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Standing Committee on Indigenous and Northern Affairs

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• (1105)

[English]

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

Welcome to meeting number 115 of the House of Commons Standing Committee on Indigenous and Northern Affairs. I want to start by recognizing that we meet on the ancestral and unceded territories of the Algonquin Anishinabe peoples and, as always, express gratitude that we're able to do the important work of this committee on lands they've stewarded since time immemorial.

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

Before we begin, I would like to ask all members and other in-person participants to consult the cards on the table for guidelines to prevent audio feedback incidents. Please take note of the following preventative measures in place to protect the health and safety of all participants, including the interpreters. Only use a black, approved earpiece. The former, grey earpieces must no longer be used. Keep your earpiece away from all microphones at all times, and when you're not using your earpiece, please place it face down on the sticker placed on the table for this purpose. I want to thank you all for your co-operation.

Today's meeting is taking place in a hybrid format. In accordance with the committee's routine motion concerning connection tests for witnesses, I'm informing the committee that all witnesses have completed the required connection tests in advance of this meeting.

With that, I would like to welcome our witnesses. We have, joining us by video conference, Ms. Merrell-Ann Phare. In person, we have Chief Lance Haymond from the Assembly of First Nations Quebec-Labrador, and Chief Sheldon Sunshine from the Sturgeon Lake Cree Nation.

Thank you, all, for being here today. There will be up to five minutes given to you for opening remarks, after which we will proceed with rounds of questioning. It might be that there is a bit of Euro Cup fever happening, but I'm going to be using this yellow card once we have 30 seconds left. Then I'll use a red card when the time has elapsed.

With that, I want to welcome you. We'll start with Ms. Merrell-Ann Phare.

I invite you to give an opening statement of up to five minutes.

Ms. Merrell-Ann Phare (Lawyer, As an Individual): Hi, everyone.

My name is Merrell-Ann Phare, and I'm legal adviser to the Assembly of First Nations on drinking water. I've been working on these issues since the expert panel on safe drinking water in 2006, and I am currently a member of their co-development team. They are presenting separately, so I'm here in my personal capacity.

I want you to know that, in my view, the bill is a vast improvement over the previous legislation that was repealed and, of course, over the situation that existed before that, which was a regulatory gap with no legislation whatsoever.

You've heard other witnesses talk to you about some of its key positive areas, such as affirming the inherent right to self-government over water and source water. There's a potential big game-changer in terms of how decisions are made about funding through a funding framework. There are improvements on standards for drinking water quality and quantity and waste water. There's a beginning of the process of supporting the creation of first nation water institutions, and, just generally throughout the legislation, you can see quite a bit on collaboration—the phrase is “consultation and collaboration”—and that is a positive relationship-building aspect.

Now, all of these changes—and there are many more in the bill that you're familiar with—are absolutely necessary, and they were negotiated by AFN and others. There was much input, as you've heard, through a co-development process. It wasn't perfect, and there are many ways it could be improved. I hope it gets improved over time, but that's how it has been developed so far, so I strongly support that the bill not be decreased in terms of the current clauses in there.

I wanted to point out one thing, though. Near the end of the co-development process, as the bill was near going into the House, there were some clauses that were added that AFN did not have a role in, so I wanted to speak to those ones, because there are some areas where they could be improved, and they're significant. Again, I don't think there's any circumstance in which this bill should be diminished or any of the clauses deleted or weakened, but there are definitely ways to improve it.

Here are three of them.

First, on inherent right, it's absolutely amazing, and long overdue, that the inherent right to self-government over water and source water is recognized. However, it's currently recognized off reserve only in a protection zone attached to the reserve or adjacent to the reserve. There's no legal reason for that. Source water is source water; water is water. If it's water, there are indigenous rights to water. They've clearly recognized them, and there's no need for the water to be adjacent. Legally, there's no reason for that.

The idea is that a federal-provincial-territorial agreement is required for first nations to implement their right off reserve, and again, that's in line with the federal inherent rights policy. I understand that, but it doesn't really make sense when it comes to water. Water requires all governments to be at the table and to negotiate the way their jurisdictions are going to work together. It shouldn't be that any other government is required for first nations to be able to do that. It should be up to first nations to decide when they feel that they need to work with other governments, just like the federal, provincial and territorial governments do. That's exactly the way the relationship works now, and first nations shouldn't be treated any differently from them.

The second idea is about the minister's obligation. The act currently does not make it absolutely clear that the minister must provide water that meets water quality, quantity and waste-water effluent standards. The current standard is a best-efforts clause, and it's only focused on water quality. That was added after, and I think you can see the problem with that. We've long since passed the time when this should be optional, or even best efforts. The only reason a minister shouldn't have to provide those three things is if the first nation has opted to exercise its jurisdiction on that matter, in which case it's fine, but in the absence of that, we have been, since colonization, long past the time when the minister should be required to provide safe drinking water, water quantity and waste-water effluent treatment.

The final one is the funding framework. You'll see that there's a section in there where first nations will work with the Government of Canada to develop a funding framework. That will assess needs, but what it also will do is set out how decisions are made and implemented, and that's the game-changer. First nations get to work with Canada to scope the needs and how the decisions will be made. Remember, Canada is in that conversation—

• (1110)

The Chair: I'm sorry, Ms. Phare. I'm going to have to ask you to wrap it up quickly.

Ms. Merrell-Ann Phare: Okay.

The idea is that a best-efforts clause is not sufficient for Canada to provide funding, and that Canada needs to make a full commitment after it has been part of the funding framework development.

Thank you.

The Chair: Thank you very much, Ms. Phare. I'm sure there will be questions from our members here about the points you raise.

With that, I will turn the floor over to Chief Lance Haymond from the Assembly of First Nations of Quebec-Labrador, for up to five minutes of an opening statement.

Chief Lance Haymond (Assembly of First Nations Quebec-Labrador): Good morning. *Kwe*. Hello. *Bonjour*.

My name is Lance Haymond. I'm currently the chief of the Algonquin community of Kebaowek, but I'm here today representing the Assembly of First Nations Quebec-Labrador, where I am the portfolio holder for housing, infrastructure and water.

As it's been mentioned, I'd like to acknowledge and welcome everybody to our ancestral territory. As I've mentioned on several occasions, it's always good to see you conducting your business, and we're grateful to have you here so that we can have this opportunity.

Thank you for giving me the opportunity to share the AFNQL's point of view on Bill C-61.

I've been involved in this process since 2009, when the Quebec region had its first engagement session on water on Bill S-11, before it was introduced and eventually died on the Order Paper with the calling of the election. I was also around when Bill S-8 received royal assent in 2013 and was repealed in 2022. Canada then committed to the co-development of new legislation, and we're currently discussing Bill C-61.

I've heard much criticism about this bill, about what's not in it and what's missing, but in criticizing it, we overshadow the important and significant progress we have made since seeing the first draft of this legislation, and it further diminishes the hard work, sacrifices and important contributions made by the team from the water secretariat at the Assembly of First Nations on this legislation. I think about former director Irving Leblanc, Kerry Black, Madame Phare, who just presented, legal counsel Stuart Wuttke, *Ogimaa Kwe* Linda Debassige, former chief Phil Fontaine, and our regional technicians and water coordinators, who were instrumental in getting important changes and additions to the legislation before it was tabled.

We are quick to criticize, because it's easy, but I believe in giving credit where credit is due. I want to acknowledge and thank Minister Hajdu for tabling this important legislation, and thank her team for working with the Assembly of First Nations and all stakeholders to get this far.

There will never be a perfect piece of legislation, but this is a far cry from where we started. I now believe that we have a chance to address the gaps, some of which were identified by Madame Phare. Our chiefs in Quebec are not opposed to the adoption of Bill C-61 and the eventual regulatory framework.

We did and continue to have concerns about the process. I've been around for a long time and can therefore say that a lack of consultation with first nations has often characterized previous attempts, whether it was Bill S-11 or Bill S-8. That lack of real co-development was undoubtedly a major concern for chiefs across this country regarding the development of Bill C-61.

Furthermore, in Quebec, we were put at a disadvantage a year ago, in February 2023, when we had organized and booked our engagement session for February 15 but weren't able to speak to the legislation because it wasn't officially tabled until the 17th. You can imagine it. We had signed an NDA—me, the water technician and the coordinator. We had a session with over 100 participants, but we couldn't actually talk about the contents of the legislation because it had not yet been officially tabled.

We've come a long way from those early disadvantages. We are now in a situation where, as I mentioned, we are agreeable to Bill C-61.

As for the bill itself, although it was not co-developed as planned, the text still evolved compared to previous versions. This is the first time I've seen our input included in its entirety in some areas, and the government going farther than expected in other areas. Despite an inadequate process, we have still made progress on the main gaps, which are inherent rights, funding, governance, standards, transboundary water sources and immunity.

For example, there is now a reference to the existence of the inherent right of first nations to self-government. The concept of free, prior and informed consent has been added to the principles section. There are some substantial additions to the government's obligations, such as doing its best to provide funding that is “adequate, predictable, stable, sustainable” and “needs-based”.

On the issue of transboundary waters, there is a mechanism for off-reserve collaboration regarding provincial, federal and first nations territorial jurisdiction. There are also added provisions related to the immunity of first nations employees.

• (1115)

These are a few examples of the progress made, but important issues remain. Important steps are ahead, and past mistakes have us very concerned. The issue of real co-development remains a great preoccupation as we take major steps in the implementation of Bill C-61—

The Chair: Chief Haymond, I'm afraid I'm going to have to ask you just to finish that thought, if you could, please.

Chief Lance Haymond: I mean namely the development of the funding framework and the regulatory framework.

Thank you.

The Chair: Thank you very much, Chief Haymond.

We'll turn the floor over to Chief Sheldon Sunshine from the Sturgeon Lake Cree Nation.

You have up to five minutes for your opening statement.

Chief Sheldon Sunshine (Sturgeon Lake Cree Nation): Thank you, Mr. Chairman.

Tansi. Honourable members of Parliament, I'm Sheldon Sunshine. I'm the chief of the Sturgeon Lake Cree Nation in Treaty 8 territory.

Thank you for this invitation to speak about Bill C-61.

Before I begin, I'd like to acknowledge that I'm speaking on the unceded lands of the Algonquin people.

Sturgeon Lake Cree Nation has over 3,800 members. We are one of the largest first nations in Treaty 8 territory. Our ancestors entered into Treaty 8 in 1899 with the imperial Crown. At that time, and until 1905, Alberta was not a province, and our people did not conceive that we would ever have dealings with a province. Our treaty is a nation-to-nation, international, sacred covenant that provides the legal foundations of this country.

Since time immemorial, our territory has been surrounded by water. We rely on Smoky River, Iosegun River, Goose Lake and Sturgeon Lake. The Smoky originates in the Rocky Mountains near Jasper and then feeds the Peace River, a navigable river under federal legislation. We depend on these waters to harvest fish and large game, which sustain our people. Our lands are home to endangered species such as bull trout and woodland caribou.

Our territory is located in the northwestern part of what is now known as Alberta. Many parts of our territory are now industrialized and surrounded by mining in Grande Cache, forestry near Fox Creek, and conventional oil and gas projects, including abandoned, orphan wells. All of this development is near, on or in the water we rely on to continue our way of life and our livelihood and to exercise our treaty and inherent rights. We are experiencing unmitigated cumulative effects in our territory and in our waters, which is a breach of Treaty 8.

Before getting into Bill C-61, I'd like to tell you about the water in our treaty. At the time of the treaty, we were a matriarchal society, and our women were the water keepers. They were not included in treaty negotiations, so water was not discussed. We did not treat our water. Water was non-negotiable for our ancestors, as it is for us today.

Since 1899, the time of the treaty, the government has encroached on our treaty jurisdiction over water. For example, through their interpretation of the Constitution of 1867, the Crown has said that the province has jurisdiction over water, based on words like “local works” and “property”, for example. Like our treaty, this is not explicit. Unlike our treaty, it makes no sense. For example, there is no property in water under any law.

Bill C-61 is the latest attempt to encroach on our inherent authority over water. The government is using legislation to override our treaty promises—their treaty promises. This is the fundamental problem with Bill C-61 and why we will not accept it, even with amendments.

I want to be crystal clear today that we do not need legislation to recognize and affirm our treaty. We need the space and the capacity to develop our own laws. This requires positive action by the federal government, given the effects of decades of neglect.

However, Bill C-61 does not just infringe on our jurisdiction. It also creates a two-tier water system where the first nations will continue to be denied the human right to water, and it downloads federal liability to the nations.

Some of the most serious issues we have identified in Bill C-61 are the following.

First, the legislation does not recognize the human right to water recognized in the legislation. There is no guarantee for safe drinking water. Instead, it creates a different set of rules for first nation lands. Calgary, through the water main break, recently learned what we go through on a daily basis. We still have boil water advisories, and we need a new water treatment plant, but the cost is estimated at around \$50 million.

Second, this legislation will do nothing to affect the billions of litres that are removed from our waters through provincial water allocation licences by the province in violation of Treaty 8.

Third, this legislation will do nothing to protect our water and our treaty rights from the ongoing threats of contamination. For example, last year, the CST coal mine near Grand Cache released more than one million litres of toxic water directly into Smoky River. We were never notified. This is 200 kilometres upstream from us, much like what is being faced by those communities downstream from the Imperial Oil Kearl spill and seepage. This is one example. Bill C-61 will do nothing to stop this poisoning of our water and the fish we depend on to exercise our treaty and inherent rights.

Fourth, the legislation imposes a federal framework by which we can create our own laws, but we don't need legislation to do so. And if we don't pass our own laws, the legislation says that we will default to the federal regulations. The federal regulations are at the whim of the minister in place. This is not an opt-in. It is not self-government.

- (1120)

Fifth, the legislation will download federal responsibility onto us, with no guarantee of funding backstop. The federal government has fiduciary responsibilities to us. We will need them to live up to these duties. We don't need their attempts to give us self-government without any guaranteed capacity funding. We will be held liable for the issues that are within the federal government's fiduciary responsibility to us right now.

In conclusion, Mr. Chair, the Sturgeon Lake Cree Nation and Treaty 8 territory are firmly against this legislation, as we see a grave infringement on our jurisdiction and rights. We ask that you reject Bill C-61 in its entirety.

I thank you for your time.

The Chair: Thank you very much, Chief Sunshine.

That concludes the opening statements. We're going to start our first round of questioning.

This is a six-minute round, starting with Mr. Melillo.

The floor is yours.

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

Thank you to all the witnesses for being here on this important discussion.

Chief Sunshine, thank you for your comments. I think you spoke very well and very strongly in those opening remarks. I'd like to ask you a few questions about them.

Before I get into some of the details of your comments, just off the top, this is something the government claims was co-developed, but we've heard from a number of first nations that do not feel they were adequately consulted. I'd like to get your take on that and on what the government could have done differently to ensure that there was a proper consultation process.

Chief Sheldon Sunshine: Thank you.

I agree with those sentiments. Minister Hajdu came out to Treaty 6 territory in Edmonton. I expressed those same sentiments and concerns, that Sturgeon Lake Cree Nation was not properly consulted when this was developed. I was not in the seat that I sit in today.

With everything that faces our first nation communities, we haven't had the opportunity to really take a deep dive into this until now. That's the reason I'm here.

Mr. Eric Melillo: I appreciate that.

You mentioned in your opening comments that there are a number of future regulations to be made at the whim of the minister. You identified that as a concern, and I share that concern as well.

In one instance, this is the case when it comes to defining protection zones set out in this legislation. A representative from the Department of Justice was here not long ago. It took him a few minutes, but I was able to get him to admit that this is the case. Although the legislation says that the minister will co-operate, there is no defining characteristic that says the minister has to have the consent of the first nation—or of the province or territory of jurisdiction, for that matter—to define a protection zone. It's just up to future regulation.

Do you think, based on what you said, that the minister should have that power, or do you believe that the minister should have to have the consent of the first nation before defining the protection zone?

Chief Sheldon Sunshine: I absolutely believe that it should have the first nation's consent, as I mentioned, on the signing of a treaty. That's one thing that's been forgotten by Canada. They put us in a box and they forgot about us. Without going into too many details surrounding that whole concept, I absolutely agree that first nations should be party to those decisions.

• (1125)

Mr. Eric Melillo: I appreciate that.

You mentioned that even with amendments, you would not support this legislation going forward. Could you highlight that a bit more?

A number of issues have been identified in Bill C-61. We hope to be able to fix and amend those things. You're still saying that even if it is amended, it's not going to be good enough. Did I understand you correctly?

Chief Sheldon Sunshine: Yes. That is correct.

Mr. Eric Melillo: Could you expand on why that is the case?

You had some strong comments. I think you said this is legislation that would override the treaty promises. Could you expand more on what you meant by that?

Chief Sheldon Sunshine: There are a few examples.

We don't need the law to implement a treaty. We need recognition of treaty jurisdiction. That was already done in the Constitution Act of 1982. What we need is what the courts have been calling for in B.C. and Ontario, and even the Supreme Court. We need the court to honourably and diligently implement the promises. Implementing treaty does not mean creating neocolonial legislation like Bill C-61, which tells us what we need to do.

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

You mentioned some of those concerns off the top.

I'll go back to another quote from Rupert Meneen of Tallcree First Nation, also in Treaty 8. He has said previously on the record that the government was dumping responsibility for water and waste-water infrastructure prior to any discussion about transferring jurisdiction.

Do you agree with that sentiment from Chief Rupert Meneen?

Chief Sheldon Sunshine: Yes, I agree with that.

Mr. Eric Melillo: Do you care to expand any more on that characterization and what needs to be done to ensure that the transfer is done properly?

Chief Sheldon Sunshine: For a lot of those challenges that we're facing in the first nation—I speak for my first nation alone, as I am chief of Sturgeon Lake Cree Nation—those sentiments are throughout, whether we're talking about co-legislation, development of health or water. It's everything.

From where I sit, we are at a disadvantage in every aspect. You know, capacity.... I mentioned in my statement that we need assis-

tance to develop our laws. We have always had laws. Before contact, before Europeans settled this land and we agreed to have them settle this land, we had our own laws and legislation. That's one thing that I think is important. We should have our say and, as I mentioned, help with developing those.

Mr. Eric Melillo: Thank you very much. I think that's pretty much my time.

I appreciate all those comments. Thank you very much for being here.

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

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

Mrs. Atwin, you have the floor for six minutes.

Mrs. Jenica Atwin (Fredericton, Lib.): Thank you very much, Mr. Chair.

Thank you to our witnesses for being with us.

I am joining you all from the unceded, unsundered territory of the Wolastoqey today.

I'd like to direct my questions to Chief Haymond, if I could.

I'm really interested in learning more about the consultation process and your personal experience developing this replacement to the Safe Drinking Water for First Nations Act. I'm wondering if you could explain what kinds of supports the government may have provided for individual first nations to participate in this process.

Chief Lance Haymond: As I mentioned, some of the initial challenges we had were around the timing of the dropping of the first drafts of the legislation. It created a little bit of a disadvantage for us. However, given that we have a well-structured situation in Quebec where we have strong tribal councils, along with other resources that are available in our region, the hiring and the funding that was provided to engage regional water coordinators was instrumental in the consultation process. It allowed the young lady who was hired to do the work to do outreach beyond the initial regional engagement session that we had, and to go to first nations that wanted additional information or had questions around the legislation.

As I mentioned, although the process started off quite poorly and we were very disappointed with the initial draft of the legislation that we saw, we also note that the government took the time to go back, get an expanded mandate and work diligently with the water committee at the Assembly of First Nations to get to a point where we were comfortable when the minister tabled the legislation in December.

I think part of the challenge is that AFN was primarily responsible for the consultation process, and I know that regions like Treaty 8 in Alberta are not full participatory partners in the Assembly of First Nations. Thus, making sure that every region across the country is involved at the same level is a challenge for the assembly, to make sure regions like Alberta have an opportunity to be consulted.

That being said, I think Madame Phare and others who've actually done the work on the ground will tell you that a considerable amount of time, energy and effort went into the draft that was tabled in December.

I'll stop there.

● (1130)

Mrs. Jenica Atwin: Thank you very much.

Could you be a bit more specific, perhaps? Compared with the initial drafts, what are the areas of the current version of the bill that were significantly altered or strengthened during that consultation process?

Chief Lance Haymond: There are a number of key provisions that were added. Again, I would have preferred that those comments and those elements of improvement had come from the Assembly of First Nations. They've done the work to get those improvements. There were definitely some improvements in terms of the definition.

Going forward, we know the implications and the application of UNDRIP have to be a part of this process, so, again, that is free, prior and informed consent. Some good consultation has to occur, but there were improvements in ensuring the funding is adequate, predictable and stable, along with improvements on transboundary water. Again, there's some work that needs to go forward with the whole issue around jurisdiction, as indicated by the chief beside me.

One of the more important improvements, particularly from a first nation perspective, was this. The initial draft of the legislation most certainly protected the Government of Canada from any legal responsibilities, so there was an important improvement in the next phase, which we fought hard for, to have that same protection for our employees who will be working in water and waste water, to ensure that, in the event of any issues, they will not be held liable. If there are issues with our water treatment facilities, of course it will probably be due to inadequate funding and facilities that need to be brought up to code.

I think fundamentally the main piece that still has to be worked out is the funding framework. While a good piece of legislation is important, if we don't have the financial resources to bring our systems up to par and keep them there, as well as train and provide good salaries to our operators, we're going to continue to have the same kind of challenges we have today.

Mrs. Jenica Atwin: Thank you very much.

In my last few seconds, around the issue of jurisdiction, how do you see that interplay between the provinces, the federal government and first nations self-governments? What do you think that will look like?

Chief Lance Haymond: What it should look like is governments recognizing our ability and our right to develop our own jurisdictions. Currently, in this legislation, it doesn't look like that's the case. It looks like we will have to negotiate with the province. If the province is unwilling, that is going to become a challenge.

Again, it would be preferable if we could develop our own legislation and jurisdiction, but it looks like we're going to have to find

the ways and means to negotiate with both the federal government and the provinces in the effort to apply our own laws.

● (1135)

The Chair: Thank you very much, Mrs. Atwin.

[Translation]

We now go to Mr. Lemire for six minutes.

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

Chief Haymond, I'm speaking to you as the chief of the Ke-kaowek First Nation, not as the representative of the Assembly of First Nations Quebec-Labrador. I have a question for you about your extensive experience dealing with the issue of the near-surface nuclear waste disposal site at Chalk River.

What specific concerns do you have about the Canadian Nuclear Safety Commission's decision on the location of the site, keeping in mind the trend among ministers to off-load their responsibilities onto independent commissions?

Since the Canadian Nuclear Safety Commission doesn't have the ability to propose another site, should we include that power in the water bill when source water is at risk?

In this case, an important water source for more than 144 communities is being exposed to elevated risk levels. Do you think the bill will give you more power to protect this source water?

[English]

Chief Lance Haymond: That's a multitude of questions in one question.

Starting off, I think that the whole issue of nuclear waste and Chalk River is an important element to discuss, primarily because developing laws in our interest is really about protecting the water in the long term. The current project that's been approved by CNSC causes us great concern and heartburn in the fact that down the road, in a couple of hundred years, the mound will degenerate and in all likelihood, from everything we've seen, poison the water.

We're not clear whether or not Bill C-61 will have any major implications as, of course, there are other ministries involved. It could help, but it will also require the ministry of natural resources and the ministry of the environment to take into consideration our concerns around what's happening at Chalk River.

I'm sorry, but it's common sense. I don't think you need to be a nuclear scientist to recognize that building a nuclear waste dump at the edge of an important water source like the Ottawa River is probably not a very good idea, for the very fact that potential leaching could impact the drinking water supply for millions of people in the future.

Again, I'm not sure Bill C-61 will have major implications in terms of what's happening at Chalk River, but it will most certainly help communities like mine potentially use and argue that some elements of UNDRIP need to be taken into consideration prior to the government making decisions.

Again, when projects like the nuclear NSDF—the nuclear dump at Chalk River—come to bear, I think we should always opt for erring on the side of caution rather than simply moving ahead with projects that have the potential to impact our water supply.

[*Translation*]

Mr. Sébastien Lemire: *Meegwetch.*

What do you make of the fact that article 29 of the United Nations Declaration on the Rights of Indigenous Peoples is mentioned only in the preamble of the bill? The government nevertheless has an obligation to respect that principle, including in connection with activities that pose a risk to the source water of indigenous communities.

What specific measures need to be taken to ensure the lasting quality and safety of those water sources, in accordance with the rights of indigenous peoples?

[*English*]

Chief Lance Haymond: Whenever I hear that part of the legislation is to be defined in the preamble, it makes me nervous. I think we've learned from Bill C-15 that putting in the preamble aspects that we want to see in the body of the legislation does not give them the weight that is required.

With lessons learned from Bill C-15, it's absolutely clear that to engage and force the government, those provisions should be encompassed within the body of the bill, not in the preamble, which is used more for interpretive purposes and does not necessarily constitute a part of the law.

• (1140)

[*Translation*]

Mr. Sébastien Lemire: Would you be in favour of amending clause 3 to include the right to clean and safe drinking water?

[*English*]

Chief Lance Haymond: Yes, I think it's clear that we need to have the ability to have the right of access to water.

Again, in the improvements that have been made, there's some language that says “the Minister may”. I think we need to strengthen that with “must” and “should”. There are a whole host of areas that should have more solid language that commits the government and the minister to do something and not give them the option to opt out if it doesn't work. We need more solid language that says they “will” and “must” versus “may” or “could”. I think that's really important.

[*Translation*]

Mr. Sébastien Lemire: Since I'm almost out of time, I'll end with a yes or no question for you.

Would you be in favour of applying the precautionary principle to all high-risk projects, especially those with an impact on critical resources like water, in order to better protect indigenous communities?

[*English*]

Chief Lance Haymond: The answer is a simple yes. I think we should always err on the side of caution, especially when there are

variables that we don't understand and when we're making decisions that have impacts for the next 500 years to thousands of years, as the project at Chalk River will. Therefore, absolutely, the precautionary principle, I think, is key in moving forward.

[*Translation*]

Mr. Sébastien Lemire: *Meegwetch.*

The Chair: Thank you, Mr. Lemire.

[*English*]

With that, I want to welcome MP Desjarlais to the committee today.

I will turn the floor over to you for six minutes.

Mr. Blake Desjarlais (Edmonton Griesbach, NDP): Thank you very much for the welcome, Mr. Chair. It's good to see you here.

Witnesses, thank you for being present here, in particular *Okimaw* Sunshine, from my neck of the woods. It's good to have you here. You spoke to me earlier, before we started today. You said that you weren't certain how good of a politician you are, but you did a pretty good job today, I'd say, in outlining the concerns of Treaty 8, particularly those of Sturgeon Lake Cree Nation.

We heard a lot, particularly in Alberta from Treaty 6, Treaty 7 and Treaty 8, that there hasn't been enough consultation. However, in your remarks, I think you elevated the discussion to a place where Canada has never really wanted to go, the place where they have to actually address the fact that they had a treaty with many people on the prairies—mine, yours, just the whole province of people—and had these commitments that were laid out in the treaty-committed partnership. They committed to a nation-to-nation relationship, committed to dual sovereignty, this idea that we could exist separately but together.

I think the principle you're speaking about today, and one that I really implore my colleagues to listen to deeply, is that this is the most critical kind of legislation, in the sense that it deals with water, life, our women and our future. If I've heard anything that's been clear from chiefs in Alberta, it's that we have to get this right, and if we don't get it right, then we have to go back to the drawing board.

You mentioned in your statement that we have to find a way to return to treating each other more honourably, but most particularly Canada, the Crown, has to see its obligations to its treaty partners first and foremost. You even mentioned the Province of Alberta as an obstacle to what is, really, the full enfranchisement or full recognition of treaty rights, as well as your nation's sovereignty, future and ability to be recognized for its already existing powers: the right to self-government, the right to water, the right to land, the right to simply be who we are. Those are fundamental rights that exist, whether Canada acknowledges them or not. Your statements here today have made even more clear and deeply founded in my heart the great reminder that this place has a lot longer to go in finally trying to recognize its jurisdiction, which isn't complete jurisdiction but a shared one—one that it hasn't yet fully recognized with indigenous people.

I want to ask you this, Chief Sunshine. You made this statement about Canada: "They put us in a box and they forgot about us." It pains my heart to know that such a proud people, particularly the Cree people on the prairies—my mother, my parents, our relatives—find themselves in this deplorable condition of poverty where water... This is something that you mentioned in Calgary right now is being met by the people there as something so critical and desperate that now the attention on the importance of it is at the forefront of every newspaper in Alberta. However, this is something you've thought about as chief, something your people have thought about, something that indigenous people across the prairies have thought about for generations. What does our future mean without water? What does our future mean without clean water?

You also spoke about the importance of limiting the damages to existing water. The fish we eat come from the water that's been there, gifted by the Creator, yet toxic pollutants are constantly put into the water without your notification.

Many of these issues stem from a great deal of disrespect when it comes to the signatories who signed those treaties all those years ago, to have all these barriers put in front of them and to force you to come to this table today to say yet again what's been said for over 100 years, which is to simply allow us to be ourselves and to simply allow us to continue to do the work that we've been doing for generations, since time immemorial, to recognize the fundamental jurisdiction that is already present. The jurisdiction doesn't come from the Crown in better ways. It comes from our Creator, and you've made that very clear today.

My question is whether you'd like to elaborate any more on why the things you've said today are so important and why they lead you to oppose this legislation.

• (1145)

Chief Sheldon Sunshine: Thank you for that.

I talked about our treaty and our box. I've been in this position for two years, and it's relatively new. When I say that I'm not a politician, I know that one of my elders said, "You are, because you are in your position." When I learn of the atrocities that our people have faced over 125 years.... This year in Treaty 8 territory, right now, we're having a celebration of the signing of Treaty 8. I'm missing the grand opening. It's a reminder of where we are today

and how far we have to go with the Government of Canada, and the Province of Alberta as well.

It's difficult to look back. I walk around this land and see the grandeur of these facilities, and where I come from we deal with poverty every day. When it comes to legislation, we talk about co-development. It's a struggle for me to really put it into words, to express how I feel today. I feel it's a responsibility that I have to my people to really try to come and express what that is. A treaty was an obligation. We agreed to share the land, but we haven't seen it.

Our people have been very good treaty partners, but our partner in the Crown, the Government of Canada, hasn't reciprocated. We've seen it. We see it every day. I'm sure you guys see all the statistics, the opioids epidemic that has faced our people. It's not a quick fix. It's not just one thing. You can't come here and just think you're going to fix the water and the water issues, or you're going to come and fix the drug issues, the opioid problem. In my community, it's a global issue.

The Chair: Chief, I'm afraid I'm going to have to ask you to finish that thought, please.

Chief Sheldon Sunshine: It's housing. It's jobs. It's all of that. That's how you fix it. You fix it one piece at a time, but all together. In my community we're taking some steps towards that, but we need some assistance, and some partnership. We need the other side to uphold their obligations.

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

With that, we're moving into our second round, for five minutes, and we'll start with Mr. Schmale.

Mr. Jamie Schmale (Haliburton—Kawartha Lakes—Brock, CPC): Thank you very much, Chair.

Thank you to our witnesses for this very important discussion.

Chief Sunshine, just to pick up where you left off, you were talking about the challenges that you're dealing with in your community, most of them, if not all, created by the "Ottawa knows best" approach. Now we've heard, through testimony in this meeting and others before it, about Bill C-61 and the challenges it imposes on you, in many cases, as a leader in your nation. Specifically, the consultation piece has been mentioned a few times, but also what can be described by many in this committee, through testimony, as the power that the minister would have under this legislation. Would you like to expand upon that?

• (1150)

Chief Sheldon Sunshine: Thank you for the question.

When it comes to consultation, my friend here said that the AFN has been privy to that, and some other organizations. I know Sturgeon Lake Cree Nation hasn't been part of that. When it comes to consultation, AFN in particular, out of Alberta.... We're not participatory. I know the AFN has a lot to say when it comes to these types of things, but in Sturgeon Lake Cree Nation, we haven't.

I'm sorry. What was the second part of the question?

Mr. Jamie Schmale: A lot of the wording in this legislation talks about “best efforts” by the minister, which could be interpreted as a large amount of power given to the minister to designate certain pieces of area as source water. It could be with or without consultation, according to some of the testimony we've heard.

Chief Sheldon Sunshine: Yes, that's part of the issue that we have with it, because it's always a top-down approach.

In Sturgeon Lake Cree Nation, we've always been like a little brother always asking for help, and this type of thing. I would like that to change, and have us at the table when we talk about source water. This legislation gives us jurisdiction on our lands, our Sturgeon Lake. The lake itself is not on reserve. It's just on the boundary. Then we're reliant on outsiders to decide what's best for our people. I don't agree with that—100% don't agree. Our territory spans an enormous amount of treaty territory, so when you talk about legislation, we have jurisdiction on Sturgeon Lake reserve lands. It's a huge discrepancy for our people.

Mr. Jamie Schmale: Did the AFN have the same issues with the wording “best practices”, Chief Haymond?

Chief Lance Haymond: I don't really understand the question. I'm sorry.

Mr. Jamie Schmale: That's okay. Maybe I'll come back to it in just a second.

I need to quickly deal with this motion—and I do apologize to our witnesses—that was put on notice last week.

We're pushing through on Bill C-61, this piece of legislation, but we've also heard from a number of indigenous leaders in the past few weeks talking about the ongoing housing crisis in first nations and Inuit communities. We've now had our fourth straight Auditor General report talking about the failing state of housing for indigenous communities, first nations and Inuit, and I think it's important for us to continue that work right through the summer, if need be. It's something that I think these leaders are calling for, and it's something our committee should be looking at and taking seriously.

I will reread the motion. I move:

That, given the large workload and expansive mandate of this committee, the committee hold five meetings for a duration of 2 hours each between July 8 and September 13, to address housing on First Nations and produce a report with policy proposals to build more homes and solve chronic housing challenges on First Nations communities.

Thank you, Chair.

The Chair: Thank you, Mr. Schmale.

We'll have discussion on this. I see that Mr. Battiste's hand is up.

The floor is yours.

Mr. Jaime Battiste (Sydney—Victoria, Lib.): Today I'd like to continue to focus on first nations' clean water.

I'd like to adjourn debate. I'm making a motion to adjourn debate.

The Chair: As this is a dilatory motion, we will proceed to a vote.

[*Translation*]

Mr. Sébastien Lemire: To make sure everyone is clear on the motion, Mr. Chair, I think it's worth having the debate. Can we fin-

ish our hour with the witnesses and take advantage of the fact that we no doubt have resources for the second hour? I know it's not on the agenda, but that way, we could get to the bottom of it.

• (1155)

The Chair: Mr. Lemire, we have resources until one o'clock, so we're going to continue.

Mr. Sébastien Lemire: Does voting for Mr. Battiste's motion completely cancel out Mr. Schmale's motion? Can we suspend debate, instead of adjourning it?

[*English*]

The Chair: This would just adjourn debate for today. We could always pick it up at another time, but that's the motion that was moved by Mr. Battiste.

[*Translation*]

Mr. Sébastien Lemire: In that case, I'd like to call on the committee's good faith to propose that we finish the second round and pick up the debate on the motion afterwards.

I can't vote in favour of adjourning the debate, if that is what we are voting on. If we are voting in good faith to revisit Mr. Schmale's motion at the end of the second round and he's given an opportunity to speak, I'm fine with that. That's what I'm proposing.

[*English*]

The Chair: Monsieur Lemire, the motion that we have on the floor right now is to adjourn the debate. I think we need to vote on that, unless it will be decided not to move ahead with it, but I believe we're doing it. I think we're going to go to a vote, and then we can discuss that afterwards if the motion doesn't pass.

Mr. Blake Desjarlais: Chair, I have a point of order.

The Chair: Go ahead on a point of order, Mr. Desjarlais.

Mr. Blake Desjarlais: Thank you very much, Mr. Chair.

I do believe that we owe a great debt to our witnesses present today.

Thank you so much for being here.

As a matter of clarification, to my Bloc colleague's question earlier about the procedures that would allow us to get to our witnesses, who travelled a great deal to be here with us, to finish our round, is it possible that our Conservative colleagues would be so gracious as to allow us the opportunity to continue this discussion on clean water with the earnest ability to come back to that motion? I understand that they've tabled it, but I also think it's important that we finish this round or at least to have the Conservatives withdraw the motion for the time being so that we can offer our due respect to the witnesses who are present.

Mr. Jamie Schmale: It's my understanding that we have to deal with Jaime's motion first.

Mr. Blake Desjarlais: Could you both withdraw?

Mr. Jaime Battiste: I'm willing to withdraw if we can get to the witnesses and finish the round.

The Chair: Is there unanimous consent for this motion to be withdrawn?

Mr. Blake Desjarlais: Is it for both of them?

Mr. Bob Zimmer (Prince George—Peace River—Northern Rockies, CPC): [*Inaudible—Editor*] voting on his motion directly, or else we're in debate right now. That's what's happening.

Mr. Jaime Battiste: Let's get to the vote.

The Chair: We're going to go to the vote. We're voting on adjourning debate.

(Motion agreed to: yeas 6; nays 4)

The Chair: Thank you for that.

The debate is adjourned.

We will go back to Mr. Schmale.

You have another minute and a half on your time.

Mr. Jamie Schmale: I'm more than happy to take that.

Mr. Blake Desjarlais: As a matter of clarification, Mr. Chair, the motion that was just passed was to adjourn debate on the motion. Does that mean that we'll return to our regular order?

The Chair: Yes.

Mr. Blake Desjarlais: I'll be entitled to another round. Wonderful.

I appreciate everyone's co-operation here, and I hope the Conservatives can play nice while we have our witnesses here.

Mr. Jamie Schmale: I didn't use my time. Do I get my time?

• (1200)

The Chair: Mr. Schmale, you have another minute and 20 seconds.

Mr. Jamie Schmale: Thank you very much.

I will go to Chief Haymond, if I could.

We uncovered during the testimony, when we were talking about this bill, that we recognize successive governments have made some progress here and there on solving, or trying to solve, at least, the issue of achieving clean drinking water for all. I recognize that it's not going fast enough for the vast majority and there are still massive problems here.

If this bill goes forward, do you see this bill, as it expands to source water and elsewhere...? The fact is that the consultation has been raised by many as an issue. The "Ottawa knows best" approach has been raised by many as a potential issue. Do you feel the voices of those on the ground will be heard if this legislation is given royal assent?

Chief Lance Haymond: Again, I won't speak for all of the other regions in the country. I'm here representing the interests of the Assembly of First Nations Quebec-Labrador.

For all intents and purposes, even with the shortcomings that have occurred in terms of the process, as I've indicated, our chiefs are amenable to Bill C-61, predominantly because we don't have a lot of the same issues related to safe drinking water and access to water that a lot of other first nations do across this country. It's predominantly because we've set up strong support mechanisms, such as tribal councils and circuit rider programs, which ensure that we are working collaboratively with our federal partners at Indigenous Services, and for housing with Canada Mortgage and Housing Corporation representatives, to address the issues being raised by and for first nations in Quebec.

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

With that, we're moving to the second questioner in the second round.

[*Translation*]

We now go to Mr. Scarpaleggia for five minutes.

[*English*]

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

I'd like to continue along that line, Chief Haymond.

I remember attending a conference in Montreal on first nations water a few years back and being surprised to hear that there were no long-term boil water advisories in Quebec. I assume that's correct.

My question is on something you kind of touched on. I was hoping you could elaborate. Why is it that the situation seems so much better in the province of Quebec than in other areas of the country? Does it have anything to do with the philosophy that the Quebec government employed, especially around the development of the James Bay agreement?

I'd like your insights on that, because it sounds like something is working in Quebec and maybe we can all learn from it.

Chief Lance Haymond: Again, I'll go back to the fact that we've spent a lot of time, effort and energy in developing our own capacities to address the needs that are being raised in our communities.

As with most first nation communities across this country, we're small, independent communities and we don't have the financial resources to be able to have all of the expertise we need. We don't all have engineers. We don't all have folks who are helping us manage our water systems. We don't have the capacity to do water monitoring and testing on an individual basis.

Over the course of time, we've developed and learned that there's strength in numbers, and buying and building capacity can be done in a number of ways. In Quebec, we've chosen to build capacity by having strong operators and training programs, so that we have qualified people in our communities.

The most important aspect of why we're so successful is that, in spite of our differences, we sit down with our regional colleagues from Indigenous Services, we look at the problems and we look at the potential solutions, including the provision of a budget and what that allocation will look like on an annual basis.

We've built up the capacities we need at the tribal council level, so we have the engineers and the expertise we need to help us build quality plants and infrastructure. Then, more importantly, we have a circuit rider program that travels around all of the communities in Quebec assessing our systems and making suggestions for improvements in terms of training and what improvements need to be done to our systems. Then, we work with our federal partners to find the funding and implement the solutions.

In fact, we have no boil water advisories in Quebec, but we do have some communities that have to have continual drinking water. It's not because of poor facilities, but because their communities are built on uranium deposits, which continue to impact their ability to have quality drinking water. In fact, I referenced my sister community of Kitigan Zibi, which is probably the only community in the province that lives the reality of not having a safe drinking water supply, but it's not because of the facilities.

• (1205)

Mr. Francis Scarpaleggia: That leads me to my next question.

You said that you've built up capacity. Do you think that Bill C-61 would allow communities outside of Quebec to build up that capacity, especially since it references, if I'm not mistaken, the creation of a first nations water commission? Would that not, in a sense, be replicating what you've accomplished in Quebec?

Chief Lance Haymond: It wouldn't be replicating it. I think it would be building on that experience. It would be building something that's representative and needed for all first nations across the board, not just those in Quebec.

Other first nations will be successful, but we have one huge hurdle ahead of us that we need to work with Indigenous Services on. I mentioned earlier in my testimony that there are two pieces that still need to be done. These are the regulatory framework and, more importantly, the funding framework. Without adequate funding for the investments that we need to bring our systems up to snuff, train our operators and ensure replacement of those assets as they reach the end of their life cycle, a lot of this work may be potentially for naught.

The funding framework and the negotiations for the huge needs that exist in first nations are going to be paramount to our ability to succeed going forward.

[*Translation*]

The Chair: Thank you, Mr. Scarpaleggia.

It's now over to Mr. Lemire for two and a half minutes.

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

Ms. Phare, you recommended improvements to Bill C-61 in three areas. Since we don't have much time, I think it would be very germane to the study if you could send them to us in writing. That way, we could examine them closely. Thank you.

Mr. Haymond, the justice department officials said that the first nations water commission had limited powers.

How might those limited powers prevent the commission from effectively fulfilling its mandate of providing support and managing water issues affecting first nations?

I asked the question given the limitations on another commission preventing it from properly fulfilling its role of protecting and consulting first nations like yours. I'm talking about the Canadian Nuclear Safety Commission, of course.

Should this be seen as a limitation or a red flag? Thank you.

[*English*]

Chief Lance Haymond: I think duplication is absolutely something that we don't want to have, but we believe that having our own water commission is paramount to our being able to develop and address our own issues and bring the potential solutions going forward.

• (1210)

[*Translation*]

Mr. Sébastien Lemire: Were you surprised or concerned by the answer the justice officials gave the committee last week when they were here? I asked them about the Canadian Nuclear Safety Commission and its lack of knowledge regarding the dangers and risks of storing nuclear waste next to the Kitchissippi River, in other words, the Ottawa River.

[*English*]

Chief Lance Haymond: Yes, I'm always concerned with the government's response when they state and restate that they have full confidence in the entities that they've created simply for the purposes of approving licensing, such as the CNSC.

It absolutely concerns me when we know that the CNSC has never rejected a nuclear project in spite of all the concerns and pre-occupations that are being raised by not only first nations but non-indigenous citizens who are going to be directly impacted as well.

[*Translation*]

Mr. Sébastien Lemire: *Meegwetch.*

The Chair: Thank you, Mr. Lemire.

[*English*]

With that, we're going to go to our last questioner of the day, Mr. Desjarlais.

You have two and a half minutes.

Mr. Blake Desjarlais: Thank you very much, Mr. Chair.

I'm going to try this for our Inuit interpreter. I'm going to ensure that she has a heads-up as I'm going to practice my Inuktitut. I'm going to say *qujannamiik* to the committee for having me here today. It means a lot to have been a participant in this very important work and to have our wonderful witnesses here, particularly Chief Sunshine from Alberta. I'm usually outnumbered as the only Alberman in the room, but today we did it. We're maybe the majority; I don't know.

I want to continue our discussion and highlight an overview of where first nations have been on the pathway of trying to get clean water for their communities. Stephen Harper promised clean water before in an act in 2013 that passed. It was a huge class action lawsuit. One of the lawyers who is present with us today, one of the witnesses, mentioned that.

I'm stuck with this kind of paradox, this dichotomy, this tough decision that I think first nations are also dealing with, which is the decision of really bad legislation under the Conservatives and bad legislation under the Liberals. The answer is in first nations communities, not really in Ottawa, and I think you've outlined that, Chief Sunshine.

Do you want to speak to that principle about ensuring that this place recognizes first nations' jurisdiction, because so many times they've got it wrong?

Please go ahead.

Chief Sheldon Sunshine: Thank you for that.

When I think back about the previous legislation by the Conservatives and it being challenged by first nations, I'm afraid that this is going to be the same type of thing that's going to happen. It's going to roll out, and we're going to have nations such mine that are not happy being put in that little box continually.

I told Minister Hajdu that we really need to sit down with the rights holders and determine the best path forward. I know that Treaty 8 chiefs have always mentioned that we were willing to sit down and have those talks, but, for myself, on behalf of the Sturgeon Lake Cree Nation, I am open. We're progressive people. We have those challenges that we face every day, as I mentioned earlier, and we want to work with the government to create something that's beneficial for all parties.

When we talk about source water, we want to have a say on what comes into our territory and into our homes. When we see the Grande Cache spill, that affects us. It affects the fish, and we have endangered species because of it.

I think it's important that we understand where we're coming from and where you're coming from so we can find a solution to move forward.

Thanks.

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

That ends this portion of the meeting.

I want to thank all three witnesses for being here today and for their very important testimony. This will certainly be very informa-

tive as we move ahead with the study and perhaps with amendments to the bill if it comes to that.

Ms. Merrell-Ann Phare: Mr. Chair, could I respond to the question that the member of Parliament asked me about providing my comments in writing?

The Chair: Ms. Phare, if you're able to provide those answers in writing, it would be well appreciated by the committee so that we can look at that as we move ahead with the study.

• (1215)

Ms. Merrell-Ann Phare: I just need to provide a moment of context around that, if you would permit me.

The Chair: Ms. Phare, I'm afraid I'm going to have to get you to send that to the clerk.

Ms. Merrell-Ann Phare: Okay. I'm not sure if I can do that, but I will see.... That's the context I wanted to provide, but if that's.... If you can't do that today, that's fine. I will explain—

The Chair: Okay. Maybe if you could just explain the context, that might be helpful, actually.

Ms. Merrell-Ann Phare: As I understand it, the AFN will be presenting to you later this week, and they will provide the general context of their support or information around the bill and will be, pursuant to that, providing potential amendments. I was merely providing suggested ways to improve the bill, given that the full content of the bill has been negotiated by a mandate provided by chiefs from across Canada through resolutions from the chiefs in assembly. That's what makes up the content of the bill, so I think it's best for AFN to provide any amendments, if there are any that are being proposed.

The Chair: That's well understood, and so I would just share what you're comfortable sharing with the committee. In that regard, of course, we will be hearing from further representatives from the Assembly of First Nations as part of the study.

I want to thank you, as well as our other witnesses, for being here today.

With that, is there agreement to adjourn the meeting?

Mr. Schmale.

Mr. Jamie Schmale: Thank you, Chair.

I just wanted to pick up where the discussion was on the motion. I know we passed a motion to suspend debate, but there did seem to be a willingness around the table to discuss my motion. I was just wondering if that interest is still in the room.

The Chair: I have Mr. Battiste up first here.

Mr. Jaime Battiste: The interest is not still in the room. I'm not hearing many first nations out there calling for more studies on them. I'm hearing talk about funding, talk about implementation of recommendations and treaty rights. No one is talking about more studies in the first nations communities I know.

I don't think he can bring it back up.

The Chair: I'm afraid we're getting into debate here, but it appears that we don't have unanimous consent to bring it back up.

With that, do we have agreement to adjourn the meeting?

Some hon. members: Yes.

The Chair: The meeting is adjourned.

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