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Official Report of Debates (Hansard)

Monday 13 September 2010

**Standing Committee on
General Government**

Far North Act, 2010

Journal des débats (Hansard)

Lundi 13 septembre 2010

**Comité permanent des
affaires gouvernementales**

Loi de 2010 sur le Grand Nord

Chair: David Oraziotti
Clerk: William Short

Président : David Oraziotti
Greffier : William Short

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Monday 13 September 2010

Lundi 13 septembre 2010

The committee met at 1402 in room 151.

ELECTION OF ACTING CHAIR

The Clerk of the Committee (Mr. William Short): Good afternoon, honourable members. It's my duty to call upon you this afternoon to elect an Acting Chair. Are there any nominations? Mr. Arthurs?

Mr. Wayne Arthurs: I would name Mr. Qaadri.

The Clerk of the Committee (Mr. William Short): Mr. Qaadri, do you accept the nomination?

Mr. Shafiq Qaadri: I do.

The Clerk of the Committee (Mr. William Short): Any further nominations? Mr. Bisson?

Mr. Gilles Bisson: Randy Hillier.

The Clerk of the Committee (Mr. William Short): Mr. Hillier, do you accept the nomination?

Mr. Randy Hillier: Absolutely.

The Clerk of the Committee (Mr. William Short): Further nominations? There being none, I declare nominations closed.

I will deal with the nominations in order. All those in favour of Mr. Qaadri being Acting Chair? Mr. Qaadri, getting the majority of the votes of the committee, is elected Acting Chair.

Interjections.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, colleagues, for the confidence you've bestowed upon me. I would invite, if there are any further nominations or procedures—Mr. Arthurs?

Mr. Wayne Arthurs: Mr. Acting Chair, I'm going to move that, in the absence of the Acting Chair, Mr. Delaney do act as the Chair.

The Acting Chair (Mr. Shafiq Qaadri): Are there any comments or questions before we accept that nomination? Accepted. Thank you.

SUBCOMMITTEE REPORT

The Acting Chair (Mr. Shafiq Qaadri): I think we'll proceed to our subcommittee report. May I have it first entered into the record, please? Mr. Levac.

Mr. Dave Levac: Your subcommittee met on Thursday, June 3, and Wednesday, June 9, 2010, to consider the method of proceeding on Bill 191, An Act with respect to land use planning and protection in the Far North, and recommends the following:

(1) That, as per the order of the House, the committee meet for up to four days the week of June 14, 2010, in Slate Falls, Sandy Lake, Webequie, Moosonee and Attawapiskat for the purpose of holding public hearings.

(2) That the committee clerk, with the authorization of the Chair, post information regarding public hearings on the Legislative Assembly website, Wawatay Online and with Wawatay Radio.

(3) That in order to facilitate the planning of committee travel, each location would initially be scheduled for three hours of public hearings.

(4) That interested parties who wish to be considered to make an oral presentation contact the committee clerk by 5 p.m. on Friday, June 11, 2010.

(5) That groups and individuals be offered up to 20 minutes for their presentation. This timing is subject to change depending on the number of requests to appear.

(6) That late requests to appear be accepted for any location provided there are spaces available.

(7) That the deadline for written submissions be 5 p.m. on Friday, September 3, 2010.

(8) That the research officer provide the committee with a summary of presentations.

(9) That the committee clerk, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

(10) That, as a result of NAN resolution 10/36, the Standing Committee on General Government not hold public hearings the week of June 14, 2010, in Slate Falls, Sandy Lake, Webequie, Moosonee and Attawapiskat—Attawapiskat—

Mr. Gilles Bisson: Attawapiskat.

Mr. Dave Levac: —Attawapiskat. I said that three times; my apologies.

(11) That the committee clerk cancel all preliminary arrangements authorized by the subcommittee report dated June 3, 2010.

That's your subcommittee report by your subcommittee, Mr. Chairman.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Mr. Levac. I'll open the floor for any comments or questions. Monsieur Bisson?

Mr. Gilles Bisson: First of all, I want to start off by thanking the minister for being here today. We understand the circumstances, and our thoughts go to Mr.

Oraziotti. That is never a good time in anyone's life, so I want you to pass on to him our condolences.

First of all, I just want to say that I thank the minister for being here. I think it's important that she is here to hear what we have to say throughout this particular process because, as members will know, we never did get a chance to go out and do the consultation that needed to be done and should have happened over the summer months. The government, by time allocation motion, shortened the time that we needed to go out and actually do the hearings. We were given about two weeks to get organized, and First Nations—because you had school graduations going on, because you still have the hunt going on, because people just had things in their lives going on—were not able to pull together committee hearings in such a short time, in two weeks of time.

We had suggested that the government step back and say, "All right, let's go to Nishnawbe Aski Nation. Let's say to them, 'This is an act that's going to affect you, so therefore, when do you want us to go and where do you want us to go?' and not limit ourselves to time or places, based on a true consultation." The government didn't do that. As a result, we have not had the consultation.

I just want for the record to say a couple of things right here at the beginning. One is, the minister has stated in the House and has stated in scrums that First Nations support this particular act. I want to tell you, unequivocally, that is not the case. The minister thinks what she does, and hopefully by the end of this process we will have convinced her, but it is pretty clear when we look at who's here from places like Sandy Lake, Moose Factory, Slate Falls—you name it; we have representatives from across Nishnawbe Aski who are here with us today who have said by resolutions at their band councils, by community meetings that they've had in their communities, that their communities, in the entirety of the Nishnawbe Aski Nation, oppose this legislation.

I want to make it very clear, Minister: They want land use planning. The communities, as you well know, want to get on with the business of developing what should be a planning regime when it comes to what needs to be done in the Far North territories. But it has to be done with the consent of the First Nations, and there lies the rub: This particular act is being put forward in a way that does not meet with the approval of the First Nations. It misses on a number of points, which I'll get into later. I want to make it very clear that they are not in favour.

1410

I thought it was interesting today, in the question that I put in the House, that the minister said that she travelled to some eight communities in the north, had some discussions with First Nations communities in regard to the Far North planning act and took that as consultation. I want to be really clear: That's not consultation, with all due respect to the minister. I respect the minister. I know that you're trying to do the right thing. This is not meant as a personal thing toward you, please understand me. But from the perspective of First Nations, consultation is getting in touch with the leadership and saying, "We

want to have a discussion," and then setting out the framework of what needs to be discussed, the items to be discussed, and when we're going to do it and how often we're going to do it.

Let me give you an example. Moose Cree First Nation, in consultation with Ontario Power Generation, have inked a deal worth \$2.7 billion on an IBA, an impact benefit agreement, to allow the redevelopment of the Mattagami River basin to be done—\$2.7 billion; you got the numbers right. The First Nation had consultations with OPG, but that wasn't one meeting. It wasn't the Minister of Energy all of a sudden dropping in on the community and saying, "How's it going? By the way, I've got \$2.7 billion" and leaving. There were I don't know how many meetings, but there had to have been at least 10 or 12 meetings that I know of, where people from the community of Moose Factory and people who were off-reserve folks, who lived in Timmins and different places, had an opportunity to have their say about what would be the basis of an IBA. At the end of that consultation, the community had a vote, and by a majority vote—it took two attempts, if I remember correctly; I think it was 85%—voted to approve the IBA with Ontario Power Generation.

That's consultation. It's consultation when the government or the company sits with the First Nations, establishes what it is that they're going to talk about, what it is they want to accomplish, how often they are going to meet and what is going to be the process for the acceptance of whatever is being proposed. That has not been done in this case.

In fact, I had a chance to speak to some of the leadership in regard to the comments you made in the House today, and it was pretty clear—I wish I had known this during the question in question period, because my supplementary would have been different. You said that you had an opportunity to go to Sandy Lake and Neskantaga in order to consult. Adam Fiddler, the chief of Sandy Lake, is here. Roy Moonias, the chief of Neskantaga—please help me with the pronunciation; I'm doing it wrong. Both chiefs are very clear that in no way, shape or form was there any agreement by them, their band councils or the community to support Bill 191. In fact, they left you very clearly understanding that in fact there was not an agreement on Bill 191 as inked.

Is there a willingness to talk about land use planning? You bet, Minister. They're prepared to do it. They'll do it today. If you want to sit down and you want to start going through a process where First Nations are able to discuss with the province, the crown, the ability to develop land use planning, they are prepared to do it.

Are they in favour of development? Absolutely—\$2.7 billion with OPG; over a billion dollars with De Beers; the Detour Lake gold mine, \$1.3 billion. First Nations understand that economic development is crucial to them. But there needs to be a planning regime that meets with their approval, that protects their inherent right to be able to determine what happens on their territory—that's the key issue; number two, that their values be safeguarded

when it comes to how development will or will not happen, in some cases, and when development does happen, how we are going to protect those lands so that those lands are minimally affected when it comes to what the impact on the environment is going to be.

I just want to say to the minister up front and make it very clear: First Nations do not agree with Bill 191. They are here today to say to you, Minister, that you may not have had an opportunity to send the committee there because of the truncated committee process that we had, but in no way, shape or form did the Nishnawbe Aski Nation in any way—the tribal councils or individual communities—support this particular legislation. In fact, they're asking you to withdraw this legislation.

With that, I'd like to move a motion when we have an opportunity.

The Acting Chair (Mr. Shafiq Qaadri): Thank you for your comments.

The floor is open if there are any further comments on the subcommittee report. Mr. Hillier?

Mr. Randy Hillier: I was involved with these subcommittee reports as well. I have to say that I have never seen such an abject failure and contempt for the First Nations communities as when this government arbitrarily said, "We will meet with you on this day at this time and we will not give you any latitude or any opportunity to change anything in this schedule." This was just a complete disregard for everybody. We hear the words that this government is opening up a new relationship and being open and transparent, and they want to be partners with the First Nations—and this is what they do. They bring in a time allocation motion which arbitrarily says, "We don't care what your concerns are, First Nations. We don't care what other activities you're doing. We're going to hold these meetings on these particular days." They constructed it and set up this time allocation motion, in my view, that there would be no other choice, no other option—there would not be public consultations on Bill 191.

The Liberals have seen the opposition to Bill 191. The First Nations communities are here. They've passed a multitude of resolutions opposing Bill 191 in its current form. They know that they've not been consulted, and indeed everybody in the north—the northern mayors have said the same thing; industry has said the same thing. I'll reiterate: There was no consultation on Bill 191 before it was introduced.

I go back to the committee hearings that we had on the Mining Act, when I asked each and every individual who came before the committee if this government had consulted with them before introducing Bill 191. Not one person from the north had been consulted. There was only individual who said that they had been consulted by this Liberal government and that was Monte Hummel, chairman of the World Wildlife Fund. That is totally contrary and contemptible of democracy where this government is looking for a southern decision for the north, disregarding everybody else who lives in the north but seeking out the approval of Monte Hummel of the World Wildlife Fund.

Everybody in the north knows that Bill 191, the way it is constructed, provides this government with the decision-making that goes on up there. They understand that, arbitrarily, a quarter-million square kilometres of northern land will be excluded from any activity. There will be no natives allowed there. There will be no anybody allowed there. There will be no transmission corridors. There will be no roads. There will be no mining. It's protected and excluded from anybody in the north from doing anything there.

On June 3 we asked this Liberal government to provide some accommodation. We sought unanimous consent that there be some accommodation provided so that the time allocation motion could be amended so that we could have public consultations in the north at a convenient, practical and appropriate time for the communities and the people in the north. This government said no. That's all we were asking for, just some latitude that we could reschedule and have consultations that fit in with the schedule of people in the north. Is that an open relationship when you arbitrarily say, "No, we're not giving you any latitude. We're not giving you any opportunity. It's my way or the highway"? That's what you told them on June 3 and you said it again today when we asked for unanimous consent once more that we have actual consultations in the north, and your government chose not to provide any latitude, no opportunity for the First Nations in northern Ontario to be part and parcel of the legislation that affects them.

You're ramming this through, and one can only assume what the motivator is here, why this Liberal government is disregarding the interests of the north and only accepting the input and the influence of the World Wildlife Fund and people like that.

1420

I guess there's one thing that the Liberals have learned over the last seven years, that there are more votes in southern Ontario than there are in northern Ontario, with the way they're ramming this bill through this committee and through this House.

The Acting Chair (Mr. Shafiq Qaadri): Thank you for your comments.

Are there any further comments before I offer the floor to Mr. Bisson? Mr. Bisson.

Mr. Gilles Bisson: I have to pick up on something Mr. Hillier said. I think the environmental movement has a lot to say on this particular issue, and I think we should value what's being said. What you had to say in regard to the environmental movement might be a little bit harsh, because I think they've tried to find ways of reaching out to First Nations in order to deal with some of these issues.

I do understand what you're saying, however, as a northerner. There really is a sense in northern Ontario—and this is not directed toward environmental movements—that decisions are being made at Queen's Park that, quite frankly, leave us far behind with little say about what the final decision will be. If you're living in the Far North, my God, it's even worse because there is

no ability to go down to the local MNR office, no ability to go to the local MNDM office or even to see your provincial or federal members of Parliament on a regular basis. You're in landlocked communities that are accessible only by air, and there's really a sense of isolation.

That's why, when I made the comment earlier, Minister, in regard to consultation, what I really tried to stress is that consultation in my context as a person living in Timmins is very different than consultation in the context of somebody who's living in the Far North, because of not just the geography but, more importantly, the culture.

I just want to say, again, I want you to be very clear in understanding that there is not a First Nation in the NAN territory that supports this legislation as amended. I also want to make it clear that they are prepared to sit down and go through a process that gets us to where we need to be. At the end of the day, I think we all want the same thing. I think the minister, the Premier and the First Nations, myself and others want to have some certainty around the issue of development in the Far North, and we want to make sure that whatever development happens happens in a way that is consistent with the protection of the environment. I don't think any of us disagree on that point. If there's agreement on the basic point of that, what, then, is holding us up in getting to the issue of really developing a land use planning regime that works for First Nations?

I'm beginning more and more to think that the government doesn't want to get into a discussion about treaties. I really think that's what this is all about. At the end of the day, it is the understanding of First Nations—and I'll tell you, it's a bit of a study, because like you, I've read Treaty 9, I've read Treaty 3 and others; I begin to understand it on the periphery. I don't pretend to be an expert in any way, shape or form. But my understanding of reading treaty, and from not only speaking to elders but speaking to the leadership, is that there was never a sense by those who signed that they gave up title to the land.

That's the problem with this bill. Many people in the Far North say, "Listen, if we allow 191 to go forward as is, this is the biggest thing to hit us since the treaty." If we allow this thing to go forward, it goes contrary to what was agreed to by what was said by the treaty commissioners to those people who were negotiating the treaty on the part of First Nations. They were clearly told that they were not giving up title to the land; that, in fact, the European settlers would share the land with First Nations and that First Nations would benefit from the sharing of that land. So in exchange for allowing mining, forestry and hydro development to happen in those territories, or whatever the activity would be—there would be permission on the part of First Nations, but there would be a quid pro quo: There would be jobs for First Nations members; there would be economic opportunity; there would be a sharing of the benefits of what the land has to offer.

The way that people read this act, at the end of the day, the crown asserts predominance as to who controls

the land. The fundamental issue that I think the provincial government has to get their heads around is that First Nations don't accept that they've ever ceded the land in the first place. If you talk to any leader, talk to any of their legal people, talk to the elders, they'll pretty well tell you the same thing in many different ways, that the basic thing is that the land was never ceded.

There was a point made the other day at the conference in Timmins—and I hope you heard it a second time—by counsel from Mushkegowuk Tribal Council, Murray Klippenstein. He talked about the treaty commissioners and what they had to say by way of their diaries, what they wrote down in the diaries when it came to what was said to the First Nations. What was clearly said was the first point which I made: "You're not giving up title on land. This is about sharing, and you'll benefit from the land, but you would continue to have the right to hunt whenever and wherever you choose to hunt, which means to say that no water development, no mining activity, no forestry activity or any other economic activity could impede on your right to utilize your territory." In the context of the day, the main use of the land was hunting and trapping. So they were told that they would never be interfered with when it came to their ability to benefit from being able to provide for themselves and also have economic activity on the land in any way, shape or form.

I guess part of the issue that I think this government has to get into a conversation with the First Nations about is, take a step back. Say, "All right; 191 we put in abeyance for now." I realize we're under a time allocation motion here, and I'm going to propose something later that might be a way for us to get out of this. The province says, "Okay, we're going to put this aside for now and we're going to go back and we're going to have a basic conversation with First Nations as to the scope of the conversation we're really having when it comes to land use planning."

I can tell you that First Nations are going to welcome that, because they want land use planning, they want development and they want to protect the environment that they live in, not only for themselves today but for their grandchildren in the future. But the basic tenet is, who in the end has paramouncy over the decisions of what happens in the land? That issue has to be resolved before you ever get into land use planning.

I know what side I fall on. I would hope that the minister falls on the same side, because as I said at the beginning, I don't believe that Linda Jeffrey, MPP for—

Hon. Linda Jeffrey: Brampton–Springdale.

Mr. Gilles Bisson: Brampton–Springdale. That's it? Okay. At one time it was a longer title.

I think that you're an honourable person and you want to do the right thing. I think the problem is, I don't understand issues in southern Ontario as fully as I need to because I don't live it every day. I think you need to understand some of the issues that I've come to understand, but more importantly, issues that the First Nations live with every day, so that we understand how we can

move forward with something at the end that's actually going to work.

You know what? It's about protecting the environment; it's about protecting the ability for First Nations to find an economy that works for them, and, probably as important, I think it's all about, at the same time—I had a third point. Don't you hate that when the third point disappears? It's about the ability for them to have a say about what happens on their own territories.

With that, Mr. Chair, I'm going to suggest that a motion, worded along the lines of—that doesn't go contrary to the time allocation motion, if you can give me a little help here—that says that the committee will deal with the business that's before this committee today, but that there's a direction by this committee to go back to the government House leader and the various House leaders and whips in order to find a way to put this whole process on hold so that in fact the government can do what it is that it wants to do at the end, and that is to create what I said earlier: a protection of the land, an ability for economic opportunity and a certainty of what the rules are when it comes to development.

I'm just wondering, Mr. Clerk, if you can help me come up with wording that would allow this committee to do what it is that I'm asking, which is, simply put, that the committee actually deal with the clause-by-clause motions that we have before us, because we are ordered by time allocation to do so—I understand the rules; I can't get around them—but that this committee direct, once we pass the motion, communications with the government House leader and the opposition House leaders in order to try to find a way to put this whole thing into abeyance until such time that we can do what needs to be done to satisfy everybody's interests in this particular debate.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Monsieur Bisson. Procedurally, I would invite you to make an amendment to the subcommittee report, encapsulating those issues. You have the floor to do that now.

Mr. Gilles Bisson: Can I ask for maybe a five-minute recess with the clerk so that I can actually put something together?

The Acting Chair (Mr. Shafiq Qaadri): Is it the will of the committee—a five-minute recess?

Hon. Linda Jeffrey: If you need more time, why don't you give yourself 10 or 15?

Mr. Gilles Bisson: Yeah, 10 or 15 minutes?

The Acting Chair (Mr. Shafiq Qaadri): Which?

Mr. Gilles Bisson: Give me 15 minutes in order to work something out with the clerk.

The Acting Chair (Mr. Shafiq Qaadri): The will of the committee? A 15-minute recess.

The committee recessed from 1430 to 1450.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, members of the committee, for your indulgence. I believe we're ready to reconvene and I open the floor for comments and further process. Monsieur Bisson.

Mr. Gilles Bisson: Before I move the motion, I just want to say up front that this is my attempt, along with the attempt of the official opposition, to give the government an opportunity to go back and deal with this in some sort of way that will achieve what it is that we're trying to do. In no way, shape or form do I want anybody to think that what I'm about to put forward is something that puts the position of Nishnawbe Aski Nation on paper. This is me, Gilles Bisson, New Democrat, Timmins-James Bay, putting this forward.

I'm going to propose the following under number 12 of the subcommittee report: "That the committee send correspondence to the House leaders requesting that Bill 191, the Far North Act, 2010, not be called for third reading until such time as a process of consultation and consent has been agreed to by First Nation communities and the government."

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Mr. Bisson. Do I have any further comments or proposals for deferral? Minister Jeffrey.

Hon. Linda Jeffrey: Mr. Chair—and I realize Mr. Bisson is honestly trying to find a reasonable resolution to the issues raised by the First Nations chiefs who are with us today—I'm asking whether we could defer this decision to Wednesday's debate. I mean, most of us have just been handed this motion now. We'd really like to have at least 24 hours to look at it and to decide whether this side will be supporting the motion. I don't want to dash it right now, so I'm asking if we could defer it and go through clause-by-clause, and then by Wednesday we could have a conversation about it again.

The Acting Chair (Mr. Shafiq Qaadri): Understood. So for the benefit of the committee members, the proposal is that we continue right now with clause-by-clause, as stated by the time allocation motion, and defer consideration of the entire subcommittee report, which includes Monsieur Bisson's proposals, to end of day Wednesday. Is that the will of the committee? Yes, Mr. Bisson.

Mr. Gilles Bisson: For the record, I just want to say to the minister, I appreciate your offer to try to find some mechanism to deal with this, and I'll take it in good faith that in fact you will go back and have these discussions with folks on your side in order to try to deal with this in some way. But again, I want to make very clear that this is a proposal that's put forward by me. It doesn't reflect the position of NAN as far as their agreement to the language; this is me, a legislator, trying to get something to happen. It will then be up to the crown to work out with the First Nations whatever it is that's to happen after this. I would at that point allow you to do your job.

The Acting Chair (Mr. Shafiq Qaadri): Thank you. Are there any further comments on this issue of deferral of the subcommittee report before we entertain—Mr. Arthurs.

Mr. Wayne Arthurs: Just one: Does this in any way frustrate the activities of the committee to carry out its work, in the absence of a subcommittee report having been adopted? I guess the option is to defer this particular

amendment, not defer the entire report. I just want to be sure we're not frustrating the work of the committee.

Mr. Gilles Bisson: Maybe the Chair wants to rule. You have to deal with the entirety of the report; that's the problem.

The Acting Chair (Mr. Shafiq Qaadri): I would ask for guidance.

Interjections.

The Acting Chair (Mr. Shafiq Qaadri): In order to find out the divisibility of the subcommittee report, the whole report plus the end addition, Monsieur Bisson's proposed amendment, the clerk and powers that be are asking for a five-minute recess. Is that the will of the committee?

You have your five minutes.

The committee recessed from 1454 to 1458.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, colleagues, for your continued indulgence and patience. I have been informed that it is procedurally better to defer the entire subcommittee report, so I will assume that's the will of the committee, and the end-point divisibility will no longer apply. Is it the will of the committee that the subcommittee report be deferred until Wednesday? Mr. Hillier.

Mr. Randy Hillier: I'd just like to add one comment here. I think it's very positive that we see some goodwill demonstrated today. I think it's exceptionally important that the government really sees that there is—all parties are concerned about Bill 191 and about the process. I can't stress enough that deferring this subcommittee report really is looking for that last point to be accepted by the House leaders. I would encourage members on the government side to use their influence—

Mr. Dave Levac: Take yes for an answer, Randy. Take yes for an answer.

The Acting Chair (Mr. Shafiq Qaadri): Thank you. Any further comments? May I then take it that it's the will of the committee that the subcommittee report is deferred until Wednesday? Agreed.

FAR NORTH ACT, 2010

LOI DE 2010 SUR LE GRAND NORD

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

The Acting Chair (Mr. Shafiq Qaadri): We'll now move to the consideration of the bill. I'll open the floor first now for general comments. Are there general comments on the bill? Monsieur Bisson.

Mr. Gilles Bisson: For the record, now that we're actually into the clause-by-clause, I want to say a couple of things up front. Just so the government knows—I know you're going to be disappointed—I'm going to vote against every one of your amendments, even though some of these amendments, quite frankly, I could support. I'm going to tell you up front that the reason I

want to vote against all of these amendments is pretty clear: that there is, at this point, a direction on the part of all First Nations that are affected by this bill that they are opposed to this legislation. As such, I'm going to be voting against all amendments—good, bad or indifferent—on the prospect that this bill cannot go forward in the way that it is now. Let's see where we end up with the process that we're about to get into. Maybe the minister is able to find some way to climb this thing down so that we can get to some sort of process at the end that meets with the approval of First Nations and the government.

This is the opportunity that we get to talk about the bill in its entirety, and I want you to know, Chair, that I'm not going to be doing a filibuster, but there are a couple of things that I want to go through. The first thing I want to say is—and I said this in the debate at second reading—for somebody to understand where First Nations people are coming from, you need to understand it goes through the land. Everything that is anything about First Nations people and how they've lived their daily lives for millennia and how they will do so for many years to come all has to do with the land. I've got to tell you, as somebody who comes from northern Ontario and who recently started representing larger First Nations in 1999 when there was redistribution, I thought I understood that. But it has been made very clear to me over the years, from talking to friends, various community members, leaders and elders, that you really have to understand that first point: Everything that has anything to do with First Nations goes through the land. The whole idea of being able to live comes from the land. There weren't grocery stores 200 years ago. It was the ability to hunt and gather that allowed First Nations to survive for millennia and, quite frankly, have quite a good economy.

To that point, there was an economy. This is the other thing I've learnt over the years. There was an economy that flourished in North America for years and years before the Europeans ever came, and that economy was one of gathering and one of being able to sustain themselves when it came to not only being able to survive on a daily basis but to trade with other nations and other communities nearby. The whole concept of gathering every year to be able to trade goods is something that has been going on for millennia on this land by First Nations, and it was their form of an economy.

So you need to understand from the very beginning—and some of you might find this repetitious because you've heard me say this before. But for the record and for those of you who've not had the opportunity to hear this argument, once you look at this bill, Bill 191, once you look at treaty or you look at anything that comes out of treaty or the Indian Act, from the perspective of the First Nations everything has to do with what the land is about: the ability to hunt and to gather and to be able to do so without restriction. I don't mean to holus-bolus go out and bag as many caribou as you can and take as many fish as you want—because they have their own limits, in

understanding what the land is able to sustain, when it comes to gathering and harvesting of various food items they take out of the environment.

My point is this: If you understand that land is paramount to everything else that is the identity of the Mushkegowuk and the Mattawa and various other people out there, it then allows you to get to the next point, which is if it is the land, that is why 191 has hit such a chord with First Nations, because this bill goes to the very essence of what and who First Nations are and how they see themselves when it comes to the land.

I said earlier that when the Europeans came to both Ontario and Canada and negotiated a treaty with the First Nations people at the turn of the previous century, it was very well understood that the concept was the Europeans wanted to be able to access the land, wanted to do things such as mining, forestry and other activities that would derive economic activity from the land and create wealth, but First Nations understood that that development would be done in such a way that didn't take away their right to the territory, their governance of the territory, their control of what happened on their own land. In other words, in the view of First Nations—and that is really clear from everybody I've talked to—never was there a concept of ceding the territory to the crown. It was always, "The land is to be shared." Unfortunately what ensued for the past number of years is treaty was signed and we, the Europeans, went out and did our part, which was to get the benefit from the land, and for their part they got very little.

We didn't have homes in many of the communities that we have today until the 1950s. We signed treaty, what, in 1906?

Hon. Linda Jeffrey: In 1905.

Mr. Gilles Bisson: In 1905. Thank you, Minister. That's why you're here. You're the boss. You're the boss of the beavers, I understand. That's the translation in Cree. It might be muskrat, but that's a whole other issue.

Hon. Linda Jeffrey: No, it's beaver.

Mr. Gilles Bisson: It's beaver? It is beaver, okay. We'll get to that one later.

My point is that it was understood that at the end there was no ceding of the land, and 191 is seen by First Nations as the crown trying to do by way of this act what they tried to do and didn't do by way of treaty. So you really need to understand that point.

Now, does it mean to say—and this I want to say to my detractors. I've got people across Ontario, as you do, Minister, who would see this kind of talk in committee and say, "Well, what are you saying? We can't do development in the Far North?" Absolutely not. There is hardly a First Nations leader, there is hardly a First Nations member who is opposed to development of some type in order to bring them economic opportunity. All they're saying is, under the principle that they still control the land, and under the principle that development happens with the values and with the interests of First Nations put in legislation somehow—so for that to

happen, there needs to be some kind of process where we develop legislation that makes that happen.

What's the proof that development should happen? I look at Moose Cree, which is one of the communities in my riding. An IBA with Ontario Power Generation—is it \$1.7 billion, is it \$1.3 billion or—

Interjection.

Mr. Gilles Bisson: It's \$2.7 billion to develop the Lower Mattagami, signed by the First Nations by way of consultation, by way of ratification by the First Nations community. There's a deal with De Beers Canada on the part of Kashechewan, Fort Albany, Attawapiskat, and Moose Cree, where they have negotiated IBAs with De Beers in order to allow a \$1.2-billion project that is now in production.

I'll tell you, it wasn't easy. Attawapiskat probably took about seven or eight years by the time they negotiated an IBA. I know it was part of the process that took so long. I never thought it was going to happen, but there was a genuine will on the part of those communities to allow that to happen, because they understand that there needs to be development if their communities are to prosper and get the same opportunities as we do. But all of this has to be done within the context that not only are they able to derive benefit from those projects, but that also their values and the environment are protected. That's the other part of this whole thing.

So I want to say to those who may be my detractors that when I say we need to accept the principle that First Nations have never given up title to the territory known as the Far North, and that in fact they have to have an absolute say of what goes on there, it doesn't equate to there being no development. Because, I'll tell you, there will be development.

To the government's initial point on 191, they were saying that this is all about protecting the land. Listen, for millennia, First Nations have protected that territory. They still can get tonnes of fish out of the Fort Albany, Winisk, Attawapiskat and other rivers. They're still there. Why? Because First Nations have never overfished them. First Nations have always understood that it's a finite resource: You only take what you need; you don't take out what you don't need.

I fly an airplane, as a number of you know, as Mr. Shurman does in the Conservative caucus and Madame Gélinas does in our caucus. You go flying over the Mushkegowuk territory, you'll see caribou. You don't see one or two of them; you see herds of caribou. Why? Because for millennia, the Mushkegowuk people have been hunting caribou, but, again, they don't over-harvest. They understand. The other issue is that the land itself cannot be left in such a way that the land would be harmed in any way for future generations.

I just want to end on this point. All that First Nations are asking is that when we go forward with the land use planning process, in whatever bill we want to call it—Bill 191 or whatever it might be in the future—we do so with a clear understanding that First Nations have never ceded territory to Ontario or Canada when it comes to

their ability to decide what has to be done, that that does not mean that there cannot be an agreement as to what land use planning should look like and that it doesn't mean that no development would ever happen again. It doesn't mean that the environment has to be damaged in order to allow that development to happen.

In a manner consistent with good rules and good practices, I think the environment could be well taken care of. In fact, we can protect far more than 50% of the territory if we decide to put our minds to it and we do it right. We learn from those mistakes of the past, where the Kamiskotia mines of this world don't exist and can't happen again. We understand that you cannot go in and over-harvest a forest or dam a river to the point of changing the silting and various activities that naturally happen within a river, that it be done in a manner that's consistent with best practices so that we protect the land.

1510

I just want to say to those members that when it comes to this bill, please understand that the opposition of First Nations is not to the concept but to the process by which we get to what we all want to do, and that is to allow development to happen in such a way that's consistent with good principles that protect the environment, that respect the values of First Nations, and that allow people to benefit from the very territory that they reside on.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Mr. Bisson. Before we move to clause-by-clause consideration, Mr. Hillier.

Mr. Randy Hillier: I'd like to say that I'm not opposed to planning in the north, and I do believe there's a role for Queen's Park to be involved with planning in the north, but I would like to see the planning of the north be involved with planning for good governance, for good administration, for a good relationship with First Nations. But that's not what this bill is all about. This bill is about planning for the land in the north and not for planning for a good relationship, good administration and good governance. That really is why there is so much opposition. Here we see Queen's Park trying to impose a preconceived notion, a preconceived plan, arbitrarily on people in the north. If we had taken some time and thought about planning for a good relationship, planning for good administration, this problem wouldn't have developed.

People in the north don't need Queen's Park to be the arbiter of what happens on the land in the north. That's not what they need from Queen's Park. I'm sure everyone in the north understands that, and I'm sure most people in this committee understand that there are people who are better suited to determining what happens in the north than those who are sitting here today in this committee and those who sit in the Legislative Assembly. That's my take on planning for the north.

I also have to say that we've heard this talk so often about, "We must protect the land." I'm just wondering, who are we protecting it from? What are we protecting? The land is not going to go away. The land is going to stay there. Who are we protecting it from with Bill 191? Who do you want to protect this land? What do you want

to actually achieve with this protecting of the land? I'm confused as to who you want to protect it from.

I know the people who live in northern Ontario can take care of the land. If anything, if I was living up north, I'd want to protect the north from us, not from the people who live there. That's what I think we should be looking at very significantly.

I will just say that, hopefully, we've gone past a little bit of what has happened with this time allocation motion on Bill 191. We still recognize, though, that all these government amendments are going to be passed. The consultation, the discussion here in this committee, will be worthless and meaningless because they're all going to be deemed passed. I think that's a disservice to the people in northern Ontario. I think it's a disservice to everybody in Ontario.

Like my colleague from the third party, we will be opposing all government amendments. It really is nothing but a mockery of democracy and a mockery of actually having a concern in the interest of the people of northern Ontario.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier, for your comments. Are there any further general comments before we move to individual clause-by-clause consideration? Mr. Arthurs.

Mr. Wayne Arthurs: Very briefly, just two things: One, I think it's already been acknowledged that the minister is here today for clause-by-clause, and I'm anxious, of course, to get into that, because I'm anxious, obviously, for her to have an opportunity to speak to some of the government amendments that are being brought forward.

Mr. Bisson has referenced that there are amendments, some of which you don't agree with, some of which you may agree with but you won't be voting for—and I appreciate the comment. I'm hoping, though, that during the dialogue, the debate that goes on, you will take the opportunity to express your opinions on the amendments, both pro and con, even knowing that your decision on those amendments will be in the negative. I think that will be beneficial to us, beneficial to this process, particularly as someone who represents a northern Ontario riding and is as familiar with First Nations as anyone in the Legislature.

The Acting Chair (Mr. Shafiq Qaadri): We'll move to clause-by-clause. Government motion 1, Minister Jeffrey.

Hon. Linda Jeffrey: I move that section 1 of the bill be struck out and the following substituted:

"Purpose of the act

"1. The purpose of this act is to provide for community-based land use planning in the Far North that,

"(a) sets out a joint planning process between the First Nations and Ontario;

"(b) supports the environmental, social and economic objectives for land use planning for the peoples of Ontario that are set out in section 6; and

"(c) is done in a manner that is 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.”

On several occasions, NAN has written to the province, asking that Bill 191, the Far North Act, protect and support aboriginal and treaty rights. Most recently, on August 9, 2010, Grand Chief Stan Beardy wrote to the Premier asking that Bill 191 support aboriginal and treaty rights.

We are tabling this motion in response to what we’ve heard. With this amendment, the purpose statement would provide that land use planning in the Far North will be done in a manner that is consistent with existing aboriginal and treaty rights in section 35 of the Constitution. The Mining Act is the only other piece of Ontario legislation that does this.

I’ve personally heard concerns from First Nations that Bill 191 will impact aboriginal and treaty rights. These existing rights are recognized and affirmed in the Constitution, and the province must meet its obligations under the Constitution. Bill 191 cannot and will not change this. We can make this point very clear by speaking to these existing rights in the purpose statement of the bill.

Mr. Gilles Bisson: Could you repeat the last part you just read, Madam Minister?

Hon. Linda Jeffrey: The last sentence?

Mr. Gilles Bisson: No, the last paragraph. I missed something, I’m sure.

Hon. Linda Jeffrey: I’ve heard from First Nations that they feel that that Bill 191 will impact their treaty rights. These existing rights are recognized and affirmed in the Constitution, and the province must meet its obligations under the Constitution. Bill 191 can and will not change this.

Mr. Gilles Bisson: I though you were saying the inverse, that’s why.

Hon. Linda Jeffrey: No.

Mr. Gilles Bisson: My bells were going off there. Okay.

Hon. Linda Jeffrey: On the issue of joint planning: Earlier this month, in a radio interview, the grand chiefs said that they want a mechanism to jointly make decisions on what happens in the Far North. We agree. Bill 191 is a mechanism that would allow for joint land use planning. To make this point abundantly clear, we are tabling a motion that would directly reference a joint planning process between First Nations and Ontario in the purpose statement of the bill. We are also working to provide First Nations with the funding to participate in the joint process. All communities in the Far North who want to do land use planning have received funding, and this past week we committed an additional \$10 million to communities working on planning with Ontario.

If this bill is passed, it would be the first time in Ontario’s history when legislation would require First Nations’ approval on land use plans. This is a significant change to the current approach in the Far North and represents a step forward in our relationship with First Nations.

The Acting Chair (Mr. Shafiq Qadri): Are there any further comments?

Mr. Gilles Bisson: Well, is this a step in the right direction? I think it is, to be blunt. Does it really address the concerns first raised by not only NAN but NAN communities and others? I think not, and I’ll explain why in a minute. Does it deal with the essential issue of protection? I think not, and let me explain why.

The original purpose clause spoke strictly to the social and economic objectives of land use planning, blah, blah, blah. It didn’t entrench in there, as the minister said quite correctly, the concept that First Nations are in the driver’s seat.

But here lies the problem: As I read the amendment, it says “sets out a joint planning process between the First Nations and Ontario.” “Joint” is the keyword. What does that mean? Does that mean to say that at the end of the day the minister will have the final authority?

1520

As I read—this is where we’re going to get into the bill a little bit later—the amendments that have been put forward by the government, you have a joint planning process that says, “Yes, the community approves the land use plan, but at the end of the day so does the minister.” It sounds to me that, at the end of the day, the minister has the authority in that scenario. What you’re essentially saying in (a) is “sets out a joint planning process between the First Nations and Ontario.” I think that has to be fleshed out in the sense of what are we really talking about. Do we agree with the principle that, at the end of the day, they have the right to determine their own land use plans such as municipalities have—and I’ll come back to that. Actually, let me deal with that right away.

Currently, a municipality in Ontario has a right to develop its own land use plan if they don’t have one, and if they were a new municipality, to develop a new one, and if they want to amend one, they can amend one. The point is that they go, yes, to the end, and they go to the crown in order to be able to deal with the approval of the land use plan. The difference is, it’s the province that created the municipalities. In the instance of First Nations, it wasn’t the province that created reserves; it wasn’t the province that created the territories which First Nations see as their lands. They were there millennia before we ever came around, so that process is a little bit foreign to them.

But to the issue of municipalities, a municipal council, if they decided—if there’s a planned development that’s to come forward before a municipality that is not consistent with the official plan, the municipality can say no. It’s their say and nobody can appeal that as long as it follows the official plan. So if, let’s say, the official plan says, “There will be no development in this particular area,” for whatever reason, and a proponent comes forward and says, “I’m applying for development in that area,” and it’s not consistent with the official plan, the municipality has every right to say, “No, there will be no development.” No such provision is put in this legislation that officially gives the First Nations the ability to ensure

that what's in their official plans—that at the end of the day, they're masters of their own destiny.

The other issue for municipalities—and, again, a right that we've not given in this legislation—let's say somebody does come before your municipality—and you know that more than I do because you sat on municipal council; I didn't. My understanding of the rules of municipalities is based on the work I've done as a provincial member, which is a very, very different view than you would have as a former councillor. Let's say somebody does come forward to you as a council and says, "I do have a planned development that is consistent with your official plan." The municipality, in the end, can, again, say no. Is it appealable? Yes. The proponent of the planned development can bring it before the Ontario Municipal Board and a decision will be made, but there is at least some sort of a hearing process. That kind of process doesn't really exist in this legislation. I guess I have a bit of a hard time trying to understand why we give municipalities a certain right, and to a large extent don't give an equal right—and I'm not arguing it should be equal. I think they're different. I think we created municipalities; First Nations were there before we came along, so I think we need to respect that they were nations before we got here. But at the very least, we're not even giving them an equal right to planning that is given to municipalities.

So on (a), I can't support it on the basis of that.

"(b) supports the environmental, social and economic objectives" etc.—motherhood and apple pie, Minister. I'll give you that one. That's motherhood and apple pie.

But here's the kicker, which is (c)—and this will speak to Mr. Hillier's point. I understand where he's coming from—"is done in a manner that is consistent with the recognition and affirmations of existing aboriginal and treaty rights" set out in section 35. Agreed. I understand. Your point is well taken, but—where the heck did it say sections? Oh no, excuse me—I don't agree with (b). I got it mixed up.

"(c) is done in a manner that is 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."

There's not only the duty to consult; there's also the duty to accommodate. I think the word "accommodate" needs to be put in (c).

I don't agree on (b). That's not motherhood and apple pie. This is where the problem lies. It has to be consistent with what is in section 6, and if you go and look at section 6, it says, "The following are objectives for land use planning in the Far North:

"1. A significant role for First Nations in the planning."

I don't know. I look at my First Nations friends. Do they want a significant role, or do they want to have an ability to have a say, in other words, to have the final say? It's about the ability to have that final say. It's not about having a significant role. They want to have an ability to develop their own land use plan based on some

principles that will be negotiated with the province, but that's for them and you to work out.

But then you look at 2—and this is where I'm going to get in a little bit of trouble with my environmental friends, because I'm more of an environmentalist than they are, and I say that in all honesty—"The protection of areas of cultural value in the Far North and the protection of ecological systems in the Far North by including at least 225,000 square kilometres," roughly 50%. The problem I have: We can protect 99.9%. Why are we saying 50%? You protect 99.9% by having good planning rules that say how development is to happen or not happen in particular parts of that territory.

Saying that we're going to have 50% is an arbitrary number, in my view, that has been put out there, that is noble, that is understandable. It's a great sound bite: "We're protecting 50%," says the government. But at the end of the day, who the heck is to determine where a mine's going to be found 15 or 50 or 100 years from now? Who's going to know what development will be available when it comes to the lands that are in the Far North, when it comes to any kind of economic development? How do you determine where that 50% is going to be?

You're going to get it wrong, even if you try to get it right. Even if I tried to figure out where the 50% would be, I would get it wrong. Even if they tried to figure out where the 50% would be, and "they" means First Nations, they would get it wrong. Technology changes with time.

I think what's more incumbent upon us is not putting an arbitrary number of 50% as an area that we want to protect. I think what we're trying to do is protect it all. You protect it all by saying some very fundamental things: Will establishing a mine in this particular area be, first of all, harmful to the environment in a way that is going to create significant damage that cannot be repaired? I'm going to say it here, and I come from a mining community: If it's going to be so significant when it comes to the damage to the environment, then maybe we shouldn't make it happen. Who better to figure that out than First Nations? They're the ones who live there.

Number two, if there is to be a development of a mine—and I'm just using a mine as an example—then let's have some principles about how that development is to happen so that we're in fact able to do the development in some way that has a minimum footprint on the environment and on the area and that is able to significantly lower the risk when it comes to its impact on the environment.

I'm going to vote in opposition to this one, not just because I don't want to vote in favour of any this because of the process we're under—I think the government is actually trying to do something here—but again, because the process is such that we have really not had a chance to allow First Nations to deal themselves with what the planning issues are, what questions need to be asked, what are the areas of interest. All that kind of stuff has to be done first before we ever draft an act. We're going to end up in this type of legislation that I think at the end

misses the mark and is minimal when it comes to the ability for First Nations to be able to protect themselves.

The Acting Chair (Mr. Shafiq Qaadri): Are there any further comments on government motion 1? Mr. Hillier.

Mr. Randy Hillier: Mr. Bisson has alluded to just what is the failing of this bill. It sets out a joint planning process, but we have predetermined targets of this joint planning process. Section 6: a quarter of a million square kilometres will be off limits. There will be no planning there. We don't know where that quarter of a million square kilometres will be, but it's off limits. It's not a relationship when we say, "You're going to have joint planning with us, but we're already going to set the targets: a quarter of a million square kilometres of interconnected space."

Let's just forecast a little bit down the road if this does go through in this fashion. The First Nations will be obligated to do those land use plans in conjunction with bureaucrats from the Ministry of Natural Resources and from other ministries. They're going to look at this act, and they'll say, "Well, we have to exclude a quarter of a million square kilometres of interconnected space." That's an obligation; it's a legal responsibility. They will not be allowed to jointly plan and administer with First Nations something that is contrary to the legislation. Even the minister will not be able to make that change. It's set in the legislation that a quarter-million square kilometres are excluded from opportunities and from First Nations' abilities to do anything there.

1530

The whole premise of calling this a joint planning process, when you have a predetermined and pre-set outcome—that's being dishonest, really. When you have a predetermined outcome, is there joint planning? I say, obviously not.

Following up, furthermore, we have seen that we don't know which quarter-million square kilometres are going to be excluded, and we don't know what commodities are there. We don't know what resources are there, because we just have this finite, pre-set amount of land, but we don't know what land, we don't know where it is. We don't know what's under the ground.

I've talked with many people in the First Nations communities, and we all know it intuitively ourselves: A land use plan is not something that is done overnight. It's not done in a week or a month. I've talked to First Nations communities that have been going through the hoops of bureaucracy, looking at seven, eight and more years, to create a land use plan. And just imagine—again, just to forecast, to have a view—what happens? We finally do get a plan put together, after five or seven or eight or 10 years, and new technologies have come online that make extracting of resources more feasible. We may even find new commodities that we don't know about today that have an economic value in 10 years' time. But we're not going to let anybody prospect or look for them. We're not going to allow anybody to extract them. We're not going to allow the people who live there

to derive any benefit. We're creating a condition where—I think, in section 6, paragraph 4, it says, "Enabling sustainable economic development..." What you're ensuring is no economic development. You're ensuring that the economic level that is now in the north will never be exceeded in the north. That's what the Far North planning act does.

Now, just look at what other jurisdictions in this country are doing with regard to First Nations. We've seen powerful, unique, imaginative ways to really build relationships with First Nations, where they have far greater autonomy, where they have the ability to bring themselves out of very poor economic conditions on many of our First Nations reserves. There are provinces in this country that have gotten it right, that have sat down with their First Nations and really have come up with consensual legislation that empowers First Nations, gives them autonomy, gives them a level of sovereignty, gives them the ability to be an economic engine. Bill 191 fails on all those counts.

We'll oppose this amendment as well.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Any further comments? Ms. Jeffrey—

Mr. Gilles Bisson: I just want to pick up on the one point that Mr. Hillier made, because I think it really is an essential point.

One of the objectives that we're trying to get into this act is to provide some sort of certainty as far as what the rules are. If I'm a developer, what do I need to do, as a developer, to be able to go forward with the project? That certainty creates an atmosphere for investment, period. That's the point that you're making. Talk to any of the First Nations folks; that's one of the first things they talk about to me.

If you listened to the press conference that we had earlier, at 1 o'clock today, allowing this bill to go forward in the present version, without the consent of First Nations, is not going to create certainty that you're looking for. In fact, it will create a disincentive to investment, because who's going to want to invest in an area where there's no agreement about how planning is to go forward?

I've got to take the government at its word when they say they have a policy of Open Ontario. I've read your press releases as they relate to 191. It ain't gonna open Ontario if you don't have the First Nations onside on the very basic issue of land use planning.

If one of the objectives as stated, as Mr. Hillier did, is that we need to have some certainty so that those who invest in Ontario know what the rules are, we've got to make sure that we get this right. Because if we don't, in fact, we're going to be creating a disincentive for investment.

I'll tell you, we all know this, sitting around the table—this is no preaching by a New Democrat to Liberals. Maybe it is; I don't know. Capital's got feet, and it's going to run as far as it needs to in order to invest wherever if things aren't in such a way that allows them

to make decisions that they can then say, “Okay, here are the rules. This is what’s to happen.”

I just want to make one other little, very quick point on one thing that has been really clear to me over the years in dealing with mining companies and others. They’re not opposed to good environmental regulation, although some people would categorize them that way. They’re saying to us, “What the hell are the rules? Tell me what you want. Tell me what your principles are of what you want. Tell me where you want me to go, and I’ll build it into my model. If I can do it within the context of whatever economic activity I’m carrying out and make a profit, it’s part of my budget. I’ll do it. But I need to know what the heck the rules are.” That’s part of the problem we have in the Far North: We don’t know what the rules are. Every industry is having to go out and negotiate individually with each First Nation, trying to figure out what the heck the rules are.

The province’s willingness to insert itself into this debate—I think it’s healthy that the province wants to play a role in determining how we are going to establish rules that everybody can operate by, that protect the environment, that do all the things that we talked about earlier but ultimately create a certainty, I think, that the financial community needs in order to invest. All that said by a social democrat.

The Acting Chair (Mr. Shafiq Qaadri): Are there any further comments? Ms. Jeffrey.

Hon. Linda Jeffrey: Mr. Chair, I would like to respond to everything that both opposition parties have indicated, but I don’t know if I have enough time today, because I think they’ve covered all of the bill, and we’re going to get into the specifics later on. But a couple of—

Mr. Gilles Bisson: The purpose clause is very wide.

Hon. Linda Jeffrey: It is, but I feel like I need to jump in on a couple of issues.

Mr. Bisson talked about the fact that we don’t know where a mine is, we don’t know where the next hydro-electric dam will be, we don’t know where the next economic opportunity is. I think at the end of the day, if you’ve done land use planning, even in a southern municipality, you understand that land use planning is not a static document. It’s amended from time to time, based on what happens technology-wise or resource-wise, and every community has that opportunity.

But we realized that the north is a very different place; it’s a special place. We have tried to customize the language that we used in this bill to reflect what we’ve heard in the north.

We know that land use planning isn’t static. We’ve put language in the course of the bill that allows the First Nations communities to amend the plan, and in fact they will be choosing whether or not they put those amendments in place. It would be approved by First Nations and the minister. But in this case, it will be approved by the minister prior to the land use planning occurring, and final approval would occur by the First Nations community, and that’s in the bill.

Mr. Hillier claimed that all First Nations would feel obligated to do land use planning. Nothing could be further from the truth. There is nothing that forces any First Nations community to do land use planning. They can choose to initiate it, and if they choose to initiate it, they can decide where, when and how that will occur. They, in fact, will be allowed to determine what would be a protected area.

Your claim that areas will be frozen and no activity will occur—that’s not true. Protected areas will also be allowed to have business occur in them. For example, tourism could still occur in a protected area, but it will be the determination of the First Nations community. I’m not here to tell them what should be happening in their community. They know their homeland better than we do, and they’re going to be the ones that initiate and do the land use planning and bring it back and show us what they would like to have as a plan.

1540

Mr. Randy Hillier: Draw me the quarter-million square kilometres; I’d like to see you draw me that.

Hon. Linda Jeffrey: Mr. Chair, if I can conclude, I’d like to make it clear that the community land-based planning will be jointly prepared, and I expect that each First Nation community will determine what their protected areas are. And if we can get to the rest of the bill, perhaps you can find where in those clauses it will occur.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Ms. Jeffrey. Further comments?

Mr. Gilles Bisson: I hear your comment that land use plans are not static, but as I read the bill—and I’m going to go back and do a little bit more reading tonight—to a degree, it is. As I read the bill in its entirety, it would be fairly difficult for somebody to undo a protected area, should it be protected under the bill, because there has to be a process at the end so that the public is informed, as the bill spells out, and the public will have its ability to comment.

My point is that politically it would be pretty difficult for anybody to undo the protection—well, we have all kinds of examples where that happens now within municipalities. Anyway, it’s just the point that I make.

To your issue about final approval by First Nations, again I just beg to disagree because, as I read the bill, at the end of the day it’s the minister ultimately who’s going to approve land use plans. There’s a bit of a joint process that’s set up. I wouldn’t say that there isn’t a role for First Nations, but at the end, even with your amendments that you brought forward—and I was just rifling through them because I remember reading the amendment—basically, as I understand it, the First Nations have the final right of approval, but then so does the minister, as I read the amendments. But we’ll come to that a little bit later.

The Acting Chair (Mr. Shafiq Qaadri): Thank you. Further comments?

Mr. Randy Hillier: I want to just say we have the targets set in the legislation, a quarter-million square kilometres. That has to be done. If it’s not done, then the

minister is in violation of the legislation. You could be held liable and brought to court for not upholding your own legislation.

I'm just going to put this out: A quarter-million square kilometres is protected and eventually those lines will be drawn in somewhere and they will be interconnected, as the legislation says. So what happens when somebody finds a valuable resource on 1,000 acres, on 100 square kilometres? You're saying that this is not static. Of course it's static. It's targeted. What are you going to do to be able to facilitate the people in the north to extract and benefit from that resource in that quarter-million square kilometres?

We know—we may pretend, but we've all been through the process—you don't change a land use plan overnight. You don't change legislation overnight. Going back to what Mr. Bisson said, certainty is the name of the game here. Investment requires certainty. There is no certainty here.

I'll just reiterate once more: Why wasn't there the interest in planning for good relationships and good administration so things could be done, so there could be certainty for investment instead of just planning for land use, not planning for good relationships? Why is anybody going to put any investment to go searching for opportunities in the north when you have this bill as the obstacle in front of you?

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Just before we proceed, Mr. Bisson, I'd just alert you that those seats are for members of Parliament duly elected, and once that individual is elected to the Legislature, he's of course welcome to come back and resume that seat.

Mr. Gilles Bisson: I'll find a seat somewhere for him.

The Acting Chair (Mr. Shafiq Qaadri): Thank you. Are there any further comments?

Interjection.

Mr. Shafiq Qaadri: Mr. Bisson, I'm going to give it to Ms. Jeffrey and then offer it to you.

Hon. Linda Jeffrey: Chair, I don't want to prolong the debate, but I want to make a clarification. Obviously, Mr. Hillier did not understand what I said. When I talk about a static document, I'm talking about the fact that the planning process is not a static process. A mine, obviously, is static. Based on my conversations with First Nations communities, I think they're extraordinarily good stewards of the land, and I think, in fact, they would like to protect more land than the planning objective that was placed in this bill. I look forward to more conversations with them about protected areas.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Ms. Jeffrey. First Monsieur Bisson, and then open.

Mr. Gilles Bisson: We're going to get a chance to get into this a little bit more in detail later as we go to other sections, but as I read the bill, Minister, in regards to the minister's ability to approve a plan—and I'm just reading under subsection (14); I believe it's under section 8—“The minister shall not make an order approving a land use plan ... unless”—and then it goes on to factors for the

minister to consider. As I read your amendments, it still at the end of the day leaves you in the position of being boss of the beaver.

It would be interesting to get into that and to get your explanations later, because as I read it, you still have the authority to approve the plan or reject the plan if you don't find that it's consistent with whatever the values are that are set out.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Monsieur Bisson. Are there any further comments before we move to the vote considering government motion 1? Monsieur Bisson.

Mr. Gilles Bisson: Can we require 20 minutes?

The Acting Chair (Mr. Shafiq Qaadri): Are you asking for a 20-minute recess?

Mr. Gilles Bisson: Yes, yes. This is to be helpful with our other discussion.

The Acting Chair (Mr. Shafiq Qaadri): All right, a 20-minute recess.

The committee recessed from 1545 to 1605.

The Acting Chair (Mr. Bob Delaney): Thank you very much, one and all. Welcome back. We are dealing with section number 1, government motion number 1—

Mr. Wayne Arthurs: Recorded vote, please.

The Acting Chair (Mr. Bob Delaney): —and we're calling for a recorded vote.

Ayes

Arthurs, Jeffrey, Kular, Levac, Sousa.

Nays

Bisson, Clark, Hillier.

The Acting Chair (Mr. Bob Delaney): I declare the motion carried.

Shall section 1, as amended, carry? Carried.

We will move to section 2 on page 2: Government motion number 2. Ms. Jeffrey.

Hon. Linda Jeffrey: I move that the definition of “Far North policy statement” in section 2 of the bill be amended by striking out “7(6)” and substituting “6.2(7)”.

This is a housekeeping amendment to reflect the correction in section numbers.

Mr. Gilles Bisson: That was my question. Could you just give me a second because I saw it as a little bit more than that. Maybe I'm reading it wrong. Just a question to the ministry: So 7(6) exists in the current act, as I see it, right—that's why I was a bit confused here—and now you're going to replace it with the same language but you're moving it to section 6.2? Am I correct?

Hon. Linda Jeffrey: I'm told it's housekeeping.

Mr. Gilles Bisson: So it's only strictly a changing of the numbers on it. It doesn't change in any way, shape or form the actual content of that Far North policy statement, right? Just looking for somebody to shake their head to the affirmative.

Hon. Linda Jeffrey: It doesn't change the content, no. You're right.

Mr. Gilles Bisson: So then I have another question but I can wait and let Mr. Hillier go first.

Mr. Randy Hillier: Go ahead. I'm still trying to see where all these numbers come into play here.

The Acting Chair (Mr. Bob Delaney): Mr. Bisson, you still have the floor if you have any further questions.

Mr. Gilles Bisson: I do. I just thought Mr. Hillier had wanted to get in on that part.

This refers to the policy statements, and we all know what policy statements are. The way that these are run out, paragraphs 1 through 8, weren't there submissions that I've seen by some that wanted to see that extended beyond the eight that are there? I'm just looking at MNR staff or maybe counsel. It seems to me that some of the policy statements had to take into account things other than the eight points that were raised. I just—

Interjection.

1610

Mr. Gilles Bisson: Yes, if I could get an answer. It just seems to me there were.

The Acting Chair (Mr. Bob Delaney): Just before you answer the question, please state your name for Hansard.

Ms. Sheila Ritson-Bennett: Sheila Ritson-Bennett. So the question is with regard to the substitution of the number. It's substituting the number that relates to an amendment that's further along in the package.

Mr. Gilles Bisson: Yes. No, I understand that part, but my question was, in the submissions that the committee received and in the conversations that you've had with First Nations, wasn't there a desire to increase the bullet points, 1 through 8, beyond what is contained there now to other—

Ms. Sheila Ritson-Bennett: I'm afraid I can't speak to what those conversations were. I wasn't at those.

Mr. Gilles Bisson: Minister, do you remember, because I seem to remember having this conversation with folks. Hence, when you don't have committee hearings, it gets to be a real problem.

The policy statements say, "The minister shall prepare policy statements which may relate to the following matters," based on the following: "1. Cultural and heritage values.... 2. Ecological systems"—I'm not going to read them all, but I think it was the PDAC, the Prospectors and Developers Association of Canada, that raised the point in regard to mineral potential. I'm just wondering why that kind of stuff is not in there. I'm just curious.

Hon. Linda Jeffrey: I'm going to guess, Mr. Chairman. Maybe I can respond: I think there is some more flexibility further on in the bill that would reflect that. I'm hoping that we'll be able to clarify that later on in the bill.

Mr. Gilles Bisson: Okay.

The Acting Chair (Mr. Bob Delaney): Any further debate? Shall government motion number 2 carry? Carried.

Mr. Gilles Bisson: No.

The Acting Chair (Mr. Bob Delaney): Okay. Government—

Mr. Gilles Bisson: Just for the record, so that it's recorded at least in Hansard, I voted against. I understand that I was slow off the mark, but I was voting against.

The Acting Chair (Mr. Bob Delaney): Motion number 3, Mrs. Jeffrey.

Hon. Linda Jeffrey: I move that the definition of "First Nation" in section 2 of the bill be amended by striking out "which was made" and substituting "which latter treaty was made".

This is a housekeeping amendment to clarify that it was only Treaty 9 that was signed in 1905 and 1906 and not Treaty 5.

The Acting Chair (Mr. Bob Delaney): Any discussion?

Mr. Gilles Bisson: If you can give me two minutes to take a look at that. That's still under "Definitions," right?

Interjection: Yes.

Mr. Gilles Bisson: So is that under definitions of First Nations? It currently says, "means a band having one or more reserves set apart for it in the area of Treaty No. 5...." Are you saying it excludes Treaty 5? Is that what you're getting at here?

Hon. Linda Jeffrey: No, I think it's a clarification, but maybe I can get legal counsel to affirm that.

Mr. Gilles Bisson: Ah, I get the drift now. I understand. I got it, I got it. I figured it out. Saved by the bell. If I'd read the amendment in its entirety, I would understand what you were trying to do. Thank you.

The Acting Chair (Mr. Bob Delaney): Does that cover your discussion? Okay. All right. Any further discussion? Shall motion number 3 carry? Carried.

Shall section 2, as amended, carry? Carried.

Page 3 is a government notice of motion. We'll deal just with section 3—

Interjection.

The Acting Chair (Mr. Bob Delaney): Sorry. Debate?

Mr. Gilles Bisson: My question to the minister is that this strikes "This act shall be interpreted in a manner that is consistent with the recognition and affirmation of existing aboriginal and treaty rights in section 35 of the Constitution Act ... including the duty to consult."

Two points: (1), I take it that's going to be put in the purpose clause, and that's why you're taking it out; and (2), to my point, it doesn't say "accommodate." Why is the word "accommodate" not within the purpose clause? I'm dealing with it here because it originally was dealt with in section 3 of the bill.

Just as your ministry folk are coming forward to explain, it is pretty clear what First Nations have said right from the beginning: that it's not just the duty to consult but it's also the duty to accommodate which concerns them. In the original section 3 of the bill, it's only the duty to consult that is described in the bill, not "accommodate," and if we now look at the purpose, it's

kind of the same. So what was the basis of the decisions for not including the word “accommodate”?

Ms. Jessica Ginsberg: Jessica Ginsberg, MNR legal services. I don’t know if this will be of assistance to you, but I’d like to draw your attention to both section 2, the purpose clause, of the Mining Act, as well as the interpretation clause of the Green Energy Act, both of which use very similar language. I could read to you the purpose clause of the Mining Act, which has, “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...” Then it goes on to say, “and to minimize the impact of these activities on public health and safety and the environment.”

Mr. Gilles Bisson: But back to my point that it is the view of First Nations and that decision of the Supreme Court that it was not only the duty to consult that was given by way of that decision; it was also the duty to accommodate. So why is it that the government has chosen not to put the word “accommodate” in that particular section? I think it’s more a political question than a legal one, to be fair to your staff.

Hon. Linda Jeffrey: I think what we were trying to do was to find consistency with other pieces of legislation. We were just trying to find a similar piece of legislation. That was really the whole point. It wasn’t a decision to remove anything.

Mr. Gilles Bisson: But as I said, Minister, in all respect, with the changes to the Mining Act the same issue was raised. What First Nations clearly said was, “We want the word ‘accommodate’ included with the word ‘consult.’” Just because we got it wrong in the Mining Act doesn’t mean we’ve got to get it wrong in the planning act. So my question is, is there any willingness to amend that section to include the word “accommodate”?

Hon. Linda Jeffrey: I guess I would say, Mr. Bisson, that in the conversations I’ve had with First Nations communities, this wasn’t an issue that was raised in any conversations I had, and I don’t recall that particular request to have been made. Our goal here is to continue the conversation with First Nations communities, and as I said earlier today, it’s the beginning of a dialogue.

Mr. Gilles Bisson: Well, in all respect—

Hon. Linda Jeffrey: So it wasn’t to hold things back. It wasn’t to prevent the conversation from happening, but it was an attempt to try and find legislation that had a common usage, whether it was mining or land use planning.

Mr. Gilles Bisson: I understand your argument about trying to make it consistent with other acts, but my argument to that point is, just because something is wrong, you don’t go and make it wrong, then wrong and wrong again, being the third act that uses this particular language.

To your point that in conversations you’ve had with First Nations: I know in fact they’ve had these conversations, and the word “accommodate” is crucial to whatever discussion they’ve had on the planning act. That’s been sort of central to the whole argument: “It’s not that we just want to be told somebody is coming here and maybe they’re going to be doing some development, but we need to be accommodated.” We need to have something in legislation that clearly states that the crown’s responsibility under the decision is not just to consult but to accommodate. Your response to that just before I go to the next part: Why would we not include the word “accommodate”?

Hon. Linda Jeffrey: Mr. Bisson, I have spent the last month trying to get people to talk about the bill and to talk about the proposed amendments. I’ve had some difficulty getting people to return my phone calls and to have a discussion about it. I don’t want to put any chief on the spot, but at the end of the day there was an opportunity in the last month to make the changes and to provide us with advice to make the bill better. There hasn’t been a lot of that conversation happening. The improvement to the bill could have been made in the last month had chiefs attempted to provide me with that advice.

1620

Mr. Gilles Bisson: I’ve just got to say—I don’t know how I’d say it more forcefully. That whole issue of how it’s not just a duty to consult but to accommodate is central to what this debate is all about. I find it a little bit hard to believe that First Nations have not raised this point with you, because I know it has been raised with me time and time again. In fact, we must have had four or five conversations since this committee started with First Nations on that point itself. I see people furiously writing notes as we’re having this discussion, which tells me they all have something to say about whether they’ve been consulted or not when it comes to the duty to accommodate. So I just want to make very clear that you understand: First Nations are requesting that there be a duty to accommodate, period. That’s the first point.

The other point is—and I understand, Minister. I don’t want to attack you; I don’t think you win anything in committee by playing those types of games, but I don’t know how to stress it more forcefully or more friendly, or whatever way you want to say it. Picking up the phone and calling somebody, or having a chat with them at an airport, or dropping into the community to have a chat, is not what First Nations consider an issue of consultation. “Consultation” means there’s a to-ing and fro-ing of ideas, there’s a discussion, there are terms of reference, and then there’s a proper process by which everybody gets a chance to wrestle with the issue, to think about it, and then finally there’d be some sort of resolve at the end of the process.

I use the IBA processes that we’ve gone through in communities across the North when it comes to development. In each and every case, there has been a referendum at the end, because the leadership understands that

it's not for them to decide. A duty to accommodate doesn't mean to say the chief gets to decide, or the council; it's about the community. That's the thing that's so foreign to us, because we come from structures where municipal councils and federal and provincial Legislatures are a power unto themselves, and the only time we really consult is every four years when it comes to an actual election.

Please understand that the whole point of consulting and accommodation means to say that you really do have to have some meaningful discussion with the First Nations. They need to go back and think of what the conversation was about so they know, when it comes back to you, to say, "Here's what we want to talk about," and then try to resolve those issues, so that in the end there actually is a process for the community to make a decision.

Again, I just say, is there any willingness on your part to include the word "accommodate"?

Hon. Linda Jeffrey: Mr. Bisson, I too do not believe that a conversation in an airport is consultation. I have read that in the newspaper—that is a conversation you have with somebody. I realize that that story has floated around. My goal this summer was to have a conversation, and our government has been having a conversation for the last two years about this bill.

The first time we went out on committee was last summer, when I was a backbencher and travelled with committee. Certainly, you were there at the same time. It was a very heated conversation at that time. We took that advice, came back, made amendments, and this time we tried to accommodate many of the requests that we heard from chiefs that the bill did not reflect their understanding of what land use planning would look like in the Far North.

It is my goal to continue that dialogue. It's too important. We have to protect the Far North as well as provide economic development. I understand that chiefs want us to get this right; we too want to get it right.

Mr. Gilles Bisson: I'd just say that it was pretty clear in the documents that were submitted by NAN—and I have it here—that the issue of the duty to accommodate is one that they actually raised in documents to you, so to say, "Nobody has had that conversation with me," is not taken extremely well by those who have been trying to have that conversation with you at the beginning.

I think my friends from the Conservatives have a question; I'll let them have their question at this point.

The Acting Chair (Mr. Bob Delaney): Mr. Hillier.

Mr. Randy Hillier: The duty to accommodate was heard so loud and clear during our committee hearings last year when we travelled. The minister was on that committee. I'm sure you heard those phrases as frequently as I did and as Mr. Bisson did. It was everywhere we went, and it was from every First Nations community that came before the committee. To think that because you haven't had conversations where that phrase came up since you became minister is to disregard all the work and all the value of the original committee. We were all

on that committee. We heard it as clear as an uncloudy day. That duty to accommodate in the Mining Act and in the Far North Act was spoken of often.

When you're looking at consistency as being the prime motivator, to be consistently bad is still a good thing. They didn't get the duty to accommodate in the Mining Act, and now they'll be consistently bad and not get it in the Far North Act. Consistency ought not to be the objective when it's the wrong thing that you're doing.

I also have to take issue: The minister mentioned that this is the beginning of the dialogue. Well, how mucked up and muddle-headed is that? We pass the legislation, and then we begin the dialogue? That's not my concept of democracy. My concept of democracy is that you have the dialogue first and the legislation is spawned out of the dialogue. This idea that we're going to begin the dialogue when we're on the eve of third reading of the bill, it's just absolutely abhorrent that that concept can be put forth to the assembly. It's just too much to believe.

On this other concept that you've had trouble getting people to talk to you of this bill, I know—and I'm sure Mr. Bisson from the third party will agree—that there has been no shortage of correspondence and there has been no shortage of people wanting to talk about this bill. I've heard it every time I've gone to the north and I've heard it every time in my constituency office in southern Ontario that people are outraged. We can see it; the evidence is before us. Significant numbers of members and representatives of the First Nations are here in Queen's Park this week. They're wanting to talk about this bill. So I find it incredible that the minister has had difficulty talking to people about Bill 191.

How do you have a dialogue if you have trouble talking to people? But I would certainly say that legislation comes forth out of the dialogue. We sort of have the cart in front of the donkey on this bill.

The Acting Chair (Mr. Bob Delaney): Ms. Jeffrey.

Hon. Linda Jeffrey: I guess I would like to re-remind members that, other than the Mining Act, this bill is the only piece of legislation that would actually reference aboriginal and treaty rights in the purpose statement. That's kind of an unusual situation.

I guess I've left people with the impression that no one would talk with me. That's not exactly the way I meant it to come across. I had great conversation with First Nations communities that I visited with this summer, with very productive and thoughtful advice that they provided to us.

I guess the conversation with regard to the clause-by-clause is where the conversation just didn't pan out the way I would have liked. I think that the legal language of a document is where you need to tweak and find better language that reflects what both sides agree is the goal of the bill, and we haven't had those discussions in the last month. We might have been able to find different language over the course of the last month if we had had more conversations, but the conversations kind of stopped.

Whatever comes forward in the future, within the obligations pursuant to the recognition and affirmation of existing rights, is something that will evolve over time in case law, but this purpose references a spectrum of section 35. That's the best advice I can give at this point.

1630

Mr. Gilles Bisson: Well, I don't want to belabour the point, but I just want to make it for the record. It's pretty paramount—I was just looking at the documents that I have from various First Nations, and I'm just going to go through the Shibogama First Nation Council, which pretty clearly says, "Shibogama First Nation Council, the regional body representing this community, has spoken with its members regarding Bill 191. The people have clearly expressed their expectation that Ontario will fulfill its duty to consult by visiting them to discuss Bill 191. People will not and cannot give their free and prior informed consent"—which is the duty to accommodate.

So in each and every document that I have—that you have, because we received the same documents from First Nations—the duty to accommodate is one that is paramount. The problem, I guess, with the argument that you've put forward—and you have the majority on the committee, so you're going to do what you're going to do—is that "duty to consult" means, "Hi, how are you? Minister, are you doing fine?" I just consulted you. Duty to accommodate is, "Oh, what can I do to help you? How can I address your concerns?" It's the latter part that's not in here that's making people feel uncomfortable. You can't stand on just the duty to consult because that only means that somebody's walked in and said, "Hello, how's it going?" and walked out. We've not accommodated the issues and concerns that people have raised, and that's why "accommodate" should be included in the legislation.

The Acting Chair (Mr. Bob Delaney): Mr. Hillier.

Mr. Randy Hillier: I'd like to just follow that up. There is case law demonstrating that duty to accommodate. I think when the minister says, "Nobody raised this during the clause-by-clause. It didn't come up"—even though we all heard it during the committee. To hand people in the north this bill with, "What are your concerns? Talk to me about it"—I'm not going to expect everybody who's impacted by this bill to go through it clause by clause and look at each individual word within the legislation and say, "Well, I dislike this word. This word is not proper. It could be a better phrase over here." That's a little bit rich.

People have been clearly expressing their view that they dislike the bill. They dislike significant components of the bill. They see a future of hardship with this bill. And to say that somebody didn't mention the duty to accommodate—well, I know that I heard it so frequently, and I wouldn't expect anybody in the general public to go through the bill in a clause-by-clause format. That's our job. That's what we're paid to do. That's what we're paid to look at. We're here to represent our constituents' concerns and ensure that the rule of law and justice is incorporated within the legislation.

Minister, I will have to say that we know what was said to us last year; whether it was said to you last month, I don't know. We know we heard it so often last year, and we also know there is case law demonstrating a requirement for duty to accommodate. It ought to be included in the bill.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. The legislative counsel, Mr. Wood.

Mr. Michael Wood: My role is to offer some comments about possible interpretation of the legislation, not, of course, any comments about the policy behind it. With that in mind, I can supply, perhaps, some points for consideration.

One is that whether we're dealing with the language in the present section 3 or the language adopted by the motion for section 1 in the purpose clause, the main thing that the language focuses on is the recognition and affirmation of existing aboriginal and treaty rights. There is then the word "including," so anything following "including" would not modify or change what precedes it. So if you didn't add in a duty to accommodate, it still wouldn't change the fact that the overall obligation is to ensure that things are done consistent with the recognition of affirmation of existing rights.

The second point is—and ministry counsel perhaps could comment on this, if you desired—it seems to me that duty to accommodate would have to be fleshed out by what you mean. To respond to one specific comment, I think made by Mr. Bisson, saying that if you happened to run into somebody in an airport and said, "Hello, how are you?", that constitutes adequate fulfillment of the duty to consult, I would think that it would not. I would think a court would hold, as it often does, that there is a reasonable standard, and when you talk about a duty to consult, you have to provide a reasonable opportunity for a party to respond.

Ms. Jessica Ginsberg: Jessica Ginsberg, MNR legal counsel. I'd just like to follow up on what legislative counsel has just said.

Quite correctly, in using the word "including," that gets to the point which Minister Jeffrey made earlier, that this references the full spectrum of what would follow from the recognition and affirmation of existing aboriginal treaty rights in section 35 of the Constitution. That's really, I think, the main point and the main source of what the crown's obligations could be. Those obligations can evolve as case law continues to speak to section 35 in the future.

Here we have included one example, being "including the duty to consult." It's not to say that that is the full range. I could argue that the duty to consult can include the duty to accommodate where it's required, but again, that is something that evolves over time with the case law. Again, this is just an example; the way that it's phrased is just an example of what can fall under that spectrum of section 35.

The Acting Chair (Mr. Shafiq Qaadri): Mr. Bisson?

Mr. Gilles Bisson: To the point: It "can"—up to interpretation. That's the point.

It's clear in the act. What the act intended was that the rights under section 35 of the Constitution Act be respected, and that includes the duty to consult. We're pretty clear as a Legislature: We're saying that "includes." That's what we're talking about.

By leaving "accommodate" out, it leaves it to interpretation where you've got to litigate, quite frankly, if "accommodate" is even included in that 1985—in section 35, if you follow what I'm saying.

My only point is, why not put it in at the beginning? Then it's clear that what we were talking about as a Legislature was not only the duty to consult but also to accommodate.

To the point that was made by my learned friend Mr. Wood, leg counsel: In some way, if we put "accommodate," we need to define that. What is "accommodate"? Well, the same could be said for "consult." Do you follow where I'm going? You have to argue both; you can't argue one, I guess is what I'm saying.

It seems to me the government has made a decision, for whatever reason. I'm not going to impugn motive; that's their decision. I just think that First Nations would have been a lot more comfortable if, in the purpose clause, we actually did say it wasn't just the rights inferred under section 35, including the duty to consult, but it should also be to accommodate. It would have made their comfort level rise.

The Acting Chair (Mr. Shafiq Qaadri): Mr. Hillier.

Mr. Randy Hillier: I'm glad we've had some legal counsel here to flesh this out a little bit. I think it's important for us to look at these component parts.

I'll go back to some initial statements that I said. This bill is focused all on imposing a downtown Toronto view on northern land; whereas, if it had looked at planning for a real relationship with First Nations and our northern communities, the duty to accommodate could have been, and ought to have been, fleshed out in this bill, instead of just allowing and abdicating our authority to the bench.

That's our job. We should have included in this bill what "duty to accommodate" really means. Put the meat on the bones, instead of this statement that can mean different things to different people. Planning for good governance, planning for a good administration, planning for a good relationship, that's where this bill fails miserably. It fails once again by not including that duty to accommodate, allowing that to be interpreted by our courts, and as legislators abdicating our responsibility to provide direction, to provide meaning, to put that meat on the bones so that people do have certainty.

Mr. Bisson spoke to it earlier, and I have spoken to it, about not having certainty. You can't have economic development, you can't have economic investment, you can't have jobs and prosperity, if you don't have certainty. You've failed; it's consistently failing, just as in the Mining Act.

Mr. Gilles Bisson: I just want to clarify that I understood what the minister said. So what you're saying is, all rights given under section 35 are pulled into the purpose clause when you say that including the duty to

consult doesn't necessarily negate the duty to accommodate. That's your argument, right? I just want to understand what you're saying, because that's the way I understood the argument being put forward.

Ms. Jessica Ginsberg: If I could speak to that in response, the purpose is to act in a manner consistent with the recognition and affirmation of existing rights, and that recognition and affirmation is something that will, over time, continue to be interpreted by the courts. The courts have already spoken to the duty to consult. They have already spoken to situations where accommodation would be warranted and required.

Mr. Gilles Bisson: What you're saying, in fact, is that this particular purpose clause does not negate in any way the obligation on the part of the crown to accommodate?

Ms. Jessica Ginsberg: There is nothing in this purpose clause, or anywhere else in the bill, that would negate the crown's obligations under the Constitution Act, whatever those obligations include.

Mr. Gilles Bisson: Including the accommodation?

Ms. Jessica Ginsberg: Where it has been found to be required and warranted, yes.

Mr. Gilles Bisson: So, for the record, just let the record show that in fact the crown does recognize the duty to accommodate. Thank you.

The Acting Chair (Mr. Shafiq Qaadri): Mr. Arthurs.

Mr. Wayne Arthurs: When we get to the vote, I'll be voting against this section. This is section 3, and I think in hockey parlance we'd probably describe this as ragging the puck.

Mr. Gilles Bisson: No, it's not ragging the puck.

Mr. Wayne Arthurs: In pond hockey.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Mr. Arthurs. I think that will be a separate subcommittee report on the hockey issue. But in any case, are we ready to proceed?

Mr. Randy Hillier: I'd like to call for a 20-minute recess.

The Acting Chair (Mr. Shafiq Qaadri): A 20-minute recess.

The committee recessed from 1642 to 1702.

The Acting Chair (Mr. Shafiq Qaadri): We'll resume. If there any further comments, I'll entertain them now.

We'll move to the vote on section 3. All those in favour? All those opposed? I declare section 3 to have been lost.

We'll move, if it's the will of committee, for block consideration of sections 4 and 5, seeing as no motions so far have been proposed. Shall sections 4 and 5 carry? Carried.

We'll move to section 6, government motion 4.

Mr. Gilles Bisson: Whoa, whoa. I quickly had a question.

The Acting Chair (Mr. Shafiq Qaadri): Yes, Mr. Bisson.

Mr. Gilles Bisson: I just needed an interpretation on something. "Non-application of act," when it says under

(b), “land not vested in the crown in the right of Canada”, we’re talking about federal crown land, right?

The Acting Chair (Mr. Shafiq Qaadri): Is this a general question, Mr. Bisson?

Mr. Gilles Bisson: Yeah, it’s just a general question to section 4.

The Acting Chair (Mr. Shafiq Qaadri): Fair enough. Please pose your question. I’ll allow it.

Mr. Gilles Bisson: I just want to make sure I understand that right. So we’re talking about land owned by the federal crown, right?

Hon. Linda Jeffrey: I’ll ask legislative counsel to answer your question.

Mr. Gilles Bisson: I take it that’s all we’re talking about here?

Ms. Sheila Ritson-Bennett: Sheila Ritson-Bennett, counsel, Ministry of Natural Resources. That’s correct. It would be federal land.

Mr. Gilles Bisson: Other than Indian reserves, what land far north would be federal crown land? I wasn’t too sure.

Ms. Sheila Ritson-Bennett: I don’t think—

Mr. Gilles Bisson: I don’t think there is any.

Ms. Sheila Ritson-Bennett: Yeah, but just to be clear as to where it does or does not apply: That’s why that’s there.

Mr. Gilles Bisson: So it’s just making sure, in case there might be. Okay.

The Acting Chair (Mr. Shafiq Qaadri): All right. So we’ll proceed now. Section 4 questions hopefully have been answered.

Shall sections 4 and 5 carry? Carried.

We’ll proceed now to section 6, government motion 4.

Hon. Linda Jeffrey: I move that paragraph 1 of section 6 of the bill be struck out and the following substituted:

“1. A significant role for First Nations in the planning.”

The Acting Chair (Mr. Shafiq Qaadri): Comments? Monsieur Bisson.

Mr. Gilles Bisson: Does that infer that points 2, 3 and 4 are then removed from the bill? Under section 6, “The following are objectives for land use planning in the Far North,” right? You’re saying that the following will be struck out and substituted. It currently reads, “A significant role for First Nations in the planning,” and then in your amendment it reads, “A significant role for First Nations in the planning,” but nothing else is mentioned after. So does that mean to say that the rest is erased?

The Acting Chair (Mr. Shafiq Qaadri): Mr. Wood.

Mr. Michael Wood: Actually, as it is presently written, this motion does not accomplish anything legally. It just restates what paragraph 1, section 6, of the bill says. To answer Mr. Bisson’s question, it does not in any way amend the following paragraphs of section 6.

Mr. Gilles Bisson: So is this like, whoops, a bit of a mistake?

Mr. Michael Wood: Yes. It would have been possible for the government, actually, to withdraw this motion.

Mr. Gilles Bisson: So this is the “whoops” clause. Okay. All right, we’ll let you have the “whoops” clause, but I just wanted to make it clear that it didn’t delete the others.

The Acting Chair (Mr. Shafiq Qaadri): Thank you. We’ll proceed to the vote, then. Those in favour of government motion 4? Those opposed? Government motion 4 carries.

Shall section 6, as amended, carry? Carried.

We’ll move now to consideration of a new section, government motion 5. Ms. Jeffrey.

Hon. Linda Jeffrey: Could Mr. Sousa read the motion, please?

The Acting Chair (Mr. Shafiq Qaadri): Mr. Sousa.

Mr. Charles Sousa: I move that the bill be amended by adding the following sections:

“Contribution of First Nations

“6.1 First Nations may contribute their traditional knowledge and perspectives on protection and conservation for the purposes of land use planning under this act.

“Joint body

“6.2(1) Any First Nation having one or more reserves in the Far North and any First Nation with whom the minister has agreed to work to prepare terms of reference under subsection 8(2) may indicate an interest to the minister to initiate discussions with respect to establishing a joint body to,

“(a) advise on the development, implementation and co-ordination of land use planning in the Far North in accordance with this act; and

“(b) perform the other advisory functions to which the minister and the First Nations that participate in the discussions agree.

“Discussions

“(2) If one or more First Nations indicate their interest under subsection (1) within six months after this section comes into force, the minister shall participate in the discussions with them.

“Content of discussions

“(3) The discussions shall focus on factors relevant to establishing the joint body, including,

“(a) the criteria that members of the body must meet to be eligible to be appointed to the body;

“(b) the functions of the body;

“(c) the procedures that the body is required to follow in carrying out its functions, including the frequency of its meetings and the selection of a chair or two or more co-chairs for it; and

“(d) any other matters that the minister and the First Nations that participate in the discussions agree to with respect to establishing the body.

“Functions of the body

“(4) The functions of the joint body may include,

“(a) recommending to the minister matters to include in the Far North land use strategy, including statements to be issued as Far North policy statements; and

“(b) advising the minister on matters related to the development, implementation and co-ordination of land use planning in the Far North in accordance with this act, including,

“(i) the allocation of funding to support First Nations working with Ontario on that land use planning, and

“(ii) appropriate dispute resolution processes for land use planning matters under this act.

“Establishment of body

“(5) If the First Nations that participate in the discussions and the minister agree to establish the joint body, the minister shall,

“(a) take into account the discussions and establish the joint body in accordance with subsection (6); and

“(b) ensure that the instrument establishing the body sets out the functions of the body consistent with subsection (4).

“Composition

“(6) The joint body shall be composed of the following in equal numbers:

“1. Persons, each of whom is a member of a First Nation.

“2. Persons, each of whom is an official of the government of Ontario.

“Far North policy statements

“(7) If the joint body recommends a statement to the minister under clause (4)(a), the minister shall submit the statement to the Lieutenant Governor in Council and, with the approval of the Lieutenant Governor in Council, issue the statement as a Far North policy statement if the minister is of the opinion that the statement takes into account the objectives set out in section 6 and if the statement relates to any of the following matters:

1710

“1. Cultural and heritage values.

“2. Ecological systems, processes and functions, including considerations for cumulative effects and for climate change adaptation and mitigation.

“3. The interconnectedness of protected areas.

“4. Biological diversity.

“5. Areas of natural resource value for potential economic development.

“6. Electricity transmission, roads and other infrastructure.

“7. Tourism.

“8. Other matters that are relevant to land use planning under this act if the minister and the joint body agree to the matters.

“Non-application of Environmental Assessment Act

“(8) For greater certainty, the Far North policy statements are not undertakings as defined in the Environmental Assessment Act.

“Posting on the Internet

“(9) Upon issuing a Far North land use policy statement, the minister shall post it on the government of Ontario site on the Internet.

“Amendment

“(10) At least every 10 years after issuing a Far North policy statement, the minister shall request the joint body to advise the minister whether it is necessary to amend it.

“Process for amendment

“(11) The joint body may recommend to the minister amending a Far North policy statement and subsections (7), (8) and (9) apply to the amendment with necessary modifications.”

The Acting Chair (Mr. Shafiq Qaadri): Are there any further comments? Ms. Jeffrey.

Hon. Linda Jeffrey: I realize this covers a lot of ground, and I think it answers some questions you asked, Mr. Bisson, at the first point.

Through our outreach last fall, NAN asked that the bill include reference to First Nations’ traditional knowledge. We agree. First Nations’ traditional knowledge is extremely important to land use planning, and that’s why we’re proposing a stand-alone clause that recognizes First Nations’ contribution of traditional knowledge to land use planning.

We also respect that such knowledge belongs to each First Nation. This motion leaves the decision about when, where, how and even if they wish to contribute this knowledge in the hands of First Nations.

NAN has also written the province several letters asking that First Nations leadership and understanding of protection be reflected in Bill 191. We support this. This motion would make it clear that First Nations can contribute their perspectives on protection and conservation for land use planning. By working together, we can develop a stronger framework for protection in the Far North, but it will be up to First Nations to decide how, when and if they contribute their perspectives on protection.

Bill 191, if passed, would provide a legislative foundation for First Nations and Ontario to work together to develop new approaches to protected areas in the Far North and would see that these areas are identified through community-based land use planning.

Section 6.2, on the joint body: First Nations have requested that their role in land use planning be extended to all aspects of planning, such as developing the Far North land use strategy. This was reflected in NAN’s recent letter to the Premier. The Far North Advisory Council, made up of environmental and industrial stakeholders, including the mining industry, has also recommended the establishment of a joint First Nation-Ontario body to support land use planning in the Far North.

We are listening and responding to input and feedback we have received. While changes to the joint body represent a significant change, one thing remains the same: We continue to require that First Nations and Ontario must discuss and agree on the functions of the joint body before it can be established. In addition, any joint body would have to include equal numbers of First Nations and Ontario government officials. We feel that this approach is respectful of the special relationship between First Nations and Ontario.

This motion is significant because it commits that once the joint body is established, First Nations and Ontario may jointly make recommendations on policy direction, through policy statements and other components of the Far North land use strategy. They may also discuss and advise on appropriate dispute resolution processes, as well as on the allocation of funding to support planning.

Subsection 6.2(7) responds to scientific and environmental stakeholders who requested a commitment to consider both climate change adaptation and mitigation as well as cumulative effects.

Agreeing on and establishing a joint First Nations and Ontario body to support land use planning in the Far North is an opportunity to make significant progress on land use planning, which is something I think we all support. Local planning will continue to be done with interested First Nations. The process for preparing a community land use plan will remain at the community level.

The Acting Chair (Mr. Shafiq Qaadri): Mr. Bisson?

Mr. Gilles Bisson: I have a question, Minister. What would happen under this bill, if passed along with your amendments, if a community decided not to implement a land use plan? How would you deal with development?

Hon. Linda Jeffrey: I think what we're telling you is that if a community decides they don't want to do a land use plan and they're approached by somebody who wants to develop, they won't be developing in that community.

Mr. Gilles Bisson: Hence back to my point, which is that we essentially have a regime being set out in Bill 191 that says, "If you want any development to happen, you're going to have to develop a land use plan." That's what you've confirmed, which goes to my first point: Who's driving the process?

The second part is that as I go through this section—and again, I recognize that the government is trying to respond to some of the issues that were raised by NAN and others. But as I read this, you're boss of the beaver. And I use that term—just so people know what I'm talking about, in Cree there's no such term as "Minister of Natural Resources." They pointed out to the minister on Thursday that the closest title they have to "Minister of Natural Resources" in Cree is either "boss of the beaver" or "boss of the muskrat"—I'm not sure.

Hon. Linda Jeffrey: Beaver.

Mr. Gilles Bisson: It's beaver, okay.

My point is, I read this particular amendment, which is three pages long—and I'm going to go through it later—and is it not the case that at the end of the day, if you're a First Nation and you're a community that wants development, you're going to have to do a land use plan? This particular section sets out how that is to be done, by which at the end of the day it's the minister who has the final say. Isn't that what this says, in the end?

Hon. Linda Jeffrey: I'll try to answer the question, but I'm being scribbled messages.

Mr. Gilles Bisson: Well, read it before you answer. I always find, trying to speak and read at the same time, I

can't do it, so I don't think you can either. Take your time.

Hon. Linda Jeffrey: Answering your question of who's driving the process, First Nations are. They're going to determine whether or not they want to do a land use plan. I think later on we deal with the developments in another government motion—because I know you're excited to know what the next group of motions are.

There are already communities that have land development projects in place, and they're concerned that this Far North Act will slow them down. It won't, and we will allow some interim development to occur while there's a draft plan in place. So we're trying to be flexible and accommodate the concerns that were raised with us in the First Nations communities I visited and that have written to us about this legislation.

I think at the end of the day, we're trying to find a model that works for each community. Not every community is ready to do land use planning. Some are just beginning and some are at the far end of the process, but they're all trying to find what they can do best in their community to bring education, capacity and skills training to their community. Land use planning is one of those ways that we can provide, as a government, the dollars to a community to give some of their youth jobs and opportunity.

Mr. Gilles Bisson: I think we agree with the ultimate aim, but as I read this section—it says "joint body." First of all, 6.1 says, "First Nations may contribute their traditional knowledge and perspectives," which is fine. Then it reads,

"Joint body

"6.2(1) Any First Nation having one or more reserves in the Far North and any First Nation with whom the minister has agreed to work to prepare terms of reference under subsection 8(2) may indicate an interest to the minister to initiate discussions with respect to establishing a joint body...."

So to my first point, if you don't get into land use planning you get no development.

My second point is, I read 8(2) and it says, "The minister and one or more First Nations not having a reserve in the Far North that indicate to the minister their interest in initiating the planning process by preparing the terms of reference may agree to work with each other, in addition to working with the First Nations under subsection (1), to prepare the terms of reference." As I read all of this—and I don't want to read it again, because it's long—the effect is that you drive the process. You have to agree with what the terms of reference are, and you have to agree in the end to what the final plan is. That's the way I read this.

Hon. Linda Jeffrey: At the end of the day, the First Nations, if this legislation is passed, will drive the process, and they will have to determine whether or not they want—

1720

Mr. Gilles Bisson: You will initiate.

Hon. Linda Jeffrey: They will initiate the process, and they will have final approval on the community land-based plan that they put in place.

I think that it is hard to understand because it is novel, it's historic and it's a different way of doing land use planning. Certainly every community will be determining whether or not they want to move forward.

Some communities need to work with each other. For example, if you were in the Ring of Fire, there are four or five communities that all have different needs to accommodate how that mining exploration will happen and the kinds of services they will need around that property. They need to work together. We're going to work with them, but in order for them to come to the Ministry of Natural Resources to get land use planning dollars, they have to develop terms of reference. They will be the ones who initiate that process.

Mr. Gilles Bisson: I agree that it's the First Nations that initiate, but my point is that they don't drive it. I read this under subsection (7):

"Far North policy statements

"(7) If the joint body recommends a statement to the minister under clause (4)(a)"—and it spells out what the various principles are—"the minister shall submit the statement to the Lieutenant Governor in Council and, with the approval of the Lieutenant Governor in Council,"—in other words, with the approval of cabinet, right?—"issue the statement as a Far North policy statement if the minister is of the opinion that the statement takes into account the" following objectives.

At the end of the day, you may not initiate, but you certainly determine what's going to be the end result, based on the principles that are set out in the bill and the power that cabinet reserves for itself to approve whatever is done in being consistent with the act—to the point that my friends in the First Nations make about who, in the end, is in the driver's seat? Who's going to be the boss of the beaver?

Hon. Linda Jeffrey: We're going to have to agree to disagree. The First Nations initiate; they will carry out the land use planning and will determine definitions as to what's protected in their communities. When they have decided that they are finished and they have done all the consultation they want to do in their own community and come back with a recommendation, they have final approval.

Mr. Gilles Bisson: Okay, we're going to agree to disagree, but I'm of the mind, as I read this and other sections of the bill, that you're in the driver's seat. I don't mean you personally; you're not a bad person. That's not what this is all about. But it's clear, the way I read it, that if, for whatever reason, a First Nation decides, just under policy statements, to try to add something that's outside of what is stated as far as the principles, or omit, it wouldn't be approved, which means to say that at the end of the day you drive the process.

Then you've got the amendments, and I understand why this is done under (10): "At least every 10 years after issuing a Far North policy statement"—we're just

talking about the policy statements; we're not talking about the plans—"the minister shall request the joint body to advise the minister whether it is necessary to amend it." So you can actually start it up all over again on the policy. If, let's say, this joint body decides to create a policy that says whatever, and you're all well-intentioned—and you're going to give me a chance to read this. You're going to respond so I can read after, right?

My point is, this joint body gets together, they develop a policy—the provincial policy, as we call it—on planning in the Far North—what the values are etc., that are stated in this section. In 10 years' time, there's a review process, which I understand; that's typical of most legislation. But you're the one, at the end of the day, who is going to decide whether it's necessary to amend it or not. That's how that reads. It's pretty clear in the language, right?

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Mr. Bisson. Ms. Jeffrey now.

Hon. Linda Jeffrey: There are a number of things that will—the devil will be in the details as to how this blends in the future, but we believe that this is a very innovative process in that First Nations and Ontario will be a joint body, providing advice as to how we proceed in the future.

I heard, when I travelled up north—different communities felt that one joint body was the right answer; others felt that more than one joint body was the right answer. I believe that we've made this legislation flexible enough to accommodate those kinds of requests so that we can provide the best overarching group that looks at all the plans and makes sure that they work together and that they knit the plans together properly.

I understand that there is discomfort with the language. We're doing something new, something different, that has never been done before, and it's based on the conversations we had with the First Nations communities. We want to treat First Nations communities like a partners, because they are. We need to both work on getting economic development, growth and conservation under control together. This is how we believe we can move forward on those goals to provide boreal protection as well as economic development.

It's going to be a balancing act, but we think that if we have partnership from First Nations as well as Ontario, we'll achieve that goal.

Mr. Gilles Bisson: I know Mr. Randy Hillier wants to get in. I just want to say quickly that what the First Nations were pushing for was an independent body, not a joint body. I take it you know that that's what was being asked for, not a joint body.

Because of the historical relationship of MNR and First Nations—I don't want to portray it that the MNR is bad or anything, but it has not been spot-on—let's just put it that way—when it comes to disputes between the MNR and First Nations. What First Nations were pushing for was an independent body to deal with this. This section here doesn't even deal with the issue of, how do

you protect that traditional knowledge? Because some of this stuff, the data sharing, as far as what goes into the database under traditional knowledge—I know because it has been raised by me; I know in Marten Falls for sure it was raised with me by Chief Elijah Moonias; it was raised with me in Kashechewan with the land use planning person in Kash—I forget the name now—Harry, I think it is? What was raised as well is that there's a real worry about how that information, that database, is going to be shared, because some of the stuff in there are not things they want shared with the world. We can get into a conversation about that one later.

I just want to say for the record that what this section does is not what they asked. They asked for an independent body.

The Acting Chair (Mr. Shafiq Qaadri): Mr. Hillier.

Mr. Randy Hillier: Thank you very much. I've been so patient and tolerant for that long exchange.

I have to say that it's interesting to see a three-page amendment to a four-paragraph clause in Bill 191 with this amendment. The minister has said that the First Nations are in the driver's seat on Bill 191. That's what she said. But when you look at the implementation and you look at what is obligated here in the minister's statements, if the First Nations community does not have a land use plan, they get no money. So the default position is, "No development if you don't agree with the government. But the First Nations are in the driver's seat. You get no money if you don't do the plan the way we like. You get no money. But the First Nations are in the driver's seat. If you don't do the terms of reference the way the government wants, you get no money. But the First Nations are in the driver's seat."

Who's driving the process? We're not naive here. We know that what drives is money. Who's got their hands on the purse strings? The government. Who's driving Bill 191? Well, I'm not sure who's driving Bill 191, but I know it's not the First Nations. It's not the First Nations who have driven Bill 191. It may be somebody else, but it's not the First Nations. Who's going to drive the implementation of it? It's not the First Nations; it's this government, or some government will be and is the driver for Bill 191 and the land use planning.

There's no question about it, Minister. You're in control of the purse strings. If things are not done in the manner, in the fashion, that is agreeable and acceptable to the bureaucracy in the MNR and yourself, you withhold the money. You are not only the driver; you also have the foot on the brake because you're saying, "No development if you don't agree with our plan."

1730

I'll put this thought forward: As it's indicated in the legislation, a quarter-million square kilometres of land are going to be off limits. It's going to be interconnected and it's going to be off limits. So if a First Nations community does develop a land use plan and it does not prescribe the amount of protected land that the MNR desires, is that plan going to be approved? Will that plan be approved if all these land use plans fall short of your

quarter-million square kilometres of interconnected protected land? How will you deal with that, Minister? Because you know, the way the legislation is written, you would be in violation of the law if you don't protect that land.

That one question, if you could answer that: What will you do if you fall short on your quarter-million square kilometres, if the communities in the north don't subscribe to your predetermined targets?

The Acting Chair (Mr. Shafiq Qaadri): Ms. Jeffrey?

Hon. Linda Jeffrey: I'm really encouraged by the conversation that we're having today, because we're really talking about the meat and potatoes of the bill. It is encouraging, because we've been working on this for quite some time, and it's good to have this conversation.

We're talking about an area that's about 41% of the province, so it's a very large area to be discussing. We're talking about a vision for the Far North that is quite historic. It's different, it's unique and it's one where Ontario and First Nations are going to work together to make better and wise land use decisions in the Far North. That's going to address the social and economic as well as the environmental interests of First Nations and the province.

Mr. Bisson, you stated earlier that the province sets the broad framework to support the planning process across the Far North. We're taking that concept a little bit further by having a joint First Nations-Ontario body. We're going to recommend broad statements and policies, but we also realize that the government has a responsibility or an obligation to the province as a whole, so we're trying to convey that in the body of what we're talking about.

Interjection.

Hon. Linda Jeffrey: Mr. Hillier, you talked about us driving the car. We have a responsibility as government to watch how funds are spent around the province. There are public tax dollars, and at the end of the day we need terms of reference from a First Nations community to determine what kind of work plan they have. As long as they have a work plan that supports the work they're going to do, we may be able to enhance it or better guide it so that if you haven't done a land use plan before—for some communities, this is the first time they've ever done work like this, and it is a land use plan that looks so different from anything you could possibly see around the province.

I've looked at land use plans in the south. They are nowhere near what they are in the north. Up north, they show burial sites. They show spawning grounds. They show special ceremonial spaces in the community. They show habitat for all kinds of creatures that are in their particular area. It is a beautiful, living, breathing document and, more than a document does in the south, it shows the past, the present and the future. It is a document that provides a way to capture what the elders tell First Nations communities, because, unfortunately, time is our enemy and we lose our elders over time. They're quickly trying to get that information from their

elders and trying to capture those conversations that describe the use that goes on in their communities. This, I believe, is a way to make that unique knowledge, that oral tradition that First Nations have, be captured for all time in a document that reflects what the community wants.

Again, it's up to the community to decide whether they want to, and they may decide not to move forward. It's going to depend on who comes into their community and wants to do business with that chief and that tribal council. We won't be able to determine that, and it will be up to them to initiate it.

The Acting Chair (Mr. Shafiq Qaadri): Mr. Hillier?

Mr. Randy Hillier: Again, I had a question that didn't get answered there.

I also talked, in response to your comments, about who was driving this. Clearly, it is the government that is driving this. You have the control of the purse strings. Of course you have an obligation. Some might disagree that you've been respectful guardians of the public purse, but I won't get into that in this one. Clearly, you do have an obligation for the public purse.

You stated that First Nations are the drivers of the land use plans, and that clearly is not correct. Clearly, it is the government that holds its hand on the wheel, and you've put the brake on. If you don't agree with your land use plan or the terms of reference, you get no development. You are the drivers of this.

You mentioned also this partnership, but we've seen what the partnership is with these committee hearings that didn't happen. My question to you, Minister, is what will happen if the land use plans fall short of your prescribed quarter-million square kilometres? What will happen? What will you do? What are the obligations of the Ministry of Natural Resources? What consequence will there be for our First Nations if there is a shortage in those prescribed targets? Will you say to Grand Chief Stan Beardy, will you say to NAN, will you say to them all, "Guys, you haven't protected enough property yet. Go back to the drawing board and come back so that your plan meets the legislation that's been adopted"? That is the question. What will you do if your vision for the north doesn't coincide with the vision of the people who live in the north?

The Acting Chair (Mr. Shafiq Qaadri): Ms. Jeffrey.

Hon. Linda Jeffrey: Thank you, Mr. Hillier, for your question. I guess it would be not wise of me to speculate what would happen in the future, but we believe we have an objective that's flexible, and we have the flexibility to approve plans that are more or less than 50% in a plan that comes forward.

But I guess what I learned this summer when I was travelling to talk to First Nations communities—and I think Mr. Bisson talked about it earlier—is how First Nations feel about the land. In the south, you just don't understand it until you hear them talk about it. I always had respect for First Nations, but it's just been enhanced. If you don't have the land, you have nothing. The land is their life, and how important it is. It's their supermarket,

it's their grocery store, it's their pharmacy, it's everything, and I understand that. I think that, certainly, I learned in my conversations with virtually every community that they felt they were going to be better stewards of the land than the Ontario government. In fact, they wanted to protect more land.

I don't disagree with them. I think that they've already been good stewards of the land. I think it's a projection, it's a target that we would like to reach. I think, in fact, we will probably exceed it, based on the conversations I've had with First Nations. They've already demonstrated their desire to protect lands. They already have some ideas about what those definitions would look like, and I'm happy to work with them. This is just the beginning of that conversation.

The Acting Chair (Mr. Shafiq Qaadri): Thank you.

Mr. Randy Hillier: But that is not a soft target, and I see no mechanism in here that says we can change that if we want, that we can disregard the legislation if we want. This is a legal document that people must adhere to or else—guess what?—people end up in court when they break the law. What is your mechanism in here because it's not a soft target? What is your mechanism to allow that to be amended, except in another 10 years?

The Acting Chair (Mr. Shafiq Qaadri): Let me pass to it to Mr. Arthurs, and then the floor is open.

Mr. Wayne Arthurs: Just a procedural question more than a point of order: Under our operations today, I presume we finish at 6 under the time allocation motion. Is that correct?

The Acting Chair (Mr. Shafiq Qaadri): We finish at 6, but we'd do that in any case.

Mr. Wayne Arthurs: Regardless. Okay. And we're working by that clock, I presume, or something close?

The Acting Chair (Mr. Shafiq Qaadri): It's 5:38.

Mr. Wayne Arthurs: So if this debate on this particular amendment, which has been going on for about half an hour now, goes another three minutes, and if someone were to ask for a 20-minute recess before the vote, there wouldn't be a vote on this amendment?

The Acting Chair (Mr. Shafiq Qaadri): Not today.

Mr. Wayne Arthurs: So the vote would occur the next time the committee met?

The Acting Chair (Mr. Shafiq Qaadri): Correct.

Mr. Wayne Arthurs: Thank you.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Mr. Arthurs. Ms. Jeffrey, and then who would like the floor?

1740

Hon. Linda Jeffrey: Mr. Chair, could I ask one of the lawyers to come up? Would that help Mr. Hillier with the explanation as to how this target will be met?

The Acting Chair (Mr. Shafiq Qaadri): Certainly. Welcome.

Ms. Sheila Ritson-Bennett: Sheila Ritson-Bennett, counsel for MNR. Just as a point of clarification, this is not in fact a target; it's an objective of the bill. Legislative counsel may want to weigh in on this. But just to

be clear, it's an objective of the act and it's to be taken with the other three objectives together.

Mr. Randy Hillier: But it's still stated that there will be a quarter-million square kilometres of land protected; right?

Ms. Sheila Ritson-Bennett: It's an objective, but it's not a target in the sense that you may be speaking about.

Mr. Randy Hillier: Well, maybe in your legal terminology you'll explain the difference between a target and an objective.

Ms. Sheila Ritson-Bennett: The target would be—
Interjection.

Ms. Sheila Ritson-Bennett: It's says "at least 225,000...."

Mr. Randy Hillier: Yes, "at least."

Ms. Sheila Ritson-Bennett: But the way it's written, it's not described as the target, as you're describing it.

Mr. Randy Hillier: What difference does your statement make to the discussion? My question was, what would happen if you fail to meet your target? I'll change it to "objective"—what is prescribed in the legislation. What will happen then?

Mr. Michael Wood: Michael Wood, legislative counsel. As counsel for MNR indicated, you have to look at the context. I believe that every time there is a mention in the bill of objectives set out in section 6, the words "take into account" are used, so that would describe what the obligation is. It would be up to a court ultimately to determine how reasonable you have been in taking into account the obligation, but as far as I know—and we could double-check with MNR legal counsel—I don't think there is anything that requires the minister under all circumstances to meet this target, and it certainly doesn't set out any sanctions if the target is not met.

Mr. Gilles Bisson: Okay. Just a very quick question on his point: Then why do we have section 6, paragraph 2 of the act say, "The protection of areas of cultural value in the Far North and the protection of ecological systems in the Far North by including at least 225,000 square kilometres ..."? The words are "at least." That tells me there's a minimum. I think that's the point that Mr. Hillier was trying to make. You have to have regard to what it says in section 6 under land use planning.

Mr. Michael Wood: You certainly have to have regard to it and take into account that that's the minimum target or objective that you have, but there is nothing that forces you to meet that and nothing that sets out a sanction or what happens if you don't meet that, just that you have to take that into account as an objective.

Mr. Gilles Bisson: And hence why First Nations are so uncomfortable with this: It's exactly the discussion that we're having now. There are like three interpretations as to what section 6 really means: Is it a minimum of 225,000 square kilometres? Is it a principle?

Imagine what's going to happen when MNR gets a hold on this bill and we're having discussions with First Nations. No disrespect to my friends at MNR. You're trying to do the best you can, but you're going to have your interpretations based on what you believe is in the

bill, and we're going to end up litigating this thing in licky-split time, I would think.

Mr. Randy Hillier: I'd just add this: I've met and dealt with many people in the bureaucracy, and when they see a clause that says "at least 225,000 square kilometres will be protected," I know how they're going to respond to that, and it's not going to be a sensible, reasonable discussion. It will be, "The law says." I would say to Mr. Wood, the counsel, that this also opens up, I would submit, that if the MNR does not meet its minimum target or objective, then the MNR will be open to court actions by those groups, those associations and those people in Ontario who want to see a quarter-million square kilometres of land protected. They will be able to go to court and they will say, "The MNR has failed the legislation. They've only got 200,000 square kilometres of land protected, and 50,000 aren't interconnected." The court will rule because this is what the law says.

The Acting Chair (Mr. Shafiq Qadri): Mr. Bisson.

Mr. Gilles Bisson: To get off that point—but I think you make a good point, Mr. Hillier. The point is that when all of this is done and it's passed into law, should it be passed into law—and I hope not, in its present format—there are going to be all kinds of various interpretations as to what is meant and what is desired, both by the MNR and First Nations, and hence we're going to end up in that area.

I just want to come back to what the minister said initially, and that was that they've been good stewards of the land for millennia. As far as I know, the Far North, the area where 49 First Nations reside, is one of the only pieces of land in Canada outside of the territories where it's predominantly only 98% First Nations. If they've done such a great job in being stewards of the land, why are we afraid to give them control?

I understand your argument. You're saying we need to watch out for the interests of the province. I think that First Nations are perfectly capable of developing a good land use plan. Yes, the province has to give principles—I don't disagree with you; if I was minister, I certainly would want to give some principles as well—but I think what should be done is that the crown—in this case, the province of Ontario—should set out what those principles are that you want and allow First Nations to go out and to start working at being able to develop what would be the backbone for the legislation. That's my first point.

Second point, and I have a question to the minister: How much money is actually earmarked in order to develop the land use plans? There was \$10 million that you announced the other day in Timmins, and how much before that?

Hon. Linda Jeffrey: There's a variety of dollars available through other ministries.

Mr. Gilles Bisson: Ballpark? I'm just trying to remember. Does anybody at the MNR?

Hon. Linda Jeffrey: It depends. You'd have to kind of add the dollars together from MNR and MNDM.

Mr. Gilles Bisson: Let me ask the question the inverse way: How much do you think it's going to cost First Nations, all 49 of them, to develop their land use

plans? And do we have enough money to make it happen? Hence, to the problem that we've got here: We're asking First Nations if they want to develop land use plans, and I don't believe that the capacity has been provided to even get there. So we're already starting off in the starting blocks from a position that's pretty disadvantaged.

Hon. Linda Jeffrey: He has asked a lot of questions, Mr. Chair. I'll attempt to try and answer a couple of them.

Why are we doing this? Because it's the right thing to do and because there's an economic wave coming over the north. Certainly the Ring of Fire is one that everybody knows about, but there are a lot of other economic opportunities. Whether it's hydro transmission, forestry—there are lots of other opportunities in the Far North that are certainly coming on the horizon, and First Nations communities are being approached to enter into agreements. So that's why we're doing it. But before those opportunities are seized upon, you've got to decide as a community, where do you want that development to occur and where is the no-go zone? So that's why you need that kind of land use planning.

What was the second question?

Mr. Gilles Bisson: How much money do you think it's going to cost?

Hon. Linda Jeffrey: Oh yeah, money; sorry. At the end of the day, every community that has come to the Ministry of Natural Resources in the Far North that wants to do land use planning has received dollars. There has been great uptake, and back in March we had about 28 communities that came forward and did land use planning. So they're eager to do it; they're enthusiastic about learning about the process.

The recent dollars that we announced last week were extraordinarily difficult to assemble but necessary. At the end of the day, how much money will it take? There are so many communities in the Far North that are not quite ready to do the work, so if you had more money than we have currently, I don't think there's capacity yet in First Nations communities for everybody to start land use planning, nor do they want to.

1750

I believe the \$10 million is a wonderful first start. I'm not sure every community will be able to do the uptake, nor do they have the development pressure on their doorstep to make those decisions yet. Some communities are at the front line and have to start making decisions soon. Any of the communities surrounding the Ring of Fire are in that position and need to work together and have a plan so that they can deal with all of the pressures that are on their community. There are other communities that are facing the same kinds of pressures, but we will work with any community that comes forward with a land use plan and we will assist them. As I said, some are further along in their development of a land use plan than others; some are just at the beginning stages.

Mr. Randy Hillier: I guess the member for Pickering's crystal ball was not working quite as well. We went past that two minutes.

I would like to address this to the minister. You said that the reason why you're doing this bill is that it's the right thing to do. Every chamber of commerce in the north is opposed to Bill 191. Every First Nations community in the north is opposed to Bill 191. Every mayor in northern Ontario is opposed to Bill 191. And you have the gall to say that this is the right thing to do. How can you make such a comment when there is such outrage and opposition from every quarter in the north that it is the wrong thing to be doing, that the whole process has been wrong, everything from creating legislation and then doing dialogue, by not upholding commitments to have public consultations? Every industry group, every business group, every municipality and every First Nation has clearly expressed opposition to Bill 191. It's the wrong thing to do, Minister, not the right thing to do.

What we're here to do is to listen to people who are affected by legislation and make sure that the legislation is amenable to them, not antagonistic to them.

Hon. Linda Jeffrey: I don't want to get into too much of a debate, but at the end of the day, I think all chambers of commerce support development in the sense that they want jobs. I think every mayor in northern Ontario wants jobs. They want opportunity. There isn't a First Nations community that doesn't want jobs and opportunity. I think they want education; I think they want skills development; I think they want to address the poverty; they want to address the lack of hope that exists in some Far North communities.

I think that's what this is about. This is about providing a different way of thinking. I realize we are on very unusual ground right now. We're proposing something very unusual and unique that's a different kind of relationship, and it's going to take some pretty brave leadership to move forward on this, but there are some very clever people in the north who I think are ready and able to take on the challenge of economic development, and we're going to give them the tools to do it.

The Acting Chair (Mr. Shafiq Qadri): Monsieur Bisson.

Mr. Gilles Bisson: To Mr. Hillier's point: I'm going to be a little bit softer but to the same point. All of the leaders in northern Ontario are telling you not to do this, not because they're opposed to the principle—because you're right; nobody is opposed to the principle. I don't know of any mayor, any councillor, any chamber of commerce or any First Nations opposed to the principle. That's not the point. What they're saying is that we don't have it right.

Is that a failure on the part of your government? Some people may categorize it that way, but I think that any good government and any good leader at one point should be in a position to say, "Okay, maybe we didn't get it right. Let's go back and try it again." If it takes a little bit longer and if it doesn't happen in this session of Parliament, so be it. The diamonds have been in the ground for thousands of years; the trees have been growing every 100-year cycle; the water has been running for millennia. It will still all be there; it's not going to go anywhere. And do you know what? Development will

still happen. We didn't develop the De Beers diamond mine, we didn't develop the Detour Lake gold mine that we're developing, we didn't do any of that stuff under the far north planning act. We did that by, quite frankly, having no policy and the First Nations doing a whole bunch of work in order to protect their interests. They know what needs to be done to protect their interests.

So I just say that sometimes it's good to take a step back and say, "You know what? We hear you. We still think we're doing the right thing as far as where we want to go." I think everybody will agree with you, but I think we need to take a step back and look at it.

To my earlier point that I was trying to get back on the agenda for, which is the issue of resourcing: I hear you, Minister. You're saying that there are a whole bunch of communities out there that are eager, willing and able—to a degree—to do land use planning. "Willing and eager"? Absolutely. I don't think there's a question. But "able" is a whole other issue, and I say that with all respect to my friends who are here. There isn't the capacity in a lot of these communities, in the majority of these communities, that deal with this. What do I as a provincial member of Parliament, let alone the chief of the community or the land use planning person in the community, know about planning principles and how you write an official plan? These are things that take a fair amount of time to learn, and you've got to bring people, sometimes, from outside to help you with this. The city of Timmins, like in Burlington, didn't write their official plan by locking themselves in a room. It costs a lot of money. They brought people in and they developed official plans accordingly.

My point is this: They're not properly resourced. I spoke to the land use planning people in Marten Falls, in Peawanuck, in Kashechewan and other communities. They're all saying that they don't have the budget to do what needs to be done. They're trying hard, but they don't have the money to do what needs to be done. So that's why I asked you the question earlier and said, "Listen, how much money do you think it's actually going to take to get this done, and do we have enough money?" I think the answer is that we probably don't know how much money it's going to take at this point. I think it's a little bit early to tell, because it's a bit of a moving target depending on what the final legislation is and where we go. But the fact is, all communities in the Far North eventually are going to have a land use plan, and we better be willing to fund it.

I end on this point: If it takes four or five years, if it takes 10 years, so be it. That's my view. I don't think we should be so rushed to try to foist a system of land use planning onto First Nations where we think, "Well, jeez, this is a great victory. Look at this. We've done it," if they're not prepared to accept it, because what you're going to have is resentful First Nations who are going to have a system imposed on them that they're not going to

want. Different communities will deal with that differently, and I'll tell you, it's not going to add to the ability to raise capital in the Far North, because if there's uncertainty because some communities are acting out in whatever way—and I'm not condoning it, but I'm saying it's going to happen—it's not going to serve anybody's interests.

So I just say that I really hope that the minister goes away today, based on the conversation we had earlier in regards to the amendment I put forward, to look at whether there's a way of stepping back, taking a bit of a breather here and looking at where we go from here. I don't think we should try to hang our hat on the coat peg, in the sense of saying, "Boy, we got that one figured out." I think we have to allow First Nations to figure it out, because you know what? They've been there for thousands of years, and hopefully for another thousand years they will be there. It should be up to them to determine. Being that 99% or 98% of the people who live in the Far North are First Nations people, we should put them in the driver's seat.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier?

Mr. Randy Hillier: I just want to say that I absolutely concur with Mr. Bisson that good government takes a step back when there are clearly failings and such significant opposition, but I guess I would add to Mr. Bisson's comments. About three or four or five years, I don't imagine Monte Hummel and the World Wildlife Fund want to wait that long to create the world's largest park in northern Ontario.

The Acting Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Ms. Jeffrey, your closing comments?

Hon. Linda Jeffrey: Thank you so much, Chair. I'm glad to have the final word.

I guess, Mr. Bisson, you're right: There is a capacity issue in the north, and certainly funding was an issue I heard about last year and I heard this year. That's why the \$10 million was such a great thing to have assembled, and it was something that I was very pleased to bring to my speech when I went up to Timmins.

I would say that there are communities out there that have been working on it for eight to 10 years. I think Pikangikum is one of those communities that's worked very hard. They're kind of coming to the final end of all of their community consultations about what the plan should look like. Those communities want to move forward.

So I agree with you, capacity is always an issue, and we want to work with those communities to help them. That's what my staff at MNR do. We do it well and we've got great people in the north to work with.

The Acting Chair (Mr. Shafiq Qaadri): I will close the debate. Committee is adjourned until 4 p.m. I thank you for your patience.

The committee adjourned at 1800.

CONTENTS

Monday 13 September 2010

Election of Acting Chair.....	G-99
Subcommittee report	G-99
Far North Act, 2010, Bill 191, Mrs. Jeffrey / Loi de 2010 sur le Grand Nord, projet de loi 191, Mme Jeffrey.....	G-104

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