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Monday 14 September 2009

**Journal
des débats
(Hansard)**

Lundi 14 septembre 2009

**Standing Committee on
General Government**

Mining Amendment Act, 2009

**Comité permanent des
affaires gouvernementales**

Loi de 2009 modifiant
la Loi sur les mines

Chair: David Oraziotti
Clerk: Trevor Day

Président : David Oraziotti
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
GENERAL GOVERNMENT**

**COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES**

Monday 14 September 2009

Lundi 14 septembre 2009

The committee met at 1414 in room 151.

MINING AMENDMENT ACT, 2009

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

Consideration of Bill 173, An Act to amend the Mining Act / Projet de loi 173, Loi modifiant la Loi sur les mines.

The Chair (Mr. David Oraziotti): Good afternoon, everyone, and welcome to the Standing Committee on General Government to consider clause-by-clause of Bill 173.

The first amendment is proposed by the NDP. Mr. Bisson.

Mr. Gilles Bisson: I move that subsection 1(1) of the Mining Act, as amended by 1(2) of the bill, be amended by adding the following definition:

“‘consultation’ means a process of good faith negotiations by the minister for the purpose of determining whether and how aboriginal interests should be addressed through accommodation.”

The Chair (Mr. David Oraziotti): Any debate?

Mr. Gilles Bisson: I just want to see what they have to say first and we'll take it from there. Any comment?

The Chair (Mr. David Oraziotti): Mr. Brown?

Mr. Michael A. Brown: Usually, I'd like to hear the reason for doing it.

Mr. Gilles Bisson: Well, as you know, during the committee hearings we heard from many First Nations organizations that came before us and talked about the whole issue of duty to accommodate, and I refer you back to the Chappleau hearing in your riding. We had Randy Kapashesit and others who made, I thought, a fairly elaborate point. What I'm trying to capture in this amendment is to make sure we're in keeping with the duty to accommodate and clearly specify in the bill that that's what this is all about, that at the end of the day we're going to respect that there is a duty to accommodate as set out by the Supreme Court of Canada and that it's entrenched within the legislation to make no grey area around it whatsoever.

Mr. Michael A. Brown: Thank you. Well, I appreciate that. I appreciate the fact that you're trying to clarify the definition of “consultation”; that's essentially what you're trying to do here, I think.

The difficulty is doing that in a way that reflects case law and how the standard is evolving. I don't think either one of us or anybody on this committee would want to presume where that's going to end up at the end of the day, and by inserting what I would consider to be a rather arbitrary definition, I would think that we may do exactly the opposite of what we heard.

The government is most happy to watch the evolution or to participate, actually, in the evolution of the definition of the duty to consult. We think we've moved a long way by putting it in the purpose clause in the beginning here. Therefore, we would like to leave it the way it is. I think the member can appreciate the development of the case law which is occurring across Canadian jurisdictions, not just in this one.

The Chair (Mr. David Oraziotti): Further debate?

Mr. Randy Hillier: I'll have to add that we've seen for quite a period of time now conflicts with mining and also confusion as to just what “consultation” means and what is expected out of consultations. I think the third party's amendment to put forth that concept of good faith doesn't denigrate case law; it doesn't denigrate or diminish law. It's establishing what this legislative committee believes and clarifies what this legislative committee believes the intent of the law is.

Practising negotiations in good faith is a noble and honourable expectation. I think that's what we all expect here in this committee when we say there is a process of consultation and a duty to consult. To be in good faith should be the minimum that we're expecting. To put it into words in the legislation clearly identifies to the people who come years and decades after us what we here today expected. I'm in support of the NDP motion to amend.

The Chair (Mr. David Oraziotti): Thank you, Mr. Hillier. Further debate, comment?

Mr. Gilles Bisson: Well, Chair, clearly the courts have spoken on the issue that there needs to be, first of all, a duty to consult and accommodate; that's what the precedent says. What we're trying to clarify here is that it's one thing to go out and consult First Nations—in fact, successive governments have gone out and done that. Your government has; the Conservative and the New Democratic governments have gone out and consulted before. Where the rubber meets the road is on the issue of accommodation. What we're trying to do is to clarify that in fact it's not just, “Hi, how are you doing? I thought I'd

come and talk to you,” but it’s also, “Hi, how are you doing? How can I help, and what can we do to make sure we respect that we have not only a duty to consult, but also to try to accommodate First Nations when it comes to the economic activities that will come from mining?”

Again, I just want to say right up front in these hearings that 99% of First Nations want development in their communities, for the same reasons you and I want it in our communities. The problem is that the way the laws are written today, there’s very little in the way of benefit for them. What we’re trying to do here is to set in legislation, as Mr. Hillier said, clearly what this committee was thinking of when we drafted this bill, so that in the end it’s not just that we’re going to go out and talk to people, but that we are going to accommodate them when it comes to whatever comes out of the mining project that’s coming their way.

1420

The Chair (Mr. David Oraziotti): Any further debate? Mr. Hillier.

Mr. Randy Hillier: I’ll just add to that. The committee travelled to listen and have consultation with stakeholder groups, with people. We didn’t go there with a tin ear; we went there to actually listen and have good faith to articulate those justified concerns into amendments to the legislation. I think that’s really what we’re getting at here, demonstrating what we actually expect people in the future to do with this piece of legislation, and that’s to act in good faith.

Adding clarity to legislation is never a bad thing. Clearly identifying expectations is not a bad thing. The more we can diminish the role of interpretations down the road, the less conflict there will be down the road.

The Chair (Mr. David Oraziotti): Any further debate? Mr. Brown.

Mr. Michael A. Brown: The government isn’t disagreeing that we need to have all these consultations and that we have to move not only with the letter of the law but with the spirit of the law as it unfolds. We think this doesn’t add anything to it, and we do think that it may in fact detract from the ability of us, as the province of Ontario and the government, to react in a way that is in the interests of First Nations and all Ontarians. I don’t understand your reading being any different than what we already have, and in fact may restrict it, so I can’t support that.

The Chair (Mr. David Oraziotti): Further debate? Mr. Hillier.

Mr. Randy Hillier: You said, “This may restrict.” I’d like to know how. How would including “means a process of good faith negotiations”—when you make a statement, you have to be able to justify it and give some evidence as to why this would indeed possibly restrict the government and restrict the First Nations. How?

Mr. Michael A. Brown: First, the government needs to act in good faith in any event. That’s a given.

Mr. Randy Hillier: Well, that’s an expectation.

Mr. Michael A. Brown: The second thing, if you read the amendment, it that says “whether” there will be an

accommodation. Who knows how this will evolve as we go through time? Maybe that won’t be a question as we get further along. I think we’ve got it right, and that raising this issue and putting it in the purpose clause—that we are going to deal with issues with our First Nations and aboriginal communities—is important, and we have included that intentionally in the purpose clause. You will not find, I don’t believe, in any mining legislation in the world, that this clause exists, where we definitively as a government talk about the aboriginal interests. I think we’ve moved a long way and I think we’ve done it in correct form.

Mr. Randy Hillier: I still didn’t hear why or how that is going to restrict. You’ve got some suppositions but you have not identified at all how—it sounds more like a red herring: “means a process of good faith negotiations ... for the purpose of determining whether and how aboriginal interests should be addressed through accommodation.” That’s a pretty reasonable statement. I think it gives clear indication to the courts, clear indication to the stakeholders, clear indication to the public and to the mining interest and clear indication to everybody what it is that this Legislature expects from a new, up-to-date, reformed Mining Act that is going to allow for prosperity in the north and in this country.

I’ve heard some excuses, but I haven’t heard any reasons yet.

Mr. Gilles Bisson: I think Mr. Hillier hit the nail on the head. I fail to see how this would limit or make worse the condition as set out in the current drafted bill.

Just to make it clear: You have a purpose clause and a definition clause in every bill. I grant you that in the purpose clause you have language that deals, to a certain extent, with the issue of what the rights of First Nations are. But we need to have a definition of what “consultation” means. You know as well as I do that we’ve had all kinds of situations in mining projects across the north where governments have gone in and said, “We’re going in and we’re talking to people,” and the First Nation itself says, “Well, sorry, if you call that consultation, you’ve got something else coming.”

What we’re trying to do is clearly put in the bill that the government has a responsibility to go out and consult and give a definition of what “consultation” means, which means that in the end you’re not just going to talk to somebody, but that you’re going to try to find some way to accommodate the need.

Clearly that happens in almost every other situation in mining. If they go into your riding or into my riding, in a non-aboriginal community, and there’s going to be a mining project, you can bet your bottom dollar that the city of Timmins is going to benefit, or in your case the town of Espanola or Elliot Lake. But that’s not the case when it comes to First Nations. We want to clearly say what the definition of “consultation” should be so that there’s no ambiguity about it.

The Chair (Mr. David Oraziotti): Okay. Any further debate? Seeing none, all in favour—

Mr. Gilles Bisson: Recorded vote.

The Chair (Mr. David Oraziotti): Recorded vote—

Mr. Randy Hillier: Excuse me. I'd like to call for a 20-minute recess before the vote.

Mr. Gilles Bisson: Sure.

The Chair (Mr. David Oraziotti): The committee is in recess for 20 minutes.

The committee recessed from 1427 to 1447.

The Chair (Mr. David Oraziotti): The committee's in session. A recorded vote has been called for.

Ayes

Bisson, Hillier.

Nays

Brown, Brownell, Kular, Mauro, Mitchell.

The Chair (Mr. David Oraziotti): That motion's lost.

Second motion, an NDP motion: Mr. Bisson.

Mr. Gilles Bisson: I move that the definition of "map staking" in subsection 1(1) of the Mining Act, as set out in subsection 1(5) of the bill, be struck out.

The rationale behind that is fairly simple. I think you've heard from numerous people in the exploration business in our hearings that—first, we understand why the government wants to introduce map staking. They see this as a way of being able to get away from the issue of how you give people the ability to stake a claim without any kind of destruction on the ground, and at the same time removing the difficulty of how you deal with that when it comes to notification of First Nations. The problem is that by moving to map staking, we're throwing away the baby with the bathwater.

If we have map staking, two things are going to happen. First of all, we're going to allow mining interests to—rather than do geological work on the ground in order to keep the claim current, we're going to allow payment in lieu. If you allow payment in lieu, it's going to mean that there's going to be no need to do any kind of geological work or geophysical work on that claim, which means to say that First Nations and others are going to be deprived of that work because that's typically work that's done on the ground by people who live there, and who see that as not only a way of life but, quite frankly, their living. But the other thing is, it's going to really take away from the geological database that we've managed to build here in Ontario for years. One of the things that happens is that if I stake a claim, I have to, by law, do at least I think \$400 of work on that claim every year, which means to say that physically I have to get out there to do something. So it forces you to go out and do something to see what's on that ground and to add that information to the geological database that we have in Ontario, which is second to none.

If we move to map staking, if we go down that route, we're going to do two things. One is, you're going to allow people to not do any physical work on the claim to

keep it and just do a payment in lieu, which means you're going to have less geological work done. And number two is, you're really going to give the larger operators the ability to control more of the ground. I think that, in the end, is a wrong thing to do, because when you really look at the history of mining, the big mines across the north have been found by whom? They've been found by individual prospectors. Who developed them is a whole other question: It's the De Beers, the Placer Domes, the Norandas, the Falconbridges and the Incos. They're the ones that have gone out and developed the mines and brought them into production. But they were found by people like Mr. Larche, Mr. McKinnon, and a whole bunch of other prospectors like Benny Hollinger and Mr. Jamieson, who were people who were on the ground doing that kind of work. I think if you move to map staking, you're going to be eliminating a lot of those individual prospectors who, at the end, I think, have been the backbone to this industry.

So clearly we've heard from people in the industry. If you're the mining company, you like this, because it gives you an ability to hold more land and not have to do a heck of a lot of work to keep it. But if you're a prospector, I think this is bad news and I would ask the government to reconsider.

1450

The Chair (Mr. David Oraziotti): Further debate? Mr. Brown.

Mr. Michael A. Brown: You describe it exactly right: The purpose of your amendment is to eliminate map staking. It has nothing to do with an ongoing claim. You can stake a claim and then the work must continue as you described, but it has nothing to do with the staking. So you're mixing the two issues.

The major mining jurisdictions in Canada already have map staking: British Columbia, Quebec and Newfoundland use map staking. This brings Ontario into the 21st century and permits the independent prospector to do everything that a large major could do. This is supported by the Ontario Mining Association, it's supported by private landowners who may not want a prospector to be on their property, and it's supported by many First Nations who do not want prospectors on their traditional lands. It is supported by a great number of people. It only makes sense, and I urge the member not to confuse the regime of the Mining Act to keep mining claims current. That is totally a separate, independent issue.

So we're talking about map staking, which just means you can use coordinates on the map rather than to place the lines and that sort of thing, which can still be done. But anyway, I just do not think that the member wants to take us back to the 18th century; I think he wants to move us into the 21st. That's what we're going to do.

The Chair (Mr. David Oraziotti): Further comment? Mr. Bisson.

Mr. Gilles Bisson: First of all, I hear what you're saying, that the payment in lieu is a separate issue, and I have an amendment that speaks to that. I respect what you're saying, but I'm laying it out that the problem with

map staking is that it's going to be a lot easier for a larger company to gobble up more of the staking ground. You could end up in a situation where somebody sitting in an office somewhere in Rio de Janeiro, or wherever it might be, decides that they're going to stake a number of claims on map, knowing that in the end, the act also contemplates payment in lieu, which means to say that there's an incentive to stake and hold a whole bunch of ground, because it wouldn't be very expensive to do for one of the larger companies. So from the perspective of what I think is healthy in the mining industry—the word is competition—I think it's far better to have more people on the ground doing physical work by getting access to the ground to see what's there, so that in the end we're able to get the kind of interest that we've seen in this province.

To your point that you think I'm trying to bring us back to the 17th or the 18th century, as much as I'm a reader of history—and you probably saw the latest books on my shelf, because they're about that time—it's not that at all. Ontario's done quite well. We're the prime mining area in Canada. Ontario has far more mining than anybody else, not only because of the geology of the province of Ontario, but because of, quite frankly, the industry that has managed to blossom here as a result of the current Mining Act. And I think the current Mining Act had it right when it said that there is a need for people to physically stake a claim.

The issue becomes—and this is where I'm prepared to meet the government partway—how do you do this in a way that doesn't interfere with a private landowner, as is the case with people who have come from your area, Mr. Hillier, and how do you make sure that First Nations don't find out by way of the helicopter flying overhead that ground has been staked on a particular reserve? We can deal with that—and I have successive amendments that deal with that—so that we're clear about what can happen when you stake a claim, so that we don't disrupt the private property owner and we give First Nations comfort. I do believe, however, moving to map staking, at the end of the day, is not going to be a good thing for the mining industry here in Ontario.

The Chair (Mr. David Oraziotti): Mr. Hillier, go ahead.

Mr. Randy Hillier: Yes, I have to add a few comments on this, because I think our position is very close to Gilles's. Where the dangers—and we heard it very clearly from the prospectors: the Porcupine prospectors, the Boreal forest prospectors. There were a number of them during those committees hearings. The root of their concern was this payment in lieu of assessment, in conjunction with map staking. I think that's where the big concern was. If we have that payment in lieu of actual work, this map staking will not work in the north. It will be such a regulatory incentive for the larger exploration firms, and such a disincentive for the smaller prospectors—we are going to see a significant reduction in actual exploration work done if that payment in lieu is continued on.

I've looked through, and maybe I've missed it in one of the government motions, but I have not seen a government motion to eliminate or remove or repeal that payment in lieu.

So, if payment in lieu remains in this bill, then there's no way we can accept map staking as well. Like I said, we all heard that so clearly through these committees. Again, we went there in good faith. We went there to listen to legitimate and justifiable concerns. There is map staking in other parts of the country, but to have both those components—payment in lieu and map staking—we're moving into some territory that is new. We're moving into some territory which is going to be exceptionally harmful for the real backbone of our mining in this province: the smaller prospectors.

Somebody from the government side, did I miss that motion in here, that payment in lieu is being offered up to be struck out of the bill?

The Chair (Mr. David Oraziotti): Mr. Brown, go ahead and respond.

Mr. Michael A. Brown: I want to assure the members that we understand very, very clearly that prospecting in the province of Ontario is the heart of the mineral industry—if you can't find it, you can't develop it—and that independent prospectors do a fabulous job for us, very economically, competing with each other to stake claims and bring them, hopefully, to fruition, to sell them to a junior and then on and on.

What I'm hearing, I guess, from the members—I'm not sure I'm hearing it—am I hearing that you're in favour of map staking?

Mr. Gilles Bisson: No.

Mr. Michael A. Brown: No, Mr. Bisson isn't. Mr. Hillier may be, if we can deal with the payment-in-lieu issue as we go through.

I think it is incumbent upon the government, and the government's intention is to phase in map staking across the province to make sure that majors don't tie up all the land or create undue competitive advantage versus the independent prospector. We understand that this isn't going to be an overnight thing and that we're going to work very hard to get it right.

But the second part of that is, we understand that map staking is the 21st century, and for a whole lot of reasons we need to do that to address some of the issues that Mr. Bisson pointed out. We need to do that to avoid conflicts on traditional aboriginal land—not reserves, but you can't be prospecting on-reserve anyway. Also, the private landowner does not want to wake up some morning and find Mike Brown tromping around, blazing a line.

I think those two issues are important. In the world of the 21st century, map staking is totally necessary for us to be a competitive force in mining.

The Chair (Mr. David Oraziotti): Mr. Bisson.

Mr. Gilles Bisson: Just for the record I want to say to the member, the parliamentary assistant, you're saying that prospectors support this. Quite to the contrary, in presentation after presentation that we got at this committee, in the various places that we went, prospectors

came before this committee and were very adamant that they're not in support of prospector—I think of the last hearing date we had in Timmins, when Dave Munier was there. We had Robert Calhoun. I'm just trying to think of some of the people who came to committee. They're very clear about this issue. They see the move to map staking as a shift, moving the balance of the ability to stake claims from the individual prospector to larger mining companies.

The lessening of the competition that exists by prospectors getting on the ground, I think, is not going to be good for Ontario when it comes to the ability to find new mines. I look at De Beers as a good example. That particular project is one that was found by an individual geologist who was doing some work. Yes, De Beers were the ones who clearly spent all the money to bring that project from, "Hmm, maybe there's something there," to "Yes, we've got a diamond mine." But it was the ability of the individual to go out on the ground that made the initial finding that led to everything else that happened after.

1500

So I think what you really want to be able to do in an area like northern Ontario, because the geology is so interesting here, is that you have to provide that incentive for the individual to get into the bush to do the work that needs to be done, so that they can find the anomalies that lead eventually to a find such as we saw at Hemlo and in a whole bunch of other properties out there.

The Chair (Mr. David Oraziotti): Mr. Hillier, go ahead.

Mr. Randy Hillier: I just have to add: You mentioned that it is the government's intent not to allow land to be tied up by the majors. If that's so, then why isn't it incorporated in the legislation? Why are we not seeing a government amendment to strike down the payment in lieu? A whole framework is being set up that will allow exploration and claims to be skewed to one segment of the marketplace: the majors.

I also have to say—I don't know if you were at a different committee hearing—I did not hear any land-owners around the province supporting map staking as well. I heard lots of discussion, but they were not in support of map staking from what I heard. The prospectors are clearly very concerned, and justifiably so. We are setting up conditions where a few companies can lay claim to vast tracts of this province and then not actually employ people to build up that geological database but just hold it in reserve for their own purposes.

If the government intent is not to allow lands to be tied up, as you said, I would say to you: What amendment have you put forth that would indeed substantiate your claim? What amendment are you putting in here that is going to prevent a few from owning claims on vast tracts of land? I have not seen any of your amendments. Intent is one thing, but we all know where that road goes if it's not clearly spelled out in the Legislature what the expectations are, and I have not seen it.

My own view is that if there weren't the payment-in-lieu portion in this bill, map staking on its own would

allow for greater productivity as long as we keep the component that the work on the ground has to be done; otherwise, it's just a tax. This payment in lieu will become a tax and a part of the cost of doing business to restrict business. I don't see how you can see it any other way.

The Chair (Mr. David Oraziotti): Further comment? Seeing none—

Mr. Gilles Bisson: He was just about to speak. I wanted to add to that, but if you were going to say something—

The Chair (Mr. David Oraziotti): Mr. Brown, go ahead.

Mr. Michael A. Brown: If we throw map staking out and say, "We don't want to do that; we want to go back to the 19th century," you can still, with a payment in lieu, tie up huge tracts of land. Maybe some of you aren't familiar with the great rushes of prospecting to stake land when there's a rumour or a find or potential find or all those interesting kinds of things you find in the mining community. The prospecting goes wild, the claims get staked and there's lots of activity around.

In truth, I don't really see what the difference would be. You know what map staking is: It doesn't mean that nobody's on the ground; it means that you're not going to blaze lines and put in posts. That's what it means. Instead of doing that, you use your GPS and do it on a computer; that is the only difference. People will not stake land if they aren't going to bring it, or at least have the potential to bring it—if somebody could help me with the exact word. You have to do, and will still have to do, the work that's prescribed in the Mining Act to keep that claim in force.

Mr. Randy Hillier: No, you won't.

Mr. Michael A. Brown: Yes, you will; otherwise, it will be gone. We can deal with the other issue when we get to it, but at the moment, we're talking about, "Do you believe that you can do this on a map, or do you actually have to go out and place the lines in the ground?" That's the difference.

The Chair (Mr. David Oraziotti): Mr. Bisson, and then Mr. Hillier.

Mr. Gilles Bisson: So what you're saying is that if we go to map staking, somehow or other—I didn't quite follow your argument—that was going to lead to more activity, and I'm arguing that it's completely the contrary.

If you look at the major staking rushes we've had in northern Ontario—Texasgulf, Hemlo, whatever they've been—what has happened is that an individual has basically gone in and staked a claim on the basis of some sense that there may be something there. Physically, they're not able to stake all the ground in the area, because that would be a huge undertaking. So it allows other people to come in and do some staking themselves in order to augment the overall amount of work being done to actually find the mine.

In the case of Kidd Creek or Hemlo, it wasn't one company that staked all the ground; it was numerous

people, including companies, that staked. If you go to map staking, this is what would happen. If it's a Hemlo, what would end up happening is that presumably you would hire somebody like a John Larche or a Don McKinnon to go out and not even stake the ground but do some geological work, and then the company would sit back somewhere and say, "Okay, here's a map and I'm going to take all these unregistered claims. I'm taking them all, and I'm prepared to pay the fee to register them, and I'm prepared to pay the \$400 in lieu for the next five or 10 years." You'd figure out the math on that and say you're able to do it. But the point is, they'd be able to lock up all of that ground. What I argue is that that's the wrong thing, because what it does is prevent other people from going into the ground and adding to the geological work that's done when you prospect and eventually do exploration, because the sum total is what really builds the database.

What happened in the case of Hemlo is that you had John Larche and McKinnon go in, but you had other people who went in there who had previous claims and other people who staked claims, and as a result, the overall added to the sum. It was the same thing at Kidd Creek. I understand there are some claims that are already staked and we're not going to affect those, but what you could end up with is somebody sitting back in an office tower in Timmins or Thunder Bay or Toronto or Rio de Janeiro who is going to say, "Here is all the unstaked ground in this particular area. I'm going to stake it all on a map," without ever physically sending somebody out there to do the actual staking, which means it's going to lead to less activity on the ground in the long run.

The worst part is, it's going to give the larger corporation more say to freeze up land and not do the geological work in the future that needs to be done to add to the Ontario geological database. Why would we do that? Competition is good. I believe that what has driven the mining industry to successes here in Ontario over the last 100 and some odd years is that we have a very competitive entrepreneurial spirit within the prospecting community that has allowed us to identify much in the way of mineral potential in this province and to bring those mines into production later with mining companies. Why would we want to get rid of that?

The Chair (Mr. David Oraziotti): Mr. Hillier, do you have a comment?

Mr. Randy Hillier: Once again, is the government prepared to bring forth a motion afterward to strike out this payment in lieu? That is where the real crux comes into it.

Mr. Gilles Bisson: That's only part of it.

Mr. Randy Hillier: What you're doing is opening up the floodgates all at once. You're not putting any checks and balances in there at all. You're going with map staking and payment in lieu. That is just going to kill competition and put a lopsided environment in mining in this province, and that's why prospectors are so concerned about it. I think it's incumbent on the government

side to address that and make sure that this bill should be—one of the purposes of this amendment is to minimize conflicts and, if we look at the first part of the bill, to encourage mining. These things that you're doing are not achieving that. They're diametrically opposed to the purpose that you've already stated. We need to get this right. We know that this bill, once it is amended—I think the last time it was amended was 1990, once every generation—

Mr. Michael A. Brown: I was here then.

Mr. Randy Hillier: Well, maybe some people have overstayed their time. I don't know.

Laughter.

Mr. Gilles Bisson: Hang on, be careful.

Mr. Randy Hillier: I was just being a little facetious.

We know that it's a lengthy period of time for major reforms to the Mining Act. We really need to ensure that—I'll just put it this way: If we don't get it right, if we still have the conflicts, if we lose out our prosperity on mining, what have we achieved? We know that any government, whoever comes down, will say, "Listen, the mining bill's been reformed. We're not going to open it up again." We need to get this thing right. If we're not going to take out that payment in lieu then I'll have to support the third party's motion, here. The two of those are a double-barrelled killer to our prospectors and to mining in this province.

The Chair (Mr. David Oraziotti): Seeing any further debate? None? Go ahead, Mr. Bisson.

Mr. Gilles Bisson: I don't want to hold this thing up. It's pretty clear that the government's going to vote against this, but I just, for the record, really want the government to think about this. What we've had in Ontario is the most successful mining industry in Canada. One of the reasons that we've been so successful—yes, the geology obviously has a lot to do with it, but so do Quebec and British Columbia have interesting geology, when it comes to mining. But Ontario has benefited because we've managed to attract the best of the best here in this province in large numbers, which has led to the type of activity that we've had that has led to the finding of mines such as the Victor diamond pipe, the Hemlo gold mine, the Red Lakes and others across Ontario. I just think us turning our backs on what has served Ontario well at the end of the day is a disservice to this province. I would ask the government to consider this and I would ask for a 20-minute recess.

The Chair (Mr. David Oraziotti): Further debate? All those in favour—

Mr. Gilles Bisson: Oh, I asked for a 20-minute recess.

The Chair (Mr. David Oraziotti): Is there any further debate? No? Now it's time to put the question. All those in favour of the—

Mr. Randy Hillier: I'll call for a recess.

The Chair (Mr. David Oraziotti): Mr. Bisson called for it. You have up to 20 minutes, Mr. Bisson. Would you like the full 20 minutes?

Mr. Gilles Bisson: Yes, I'm calling for a recess. I thought I was doing that—

The Chair (Mr. David Oraziotti): Yes, I'm asking you, would you like the full 20 minutes?

Mr. Gilles Bisson: Yes, the full 20 minutes please, so the government can go back and reconsider this.

The Chair (Mr. David Oraziotti): Okay. Thank you. *The committee recessed from 1513 to 1533.*

The Chair (Mr. David Oraziotti): A recorded vote has been called for.

Ayes

Bailey, Bisson, Hillier.

Nays

Brown, Brownell, Kular, Mitchell.

The Chair (Mr. David Oraziotti): The motion is lost. Any debate on section 1?

Mr. Gilles Bisson: Again, in regard to the definitions, I think it's clear we're missing an opportunity to create clarity about what it is that we want to do with this bill. I think there are a couple of things that are foremost. The first part is the issue of duty to consult and accommodate. I think we've got to clarify in the definitions what consultation is and what it leads to, which is accommodation of what those economic interests might be.

The other thing, with the map staking, I've made the point. I just think it's unfortunate that the government didn't support either one of those. I will vote against this particular section.

The Chair (Mr. David Oraziotti): Further debate on section 1?

Mr. Michael A. Brown: I move section 1.

The Chair (Mr. David Oraziotti): All those in favour of section 1? Opposed? Section 1 is carried. Thank you.

Section 2, NDP motion 3.

Mr. Gilles Bisson: I move that section 2 of the Mining Act, as set out in section 2 of the bill, be struck out and the following substituted:

“Purpose

“2.(1) The purpose of this act is to encourage prospecting, staking and exploration for the development of mineral resources, in a manner consistent with the recognition and affirmation of existing aboriginal and treaty rights in section 35 of the Constitution Act, 1982, including the duty to consult and accommodate, and to minimize the impact of these activities on public health and safety and the environment.

“Aboriginal consultation

“(2) In order to fulfill the purposes of this act, the government of Ontario shall provide such financial assistance as is necessary in order to enable aboriginal groups to participate fully in any consultations conducted under this act.”

So just a quick explanation—sorry.

The Chair (Mr. David Oraziotti): Sorry, Mr. Bisson. Once you've read the motion, because it does involve the expenditure of dollars—standing order 57 states the

following, and the motion is being ruled out of order; I'll read it:

“Any bill, resolution, motion or address, the passage of which would impose a tax or specifically direct the allocation of public funds, shall not be passed by the House unless recommended by a message from the Lieutenant Governor”—

Mr. Gilles Bisson: Okay. Then, Mr. Chair, I would just—I think it's unfortunate—strike out (2) and leave in the purpose clause, 2. That keeps it in order.

The Chair (Mr. David Oraziotti): Do you want to amend your amendment?

Mr. Gilles Bisson: Yes, and I'll speak to it after. The amended motion would only read:

“I move that section 2 of the Mining Act, as set out in section 2 of the bill, be struck out and the following substituted:

“Purpose

“2.(1) The purpose of this act is to encourage prospecting, staking and exploration for the development of mineral resources, in a manner consistent with the recognition and affirmation of existing aboriginal and treaty rights in section 35 of the Constitution Act, 1982, including the duty to consult and accommodate, and to minimize the impact of these activities on public health and safety and the environment.”

The Chair (Mr. David Oraziotti): Okay. Further debate, Mr. Bisson?

Mr. Gilles Bisson: Just to the aboriginal consultation: I obviously was trying to get that in there somewhere and I thought we might run across this problem. Many of the First Nations that came before us said that part of the difficulty for them is that there is a lack of capacity in many communities to deal with mining, what it means, what we should negotiate, what it involves, because there isn't the expertise in mining in many of these communities. So they had asked to have an amendment to the bill that deals with making sure the crown provides some dollars for First Nations to deal with having the expertise in those communities, to develop their own expertise, so they can properly negotiate.

1540

I'm not happy, but I respect the Chair's ruling that that is out of order, so I will not speak to that particular first amendment.

Now we'll deal with the amendment to the amendment, and that is the duty to consult and accommodate. If you notice, Mr. Brown, basically what I've done is taken what is in your purpose clause and added at the end of the sentence, “the duty to consult,” the words “and accommodate.” I think it's fairly clear what I'm trying to do here. We see the crown's responsibility as not only (1) to consult but also (2) to accommodate. There is an omission in the act as written that doesn't provide for accommodation, so we're asking for that to be put in.

The Chair (Mr. David Oraziotti): Any further debate? Mr. Brown.

Mr. Michael A. Brown: We agree. The difference here is that you've added “to accommodate” into the

clause. Accommodation, where appropriate, has been recognized by the courts as included in the concept of “duty to consult.” The language proposed by the government is consistent with other legislation. Process and requirements will be spelled out in regulations.

With respect to funding, the government has re-affirmed its commitment to resource benefits sharing with aboriginal communities by setting aside \$30 million for this initiative.

The Ontario government and aboriginal communities will continue to discuss what a comprehensive resource benefits sharing system should look like. The 2009 Ontario budget announced \$40 million over three years for the Mining Act initiative.

I know that isn’t directly what your amendment speaks to, but it should help to put some context around it.

The Chair (Mr. David Oraziotti): Mr. Bisson?

Mr. Gilles Bisson: I’ll let him go first.

The Chair (Mr. David Oraziotti): All right. We’ll come back to you, then. Mr. Hillier, go ahead.

Mr. Randy Hillier: Thank you very much. I can see why the third party put forth that subsection (2), which is now out. But it does speak to the government side mentioning the resource sharing benefit and the millions of dollars that are included with it but it does not make up part of this act; it’s allocated in the budget. It has to be spoken to, I think, just to add some context and some clarity here.

The official opposition also has a motion with the same clause. My concern here is that we are singling out one community for additional—or reinforcing one community’s place in the duty to consult and accommodate. We heard it throughout the north. We heard municipalities complaining that they do not have a voice or their will and their concerns are not addressed by this bill. We heard from First Nations that they are not satisfied with this bill. We heard it from private landowners and we heard it from prospectors. Everybody has not been addressed. I would say very few people have been addressed with this bill.

Although I have all the regard for our First Nations and aboriginal communities, there are more people in this province as well who need to be included in the discussion and the duty to consult and accommodate. We heard that throughout those committee hearings. That’s why the official opposition’s amendment is slightly different, that we all have constitutional protection and we all have expectations of fair and just consultation.

This bill doesn’t cut it. It excludes many others. It puts one community in a higher regard than others. That’s why our motion from the opposition side—that’s 4.1—looks for making some changes here as well.

Resource funding—because the government side has brought it up—that should be included in this bill: a mechanism by which resource revenues are shared with our community partners, our municipalities, our First Nations.

Once again, the purpose of this bill has been clearly identified to minimize or reduce or mitigate conflicts be-

tween mining and private landowners and communities. It’s not doing it. I would really like the government to reflect on those things: that we need to broaden this out, that everybody in this province needs to be consulted and treated fairly.

I understand the third party’s idea on this, to add some clarity with regard to aboriginal First Nations communities. Those are included in the Constitution. I’d like you to consider broadening it out for everybody else, all our municipalities; that there is a mechanism within this bill so that municipalities have a say in what goes on in their communities.

The Chair (Mr. David Oraziotti): Further comment?

Mr. Gilles Bisson: I heard the explanation of the parliamentary assistant, and I’m greatly disappointed. What’s clear is that we’ve had some good stories out there, good examples of what can happen. In the case of Attawapiskat—but even that was difficult. It took the better part of eight years to negotiate an IBA, it took the better part of eight years to get the community to comprehend what this mining project was all about, and they’ve had to do that all on their own.

That’s really the crux of the problem: that the province, both under this government and previous governments, has not done a heck of a lot to work with First Nations in order to properly safeguard their interests and, number two, provide them with the mechanisms to be able to go out and negotiate meaningful impact benefit agreements that would lead to some economic prosperity for their band members.

What I’m attempting to do in this particular amendment is to make sure that we’re clear and consistent with the Constitution under section 35, which says that it’s not only a duty to consult but it’s also a duty to accommodate. What you have inside your amendment—the bill as written—is only part of what the Constitution calls for under section 35, and that’s the duty to consult. You don’t have the word “accommodate.”

My argument is a pretty simple one. It’s one thing to consult; it’s quite another thing to be able to accommodate. You could, under this legislation, as you’re doing, propose that the government shall consult, but where does that lead if there’s no requirement in the bill that you have to accommodate at the end?

The Chair (Mr. David Oraziotti): Mr. Brown, go ahead.

Mr. Michael A. Brown: I’ll try it again. For better or worse, I’m not a lawyer, but I am told that accommodation, where appropriate, has been recognized by the courts as included in the concept of “duty to consult.” It is already there.

To my friend from the Conservative Party, I just should point out that the clause here talks about the “affirmation of existing aboriginal and treaty rights in section 35 of the Constitution Act, 1982, including the duty to consult, and to minimize the impact of these activities on public health and safety and the environment.” So that clearly is a broader perspective in the last half of that. I’m going to speak to that more in a government motion later.

I think your amendment, to be fair, Mr. Bisson, doesn't help because of the way the courts see these issues and we should leave it where it is.

1550

The Chair (Mr. David Oraziotti): Further debate? Mr. Bisson.

Mr. Gilles Bisson: I fail to see how it doesn't help, because what the amendment says is not only will the crown have a duty to consult the First Nations, it will also have a duty to accommodate. What I'm trying to do in the legislation is clearly spell out that there is a requirement to accommodate as well as consult. Your amendment basically says that you shall consult. It will be left, then, to the courts to decide if accommodation even plays into this, because that's the only redress that the First Nations will have. Where does that leave us? It's going to lead us to more confrontation when it comes to mining in places like KI and others. It's going to provide less clarity for the mining sector to do the investment.

I think if everybody knows what the rules are going in and the crown clearly takes its responsibility, at the end of the day we're much further ahead than leaving the system as is, and that's basically what you're doing. All you're doing under your section 2 is recognizing, in part, what the courts have ruled on when it came to the issue of the duty to consult, and you're cherry-picking the part that you want and leaving out the part that you don't.

I ask again, will you reconsider and allow the duty to accommodate to stand with the duty to consult?

Mr. Michael A. Brown: We believe it already exists.

Mr. Gilles Bisson: Well, it's not my turn, so—

The Chair (Mr. David Oraziotti): We're out of time. Mr. Hillier, go ahead.

Mr. Randy Hillier: We have a Constitution, and it clearly defines jurisdictions. Provincial legislation can't contravene what's in the Constitution. If we try to do that, it won't be long before the courts strike down that legislation. We've seen that in the past.

What I'm getting at here is—we've got some nice-sounding words in the government bill. We've got the "duty to consult," and we've got all the nice pacifying words.

I'll just reiterate what the Attawapiskat nation said in the committee with regard to Bill 173: Bill 173 is a flawed, insulting regulatory mess. That's what they called it. Those are the words from Attawapiskat.

We're talking about the purpose here. We can see what's missing, and I've talked about it earlier. This bill's purpose is to minimize and eliminate conflicts. It's not getting there. It's not anywhere near it. As far as the third parties, they're trying to clearly spell out that accommodation, because that was also identified as a huge problem on the financial side of being able to engage in this regulatory mess that has been created and that is getting worse with Bill 173. So it's unfortunate that that secondary part is off the table, but it's something I would like the government side to very much consider—how to fix the problems in mining, not exacerbate them.

The Chair (Mr. David Oraziotti): Mr. Bisson?

Mr. Gilles Bisson: The parliamentary assistant says that he believes the duty to accommodate already exists. Well, if you believe that it already exists, put it in the legislation. Why not? If your argument to me—and I'll take it at face value—is that the duties to consult and to accommodate already exist as is, and you've already put into the bill the duty to consult, why not go to the duty to accommodate, as well? If you're saying it already exists, make it clear.

The Chair (Mr. David Oraziotti): Further debate?

Mr. Gilles Bisson: Put me back on. I'm waiting for a response.

Mr. Michael A. Brown: I'll repeat myself for the fourth time, I think. Accommodation where appropriate has been recognized by the courts as included in "duty to consult."

Mr. Gilles Bisson: This is interesting. The plot thickens, as they say in the movies. Now you're saying—

Mr. Michael A. Brown: It's the same thing I've said all along.

Mr. Gilles Bisson: Let me finish. Now you're saying what you said at the beginning, which is that you believe this right already exists; you've added to that the words "where appropriate." But clearly what we heard from the mining industry, from First Nations, from everyone, is that we need to provide clarity in this industry. One of the things that you really have to have is "What is my responsibility as a prospector? What's my responsibility as a mining exploration developer? What is it that I have to do to be able to bring a project to fruition?" Part of the difficulty we have is that a lot of the people in the mining industry are unclear when it comes to what their responsibilities are when it comes to First Nations, and if they're so lucky as to find a property that has mineral potential, then they're left alone to navigate the process of negotiating an impact benefit agreement so that they can get the go-ahead with the First Nations to go forward. So it makes it very difficult, I believe, for the mining sector to move forward if the rules are not clear.

If the province is saying—and I take you at face value—that it is the belief of this government that there is a duty to consult that must be respected, and there is with that a duty to not only consult but to accommodate, then I say, well, put it in the legislation where appropriate. I don't care. Put it in the legislation. It will be clear, so that if I'm an outside player into the jurisdiction or I'm somebody in Ontario who has a property that I want to bring forward to exploration and eventually into development, I clearly understand that I have a responsibility, and that responsibility does not just include for me to talk with the First Nation, but it also includes my getting an agreement when it comes to an IBA. Because currently, we don't have that.

I went through this in the Attawapiskat situation for the better part of eight years. It was a very tough process for everyone: It was tough for the First Nation, it was tough for De Beers and it was tough for everybody else who was involved in trying to make it happen. De Beers

made a decision early on—and you heard the president of De Beers tell us that in Timmins—that they would not bring that project into development unless they had the agreement of the First Nation. So they were left on their own to spend tens of millions of dollars to negotiate an IBA. I don't think that's fair. I don't think that every mining company is capable of doing that. I take my hat off to De Beers for having done that, but even then it's still been difficult, because you're aware of some of the ramifications that came out of that.

But what you need to have is clarity of what the rules are for the industry and comfort on the part of the First Nations and others to understand that if I'm a property owner, private or otherwise—a private property owner, a municipality or a First Nation—here's what's expected on the part of the mining industry to be able to move forward; this is what the rules of the game are. I think this bill doesn't do that.

Mr. Michael A. Brown: I can't say anything but we disagree.

Mr. Gilles Bisson: Well, then, Mr. Hillier probably has something to say.

Mr. Randy Hillier: We'll leave it for the next one.

The Chair (Mr. David Oraziotti): Okay. No further debate?

Mr. Randy Hillier: I'll call for a 20-minute recess.

The Chair (Mr. David Oraziotti): A 20-minute recess has been called for.

Mr. Gilles Bisson: I think Mr. Miller had something.

Mr. Randy Hillier: Oh, you want to—

Mr. Paul Miller: It's just a quick question.

The Chair (Mr. David Oraziotti): He's called for the 20-minute recess. We're back at 4:20.

The committee recessed from 1558 to 1618.

The Chair (Mr. David Oraziotti): Okay. We'll proceed with the vote on motion number 3, which is the replacement motion from Mr. Bisson that has the section requesting money stricken from that original motion. All those in favour of NDP motion number 3?

Mr. Gilles Bisson: Recorded vote.

The Chair (Mr. David Oraziotti): The recorded vote had to be asked for before the recess.

Mr. Gilles Bisson: I thought I did. Okay, fine, go ahead.

The Chair (Mr. David Oraziotti): All those in favour? Opposed? The motion's lost.

Government motion number 4. Mr. Brown.

Mr. Michael A. Brown: I move that section 2 of the Mining Act, as set out in section 2 of the bill, be struck out and the following substituted:

“Purpose

“2. The purpose of this act is to encourage prospecting, staking and exploration for the development of mineral resources, in a manner consistent with the recognition and affirmation of existing aboriginal and treaty rights in section 35 of the Constitution Act, 1982, including the duty to consult, and in a manner that minimizes the impact of these activities on public health and safety and the environment.”

Just a brief explanation: The amendment reflects a minor wording change that reflects the environmental and public health and safety considerations, similar to the considerations of aboriginal and treaty rights. Both clauses now are introduced by similar language, “in a manner”—not a major change.

The Chair (Mr. David Oraziotti): Any debate? Mr. Bisson?

Mr. Gilles Bisson: I'm just reading the amendment. This replaces what's on page 2. I'm trying to look at what the actual difference is. Maybe you can point me to it.

Mr. Michael A. Brown: If you just look in the section before, “public health and safety and the environment,” it says, “in a manner.” It just makes the two—aboriginal rights, and health and safety—addressed in the same way. It's more of a grammatical change than anything.

Mr. Gilles Bisson: Yes, I see it. I just—do you have comments? I just want to read it before I go forward.

The Chair (Mr. David Oraziotti): I'll worry about Mr. Hillier's comments. I'm just—

Mr. Gilles Bisson: Well, I just wonder. I look at this and it seems to downplay environmental protection. That's the way I read it. Does this not, in your view, give you the sense that this would actually downplay some of the environmental protection?

Mr. Michael A. Brown: No, I think it just makes the section consistent in its wording.

Mr. Gilles Bisson: I'd like to hear Mr. Hillier.

The Chair (Mr. David Oraziotti): Mr. Hillier, go ahead.

Mr. Randy Hillier: Again, I think the government is missing the broader, bigger subject matter that needs to be spoken to here.

Why this clause is important is because we see what else is in the bill later on. I'll start my comments by saying, once again, that there are conflicts in mining. There are conflicts in my own riding of Lanark-Frontenac-Lennox and Addington. There are conflicts with First Nations people and mineral exploration companies, with private landowners and exploration companies, with municipalities and private exploration companies. This bill sets out that we're now going to do mining in a manner that's consistent with our Constitution Act—the duty to consult with our First Nations and aboriginal people—in a manner that will minimize and impact the activities of public health and safety.

Again, when you take this in context with what else is in the bill, section 2 excludes municipalities and all others. It excludes them, because they're not included elsewhere in the bill, and they're excluded from this paragraph. It's a significantly important aspect of the purpose. We're spelling out the purpose to, again, clarify and minimize those conflicts.

Here we're essentially saying we're going to abide by the Constitution and we are going to respect treaty rights, and we're going to disregard everybody else: disregard communities, disregard municipalities, disregard private landowners. You're disregarding everybody else.

Laughter.

Mr. Randy Hillier: Again, we can chuckle, we can laugh, we can smirk, we can do whatever, but the fact remains that it was clearly identified through the committee hearings that we cannot treat different communities, different peoples, in different fashions.

The official opposition has other wording on this purpose that is taken in context with the other amendments we've sent in to this committee. I think it's most important that we recognize that this bill has to minimize conflicts if we want to see a growing, prosperous mining industry in this province, and a prosperous, wealthy province.

By this statement—again, with the rest of the exclusions in the bill—we are excluding all those others from the purpose of this bill.

The Chair (Mr. David Oraziotti): Mr. Bisson, go ahead.

Mr. Gilles Bisson: I'm just wondering if I can get leg counsel and maybe a lawyer from the ministry to respond. As I read it, the bill as written says, "and to minimize the impact...." The government is proposing to put in "and in a manner that minimizes...." Is that a weakening? That's the question. Maybe I can get someone just to explain it. Could "in a manner" be interpreted by someone in the future to say that you can prescribe what that duty to consult is much, much easier, that it would be less rigid? That's what I'm trying to figure out.

The Chair (Mr. David Oraziotti): Thank you, Mr. Bisson. Does anybody from the ministry want to clarify this?

Interjection.

Mr. Gilles Bisson: Yes, that's why I'm asking.

The Chair (Mr. David Oraziotti): Please come forward and have a seat. State your name for the purposes of Hansard. If you can provide whatever information you might have with respect to the question.

Ms. Catherine Wyatt: Thank you. My name is Catherine Wyatt. I'm counsel with the Ministry of Northern Development, Mines and Forestry.

As you see, we did change the wording slightly in this section. It now says that it is to encourage prospecting and so on "in a manner consistent with the ... aboriginal and treaty rights" in the Constitution and in a manner that—

Interjection.

Ms. Catherine Wyatt: Sorry. Am I too far away?

The Chair (Mr. David Oraziotti): Pull the mic down a little bit.

Ms. Catherine Wyatt: Okay—and in a manner that protects public health, safety and the environment.

I mean, we can't predict what's going to happen in future with interpretation, but it doesn't take away the requirement that the act be "consistent with" or that these activities occur in a manner that is minimizing impacts on public health, safety and the environment.

Mr. Gilles Bisson: Okay, I hear you, but let me—

The Chair (Mr. David Oraziotti): Okay, thank you. Mr. Bisson, do you have a follow-up?

Mr. Gilles Bisson: Yes.

The Chair (Mr. David Oraziotti): Okay.

Mr. Gilles Bisson: Obviously, if this thing ever ends up in the courts, one of the things they're going to look at is the debate at the Legislature and what we say and do in this committee. I just want to be clear here: The act currently, as written, is pretty clear. It says "including the duty to consult, and to minimize...." There are no ifs, ands or buts.

My question is, by putting in "in a manner that," does that in any way weaken it, in your estimation?

Interjection: It sure does.

Ms. Catherine Wyatt: One could argue that it does, I suppose.

Mr. Gilles Bisson: That's my fear. That's my concern.

Mr. Michael A. Brown: I'd just point out—

The Chair (Mr. David Oraziotti): Okay, Mr. Brown, go ahead. Do you want to respond to that?

Mr. Michael A. Brown: I'd just point out to my friend from the third party that it is exactly the same language as refers to the aboriginal treaty. It's exactly the same. If it weakens the environmental protection, it weakens the aboriginal treaty, and I don't think it does either. It just consistently treats both major parts of the purpose clause. So if it weakens one, it weakens the other.

The Chair (Mr. David Oraziotti): Okay, Mr. Brown. Mr. Bisson, go ahead.

Mr. Gilles Bisson: And if you can stay there, please.

The question to the parliamentary assistant: Is this type of grammatical change made in other sections of the bill, in your other amendments? Is "in a manner" being used anywhere else?

Mr. Michael A. Brown: I'd have to defer to the counsel.

Mr. Gilles Bisson: I didn't see it. That's why I was asking. I can't remember seeing it.

The Chair (Mr. David Oraziotti): Ms. Wyatt, go ahead.

Ms. Catherine Wyatt: I don't think a similar provision appears anywhere else. I mean, the whole purpose thing doesn't repeat itself.

The Chair (Mr. David Oraziotti): Mr. Bisson.

Mr. Gilles Bisson: The government is doing something right here, I think, in this particular section of the bill, and that is something that has been asked for and something I've been calling on for many a year. So I give you credit for actually bringing this forward far more than it has been up to date. My only concern is that by putting in the words "in a manner that," it could end up being litigated later on that you can prescribe what that duty is.

Currently, the way that is written, the purpose clause, it's pretty clear, including the duty to consult. The way it's written now, it says "including the duty to consult, and to minimize" the impact.

I'm just a little bit worried that it's going to weaken this particular section. I would ask the government to

withdraw the words “in a manner,” and I would gladly vote for this section.

The Chair (Mr. David Oraziotti): Further debate? Mr. Hillier.

Mr. Randy Hillier: I’ll have to agree with the third party here. Reading the original one, that minimizes the impact of activities. Now we have this “and in a manner that minimizes.” Clearly, one is very distinct and defined, and the other one has thrown in a few words that don’t clarify things, in my view, at all. When I’m reading that, I could probably transpose words: “that appears to minimize the impact of activities.” With this “in a manner that minimizes,” I think you’ve added some additional words here that don’t serve anybody very well at all. So I would agree with the third party. If you strike that out, we would support it.

1630

The Chair (Mr. David Oraziotti): Okay, thank you, Mr. Hillier. Mr. Brown, go ahead.

Mr. Michael A. Brown: What is it exactly that you want to do?

The Chair (Mr. David Oraziotti): Mr. Bisson?

Mr. Gilles Bisson: What I’m suggesting is, I’m prepared to support your original language that’s in the bill. I think it’s actually not bad. In your amendment, you’re adding in the words “in a manner.” I’m saying withdraw that and I’ll support that section of the bill. I just think it weakens it somewhat. I think it opens it up to litigation. You still get what you want at the end; it just clarifies it.

The Chair (Mr. David Oraziotti): Mr. Miller, comment?

Mr. Paul Miller: Yes, just through to the parliamentary assistant: I believe I concur with the other gentlemen that you’ve added “in a manner that,” and if you get to a point where there’s a challenge in the environment or safety and public health, they could argue that they made an attempt, “in a manner,” to do what they were supposed to do: due diligence. But if you remove “in a manner that” and go with the original, it’s a lot stronger because they have to comply to the actual wording of the bill. I think it’s an error to add that in, and I think you’ve got co-operation on the bill except for that part, so I would recommend that you withdraw that if possible on that part of this motion.

The Chair (Mr. David Oraziotti): Mr. Brown?

Mr. Michael A. Brown: It would be helpful—I’m trying to understand. So you would like “in a manner” taken out of the—

Mr. Paul Miller: Right.

Mr. Michael A. Brown: Let me just read it. “The purpose of this act is to encourage prospecting, staking and exploration for the development of mineral resources, consistent with the recognition and affirmation of ... aboriginal”—I’ll just stop right there. I’ve taken “in a manner” out in both places.

Mr. Paul Miller: In both places.

Mr. Michael A. Brown: Is that what you want? I’m just trying to understand.

Mr. Paul Miller: There’s two places. It’s in there twice.

Interjection.

Mr. Paul Miller: That’s a good point, yes.

Mr. Michael A. Brown: If it weakens it in one place, it weakens it in the other, and if it strengthens it in one place, it strengthens it in the other.

Mr. Paul Miller: Well, either it’s in or out.

Mr. Michael A. Brown: Yes. We’re trying to put it in both places. You’re trying to put it in one and not the other, or—

Mr. Gilles Bisson: No, I hear you. Let me just go back and take a look at it again. I think that’s fine.

Mr. Paul Miller: You don’t have a problem.

Mr. Gilles Bisson: I don’t think I have a problem, but I just want to read it. “The development of mineral resources”—

Mr. Michael A. Brown: Before I do that, I just want to talk to the lawyers about it for a second.

Mr. Paul Miller: We’d like them both out.

Mr. Gilles Bisson: Yes.

The Chair (Mr. David Oraziotti): Do you want five minutes to clarify this?

Mr. Michael A. Brown: Can I just talk to the legal counsel on this so we know?

Mr. Gilles Bisson: Sure, why don’t you take five minutes?

The Chair (Mr. David Oraziotti): Mr. Bisson, do you want to comment further, then?

The Clerk of the Committee (Mr. Trevor Day): Do you want to move for a five-minute recess?

Mr. Gilles Bisson: I would move for a five-minute recess, Chair.

The Chair (Mr. David Oraziotti): All those in favour? Opposed? Okay. Five minutes.

The committee recessed from 1634 to 1636.

The Chair (Mr. David Oraziotti): Okay, Mr. Brown, go ahead.

Mr. Michael A. Brown: On further request, the government would just withdraw this amendment.

The Chair (Mr. David Oraziotti): Okay. The amendment is withdrawn.

Conservative amendment, motion 4.1. Mr. Hillier.

Mr. Randy Hillier: I move that section 2 of the Mining Act, as set out in section 2 of the bill, be struck out and the following substituted:

“Purpose

“2. The purpose of this act is to encourage prospecting, staking and exploration for the development of mineral resources in a manner that minimizes any adverse impact of these activities on public health, safety and the environment and in a manner that is in keeping with the Constitution Act, 1982.”

The Chair (Mr. David Oraziotti): Elaborate; go ahead.

Mr. Randy Hillier: Yes. As I’ve talked earlier on the previous two amendments, they’re on the same clause. As I’ve said earlier, we don’t want to exclude consultation with this bill. We don’t want to exclude com-

munities and others. We want to make it inclusive. When you identify certain groups, you're by that very nature excluding those that you don't identify. That's why we've drafted up this amendment, so further on in the bill you'll see the motions where we are proposing amendments to broaden out that consultative approach, that participatory approach, that joint approach between mining and mineral exploration and communities throughout the province, that all communities, whether they're a municipality in southern Ontario, like my own in Frontenac and Lanark or in Attawapiskat or any community in between, be included in that joint participatory arrangement with also the benefits of resource sharing.

It's important for this committee to understand that where conflicts arise so often is—and it's so clear in my community—that the municipality often doesn't receive much benefit from having mining in its community but they have to bear the cost. They have to bear the cost of infrastructure but the province derives all the revenue. So we need to broaden out our scope here. If we really want to see mining reach its potential prosperity in this province, I think we have to be very inclusive and not exclude anybody from this participation. I would ask that you support this motion.

The Chair (Mr. David Oraziotti): Thank you, Mr. Hillier. I saw Mr. Bisson's hand.

Mr. Gilles Bisson: Where's the whole section around "in a manner consistent with the recognition," the duty to consult?

Mr. Randy Hillier: It's already in—

Mr. Gilles Bisson: That's my question. I read this and I've got a further problem with it, but let me deal with the first one. Where is the section in the current purpose clause that deals with—we have in the current section 2 the issue of the duty to consult. I don't see it in your amendment here.

The Chair (Mr. David Oraziotti): Mr. Hillier.

Mr. Randy Hillier: You don't see it in the amendment. The reason it's not in the amendment is that we've just identified that it's in keeping with the Constitution Act. There's a whole series of legal judgments, decisions and wording in our Constitution. We don't have to identify all the wording if we identify the Constitution. It's been identified that there is a duty to consult; that's been ruled by the Supreme Court of this country. Whether we add it here or not, it is now part of our Constitutional obligations and the Supreme Court has ruled on it, so we didn't—let me put it like this: Our total Constitution Act—it also includes the Charter of Rights and Freedoms. Nobody has proposed that we put in "the Constitution Act and the Charter of Rights and Freedoms." It's known that when we say, "the Constitution Act," it incorporates all those component parts.

The Chair (Mr. David Oraziotti): Thank you, Mr. Bisson?

Mr. Gilles Bisson: I'm just saying I don't want to be unsupportive but I think I'm going to have to be. What we're trying to do in this act—at least what I've been trying to do for some years—is to give not only clarity to

the mining sector, but also to provide First Nations with some ability to have a say about what happens on traditional territories, and if we don't spell that out in the purpose, I think it very much weakens the bill. So I'd have difficulty supporting this.

As far as other individuals' or entities' rights when it comes to how we protect their interests when it comes to social and environmental issues, there are many other bills that deal with that—under the Municipal Act and others—that First Nations don't have access to. That would be my understanding of why we'd put this in the purpose clause.

The Chair (Mr. David Oraziotti): Any further comment or debate? Mr. Brown.

Mr. Michael A. Brown: I'm interested in Mr. Hillier's response to Mr. Bisson.

The Chair (Mr. David Oraziotti): Mr. Hillier.

Mr. Randy Hillier: To minimize any adverse impact of these activities on public health, safety and environment, we're not saying only for some areas or some groups but for everyone to minimize negative impacts, without exclusion, that everyone—and in a manner that's keeping with the Constitution. I think that the brevity of it is the clarity. Anybody reading that in the future would know that it means completely the same throughout this province everywhere, that everybody would be accorded—none of their rights would be diminished or privileges extended. It would be incorporated for everyone. Duty to consult is included in our constitutional obligations, as our Charter of Rights and Freedoms, as our provincial jurisdictions. I think it adds confusion when you start prioritizing some components of the Constitution over other components.

The Chair (Mr. David Oraziotti): Thank you, Mr. Hillier. Mr. Bisson, did you want to respond?

Mr. Gilles Bisson: I again would say—let's say I accept your argument, which I don't. You're excluding from that the section that deals with aboriginal and treaty rights. Ontario has signed on to Treaty 9, and under that treaty we have said we will go in and share the land and we will develop the land in co-operation with First Nations and give them some benefit out of it. Why are we excluding that? It seems to me that would very much weaken the purpose of the bill.

The Chair (Mr. David Oraziotti): Thank you, Mr. Bisson. Mr. Hillier, do you want to respond?

Mr. Randy Hillier: Those treaties are part of our Constitution now. The treaties are part of our Constitution, and that's just a fact of life. The treaties, they survive. They are the crown's obligation that survives to this day. They're part of our Constitution.

In reading through those treaties, we can see that clearly those obligations were set forth; many obligations are set forth within those treaties already. That's why the Supreme Court has indeed ruled on things like the duty to consult and accommodate.

The Chair (Mr. David Oraziotti): Okay, thank you, Mr. Hillier. Mr. Bisson, further comment?

Mr. Gilles Bisson: The problem is that "duty to consult" doesn't exist within the Constitution. It is a decision

of the Supreme Court of Canada, which has interpreted the rights of individuals under the Constitution and has said that although this Constitution does not specifically say what it is that you're saying, we're going to clarify it by court ruling. So if you don't put it in there, it could be read that you don't have a duty to consult; the crown doesn't have it. That's the way I would see it.

First of all, "duty to consult" is not in the Constitution, and treaty rights themselves are not in the Constitution, as I understand it. Am I wrong?

Ms. Catherine Wyatt: Treaty rights are in the Constitution.

Mr. Gilles Bisson: Not in section 35, though. Is it section 35? All right, I stand corrected.

The Chair (Mr. David Orazietti): Okay. Mr. Bisson, finished?

Mr. Gilles Bisson: Yes, I was done.

The Chair (Mr. David Orazietti): Mr. Brown, comment?

Mr. Michael A. Brown: As all members of the committee would know, all laws in Canada and all actions of governments in Canada are subject to the Constitution of Canada, 1982. So it is the same for everyone. What is happening here in the government's purpose clause is that we specifically recognize section 35 of the Constitution and the rights that emanate from that—you're right—for a specific situation. But everyone else has the same rights. I don't see any conflict. All the government is doing is recognizing a fact of Canadian jurisprudence.

The Chair (Mr. David Orazietti): Okay, thank you. Any further debate on the Conservative motion?

Mr. Randy Hillier: I'll just comment: You're adding in a separate component. As I mentioned earlier, and as you agreed, all jurisdictions have to abide by the Constitution. If we pass legislation that does not, then it's subject to Supreme Court rulings or challenges, and if it is indeed not constitutional, it'll probably be struck down. I would say it will be struck down if it's not constitutional.

You're identifying one component. You're giving dominance, or I guess pre-eminence is a better word, to identifying one component. The BNA Act of 1867 is part of our Constitution; we're not identifying it in here. Our Charter of Rights and Freedoms is part of our Constitution; we're not identifying it in here. However, we're identifying everything when we just say, "Constitution Act, 1982." We're not giving pre-eminence to any component part of the Constitution.

The Chair (Mr. David Orazietti): Mr. Bisson.

Mr. Gilles Bisson: I'm just going to make the point one last time that I hear what you're saying, and I partially agree, and I think the parliamentary assistant partially agrees that, yes, in fact, the Constitution applies to all our laws. Nobody argues that.

The issue is that the duty to consult and accommodate was a decision of the Supreme Court. What I see the government trying to do in part is to encompass the duty to consult in the legislation and to clarify that, in fact, the government of Ontario has heard and has accepted the

decision of the Supreme Court, and it will be the law of the land.

Unfortunately, you don't go to the other part, which is the duty to accommodate. It's a bit of a half victory for me, but that's who I am.

I won't be able to support this because I really believe that you have to have in the purpose clause something that clearly states that the crown recognizes that it has the duty to consult and, I would argue, accommodate.

The Chair (Mr. David Orazietti): Okay. Any further comments? Conservative motion 4.1: All those in favour?

Mr. Randy Hillier: I'll ask for a recess, please.

The Chair (Mr. David Orazietti): How long?

Mr. Randy Hillier: Twenty minutes.

The Chair (Mr. David Orazietti): Okay, 20 minutes.

Interjection.

The Chair (Mr. David Orazietti): A recorded vote, Mr. Hillier, when we come back, or not?

Mr. Randy Hillier: Sure.

The Chair (Mr. David Orazietti): Okay. For 20 minutes, the committee is in recess.

The committee recessed from 1650 to 1710.

The Chair (Mr. David Orazietti): Okay. Conservative motion 4.1: Debate is concluded. There has been a recorded vote called for.

Ayes

Hillier.

Nays

Bisson, Brown, Brownell, Kular, Mauro, Mitchell.

The Chair (Mr. David Orazietti): The motion is lost. Section 2—we're going to vote on section 2. Any debate on section 2?

Mr. Randy Hillier: There's still one more motion for section 2.

The Chair (Mr. David Orazietti): All those in favour of section 2?

Mr. Gilles Bisson: I thought there was another section.

The Clerk of the Committee (Mr. Trevor Day): Section 2.1 comes after section 2.

Mr. Gilles Bisson: Oh, I'm sorry. I wasn't following.

The Chair (Mr. David Orazietti): All those in favour of section 2? Opposed? Section 2 is carried.

NDP motion number 5, Mr. Bisson.

Mr. Gilles Bisson: I move that the bill be amended by adding the following section:

"2.1 The act is amended by adding the following section:

""Revenue sharing

""3.1 Fifty per cent of the royalty or tax paid by any mine in Ontario shall be shared with the aboriginal communities that have an interest in the affected area.""

I'd like to speak to that, please.

The Chair (Mr. David Oraziotti): Mr. Bisson, you know that you can't speak to it because it involves imposing a tax and specific allocation of funding, according to standing order 57, so the motion is out of order.

Mr. Gilles Bisson: Darn.

Mr. Randy Hillier: Good motion, though.

Mr. Gilles Bisson: I thought it was very good.

The Chair (Mr. David Oraziotti): NDP motion number 6, Mr. Bisson.

Mr. Gilles Bisson: I move that the following section be added after section 7 of the Mining Act, as set out in section 3 of the bill:

“Record of mining rights

“8. The Provincial Recording Office shall ensure that every purchaser of land is informed if mining rights were once attached to the land but no longer are so attached.”

I will be the first to admit that the language on this is a little bit loose. If anybody wants to give a way of clearing it up, that would be great.

What this speaks to is, a few of the presentations we had spoke to the issue that it would be helpful to know if the mining rights were originally attached with the property when it was being sold, and to clarify for new, subsequent owners if the mining rights were withdrawn.

The Chair (Mr. David Oraziotti): Thank you, Mr. Bisson. Further comment? Mr. Brown.

Mr. Michael A. Brown: The proposed amendment involves private property rights and is beyond the scope of this bill. It is a “buyer beware” concept, requiring due diligence of the purchaser, through systems beyond those which are maintained by the Provincial Recording Office. So it's beyond the scope of the bill, and the ministry wouldn't have the ability to do what's being asked here.

The Chair (Mr. David Oraziotti): Mr. Hillier?

Mr. Randy Hillier: I'll have to speak to that. That is such an excuse, and such an unreasonable excuse as well.

Listen, we've seen—and have the evidence first-hand—people who have purchased properties, and they search the title for their properties. Nowhere, when searching title, does it appear if the mining rights have been alienated or not, right? That's what this amendment is proposing to do: to have it clearly identified for the purchaser, when they search title, if there is anything unusual or any aberrations from what is normally expected.

This is where most of the problems, or a significant number of problems, and conflicts have arisen, when an individual purchases their property, does their title search, and then finds somebody staking their land years later, with complete unawareness that they don't own underneath their ground.

So I think it's incumbent on the government to not only consider this—this is a way to alleviate problems. That's what it is. If there is an easement on somebody's property, it has to be registered on title. That's what we're saying here. If mining rights have been alienated, it has to be registered on title. This is not a case of private property rights, this is a case of common sense and proper notification. When those mining rights have

reverted to the crown, whether it's through the mining taxes or whatever—however they've been removed from the surface rights owner—the crown has a duty and an obligation to ensure that that information appears on title.

I would agree with the member from the third party that maybe the wording is a little bit loose, but clearly the intention is proper and I think we ought to be looking at, if necessary, revising the wording a little bit. But we can't cop out and say that this is beyond the scope of this bill. One of the reasons we're doing this bill is because of all the controversy that has arisen when people have had their lands staked without knowing that they've lost their mining rights or their mineral rights. So I'm fully supportive of this amendment. I think we would do a terrible injustice to everybody if the government says, “It's not our business, it's not our department. It's outside the scope of this bill.” It would not be fair to the people of this province.

The Chair (Mr. David Oraziotti): Further debate or comment?

Mr. Michael A. Brown: It is outside the scope of this bill and the member now has a great opportunity to bring forward a very imaginative private member's bill to do it. It is not possible—and that's what we're saying—for us to do what the member wants done in every situation. And I would suggest to the member that, seeing as the government is withdrawing all staking rights in southern Ontario, it is probably something totally unnecessary.

The Chair (Mr. David Oraziotti): Any further comment?

Mr. Randy Hillier: I would say that it would be unnecessary if you reunified mineral and surface rights, but you've come up with a policy of withdrawal of exploration which can be overturned by the minister—there are exceptions allowed for the minister. That withdrawal has no meat, no substance. If the government was really honest in its intent to combine those properties, they would reunify mineral and surface rights.

Listen, it's not beyond the scope for one simple reason: This is an amendment to the Mining Act. If we can incorporate it in the Mining Act that the crown ownership of mineral rights will be identified in the land registry office, that is not beyond the scope. That is pretty simple, pretty easy and sensible. It's a record of mining rights that they now show up on title. That's all that this amendment is looking to do. If the crown owns the mineral rights, say so, identify it, document it.

The Chair (Mr. David Oraziotti): Any further comment? Mr. Bisson.

Mr. Gilles Bisson: Just to the point of the parliamentary assistant, he's saying that it's not necessary because of the move on the part of the government to deal with mining rights in southern Ontario, but it's not the case in northern Ontario. That's what that was all about and I think Mr. Hillier has made the point.

The Chair (Mr. David Oraziotti): Any further debate? Comment? Okay. Seeing none, all those in favour of NDP motion number 6?

Mr. Randy Hillier: I'll call for a 20-minute recess.

The Chair (Mr. David Oraziotti): Okay.

Mr. Gilles Bisson: Can I have a recorded vote when we get back?

The Chair (Mr. David Oraziotti): Okay. A recorded vote and a 20-minute recess. The committee's in recess.

The committee recessed from 1719 to 1739.

The Chair (Mr. David Oraziotti): Okay, we'll resume, and we are at NDP motion number 6. A recorded vote has been called for.

Ayes

Bisson, Hillier.

Nays

Brown, Brownell, Kular, Mitchell.

The Chair (Mr. David Oraziotti): The motion is lost. Any debate on section 3? Mr. Bisson, go ahead.

Mr. Gilles Bisson: Let me double-check to make sure I am correct. Never mind, it was in another section. Sorry.

The Chair (Mr. David Oraziotti): Shall section 3 carry? Okay, it's carried.

Sections 4, 5 and 6: There are no amendments. Shall they carry? Carried.

Government amendment number 7. Mr. Brown, go ahead.

Mr. Michael A. Brown: I move that subsection 19(1) of the Mining Act, as set out in subsection 7(1) of the bill, be amended by adding "for the licence" at the end.

This is a very simple clarification. The amendment simply clarifies that the application referred to in the subsection is the application for a prospector's licence.

The Chair (Mr. David Oraziotti): Any further comment on motion 7?

Mr. Gilles Bisson: What page of the bill is that?

Mr. Michael A. Brown: That's a good question

Mr. Gilles Bisson: I was looking at another section. If somebody could just—

Mr. Michael A. Brown: It's subsection 7(1).

Mr. Gilles Bisson: And that's on page 4?

Mr. Michael A. Brown: It's on page 3 of the bill.

Mr. Gilles Bisson: Sorry, I was on the wrong side. So you want to add it at the end of "date of the application"? Am I understanding that right? Is that where you're inserting this?

Mrs. Carol Mitchell: "For the licence."

Mr. Gilles Bisson: Is "for the licence" inserted after the words "date of the application"?

Mr. Michael A. Brown: That's right.

Mr. Gilles Bisson: So it's, "Any person who is 18 years or older is entitled to obtain a prospector's licence upon providing evidence that he or she successfully completed the prescribed prospector's awareness program within 60 days before the date of the application for the licence."

Mr. Michael A. Brown: Right.

Mr. Gilles Bisson: So you're just clarifying

Mr. Michael A. Brown: We're just clarifying.

Mr. Gilles Bisson: Oh, man, I'm a pushover. Oh man, okay.

The Chair (Mr. David Oraziotti): All right. Any further comment on 7? All those in favour of amendment 7? Opposed? Carried.

Shall section 7, as amended, carry? All those in favour? Opposed? Carried.

Amendment 8, an NDP motion. Mr. Bisson, go ahead.

Mr. Gilles Bisson: I move that subsection 21(1) of the Mining Act, as set out in subsection 8(1) of the bill, be struck out and the following substituted:

"Renewal of licence

"(1) A licensee is entitled to a renewal of his or her licence if, within 60 days before the expiry of the licence, the licensee applies for the renewal."

It's fairly clear. I just want to see what my friend the parliamentary assistant has to say to this.

The Chair (Mr. David Oraziotti): Mr. Brown, go ahead.

Mr. Michael A. Brown: I'm interested in hearing the reason it's being proposed.

Mr. Gilles Bisson: Well, the existing licensee doesn't require any awareness training, right?

Mr. Michael A. Brown: We were afraid of that.

Mr. Gilles Bisson: Okay.

The Chair (Mr. David Oraziotti): Mr. Brown, are you going to comment?

Mr. Michael A. Brown: Yes, we can't support it. The effect of the proposed amendment is to delete the requirement to take the prospector awareness program. This program is a cornerstone of the modernized mining regime in Ontario to ensure that prospectors are aware of their obligations in prospecting and consulting with aboriginal communities.

Mr. Gilles Bisson: So I can't slide this one by you, then?

Mr. Michael A. Brown: I thought you—no.

Mr. Gilles Bisson: To the point, this and a few other things later are going to deal with that. First of all, I think that nobody disagrees with the idea that people need to be aware of what their responsibilities are under this act once it becomes proclaimed so that clearly people do what they're supposed to do.

The issue is that there are a lot of people who have been in the business for many, many years who are going to have to undergo training for issues they're already dealing with, and a lot of people are finding that somewhat offensive. You would've heard that from various prospectors who presented to our committee across northern Ontario. They've been at this business for a long time and understand well what their responsibility is.

What they've asked, and the reason I brought the amendment forward, is that anybody new entering the field would obviously have to go through this particular program, but if somebody has been in the business for a prescribed period of time, they would not have to go through this particular training.

Mr. Michael A. Brown: In other words, it's grandfathering.

Mr. Gilles Bisson: Yes, it's a grandfathering clause.

Mr. Michael A. Brown: I would just suggest to the member that mining and prospecting in the 21st century have changed. I know a great number of prospectors, and they're all very competent and good at what they do, but it does not hurt anyone to have a refresher course and to understand the new obligations that may be placed on them under the new regime. I think it would be helpful to all prospectors to take this course, and if it were not necessarily helpful to all prospectors, it would be helpful to most. This is not an onerous course. This is just to bring people up to speed on what the changes are in the climate we are operating in, in Ontario today, and how they may best be able to perform their job.

The Chair (Mr. David Oraziotti): Mr. Bisson, go ahead.

Mr. Gilles Bisson: Very quickly, I point out that Mr. Hillier and I are both licensed electricians. The code book, as I understand it, when I wrote my trade exam, which is the better part of 25 or 30 years ago, was much different. I'm not required to go out and write another test or to re-qualify. It is incumbent upon me, as a qualified electrician, to maintain an understanding of the Canadian Electrical Code. I just use that as an example.

There are people who are now within the profession of prospecting who take a lot of pride in the work they do. What they say to me, and you've probably heard the same thing, is, "Why are you telling me to go back and do this? I'm doing it already." So they're saying, "Grandfather those who have been in it for a particular period of time. Make sure that new prospectors coming into the business clearly understand what their responsibilities are under the act, and deal with the bad apples."

The Chair (Mr. David Oraziotti): Mr. Hillier, go ahead.

Mr. Randy Hillier: Well, I will add to those comments. Listen, we don't know what this test for this licence will be. That's all left in regulations after. None of us here in this committee will have any input to what is required for a licence. That's a given, okay?

But I want to share with you a little story that may illustrate the dangers.

Mr. Bas Balkissoon: TSSA.

Mr. Randy Hillier: No, it's not the TSSA, because there are so many different examples. We understand intent and all that goody-goody stuff; everybody wants to be well-intended.

I had two gentlemen come into my office this year. Both were sheet metal workers. One had been in the trade for 25 years and another had been in the trade for 30 years. They worked for a contractor in his shop, putting together ductwork. They now have to have a licence. It came in a couple of years ago that they have to have a licence, even for putting in tin. Well, they couldn't pass.

I want to put this in context. I don't know if many people remember, but there was a time when we had a two-year technical program in school for those people

who were not academically inclined; we encouraged them to get into trades. These people did get into trades and were very successful at it—very good, competent tin men. They're now both unemployed. Both their families are facing huge financial difficulties because this government has said, "You must now get a licence." They couldn't pass the mathematical part of that licence.

I'm sharing that story with you because it broke my heart to see these two people who no longer could be employed in the industry they've been employed in for such a long period of time. It destroyed their ability to earn a living. We didn't know, when they passed that legislation, that those sheet metal people were going to be affected so negatively.

We don't know what this licence is going to look like. We don't know what is going to be involved. And until we do know what's going to be involved, there's no way we can take the position that we may take away somebody's livelihood because they're not very good at math and there's some math questions on it, or whatever it could be. We never thought those two tin men were going to be out of work because of government legislation, but they are.

So I agree with the third party here that people who are now prospecting must be protected from unseen consequences of this legislation. We cannot pass legislation that has regulations that are unknown and that can be harmful and detrimental to the people in this province. I'm fully supportive of this amendment.

1750

The Chair (Mr. David Oraziotti): Further comment? Mr. Bisson.

Mr. Gilles Bisson: TSSA: I raised that as an issue with—what do they call themselves again?

Mr. Randy Hillier: The Technical Standards—

Mr. Gilles Bisson: The technical service authority, anyway. The legislation was brought into this House, was accepted and passed by the House to give the TSSA the responsibility for much of the licensing to trades and others. What has happened is, they have now gone out on their own, because of the powers this Legislature gave them, with the ability to regulate trades in a way—and you just raised the one issue, in regard to the sheet metal people. I've had the same thing with qualified contractors in the electrical business who have been in the business for 20 or 25 years. I'm sure they came knocking at all of your doors about four or five years ago when the regulations were changed around a master electrician's ticket, in order to be able to do contracting. Many of the people who were in the trade were people who went into the trade at a time when the mathematical requirements were not as high and now, 20, 25 or 30 years after they've been successful in the business, are having to go back and rewrite and are having one heck of a time.

What I'm trying to do in this bill is to prevent that type of situation from happening again. You've got people who have been in the trade for many, many years. I think of people like Don McKinnon. Do you want to be the one to go to Don McKinnon and say, "Don, you're going to

have to take sensitivity training in order to be able to learn how to prospect in the province of Ontario”?

I think we should show respect to some of the people who have been around for a while. These are people who have been at it for many years, who have been quite successful. Mr. McKinnon, everybody would know, was the discoverer of not only the Hemlo gold mine, but a whole bunch of others. To force people like that into a position of having to redo training in order to qualify themselves as prospectors, I think, would be a bit of an affront, and that's why I'm asking that we have some way of being able to grandfather.

If you don't accept my proposal as far as grandfathering, is there some middle ground that we can come to?

The Chair (Mr. David Orazietti): Mr. Brown?

Mr. Michael A. Brown: I think the government contemplates developing the regulations surrounding this—and most of this bill will be implemented through regulation—by advice we get from the minister's advisory group. In that group—I won't read the list off right now, but almost half of it is prospecting organizations that will be able to provide advice on what the course should have, what exactly the requirements are. My view is that they need to be sensitive to the industry and to the industry standards that are present there today. So I think there can be some assurance that the course will fit the situation.

The Chair (Mr. David Orazietti): Mr. Bisson and then Mr. Hillier.

Mr. Gilles Bisson: Are you saying, then, that they will have to take the course no matter what, in the end? Once the minister's advisory group goes out and fleshes out what the training is going to be all about and what it is that people need to do to qualify, do you contemplate—and this is my question—that there will be a grandfathering provision within the regulation?

Mr. Michael A. Brown: I am not in a position to speculate on that.

Mr. Gilles Bisson: Mr. Hillier wanted to add something.

The Chair (Mr. David Orazietti): Mr. Hillier, go ahead.

Mr. Randy Hillier: Again, we craft up all these processes that allow us to make decisions without really making decisions, like making decisions about licensing without knowing what the licence is about, and we default back to “Well, we'll have some industry people there to tell us how to do it properly.”

I can tell you, we had industry people at TSSA for sheet metal. We had industry people for the masters electrician's licence. Those industry people have one failing when it comes to committee-type work: They believe that people are going to act with discretion, common sense and good judgment. Legislation doesn't allow people to do that; regulations don't allow discretion, common sense and good judgment. Regulations lay down the law.

I think everybody here has an obligation to understand those consequences, and everybody here, on both sides of this committee, recognizes the dangers. We've seen the evidence so many times. Do what's right. Make sure that the people who are prospecting now will not be harmed by this legislation. Put the clause in place that protects existing prospectors' livelihood and opportunities to go out and find wealth for this province.

It's not enough just to say, “Others will take care of it.” We have an obligation to make sure that we don't allow individuals to be harmed by the legislation that is passed in this House.

The Chair (Mr. David Orazietti): Mr. Bisson.

Mr. Gilles Bisson: I again go back to the parliamentary assistant. I accept and recognize that the government wants to do something to ensure that people entering into the business of prospecting or exploration clearly understand what is required of them when it comes to accessing lands and how they're to deal with the various legislation they come in contact with, including the duty to consult that the crown has and to accommodate.

I'm just looking for some way to have some flexibility, when the regulations are drawn, in the legislation, or somehow we can get to that, that would allow us to grandfather people who have been in for a certain period of time. What you could end up with quite easily is somebody who is an existing prospector who just says, “By principle, I'm not going to do it.” They'll be in a position of not having a prospector's licence, and I think we don't win when that happens. Like I say, I haven't talked to Mr. McKinnon, but I'm sure he would be one of the people who would fall into that category and would be fairly incensed by this and say, “The heck with it; I'm not going to do it.” Ontario is not well served by losing people like that in the industry.

So I would ask the government—and I'm going to ask for a bit of a recess here at the end of the day—to go away and come back with something that would get us to where I'm trying to get. I accept what you're trying to do. New people going into the business clearly need to understand what their responsibilities are, but we've got to be able to figure out some way to grandfather those people who have been in the industry for a while so that they're not feeling, “Jeez, everything I've been working for all these years doesn't mean anything.”

With that, I would ask that we have a 15-minute recess.

The Chair (Mr. David Orazietti): Is there any further debate?

Mr. Michael A. Brown: I was just going to point out to the member that we're going to take advice from the Northwestern Ontario Prospectors Association, the Sudbury Prospectors and Developers Association, the Sault and District Prospectors Association, the Ontario Prospectors Association, the Boreal Prospectors Association, the Southern Ontario Prospectors Association, the Porcupine Prospectors and Developers Association and the PDAC.

I can't imagine that the advice we'll get from these folks will be not helpful to all prospectors. I'm perfectly content to allow this to happen with regulations because the people who really know what these folks need to do—I would suggest that some of these folks, maybe not all, but some of the prospectors who are out there today would be well served by an update on what the requirements of the new Mining Act are. That is the major thrust of this licensing regime.

The Chair (Mr. David Oraziotti): Okay, thank you. Mr. Bisson, you have about 30 seconds.

Mr. Gilles Bisson: Again, is the parliamentary assistant telling us that there is going to be a provision for

grandfathering in the regulation? That's what you seem to be telling me now.

Mr. Michael A. Brown: I'm not telling you that, no. I'm telling you that we will be listening to these advisers to the minister on what should happen with regard to the prospectors' course.

The Chair (Mr. David Oraziotti): Okay. It is now 6 of the clock. The committee is going to be adjourned until Wednesday in room 228. There will be a translation booth set up in room 228. Committee is adjourned.

The committee adjourned at 1800.

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