mr. Gilles Bisson: I would only say that I know First Nations people to be very patient. They've been here a long time. They know the land and they have something to say. I presume they're not going to speak until tomorrow morning and we will have reasonable time to deal with the issues, so I think we allow them what they need.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Ouellette?

Mr. Jerry J. Ouellette: Madam Chair, I know the mandate of the committee was very specifically laid out, that if other presenters wish to come forward and make presentations in the time slots available, they would be made available. We should take that into consideration

when we make this decision to give Nishnawbe Aski the opportunity that is needed.

The Acting Chair (Mrs. Linda Jeffrey): Any further discussion? Mr. Bisson?

Mr. Gilles Bisson: I would just say that as far as the worry and all that about other ones, Matawa First Nation, which is actually Constance Lake, is here, and I'm not sure about Christine, but I can imagine that Christine wouldn't have a problem with that. Where is Christine? In the background, there.

Interjection.

Mr. Gilles Bisson: The last deputant.

The Acting Chair (Mrs. Linda Jeffrey): You mean Catharine. It's Catharine.

Mr. Gilles Bisson: Oh, I thought it was Christine, sorry. Anyway, let's vote on the motion and allow it to happen.

The Acting Chair (Mrs. Linda Jeffrey): Again, I think Mr. Rinaldi asked for some boundaries to the time. That was a friendly amendment, I believe, rather than—

Interjection.

Mr. Frank Beardy: Maybe half an hour, 40 minutes, an hour? I don't know. It depends on how many people speak.

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The Acting Chair (Mrs. Linda Jeffrey): Mr. Rinaldi.

Mr. Lou Rinaldi: No disrespect to anybody, Mr. Bisson, but some of us do have some other commitments. I'd like to hear what they have to say, but we do have some time constraints as far as travel plans, as you know. So I would be prepared to extend the time, to double the time that they're allowed: half an hour, 40 minutes at the very most, if that's okay with you fellows.

The Acting Chair (Mrs. Linda Jeffrey): Is that acceptable to you, Mr. Bisson?

Mr. Gilles Bisson: I've just been informed that Catharine Grant is prepared to give her time to NAN, so there are no problems with further presenters. I would just ask the committee to be respectful. First Nations don't work the same way that we do. I'm sure that they're not going to take two hours. The deputant who is coming after, Chief Arthur Moore, I'm sure has no problem giving up his time, if need be. I don't think he'll have to do that, and Catharine Grant has already suggested that. So I think we should be respectful that First Nations operate differently than us and that we not hold them to a time. I'm sure that they're going to be respectful of our pressing engagements afterwards.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Bisson, can I make a suggestion? If these are the three deputants who are left for the rest of the day, why don't we give 45 minutes? Do you think that's a significant period of time that you should be able to get—we'll get to 45 minutes and I'll give you the warning when you get to a minute close to it at that point and then we can discuss it further. Would that be helpful?

Mr. Gilles Bisson: Can we hear what Mr. Beardy has to say before we make any decisions?

The Acting Chair (Mrs. Linda Jeffrey): Mr. Bisson, I have to deal with the business that's in front of me. I have to deal with your motion before I hear from Mr. Beardy.

Mr. Gilles Bisson: My motion is very simple: that we allow NAN the time that they need to make this presentation. I'm not being combative here; I'm not pulling any tricks. They're going to be within a time that's reasonable. We're not going to be here for a long, long time. I think it's just respectful, given that this legislation impacts them and they've been here for thousands of years. So let's not hold them to a time; they'll know what to do.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Ouellette.

Mr. Jerry J. Ouellette: I think we may end up discussing this for a long time. I think if we agree to the 45 minutes to start, we can revisit the issue after 45 minutes and everybody—

Mr. Gilles Bisson: We can revisit; I'm okay with that, as long as we're able to revisit.

The Acting Chair (Mrs. Linda Jeffrey): Okay. Are you okay with that, Mr. Bisson?

Mr. Gilles Bisson: Mr. Moore had something.

Chief Arthur Moore: I'd like to have 15 minutes of time.

Mr. Gilles Bisson: You still have your time; you'll still have yours.

The Acting Chair (Mrs. Linda Jeffrey): Yes.

Mr. Gilles Bisson: All right: 45 minutes, and we can revisit after 45 minutes.

The Acting Chair (Mrs. Linda Jeffrey): Any further discussion? Ms. Mitchell.

Mrs. Carol Mitchell: Just very short: Do you want chairs?

Interjection.

Mrs. Carol Mitchell: No? You're good? Okay. Forty-five is good with me. I just want to make you comfortable if you want chairs. That's great.

The Acting Chair (Mrs. Linda Jeffrey): All those in favour of the motion?

Mr. Gilles Bisson: Just to be clear, it's 45 minutes, revisitable after 45.

The Acting Chair (Mrs. Linda Jeffrey): Any further discussion? All those—Mr. Dickson.

Mr. Joe Dickson: Certainly the 45 minutes is a given, and if they're going to review it at that time, I'd like to have a time frame that you would consider at that time. I know we have a flight to catch and everything else, but we want to hear everyone here. But I don't want it to go into tomorrow. So I understand what Mr. Bisson is doing, just kind of expanding the scenario, so I'd just like some direction from the Chair.

The Acting Chair (Mrs. Linda Jeffrey): I think we're just going to have to deal with what's on the floor right now. All I can deal with right now is what's on the floor. Any more discussion? All those in favour? All those opposed? That's carried.

You have the floor, Mr. Beardy. Please proceed.

Mr. Frank Beardy: Thank you. As I indicated, many of us travelled for many hours to be here, expended a lot of money. Even right now there are some of us who are staying in Wawa because of the lack of rooms within the town of Chapleau. We travelled from Wawa and some of us are going to travel back there again tonight.

I have been directed by the NAN leadership to appear before you and to reiterate NAN's position on Bill 191 and to again let the members of this committee know that we are not happy with how these hearings are being conducted. We are not happy at all.

To set up a hearing process that makes it extremely difficult, if not impossible, for people who will be directly impacted by the proposed legislation is not only disrespectful but goes totally against a fundamental belief of our democratic principles of this province and this country. Today is a very important day for the people of Nishnawbe Aski. Today is election day for Nishnawbe Aski: the day, every three years, when we select the Grand Chief and Deputy Grand Chiefs who will represent our 49 First Nations through the crown. The committee is here in Chapleau and expecting to hear from NAN First Nations on these two pieces of legislation, Bills 191 and 173. But as I said, it is election day, the single most important day on our political calendar—not just this year, but in the last three years—so why did you schedule this committee hearing today, of all days?

Some of us think it is just a mix-up by the clerk, but the majority think it's a deliberate message to us, the First Nations people who are directly affected by this legislation, signalling how little our concerns matter to the Ontario government. Either way, it was a huge mistake on your part, and one that has set the relationship back.

I am here as an envoy from NAN—because our elected leadership cannot be here; they're tied up in an election process as we speak—to speak because we have the opportunity to speak, but I'd be lying if I said I was happy to be here.

As it is with this committee's process, so it is with these pieces of legislation—a fiasco, an utter failure, an opportunity lost, a promise broken. I'll be making a few comments about that and what went wrong.

The plan from the start, as directed by the Premier, was that this would be a true partnership, a new relationship, creating a land-use planning law that would put First Nations in the driver's seat on a government-to-government basis. We keep repeating this context to you because it is fundamentally important. It is the key to everything that has gone wrong.

We started out on a government-to-government basis. That was something we could all get behind, something that showed respect for all the participants, a government-to-government relationship based on our elders' understanding of the treaty, that we agreed to live in peace, which we have; that we agreed, as First Nations people, to respect the laws of the Queen, and we have; and that we agreed, from time to time, to have shared arrangements with the newcomers. So far, up to this point, it has been a one-sided affair.

With that in mind, NAN has been at the table for two years working on a framework agreement that MNR claimed would guide the legislation. We didn't agree on the framework due to the lack of time, and when we saw the legislation, it was clearly not guided by the framework.

One simple example: We started out with land use planning being First-Nations-led. By the time we got to the legislation, that had been watered down to "significant involvement" for First Nations, as determined by the minister at her unilateral discretion. Bit by bit, over the last two years, the respect with which we began this journey has been hollowed out. The government-to-government relationship was first redefined by Ontario. It was qualified by legal denials, and finally, in the legislation, it was thrown on the trash heap.

The government-to-government relationship was a relationship that we based on our understanding of the treaty and the verbal promises that were made to our elders at that time. Ontario came back and said to us that the government-to-government relationship is based on their understanding of what is in the Indian Act, which means that we have power—and very little of that, even—within the reserve boundaries only. What did we get instead? The same old thing, the old relationship; not a partnership but a wardship.

In Bill 191, Ontario holds all the cards, makes all the important decisions, sets out all the rules and tries to placate First Nations with the illusion of participation and control. That is why Bill 191 has been rejected and why the Nishnawbe Aski Nation First Nations will exercise their jurisdiction and control over their lands as they have a right to do.

1400

Speaking of illusions, I also want to note for the record that the figure of \$30 million to support First Nation land-use planning which was mentioned by the government of Ontario some two budgets ago—the members more than once in these hearings have made statements with respect to that \$30 million, and those statements have been totally misleading. As you know or should know, the vast majority of that money—\$20 million of it—is being spent internally by MNR, on MNR projects run by MNR officials, with little or no participation by First Nations. The actual funding for First Nations land-use planning was about \$7 million, not \$30 million, much of which has already been spent, having perhaps \$2 million for this fiscal year and \$1 million per year for the next two fiscal years.

So where are we? We have a funding promise that on inspection reveals itself to be smoke and mirrors: \$30 million turns into \$3 million, maybe \$4 million. And we have legislation that is smoke and mirrors too. First Nation leadership ends up a shadow of its former self: vaguely defined participation opportunities in a rigged system. So it is no surprise that Bill 191 has been uniformly condemned by all sectors, for the same reason: It is all about the MNR. It gives all the discretion and decision-making powers to the minister and the bureau-

crats. As the Grand Chief has already said to you, we will not accept that. We are the north. It is our land, and we govern and protect by our inherent right given to us by the Creator. We have protected and governed the lands for thousands of years. The legacy of our care is that our use has been next to invisible. To you, the lands look untouched. They aren't. They've just been touched by the Anishnawbe in accordance with Anishnawbe laws and customs. That's why the lands are in the condition they are in. We will continue to protect and govern the lands for future generations.

There is a story that was conveyed to me by a number of elders in one of our meetings just about a month ago, a story that reflects on the care that we have given the land. They talked about the days when they used to move from area to area within their lands and camped, using spruce boughs for bedding. They said that as they were growing up, it was their task that was given to them by their grandmothers to gather up the spruce boughs after, when they were breaking camp, and make sure they were burned in one area, and that the land they had camped on for two or three weeks or two or three months would be taken back to its natural form. That was how they looked after the land. He said that now, today, Ontario is penalizing us because they're saying that that land is untouched by us.

We want to reiterate that we did not surrender our land by treaty or in any other way. We will exercise our treaty and aboriginal rights throughout our homelands, but we are willing to have shared arrangements with you. We want a partnership, a true partnership as envisioned by the Premier and by our nations as well, a partnership of respect and equality on a government-to-government basis. The land-use planning legislation got off track when MNR changed it from First-Nations-led to MNR-controlled. We need to return to our original purpose, First Nation leadership, and you need to listen to us and let us take the lead in showing the way forward in cooperation and respect. The government's imposition of its laws and policies, which negate and go against the spirit and intent of Treaties 9 and 5, must stop.

When your government and our Grand Chiefs signed a political accord in 2007, our chiefs and our elders had such high expectations that finally the day had come when we would be forming a relationship that would see us put a governance system together that would enable us to govern our lands together based on a mutual respect for one another. In the early part of 2009, we came to a sad realization that this was not to be. We came to see that your government was not there in good faith. It was made known to us that Ontario's definition, as I mentioned, of government-to-government was based on the Indian Act definition, that our authority would only be recognized within our reserve boundaries, and that Ontario came forward and said that our grandfathers gave up our homelands when they signed the treaty.

At the outset of these discussions we have always made it clear—very clear, right from the outset—that this is not our understanding of the treaty. As in the words of

a respected elder who has since passed away—he took me aside, and upon hearing the words that the written text of the treaty says that we gave up the land, with tears in his eyes, he said, “The Creator created what we see around us and gave us the sacred duty to look after it. How can we give up something that does not belong to us, but belongs to future generations?”

I must close with our usual warning that just because I have appeared here today does not mean that you have consulted with the Nishnawbe Aski Nation. This hearing is not consultation. We respect the individual members present here today, but our firm view is that this committee process is not legitimate. As we have said to the Premier, the process has been rushed, is insensitive to First Nations and is a violation of your legal duties to consult with us.

Thank you for your attention. My comments today have been offered in a spirit of respect and a real desire to use honest words and accurate language to tell the story of what has happened. The expectations of the Nishnawbe Aski Nation, your treaty partner and the government of what you call the far north, is that you will withdraw this legislation and begin a respectful dialogue without artificial timelines.

At this point I would like to ask any of the chiefs who are here with me and any of the members of the Nishnawbe Aski Nation to have their say to this committee.

The Acting Chair (Mrs. Linda Jeffrey): Can I ask, if they do decide to speak, that they say their name and spell it so that Hansard gets it right in the record, please? Thank you.

Chief Andrew Solomon: I'm Andrew Solomon from Fort Albany First Nation. When you look at how I got elected in my community, it was the citizens who elected me in my community. You heard your colleague talking about how we're different in how we conduct our business and how we conduct ourselves. When you look at that, when you look at the Premier and how he's elected, when you look at the Prime Minister and how he's elected, it just goes to show you that I have more power than those guys. I got elected by the people, just like you MPPs; you get elected by the people in your ridings. You're more powerful than those guys that you represent: the Premier and the Prime Minister.

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There's one point I wanted to make to you: Look at the way we look at our homelands. I said this at a meeting when they discussed possibly having a commission in Ontario.

It was stated earlier that we're nomadic people, and the treaty gave us something really different. A lot of people are displaced. The young people today don't know who they are. Their identity is lost. So you have a high rate of suicide. Those are the symptoms of the treaties and the policy-making of the governments.

There's another one here, a prime example: We're always saying we're willing to work with you. We're willing to share these resources. We are. When is the government going to wake up and say the same thing—both governments?

When you look at the legislation that's brought forward by the government, and the control mechanisms there, it's one-sided. Who makes the final decisions in the planning areas that have been brought forward in that legislation, Bill 191? Who decides on the amount of protection status there is?

The only reason why the Ontario government is coming to the First Nations is to make a case: the duty to consult and the duty to accommodate. Don't forget that consent. You require that. If we say we're not consenting to the legislation, well, you've broken your own laws. You get away with it; governments get away with it, time and time again. When First Nations do it, or when we demonstrate, our funding gets cut. Back in the 1980s, one chief of Fort Albany raised a flag—our First Nations flag—and put Canada's below it. They cut the funding for us, saying, "You can't do that." But Canada has been doing that forever, ever since the signing of the treaty, and the province followed.

The other thing that's very interesting, when I look at the history, is why we're here and the dilemma that we're facing: where you got your powers. Section 92: That's where you got your powers, in your Constitution, when Canada started, back in 1867.

But when it came to resource development, there was a milling case, the St. Catharines Milling case. The interesting and funny part is that Canada and the province settled it away from here. They went to Britain to settle it. That's why you're here today and that's where you get your powers. That's very interesting.

It just goes to show you, when you talk about jurisdiction, that there are only two ways you can have jurisdiction: You can inherit it—one way—or you get delegated it. The province and the feds got delegated by the Queen of England. First Nations here, we inherited it from our Creator. These are the things that you have to learn and to understand as MPPs or MPs.

I'm here also to tell you that I'm willing to work with you. Just give me a chance. I'm willing to share everything with you. I need your support in that.

These are all the comments I want to make today. I thank you for listening to me.

Chief Jonathon Solomon: Good afternoon, Madam Chair. Chief Jonathon Solomon, Kashechewan First Nation—and if I were to ask you where Kashechewan is, I think only one person would know.

I just wanted to share a little bit of history about our area. We live in the north. The land up north is our home. It's our lifeline, it's our bloodline of who we are.

The land up north is not an untouched land. Our people, my ancestors, travelled that land. All over the area of my land, you can see sacred burial grounds, where my people died, where they lost their loved ones during the winter months. So it's not an untouched land; it's not a land that has been discovered. We've been there for thousands and thousands of years. We were very nomadic people. We are still closely tied to the land. Like I said, that is our bloodline, our lifeline. Without land, we will be Cree people of James Bay.

I've always been the one chief who has questioned, who has always been very vocal since two years ago, when the province came forward with the Northern Table idea. The reason why is very simple: It's because I don't trust the province of Ontario. Look what it has done to us. They want to create a super-park on our land—225,000 square kilometres. We will not have a say. Under this process, the minister, the Premier have the aces in their hands. We become nobody.

I've got grandkids. I want a future for them. I want to teach them about the land that I grew up in, where my grandparents taught me. I don't want them to see a sign that says, "No hunting. Private property." That is not who we are. We are there, but if the province is willing and in good faith wants to work with us, they have to understand us. They have to recognize who we are.

I am a community of 1,600 people. I am in the mouth of James Bay in the Albany River. Right now, the province of Ontario is drooling over my river to develop for energy. That is my highway; the river is my highway. The river is my area of hunting.

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We are not against development. All we're saying is, we continue to live in poverty while the province gets wealthier and richer. Why do my people have to take shifts to sleep in a two-bedroom home where there are more than 15 people? Why is that? I'm an Ontarian, just like each and every one of you around this table. I'm also a Cree aboriginal and I'm a chief.

I've been disrespected by the province of Ontario. I signed a paper where we deliver Ontario Works programming in my community, and I have to sign on the dotted line that says that I'm a delivery agent. Why is that? The government of Ontario wants to talk about the government-to-government relationship. They must recognize me as a chief, not a delivery agent. That's the kind of respect that I want as a chief of my community. Respect is a two-way street, but the way things are going, we seem to be pushed aside. The traffic is coming from one way and we're just watching things happen as bystanders. We're saying, enough is enough.

Like I said, I am a very respectful person. I respect authority, but I also request that I be respected as a chief of my community and in my land. Where there are footprints all over the place in my territory, that signifies that my people were out in the land. That's what I want. Respect is a two-way street, and if the government of Ontario is willing to come forward to respect our inherent and treaty rights, I would welcome that with open arms. But at this point in time, I cannot and will not succumb to the pressures that we are put under. As Frank said, I'm here to make a statement, to tell you that I live up north. If you have an opportunity to see my area, I would welcome you.

Thank you very much. Meegwetch.

Chief David Babin: Chief David Babin from Wahgoshig First Nation. I've sat at the Northern Table in helping to develop a working relationship with the government on how we're going to proceed and focusing

on how our First Nations are going to foresee things. We do a lot of work at this level—the chiefs and the technical people we have working for us. It always comes down to the point where they just take what content they want to take out of there and develop it and leave us out in the dark on how they're going to proceed with it.

I feel that we've done a lot of work as First Nations in how we want to proceed with our territory and foresee how it's going to develop. Yet we are always pressured on how we're going to make decisions at the end of the day. We're getting tired of that, that you come to us and basically say, "You've only got so many days to come to these hearings" and whatever "to say your say," and yet you don't listen to us anyway.

Like the previous chiefs have said, we protect our lands. They've been protected for thousands of years. European people have come here, and look what they've developed; they've developed a land of disaster. They take all the revenues and whatever and leave, and leave us with nothing. Then we have to do the cleanup, and we have to live with that for 100 years. Our people are getting sick from all these industries that are coming around our territory.

In the far north, we're just starting to face that. I'm in the Timmins area, where development is very, very high. We've got the mining industry and the forest industry, where they leave a lot of pollutants behind. We worry about our water. We have some of the cleanest water in Canada, and we still have to worry about it because of the development that's happening around us. Yet you give these permits out to them like it was nothing.

You talk about business—you know, "Keep Ontario and Canada going." Well, what about the future? You're not thinking about the future; you're only thinking about what's happening today. We've got to think about tomorrow. We've got to think about our kids, our children who are coming. What are we going to leave them? Are they going to live on nothing? All we worry about is ourselves, today. We don't worry about tomorrow.

I was talking about development with the hydro dams and the damage they've done. They washed away our graveyards into the lakes, and yet development still happens.

You talk about species at risk. What's this all about? Species at risk? We went around and did a survey about species at risk and how our species are slowly disappearing, yet development still happens, so these species are at risk. They're still at risk, yet we don't do nothing about it. We just let it happen.

I don't know where the government lies on their priorities. Development, yes, but how much do we develop before we start realizing the damage we're doing to our society? You talk about the world in peril. We hear that here now.

I wonder about our kids. How are we going live in the next 20 or 30 years? How are we going to live? How are our children going to live? We want to try and provide a life for them too, not destroy it within 100 years. We have to start thinking about those things.

As the leader of my community—I have a very small community, but I still think about our kids who are coming up. Every day I look at those children. What are we going to offer those kids? Sure, mining's going up and forestry's going up. We educate them. What are we educating them for? Death? That's what I see.

We have to come to some sort of conclusion on how we're going to develop our territories. You talk about this park. Our rights are always being violated. You talk about parks; we want to protect some of that land too, but yet we can't develop our rights in those territories that you're putting these parks up on, you know? We can't even go hunting; we can't even go fishing. If we build a little cabin, we're all thrown in jail. For what? You took us off our land. You took us away from our home so you can develop industry.

The point is what? Destroying the lands, our rivers, our waters? What kind of water are we drinking today? It all has to be treated. You can't even find a decent cup of water in almost any lake in Ontario today because of development. You guys think you're safe behind the closed doors and drinking tap water? I don't think you guys are living in reality. You guys live in a make-up world. Our kids are going to suffer for it.

I want to see changes. You talk about this land being protected. Let's protect it and make sure that the aboriginal people have the rights to it. I don't think First Nations have ever destroyed any lands. I can't think of any. They've maintained it for hundreds and hundreds and hundreds of years. They got their food off of it for hundreds and hundreds of years. Yet the European people came over, got greedy and developed. That's all they thought about, themselves and how they're going to make a society work in Canada: over greed.

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You talk about the forest industry. Look at them: They're all falling apart because of greed, and yet First Nations are still there. They don't know what greed's all about: They were living in poverty for years and years. All we know is poverty.

Thank you.

Chief Keeter Corston: Chief Keeter Corston, Chapleau Cree First Nation.

I'm not going to be quite as polite. The Ontario government to me has never dealt in good faith, and I remember this Northern Table: I followed it quite closely. For once the First Nations thought that maybe there was some small chance that the government was going to be honourable and truthful, and that didn't happen, as usual.

When we're talking about the land, the people are connected to the land. First Nations people are stewards of the land; it's part of us. When you make the decisions in Queen's Park—as Chief Babin said, you polluted everything; you polluted all south of 50. You cut every tree; you've ruined it. Species are at risk, the moose population is going down, the marten population is crumbling, and still you want more. You want to go north of 50 now; you want to go north there because you've ruined it here: That's all.

I've warned the northern chiefs. I live south of the 50th parallel, and I've seen the behaviour. The behaviour hasn't changed one bit. These people are here to protect their homelands that belong to them. It doesn't belong to Ontario. The land was never surrendered. Stop with the lie: It's a lie. Start telling the truth and you'll be better people for it. Meegwetch.

Chief George Hunter: Good afternoon. My name is Chief George Hunter. I'm from the Weenusk First Nation. I'm way at the top of the province. I was one of the movers. I work with Nishnawbe Aski Nation.

The Acting Chair (Mrs. Linda Jeffrey): Excuse me; is it Hunter?

Chief George Hunter: It's Hunter.

I'm part of the independent First Nations that are part of the Nishnawbe Aski Nation. I was the mover to oppose the far north piece of legislation. What I think that the province has got to do is learn today that the government of Ontario does not have a relationship with First Nations. Our relationship with the government of Ontario stinks and it's very nonexistent. This piece of legislation, the far north piece of legislation, was developed not in concert with First Nations people, and obviously our relationship with each other doesn't exist. I want to point that out very clearly.

One of the other things that I want to state today is: The protection of our homelands—we're not talking provincial public lands here; we're talking First Nation lands. Get that right. The far north is First Nations land. Get that in your textbooks and your curriculum and teach your kids to learn that stuff.

The far north legislation is not endorsed by us, and I also want to state that it is very, very patronizing for Premier Dalton McGuinty to use our lands, protect our lands in the name of climate change. I'll tell you right now that our lands are not going to be responsible for turning the tides of pollution and climate change. Our lands should not be sacrificed to turn climate change. I want you to get this right: Our lands will not be the pieces of land that will turn climate change, so get that out of your head. Put that out of your head and get it out.

This land where I come from is very, very important. As a First Nation, we're probably the only First Nation in northern Ontario or in Ontario that doesn't run social assistance or welfare programs for our membership because the land looks after us. We have an abundance of fish, wildlife, waterfowl and stuff, and as a result, the land is our social welfare system, and we would like to keep it that way. We've got good, clean water and we can dip our cups into any of our river and creek systems without worrying.

One of the things that I am telling the provincial government today is that you have no business in writing pieces of legislation for the far north; this is First Nations land. If you look at the way the draft legislation is written now, it's so backwards. It's not going to complement our economic development rights; rather, it's going to control and extinguish our economic development rights to our lands and resources. A lot of people say it's our last

frontier. What the government instead should be doing is congratulating all of the First Nations and NAN territories for keeping the land in its natural state: the way it is. We have not contaminated and harmed our land. The politics and the accounting of genocide has got to stop. We've had people that have gone up, companies like De Beers and Platinex—I hear Platinex is going to be going up north again—those types of oppressor corporations that have interests in our land and resources have got to stop. We do not accept oppressor corporations to come into our territories because we have no benefit from it.

I come from the largest provincial park in northern Ontario. Since it was built in the early 1970s, we've only had one job. My father has been the radio operator for the Ministry of Natural Resources, and we get no income from our relationship with the province, so—

The Acting Chair (Mrs. Linda Jeffrey): Chief Hunter, can I just interrupt for one minute? You have one minute left of the 45 minutes we agreed to.

Chief George Hunter: Thank you. Following that note, I'm telling the government right now: After Moosonee, you've got no real property; you've got no pieces of real estate up there. If this goes through, all of the assets that you have in the north are going to go down. Thank you.

Mr. Gilles Bisson: Madam Chair?

The Acting Chair (Mrs. Linda Jeffrey): Mr. Bisson.

Mr. Gilles Bisson: We had agreed to have a discussion about additional time. I think there are only two speakers left. One is Chief Moore from Constance Lake First Nation, who already has a spot for a deputation and it'd be his choice to do it now or later, and, I believe, Chief Randy Kapashesit, and is there anybody else?

Mr. Frank Beardy: Our elder—

Mr. Gilles Bisson: One of the elders?

Mr. Frank Beardy: Mr. Koostachin.

Mr. Gilles Bisson: Mr. Koostachin?

Mr. Frank Beardy: I want to invite him to say the closing comments.

Mr. Gilles Bisson: I would ask the committee just to allow them to have their say. It's not going to take that much time.

The Acting Chair (Mrs. Linda Jeffrey): Are you asking for a specific period of time?

Mr. Gilles Bisson: I think they've named three people. They've named Randy Kapashesit; Arthur Moore already has standing; and also Elder Koostachin. I think those are the only ones who are coming forward, so I don't think it's going to be a lot of time.

The Acting Chair (Mrs. Linda Jeffrey): Three deputations? Is that what you said? So there's a request on the floor for three deputations. Any discussion? Mr. Ouellette.

Mr. Jerry J. Ouellette: After the deputations, I would hope we would get a chance to speak as well.

Mr. Gilles Bisson: Oh, yeah. I think we should have a chance to ask questions for four to five minutes per caucus. That's going to wrap up the day, by the looks of

it, because we already know that Catharine has already ceded her spot. So I think we're actually going to be on time.

The Acting Chair (Mrs. Linda Jeffrey): Normally, it would be five minutes per deputation. So, at this point, you're looking at possibly five minutes per caucus.

Mr. Gilles Bisson: Per caucus. All right. That's fair.

The Acting Chair (Mrs. Linda Jeffrey): Any discussion? The motion is that we allow three more deputations and then five minutes per caucus. Is there any discussion on that motion? Mr. Rinaldi.

Mr. Lou Rinaldi: Madam Chair, that's five minutes total, or for each deputation?

The Acting Chair (Mrs. Linda Jeffrey): I think Mr. Bisson is talking about five minutes per caucus.

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Mr. Gilles Bisson: For questions.

Mr. Lou Rinaldi: For all the presenters?

Mr. Gilles Bisson: That's right.

The Acting Chair (Mrs. Linda Jeffrey): Yes, for all of the presenters. So when we finish the three deputations, it's five minutes, five minutes, five minutes. Is there understanding about that?

Any further discussion? All those in favour? Carried.

The next deputation—go ahead—

Interjection.

The Acting Chair (Mrs. Linda Jeffrey): Just start speaking and they'll catch you.

Chief Randy Kapashesit: Okay. Thank you for your time. Good afternoon to each and every one of you, and certainly to the elders and the delegation from Nishnawbe Aski Nation, my fellow chiefs. My name is Chief Randy Kapashesit. I'm here in my capacity as chief for the MoCreebec Council of the Cree Nation.

I wanted to register a few comments in regard to the Far North Act. I also want to be certain that as you proceed with this particular piece of legislation, you are fully aware of the context in which I see this particular initiative.

I'm wondering how many of you here would admit to violating the human rights of any people, but in particular the human rights of indigenous people. I doubt that you would want that on your record, but that's in fact what I believe is going on here. I don't know if any of you are aware of the UN Declaration on the Rights of Indigenous Peoples, but I'd like to actually ask you to individually raise your hand if you've actually read that document.

Mr. Gilles Bisson: I've read part of it.

Chief Randy Kapashesit: The absence of hands going up only confirms my thinking. That is the most progressive document that has ever been produced in the history of mankind when it comes to understanding the voice of indigenous people the world over. But here we have a government in a modern time totally ignorant of that achievement by the majority of the world. The fact that Canada hasn't endorsed it only confirms that we continue to be committed to being ignorant, in my mind.

When you talk about trying to implement something like the Far North Act, you should recognize that there

are principles that have been enshrined in that document that the majority of the developed world actually agrees with, and I would encourage you to actually introduce yourself to that. You might be able to convince me that you're able to speak to me in a dialogue that I'm understanding, appreciating and wanting to see come forward from a government in a modern time.

There is something called free, prior and informed consent. That's been a big issue for indigenous people the world over. In the process and in the context of this particular initiative, I see no evidence that that has in fact been achieved or even attempted to be achieved. Again, I remind you that the human rights of indigenous people are being violated here as we sit before you. You can say that you're not really doing that, you can say that you don't really intend to do that, but your actions will speak louder than any thought or intention you may have.

The reality is, many of us are actually coming at this from a totally different perspective—it's like we're speaking two different languages—on the indigenous viewpoint on development and how we should be seeing the future. There is a great opportunity for you to actually lead the world and show that you understand that by becoming familiar with that piece of legislation, by indicating that you're willing to recognize that there are, in fact, human rights that are being violated here and you are concerned about that. It's a dialogue and principle that I'm sure you probably haven't even heard before this committee. I could be wrong; I hope I am, but my sense is that probably, nobody has represented these issues in that context to you.

In that document, it also refers to the fact that there are treaties, agreements and other constructive agreements that exist between the state and indigenous peoples. It says that we have the right to actually benefit from those particular obligations and that the state has a right to meet those particular communities insofar as they want to see a constructive interpretation in their favour of those historic documents, never mind the current ones that we have before us.

It also says that we have the right to a subsistence economy or a choice in an economic activity, whether it's on our own or participating in the mainstream economic initiatives that are out there. But the key point is, we have that right to choose. In the course of developing this document, the Far North Act, I've seen no initiative to actually be engaged with our communities, to say, "What is it that you're interested in?" I see this more as an imposition, a continuation of a higher power at work, if you will, telling us that this is the way it has to be. "Never mind your human rights, never mind your historical rights; we're not interested in that": That's what you're saying by producing this kind of document and expecting us to participate, meaning that you haven't actually spent any time to even develop an approach that achieves free, prior and informed consent. That is a principle, I think, that we will see going forward in any particular country, but in this country I don't see us actually leading anything in that regard. I throw that out to you as a chal-

lenge. If you want to have a meaningful dialogue with people like us, you need to educate yourselves on how our rights have been treated by the rest of the world and you need to come forward with that new understanding.

There are also other issues in there that I think you should become familiar with. I've mentioned a few of them. But I also need to say that the way this whole initiative has presented itself is so that we don't have a choice in the matter, that the powers that be that drive the economy and that put votes in various ridings throughout the country have determined that you must come forward with what you consider to be the best plan for those of us in the north, and you're giving us the impression that we have an opportunity to participate in that. That's a false starting point for me, because you're not coming to me with a respect for the human rights that we actually have. I think that's a really unfortunate circumstance, because I consider this time in the world the most progressive period for the indigenous people the world over and I see nothing coming from this particular bill that actually reflects that. I think that's the challenge that's there before you. You need to recognize that some of us expect more of the government, not because of historical positions or issues that are actually relating to treaties and agreements that are really in many ways not fully implemented and respected unto themselves, but even in the context of what the rest of the modern world thinks: We are being ignored by Canada. Canada isn't the only one. Canada's also got company with the United States, New Zealand and Australia, but Australia has turned their position on that recently. But the majority of the world that votes at the UN endorses that document, except for those countries, and you have to ask yourself why. In the context of this dialogue, I don't think that's lost on any of us.

There would at no time be any expectation that we would be having what is called, for lack of a better word, a far south act, but that is in fact what I think is being proposed here: that some people know better than others, and it's being proposed as such. If in fact it were that way, if we were that arrogant, we might propose that for the south, but we're not that way. I do think that it's incumbent upon you to learn more about the rights of indigenous people. I'll stop there because I think that my time is up. Thank you.

Mr. Gregory Koostachin: Good afternoon, everyone. My name is Gregory Koostachin. I am one of the elders amongst many others as I represent the east Mushkegowuk territory. I have been with the Nishnawbe Aski chiefs, and I go anywhere every time they call me to attend their meetings. I was in Toronto, the first time in my life that I have entered Queen's Park, the Parliament building. That was Mr. Bisson's office in Toronto. I never had this in mind before, to get in there. When I get in there, it reminds me of everything that the elders had said in the past. It reminds me of when the first white people came and discovered this land. It reminds me of everything.

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I'm not going to take very much of your time to repeat all this. I just wanted to say that the elders here, the

Nishnawbe Aski, some of them are there behind me, and the many other elders—our job is to give advice to our chiefs, to remember not to give their land anymore to anyone, to try to keep their land, what is left out there, for us people. There's not very much left; you all know that. I come from where there are diamonds next door to me and we are unable to get at them. We don't get anything out of it and I'm very happy to bring this up so that the other chiefs, the other people, they will know what's happening to us. The revenues have been taken away from us. The diamonds or anything which is important has been taken away from us, and we don't get anything in our community. You know what it's costing by that? The provincial government is issuing permits without any consultation with us. And this is why we give advice to our chiefs that enough is enough. We will hold what is left out there and then we will fight for it.

I just want to come to the point that our land is not for sale. It is not for sale. We want to keep that. We want to encourage our chiefs to hold it as much as possible. If it doesn't work, I guess both federal and provincial governments will push us to go overseas to London, to go out there to have a meeting with the Queen. And even then, if we are defeated by our government, both provincial and federal, we are willing to bring this to the Supreme Court, because everything is taken away from us. I had this speech in front of the chiefs this morning. Right now, the election is on, who is going to be a new leader for our Nishnawbe Aski territory.

I appreciate your respect, because you called us at a bad time. I appreciate your speakers because you came here with, I feel, a little bit of shame that you would bring this here to us while the chiefs are doing an election outside here, on the reserve. I thank you for your respect. This should not happen. You should just leave us and give us time to have our new leader for our Nishnawbe Aski territory, before you call us here.

I wish I had more time to speak. I thank you all, anyway, for everything.

I thank my chiefs and all the others for allowing me to come sit here before you. I appreciate it very much. As an elder, I speak with them directly about what to do. This is from their mouths too, what I'm saying; these are their words, what I'm saying, because I talk to them and I learn lots from them.

Thank you very much again.

Mr. Frank Beardy: I'd like to thank all the speakers who joined me here. I would like to reiterate that our presence here, and our presentation, should not be construed as the government of Ontario meeting their legal obligation to consult with the First Nations. I would also like to stress that in the past two years, in our discussions with the government of Ontario, we have always stressed that we come to you in a spirit of good faith.

We come to you with the knowledge that our First Nations signed a treaty with the government of Canada, to which Ontario is also a signatory. We know, through the archival research that our people did, that the treaty that was brought to our people was not a negotiated

treaty between two nations. It was negotiated, all right: It was negotiated between the government of Canada and the government of Ontario. Between the two of them, they dictated the terms and conditions of that treaty. When they assigned their commissioners to come into our territories, the commissioners were given specific instruction that they were not to change the wording of the written text of the treaty.

I would also like to remind the people here, the committee members, that our people did not know or understand, nor did they know how to speak, the English language, and that we used the missionaries and Hudson's Bay managers, who barely spoke the language, to translate that legal document that was given to our people.

We also know that they were given instruction that they could not change the written text, but they could make verbal promises. There were many verbal promises that were given to our people. It is those verbal promises that we hold sacred, and it is those verbal promises that one day we expect to implement in our territories.

Meegwetch, and I thank you for your time.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Committee, as agreed, we have five minutes per party to ask questions, beginning with—

Mr. Gilles Bisson: There was Arthur Moore from Constance Lake. He was the only one.

The Acting Chair (Mrs. Linda Jeffrey): I understand that, but as I understood it, he was going to be a separate delegation—

Mr. Gilles Bisson: Okay, if you want to do him separately.

The Acting Chair (Mrs. Linda Jeffrey): So he would have his own 15 minutes and his own five minutes of questions afterwards.

Mr. Gilles Bisson: That's fine with me. Yes, he's fine. Okay.

The Acting Chair (Mrs. Linda Jeffrey): I think that's what I understood, so unless I hear something different from committee, we're going to deal with this delegation in its entirety. So, five minutes for the government side—is anybody asking any questions? Mr. Brown?

Mr. Gilles Bisson: Can I just have point of order, to assist my good friend Madame Mitchell?

The Acting Chair (Mrs. Linda Jeffrey): Mr. Bisson, sorry.

Mr. Gilles Bisson: On a point of order: I just want to be helpful to the government here. For people who are here today, to know how the committee ended up here—you shouldn't be blaming the government, and I'm going to fess up to it, because quite frankly, it was a decision of the subcommittee, which I'm part of. We had decided that, because the committee was not travelling to the far north, we needed some way to talk to NAN. The idea was put forward by Ms. Mitchell. At the time, I thought it was a good idea, and if there's any blame to go around, I share in that. So on behalf of the committee I want to apologize if this is during your elections. It was an oversight, certainly on my part and, I'm sure, by the rest of

the committee. It wasn't meant to hurt anybody. But out of this, I think the committee has learned something, and if we erred, we might have learned something through that error, so I want to take responsibility for that.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Beginning with the government side, Ms. Mitchell.

Mrs. Carol Mitchell: I just—

The Acting Chair (Mrs. Linda Jeffrey): Is this your five minutes? Can I just understand—is this the five minutes or a response to what he's saying?

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Mrs. Carol Mitchell: It's a response to what he's saying.

The Acting Chair (Mrs. Linda Jeffrey): Okay.

Mrs. Carol Mitchell: I wanted to make a statement as well. I appreciate that the member has brought those comments forward, but when the subcommittee met it was in good faith that the day was selected. Certainly, what came forward to the subcommittee—which I am a member of, representing the government—was that this was in consultation with First Nations. We agreed on this day because this was the day that was recommended to us from the subcommittee members. So in any way that this day reflects back on the government, I really want to make that statement—in good faith and very respectful of NAN, but that was the information that the decision was made upon by us.

Mr. Gilles Bisson: And I've already taken responsibility, so the government's off the hook.

The Acting Chair (Mrs. Linda Jeffrey): Okay, we're not going to have any more debate about that. We're going to get to the five minutes. Mr. Ouellette, do you have any further comment on Mr. Bisson's statement?

Mr. Jerry J. Ouellette: Seeing as we're all commenting, I will mention this now, but I see things in a different—I see the Creator as giving opportunity everywhere, and when else in the short time frame that we had to deal with would we be able to get everyone together? This is an opportunity for the committee to have as many as possible together in one location in the time frames we had. So I look at it as an opportunity that we should capitalize on so that we have good debate and understanding.

The Acting Chair (Mrs. Linda Jeffrey): Okay. The first is the government side.

Mr. Frank Beardy: Can I respond to that?

The Acting Chair (Mrs. Linda Jeffrey): Mr. Beardy, no. What I'm going to let you do is that if you want to respond during the questions, you can, but otherwise I can't stay on schedule. I have to get members out into a plane later this afternoon, so I have to follow my schedule.

Government side, Mr. Brown.

Mr. Michael A. Brown: Thank you. I'll let Mr. Beardy say what he was about to say as the first part of my five minutes.

Mr. Frank Beardy: I was just going to say that we have an understanding that we were putting together that, for the government to meet their legal obligation to consult with our people, they have to consult with our

individual communities in the north. That is a position that we've come forward with, and we expect that consultation to take place with our individual communities.

Mr. Michael A. Brown: Thank you, Mr. Beardy. That was going to be one of my questions. Our understanding from when you appeared in front of us in Toronto and the grand chief appeared was that that was one of the basic principles that you were enunciating, that the consultations need to take place with individual First Nations within NAN. So I appreciate that clarification.

You know that, on Bill 191, this is an unusual thing for the committee of the Legislature to do. It is not unique, but it does not happen very often that we come out after first reading to discuss a bill with the people of the province. This is the approach that the government has taken on this bill. We could expect that there would be some amendments to the bill that's now before you—I'm speaking of Bill 191—and then we would debate it on second reading in the Legislature, and then there would be a further legislative committee process that would require the approval of the other two political parties, so that we would have a further opportunity to come out and speak with NAN and others about Bill 191.

My question is, could you, and would the organization—I guess the First Nations of NAN—be willing to provide us with some advice on how a legislative committee, after second reading, might want to proceed in a way that would be respectful of your First Nations and cognizant of the fact that there are only 107 members of the Legislature available to go out on committee?

Mr. Frank Beardy: I want to respond in a very clear, concise manner. A few years ago, when we started to look at working with Ontario and being involved in pieces of legislation that affect our people, one of the first pieces of legislation that we were involved in was what they called the parks act, when waterway parks and parks were imposed upon our territory. There was an imposition by Ontario. We said that we would like to work with Ontario to try to find a way for us to live with these parks. So the leadership instructed the grand chief to look at ways and means in which to address the concerns and issues that the Nishnawbe Aski communities and First Nations had with respect to the parks act. There was a lot of work done by our people, and we pointed out some 50-odd changes that we would like to see. The grand chief even went in front of the parliamentary committee to address those changes and concerns. When it came back to us, we saw that there had only been one change made, and even then it was watered down to a point where it didn't even reflect on what we wanted to see. We still hadn't lost faith. We were still committed to try to work things out with Ontario.

When the revisions of the Mining Act came about, we again said, "We want to participate and be a part of the changes that we would like to see within the Mining Act." We went in the tent, so to speak, with the government officials to work on the changes that we would like to see that reflect on the concerns and issues of our people. Every time we came to a clause that we would

like to see enacted as law, we were told, "We will deal with that at the policy level." We did not enter into these discussions to influence policy. We went into these discussions to influence what the wording of the law should be.

A few months after that, we went in the tent to deal with the land use planning act. Again, the same thing happened.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. Beardy. I have another question on this side.

Mr. Ouellette, you have the floor.

Mr. Jerry J. Ouellette: We have five minutes, Chair?

The Acting Chair (Mrs. Linda Jeffrey): You have five minutes.

Mr. Jerry J. Ouellette: I very much appreciate the presentation.

I've been to Fort Severn in February, I've been to Peawanuck, I've been to Moosonee, I've been to Dryden and Pickle Lake and Kenora, I've participated in drumming circles, I've been to Pagwa, and quite frankly, I know nothing of the north. It was mentioned earlier on that the people living in the south live in a fantasy; it's very difficult for the people in the south to understand what takes place in the north. In the same fashion, the people in the north don't understand what happens in the south.

In Queen's Park, my colleagues have heard me say on a number of occasions that I try to make decisions on a very simple premise, which is to look to the future through the eyes of the children of today. What I hear today from the First Nations community is a step beyond that: It's looking to the future through the eyes of the children of tomorrow to ensure that that lifeblood is there for so many.

I would ask those in attendance today to see Donna or Dave or Chief Beardy. Chief Beardy came to my community to thank me for the work that I'm trying to do with the communities in the north, and the only reason I mention that is to bring some understanding that some of us are trying to reach out to do what we can.

I agree that the difficulties in the legislation coming forward and understanding how it's going to impact—and from our perspective, yes, I have concerns, and I want to hear your concerns. I appreciate the opportunity to be here today when all are together, so that we can expand this to make sure that there are consultations with each and every First Nations community.

In southern Ontario, so many times we see how the media talk about all the other countries around the world that need to be saved and what needs to be done, yet we hear about communities in the north that have to share bedrooms with 15 living in a two-bedroom house, and they don't have an understanding at all. So many times I try to bring that perspective to the south but many times they don't listen.

1510

The influence of southern Ontario is so much. I sit around and I see individuals in the First Nations community using their BlackBerries and cellphones, and

whether it's West Nile disease or whether it's H1N1, the influence is coming. A wise man said to me—it was Chief Stan Beardy—that there are three ways we can solve this. It's quite simple and it's quite explicit. I was quite surprised; it's quite realistic. We can either kill all the white guys, kill all the Indians, or we can sit down and talk. How much time is it going to take, do you feel, in order to talk? We realize that we need to talk to gain an understanding. We fly in on planes and land at the airport and come by air conditioned buses to here and think we have a view of the north, but we really don't understand. We need that time. How much time do you believe we will need to gain that understanding so that the caretakers of the Creator's land can continue to take care of those lands? How much time will we need? What's it going to take? Where's the talk going to start?

Mr. Frank Beardy: Well, we're up against something so big, so huge; you know? We're up against John Wayne.

Mr. Gilles Bisson: He was a bad guy last time I checked.

Mr. Frank Beardy: What has been portrayed by western society of the indigenous people of this country through every media source is what we're up against. We have to change the thinking of society as to who we really are, and that starts with you and your children and your grandchildren. That's where it starts. If you're committed to that, it's going to take the next four, five, seven generations before we can change that thinking around and develop that respect amongst our people of who we really are.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Bisson, you have five minutes.

Mr. Gilles Bisson: First of all, I want to thank you for doing what you did. I wasn't too sure what you were going to do. I did know there was going to be a presentation from NAN, but if there was a presentation to be had, I think this was the one that probably has the most effect on this committee. I think it gives—at least for me and I would imagine for my colleagues on the government side—a better insight into the difficulties about how this process is flawed and has to restart. The basic premise is a fairly simple one, in my view: These are traditional lands that you've occupied for thousands of years, and if you're not in the driver's seat, then maybe we shouldn't be driving this car at all. Maybe we should take it back to the garage and fix it and find another way to do things.

The other thing I picked up on—it was said by someone and I forget who it is, but just for committee members to understand—is that there's a real fear and a real sense by community members, and not just people here and chiefs, that the treaties that were signed, both Treaty 3 and Treaty 9, were signed in good faith but sometimes with little understanding, and they don't want to repeat that mistake again. Not that they think that the treaty was a mistake overall, but it has not served your people well.

When Chief Jonathon Solomon talks about people sleeping in shifts, he's not joking. People in our com-

munities sleep in shifts because there are not enough beds and not enough places for them to sleep, and most people don't know that.

I would just say to committee members here, the one thing that I've learned over the years representing James Bay—and listen, I take fault because I grew up in Timmins and, like most other French-Canadian kids or other kids that are non-aboriginal, knew very little of my neighbours who lived on this land all of this life. They're infinitely wise and patient people and infinitely very peaceable people. We're extremely lucky that we're dealing with the Cree and we're not dealing with another group of people from some other land who may look at this in a much more—how would you say?—militant way. I think the call that they're trying to give this committee and this government today is, they're prepared to share the land. There's no question that they want development, but they want to make sure that they have a say in the process, that they're able to drive it, that they're able to benefit from it.

For the mistake of sending the committee here in Chapleau, I just want to again say to my government friends, we made a decision—and I was part of that decision and I accept my responsibility under that. But I want to say to my friends within the various communities of NAN, it was not done in order to be an affront; we just didn't think of it. Sometimes smart people do dumb things. I consider myself a pretty smart person and that was a pretty dumb thing. So I just say to all of you, it's an apology on the part of myself and everybody else here. We didn't clue into it. In the end, it is an affront, but I think a committee walks away from this with a bit of a better understanding of what the issues are.

I guess I'm going to end on a comment—and there's a question at the end—and it is, what really is galling for me about all of this is, this is a really simple issue. First Nations are asking that they be given the right, which they believe they already have, of consent about what happens in their territory. If the province of Ontario is going to have any kind of a project that happens anywhere in Ontario, be it a shopping mall, be it a new Ford plant, a mine, a forestry operation, building your own private house, the province must give consent. If the city of Timmins decides that there's going to be a mine, the mining company comes and knocks at the door in the city of Timmins and says, "Oh, we would like to open up a mine in the middle of the city of Timmins"—as we have now with Goldcorp, where they want to be able to mine the open pit in the centre of the city of Timmins—the city of Timmins has to give consent. So what is so wrong with giving First Nations the same right of consent that we already have?

I don't understand why the Legislature and the government don't understand that, because it is already the practice. And as you know, coming from municipal politics, citizens in a municipality have the right, by way of the Ontario Municipal Act, to decide how things will be developed in their communities, what kinds of developments are acceptable, how those developments

are to go forward, and what the benefits are for them, in the end, by way of other taxation measures they already have under the Municipal Act and under various acts of the Ministry of Finance. So I ask you this question, Frank, and it's a pretty simple one: Why is it that we're not getting it, that everybody else has consent and you don't? What does that mean?

Mr. Frank Beardy: Why is it that we don't have the right to give consent?

Mr. Gilles Bisson: Yes, why won't we give you consent? What do you think we're doing here? You seem to have done a pretty good job for 6,000 or 10,000 years.

Mr. Frank Beardy: Again, there, it's a mindset of a conquering nation that came into our territories. Conquered what? We weren't conquered through war. We have treaties that we call "friendship" treaties that we entered into, and yet the government that came in says that the land is empty and that it is theirs to take. It's a mindset, and it's the mindset that is wrong. That mindset tries to subjugate people. It's active in the way that government relates to us, and, as one of the chiefs said, enough is enough.

We entered into this dialogue to create an environment that would stabilize investment in the region, that would make people comfortable to come to invest their money and projects in our territories. Yet the way the government is going about it, it's not going to stabilize, it's not going to create an environment where investors will want to invest their money; it's going to further invigorate us to take over what is our right to the land. If it means that we have to break those laws that are imposed upon us and if it means that we will go to jail for that, then so be it.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Beardy, I'm sorry, but the time has expired. I want to thank you, your elders and your chiefs for coming out today.

1520

Mr. Frank Beardy: Can I make just one short statement?

The Acting Chair (Mrs. Linda Jeffrey): Sure.

Mr. Frank Beardy: We know that the Premier is focusing on December 2009 to get on the world stage in Copenhagen to announce to the world how he's going to save the world by using our lands. I just want to tell the committee that we are going to be in Copenhagen, and it's going to be up to the government of Ontario and the Premier how we position ourselves at that international conference: whether we support that vision, that dream, or whether we tell the world the true picture of what's happening. Meegwetch.

The Acting Chair (Mrs. Linda Jeffrey): Thank you very much for being here today.

MATAWA FIRST NATIONS

The Acting Chair (Mrs. Linda Jeffrey): Our last delegation of the day is Matawa First Nations. Chief Arthur Moore, you have the floor. You have 15 minutes. I will give you a one-minute warning if you get close, and

then there'll be five minutes afterwards for questions shared amongst all three parties.

Chief Arthur Moore: Thank you.

Interjection.

The Acting Chair (Mrs. Linda Jeffrey): Just a minute. Mr. Bisson.

Mr. Gilles Bisson: Just a quick point of order for committee members to know: The elections, as I understand, have re-elected Stan Beardy as Grand Chief of NAN, for those who don't know.

The Acting Chair (Mrs. Linda Jeffrey): Great. Thank you for that update.

Chief Moore, you have the floor. If you could state your name and your organization. When you begin, you'll have 15 minutes.

Chief Arthur Moore: Thank you. Good afternoon, committee members. Thank you for allowing me to appear today, as well as the NAN delegation. My name is Chief Arthur Moore. I am the chief of Constance Lake First Nation, a community 250 kilometres north of here. I have also been appointed to speak on behalf of the Matawa First Nations Tribal Council, a group of nine First Nations in northern Ontario. These include Aroland First Nation, Constance Lake First Nation, Eabametoong First Nation, Ginoogaming First Nation, Long Lake No. 58 First Nation, Marten Falls First Nation, Neskantaga First Nation, Nibinamik First Nation and Webequie First Nation.

Five of the communities are road accessible and five are remote, fly-in communities in the far north. Our total population is approximately 8,400 people. Our people are employed in a number of areas: some within the resources sector, such as forestry, mineral exploration etc., and others follow a traditional way of life hunting, trapping and living off the land. By way of example, my own community, Constance Lake First Nation, has an agreement with PhosCan for advanced exploration in our traditional territory and we are working on an impact benefits agreement—

The Acting Chair (Mrs. Linda Jeffrey): Chief Moore, can I interrupt you for just one second? Could I ask the people standing at the back of the room, if you're going to have a conversation, to step outside because it's hard to hear the chief? Thank you.

Interjection.

The Acting Chair (Mrs. Linda Jeffrey): Yes. I just want to make sure we can hear you.

Chief Arthur Moore: —if there is to be a future mine.

I will begin with Bill 173, the Mining Act amendments, and follow with comments on the Far North Act, Bill 191.

However, before I begin, I would like to say how disappointed I was that none of these hearings were held in a First Nation or in the far north. To get a real sense of the far north, you have to meet the people and come to the communities. While the four hearing sites are relatively central, they do not give a sense of the far north, and equally central sites could have been found in the far

north. Moreover, it is disrespectful to plan meetings which will affect people's lives away from where people live. Would the Oak Ridges Moraine Protection Act be passed without hearings in the greater Toronto area?

The Mining Act amendments, Bill 173: Matawa First Nations, including chiefs, counsellors and community members, participated in several Mining Amendment Act forums. They were very clear in what kinds of changes they would like to see in the legislation. Two summary reports were sent to Ontario. Regrettably, most of those recommendations were not included in the new Mining Act amendments. This is not a question of consultation but rather, were our people listened to? Consultation is only as good as the accommodation that arises.

The main points of my presentation are based on the Matawa community consultations, which are provided as appendices. These include, but are not limited to:

(1) Notice: The act does not provide any notice prior to staking in First Nation traditional territory. It only happens afterwards. We have always said that there must be consultation in all stages of the mineral exploration cycle, not after the fact. Notice is important for health and safety reasons as well as establishing an early relationship with prospectors and junior mining companies. A training course for prospectors to learn more about First Nations is very helpful but not the same as notification.

(2) Consent: The act provides no written consent of First Nations prior to staking, early exploration, advanced exploration and active mine development. There are proposed processes calling for plans and permits, but that is only with the ministry. These processes are expensive, time-consuming and bureaucratic. While regulations will be drawn up which talk about First Nation consultation, this actually gives more control to the Ministry of Northern Development, Mines and Forestry. It does not provide for First Nation consent. Most First Nations want mineral exploration in their territory; they just want it done in a co-operative manner. "Consent" does not mean veto power, but if First Nations are involved from the beginning with Ontario and the companies, it will mitigate difficulties before they arise.

During our community consultations, First Nations said they wanted consent at all stages of the mineral cycle. Consent is also part of co-management, which is what was envisioned in the treaties—shared resources and responsibilities. The legislation does not adhere to the United Nations Declaration on the Rights of Indigenous Peoples for free, prior and informed consent.

(3) Impact benefit agreements: There is no reference to mandatory IBAs in the legislation. This is totally voluntary on the part of the resource company. The act must include negotiations for mandatory impact benefit agreements with resource companies. This sends a clear statement to both First Nations and industry that this is about partnership and that First Nations are contributing to this process. Mandatory IBAs in the legislation for new mines will spur development in First Nation traditional territory and get First Nation support. It leaves

no uncertainty and tells companies that First Nations have to be part of the process as partners. The proposed act only refers to administrative arrangements which are very ambiguous; you don't know if those arrangements are with governments or companies.

(4) Resource revenue sharing: No reference to resource revenue sharing is found in the legislation. Like the need for IBAs with the companies, there is an equal need for resource revenue sharing with the provincial government. This is part of the government-to-government relationship between First Nations and the province. The province collects many revenues—royalties, taxes, fees, levies etc.—on all components of the mineral cycle. First Nations do not receive any of this, even though they can be the most socially and physically impacted by development. A case in point is the recent diamond royalty at the Victor diamond mine. Moreover, municipalities in a development area can receive certain financial benefits from the province but First Nations cannot. If resource revenue sharing is handled by the province, then it is an incentive for companies to negotiate with First Nations on matters and invest in these areas.

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(5) Capacity building: There is no reference to capacity-building funding to First Nations during the mineral cycle process. For First Nations to take advantage and actually benefit from mineral exploration and any potential mine, capacity building is a necessity. Capacity building helps the First Nations prepare for any mineral development and will assist companies in working with First Nations. If there is no one at the First Nation level who knows what is going on in the mineral cycle, the community will be resistant to any development, and mineral companies will sense that hesitancy. This adds costs and time to any negotiation processes.

Furthermore, capacity building is needed for the broader community in terms of a concerted employment and training strategy. Usually this happens after the fact, and First Nations are not prepared for the jobs, due to the higher skill levels required. Capacity building must start in the early stages of mineral development, preparing First Nations for the skilled jobs required.

(6) Environmental monitoring, and restoration for exploration: There are no environmental benchmarks and commitments in the legislation to restoration of mineral sites to their previous conditions. This requires independent monitoring. While there is a commitment for regulations on activities described in an exploration plan or permit, it is not specific enough and the option for monitors is very discretionary.

The environmental benchmarks must be clear in legislation, to give comfort to First Nations who see all the exploration going on around them with no environmental regulation or monitoring.

While existing environmental assessments can be very expensive and time-consuming, a joint First Nation-provincial assessment process could be more appropriate. However, the environmental commitment must be stronger in the legislation.

(7) Compensation for stock transfer, and successor agreement: There is no reference in the legislation to First Nations agreements when companies sell their interest or stake in the land. As an example, a company which has a good relationship with a First Nation can sell their rights to a claim and make a very good profit. However, First Nations will see none of that, even if they have contributed time, money and trust. Then they have to start all over again with the new company, which might not even hold the same corporate values as the previous company, and that's very significant.

The legislation needs to include a commitment that First Nations agreements must be transferable and compensated.

(8) Tax credits upfront for consultation: No commitment to upfront tax credits for companies to engage in consultation with First Nations in early exploration is found in the legislation. This is when consultation with First Nations is the most important. Junior mining companies do not have a lot of available funds for upfront consultation costs. Although the federal government has the major role in taxation, the province, in legislation, could include upfront tax credits for early exploration. This will make it worthwhile for companies to consult with First Nations.

(9) Socio-economic studies before mining: It is very important that there be socio-economic studies before any mine becomes active. This will help First Nations prepare for the changes which come with development.

When a community goes from 80% unemployment to 80% employment in a very short time, there are issues that need to be addressed. Or, if a community stays at 80% unemployment and there is an operating mine close by, there could be problems as well, such as union rules or qualifications. Yet the legislation does give the minister great discretionary power to override regulations if it is in the socio-economic interests of Ontario, even at the expense of First Nations.

The Acting Chair (Mrs. Linda Jeffrey): Chief Moore, you're approaching the one-minute mark, just so you know, if you want to do some wrap-up.

Chief Arthur Moore: Yes, I have four more pages. If you would allow me, I would appreciate that.

The Acting Chair (Mrs. Linda Jeffrey): Chief Moore, we have not agreed to that, and right now, you have one minute and three seconds to wrap up.

Chief Arthur Moore: Okay. The Far North Act—

The Acting Chair (Mrs. Linda Jeffrey): And we can take a copy of your deputation.

Chief Arthur Moore: Okay.

The Far North Act: When Premier McGuinty announced changes to the Mining Act in July 2008, he announced that a Far North Act would be coming as well, but he also set a goal to protect one half of the boreal forest, 225,000 square kilometres. In neither of these instances did he consult with First Nations. It was a surprise to our communities, and not a welcome one at that, for several reasons.

Ontario Parks: A number of First Nations have had negative experiences, as my colleagues indicated, with

Ontario Parks. Ontario provincial parks, water parks and other protected zones have hindered the development of First Nations, as mineral and hydro development is prohibited in these areas. Hydro development is also banned on northern rivers, which our First Nations feel limits any potential revenue generation to them at a future date.

Most of the northern parks do not have management plans, high public usage or the financial resources to make them viable. We were not consulted when these parks were created. In fact, I presented, on behalf of the Matawa chiefs, at similar hearings against the Ontario parks and protected areas act in 2005.

The Acting Chair (Mrs. Linda Jeffrey): Chief Moore, I'm sorry, your time has expired. I'm going to go—

Chief Arthur Moore: Okay. What we'll do is submit the rest.

The Acting Chair (Mrs. Linda Jeffrey): Yes, absolutely. You can give it to the clerk, or send it to the clerk, and we will make sure all the members get a copy of it. We're going to go to questions now.

Mrs. Carol Mitchell: We have a copy.

The Acting Chair (Mrs. Linda Jeffrey): Oh, we have a copy. Okay. Yes, we do. I got mine moved.

We're going to go to questions, beginning with Mr. Ouellette. You have one minute 30. I'm going to keep us to schedule.

Mr. Jerry J. Ouellette: Thank you, Chair.

The Acting Chair (Mrs. Linda Jeffrey): We've got to catch a plane.

Mr. Jerry J. Ouellette: Thank you very much for your presentation. One of the questions that came forward was the consultation process. The mining industry was concerned that the onus was being downloaded upon them to enter into consultations.

I would hope most of the members know why it was stated by Frank Beardy twice that this was not a consultation, because there are legal implications of the consultation process within the First Nations community.

How do you see that playing out, if it's the mining companies that are doing the consultations? Or should the onus be on the government to be responsible for the consultations?

Chief Arthur Moore: It depends on the relationship with the different companies. Some are socially obligated to communicate with First Nations leadership, and membership as well. In our community, we communicate through general meetings or monthly meetings or special meetings, to discuss specific concerns that we have.

The other thing is that we make sure that the consultation framework is in place. We do communicate with certain ministries, the officials, and companies, to discuss the exploration processes and benefit impact agreements.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Bisson.

Mr. Gilles Bisson: Thank you for that. Actually, you had quite a good presentation, because you were pretty specific about a number of areas that you see as shortfalls in the bill. One struck me, and that was the environmental monitoring—no, hang on. Yes, it was the en-

vironmental monitoring. In it, you're saying there's nothing in the legislation to deal with the issue of cleanup and rehabilitating the site. But the current act actually has that. Under the Mining Act, you have to have a mine closure plan. It sets out, by way of fairly strict guidelines, that once the mine starts up, they have to set aside funds, and when the mine shuts down, there needs to be a cleanup. So was there something beyond that that you're asking for?

Chief Arthur Moore: Yes. I guess we're basing that on experience. For example, in the Pagwa site, there hasn't been any cleanup on PCBs and all that. We've been requesting different ministries to do that and we haven't had any response.

Mr. Gilles Bisson: We should have a chat afterwards, because I think it's on the list to be cleaned up.

Chief Arthur Moore: Okay. So I guess the problem is, there's no dialogue. We need that communication, we need that dialogue with the leadership and the ministry officials or the companies that are involved. That's lacking and that needs to be included.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. Brown.

Mr. Michael A. Brown: Thank you for appearing. One of the things we very much appreciate is the way that you've been very clear in the points as you go forward, because it gives us really something concrete to discuss as the amendments to the legislation perhaps get drafted or at least are considered. You've been very clear

about the issues as they affect your group of First Nations and we appreciate that very much.

Most, if not all, of these can be accommodated as we go forward with the drafting of the regulations, because as you know for the Mining Act, it is more an enabling act than a precise act saying you've got to do this, this and this. The government contemplates an ongoing relationship with First Nations as we go forward in the drafting of regulations. I know my friend across the way is going to say, "Well, it all should be in legislation." But as we also know, legislation is difficult to change, and in a world where changes seem to be the order of the day more than they're not, it gives some flexibility to accommodate the circumstance that may arise. So I just want to assure you from the government side that we hope to engage your First Nation and the First Nations you represent as we go forward with both acts.

For 191—you didn't really speak to 191 very much anyway—it is still first reading. It's unusual for us even to be here talking about that—

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. Brown. You've expired the time. Chief Moore, I want to thank you for being here today and for your deputation. We appreciate it.

This brings to a close our deputations in Chapleau today. We want to thank you for your hospitality. Committee, we will be adjourned and convening tomorrow morning, 9 o'clock, in Timmins. We're adjourned.

The committee adjourned at 1542.

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