



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

44th PARLIAMENT, 1st SESSION

Standing Committee on Indigenous and Northern Affairs

EVIDENCE

NUMBER 128

Monday, November 4, 2024

Chair: Mr. Patrick Weiler



Standing Committee on Indigenous and Northern Affairs

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• (1535)

[English]

The Chair (Mr. Patrick Weiler (West Vancouver—Sunshine Coast—Sea to Sky Country, Lib.)): Welcome to meeting number 128 of the House of Commons Standing Committee on Indigenous and Northern Affairs.

I want to start by acknowledging that we are gathered on the ancestral and unceded territory of the Algonquin Anishinabe people and to express gratitude that we're able to do the important work of this committee on lands that they have stewarded since time immemorial.

Also, before going any further, it's with sadness that I want to start our meeting today by taking note of the passing of the Honourable Murray Sinclair.

Mr. Sinclair was a pioneer in indigenous law, revered elder, senator and a tireless advocate for justice and reconciliation. Senator Sinclair's legacy is deeply embedded in the heart of this nation, from his work as the first indigenous judge in Manitoba to his pivotal role as chair of the Truth and Reconciliation Commission.

Through his wisdom, compassion, courage and commitment to building consensus, Senator Sinclair illuminated the painful truths of residential schools and provided Canada with a path forward through the 94 calls to action. His contributions have forever transformed our collective journey towards reconciliation, leaving an indelible mark on generations to come. His work as a pioneering indigenous lawyer laid the way for many and, indeed, helped inspire me to get into this line of work as well.

Our thoughts are with his family and friends and all those who are touched by his work and spirit. We're grateful for his life, his vision, his service and contribution to Canada, which will continue to guide us as we walk the path of healing and justice.

Meegwetch.

There are a number of members of this committee who asked to make an intervention to take note of his passing as well, so I'd like to open it up to members of the committee.

I know it's very difficult to do this in 90 seconds or less, given the incredible contributions of Mr. Sinclair to our country, but if you could try to make your interventions within that framework, that would be much appreciated.

I see that Mr. Carr has raised his hand.

Mr. Ben Carr (Winnipeg South Centre, Lib.): Thanks, Mr. Chair. I appreciate the opportunity to speak very briefly about Senator Sinclair.

I first got to work with him in earnest when I was a young staffer at Canadian Heritage, and we were trying to pass legislation that would help to protect indigenous languages in Canada. Murray was the person who we always turned to for advice and guidance. It was remarkable to watch how measured he was and how wise he was. I was truly in awe of him and, to this day, have not seen a public figure as universally revered as Senator Sinclair was.

When I returned home after working here in Ottawa, I got back into education, and I had the fortunate opportunity to work with him in a variety of other capacities. He was always very active in helping educators in Manitoba and across the country make sense of where we were going and building upon the foundation that he had laid through the tremendously important work in the Truth and Reconciliation Commission.

What I am thinking about today, in addition to, of course, Senator Sinclair and his family, including his son Niigaan, who was a teacher of mine in high school, is that he was famous for saying that education got us into this mess and that education will get us out of this mess.

Mr. Chair, it's truly a privilege to be at this table with colleagues as we discuss the important work ahead and as a representative for Manitoba to have the opportunity to pay tribute to Senator Sinclair. Thank you for the opportunity.

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

I have Mr. Hanley next.

Mr. Brendan Hanley (Yukon, Lib.): Thank you, Mr. Chair.

Leadership, learnedness, wisdom, compassion, composure—those are some of the words that come to mind as I think of Senator Sinclair. Indeed, I consider Murray Sinclair to be a founding father of truth and reconciliation for Canada, but I'd like to give a more personal perspective.

I first met Mr. Sinclair when he came to a special meeting of the Yukon Medical Association in 2014, and I would say that meeting was a turning point in our medical community's journey of reconciliation. Many physicians had heard of residential schools, but they had never quite related that history to clinical encounters and how the residential school experience, either direct or through generational trauma, in other words, one child's direct experience in residential school, carries that trauma on through the generations, and that trauma in turn influences not just the health of first nations people but also whether they present for care and how they present for care.

It's so important for health care providers to understand the enduring effects of residential schools, and Mr. Sinclair was instrumental in laying the foundation. I remember feeling in myself how I transformed from more or less superficial knowledge to the beginning of a much more profound understanding. There were many tears in a silent and captivated room when Mr. Sinclair spoke, and I could see the light of realization coming into the faces of many of my colleagues.

He was an expert in law, residential schools and Canadian history, but ultimately a person who was able through his personal experience to tell the story of residential schools that went straight to the heart, inspiring a commitment not just to listen and to understand, but to actively participate in undoing the wrongs of the past, to integrate awareness of systemic racism, and to do better in meeting the needs and recognizing the leadership of Yukon first nations.

Thank you, Mr. Sinclair, for all that you contributed to Canada's growth in truth and reconciliation.

I extend my sincere and deep condolences to Mr. Sinclair's family.

Thank you, Mr. Chair.

• (1540)

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

Next, I'm going to turn the floor over to Mr. Schmale.

Mr. Jamie Schmale (Haliburton—Kawartha Lakes—Brock, CPC): Thank you, Chair, for the opportunity to say a few words to celebrate the remarkable life and achievements of a true champion of justice and reconciliation, of course, the Honourable Murray Sinclair. He was a distinguished lawyer, a senator, and the first indigenous person to serve as chief justice of the Manitoba Court of Queen's Bench. Justice Sinclair's journey was a testament to the power of resilience, advocacy and vision.

As we know, he was born in 1951 in the small community of St. Peter's, Manitoba. He faced a number of challenges as a member of the Selkirk First Nation. His early experiences instilled in him a profound understanding of the injustices faced by indigenous peoples in Canada. Rather than being deterred, he channelled his experiences into a lifelong commitment to advocacy and change. Of course, his educational path was nothing short of inspiring. He obtained his law degree from the University of Manitoba in 1979, and he was one of the first indigenous lawyers in Canada, and that law career just flourished. I think it was his role as chair of the Truth

and Reconciliation Commission that truly brought him to the forefront of the national consciousness. That happened in 2019.

As many have said, his work has had a profound impact on countless lives. His advocacy for education, justice and health, and equity for indigenous peoples has inspired a new generation of leaders. It was mentioned earlier that one of the quotes he is well known for—there are many—is that education is the key to reconciliation. He would say, as Mr. Carr pointed out, that education got us into this mess and education will get us out of it.

As was pointed out earlier, aside from his formal roles, he was a mentor to many. He was a role model, a beacon of hope.

I think that is a very quick synopsis of what he did, but I could go on for much, much longer. I appreciate this opportunity, and on behalf of the official opposition here, I'd like to express our deep gratitude to Justice Murray Sinclair for his unwavering dedication, his wisdom and his profound humanity.

I wish to extend condolences to his family and friends. May he rest in peace.

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

I have Ms. Idlout next.

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

Thank you, Mr. Chair.

Regarding Justice Sinclair, I do have a short message. We all know that he tremendously helped indigenous people, especially regarding the truth and reconciliation movement.

I share my love with his family. They are going through a difficult time. Although his children are getting older, it's the loss of a parent. We feel empathy.

The family did say they don't want to receive any flowers. Instead of sending flowers, you can make a donation to the Murray Sinclair memorial fund. You can make a donation to the fund which can be given to the family. That could really help the family. Justice Sinclair has really put us on a higher level, as Inuit, first nations and Métis. He has brought us up.

[*English*]

I hope he has safe journeys in the spirit world.

[*Member spoke in Inuktitut, interpreted as follows:*]

Thank you.

• (1545)

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

Next, I'll provide the floor to Mr. Lemire.

[Translation]

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

I thank all my colleagues for taking the initiative to say nice things about Justice Sinclair. I would like to add my voice and that of the Bloc Québécois to offer our condolences to his loved ones, his family and his community. This man leaves a very big legacy, particularly in the context of truth and reconciliation. We should always draw inspiration from it in the work we do as a committee.

I am particularly touched by the fact that men and women of Mr. Sinclair's generation who lived through the residential school era had the courage to speak out. They had the courage to talk about the trauma and suffering they experienced. They wanted to inspire change in our society that would lead to greater respect for indigenous communities. That change will lead to reconciliation based on truth.

That's the legacy handed down to me, to be able to name that truth every chance I get. As parliamentarians and legislators, we are able to make impactful decisions that are respectful of the harm members of indigenous communities have suffered and the courage they have shown.

The Chair: Thank you, Mr. Lemire.

[English]

Next, I'll hand the floor over to Mr. Battiste.

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

It's a sombre day here in Ottawa as we reflect on a life well lived.

Murray Sinclair was an amazing person. He had tremendous influence all across Canada. I can think of no other person who advanced reconciliation over the past decade more than Senator Sinclair did.

Long before I was a member of Parliament, I was a treaty education lead in Nova Scotia. I would go around the Atlantic region speaking his words, quoting him, and speaking about his passion for the education system. One of the quotes that I always remembered in my presentations from Murray reads:

While Indigenous children were being mistreated in residential schools being told they were heathens, savages and pagans and inferior people – that same message was being delivered in the public schools of this country.

He said that to awaken Canadians, we needed an education system that spoke not only about the truth and record about the Indian residential schools but also about our true shared history in this country, all of it.

As a member of Parliament, I was able to co-chair with him the indigenous parliamentarians and senators group, where we had a belief that no matter what your political affiliation was, no matter where you were, and wherever you grew up, if you were indigenous, we could find common ground on things. I always remember that.

He'll be well remembered. I just want to say *woliwon* to him for his legacy, but also, to his family, *meegwetich* for sharing him with us. We're thinking about you in our prayers right now.

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

I'm going to turn the floor over to Mr. Melillo.

Mr. Eric Melillo (Kenora, CPC): Thank you, Mr. Chair, for affording us all this opportunity. I'll try my best to be brief as well.

I don't want to repeat anything that's been said, but obviously, Senator Murray Sinclair had an incredibly profound impact on all of us and on many Canadians across the country. He was instrumental in advancing reconciliation. His life, his career and his incredibly impressive résumé speak to it in every respect. From my own standpoint, as someone representing northwestern Ontario—42 first nations across three treaty territories—I know from the conversations I've had that he is more than an inspiration; he's really a hero to many people, to many first nations across the country. Obviously, he's going to be very missed. Because of the incredible work that he's done and the lives he has touched, I know he will not be forgotten.

Unfortunately, I did not have an opportunity to develop much of a relationship with Senator Sinclair, but anyone who knows me well also knows I have to fly to Winnipeg in order to get home, so I had the opportunity to sit with him on a few planes. I always appreciated the opportunity to seek his guidance, and he was never reluctant and never held anything back. He was always open to a discussion with anybody about any subject to advance reconciliation and to ensure that we were moving forward together. I appreciated his wisdom and my opportunity to lean on that in the few opportunities that I had. I only wish I were able to do so more often.

I want to thank him for his contributions to our country. As the previous speaker mentioned, I thank his family for sharing him with us. I offer my condolences to his friends, family and loved ones. Really, I would just like to ensure that, on behalf of everyone on our committee, the understanding of his inspiration will live on and his work will continue, hopefully, through us to the best of our abilities.

Thank you.

● (1550)

The Chair: Thank very much, Mr. Melillo.

I do want to thank all members for sharing their thoughts at a very difficult time right now.

With that, we are going to move into clause-by-clause consideration.

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, wastewater and related infrastructure on first nation lands.

To help us with the clause-by-clause consideration of Bill C-61, I would now like to welcome our witnesses. We have Nelson Barbosa, director general, community infrastructure branch, Department of Indigenous Services; Rebecca Blake, acting director, legislation, engagement and regulations, Department of Indigenous Services; and Douglas Fairbairn, senior counsel, Crown-Indigenous Relations and Northern Affairs.

I want to remind members that the amendments are confidential and subamendments are to be shared electronically or on paper in both official languages and sent to the clerk for distribution.

I'd also like to provide members of the committee with a few comments on how the committee will proceed with the clause-by-clause consideration of Bill C-61.

As the phrase indicates, this is an examination of all the clauses in the order in which they appear in the bill. I will call each clause successively, and each clause will be subject to debate and a vote. If there are amendments to the clause in question, I will recognize the member proposing it, who then may explain it.

In addition to having to be properly drafted in a legal sense, amendments must also be procedurally admissible. The chair may be called upon to rule amendments inadmissible if they go against the principle of the bill or beyond the scope of the bill, both of which were adopted by the House when it agreed to the bill at second reading, or if they offend the financial prerogative of the Crown.

Each amendment has been given a number in the top right corner to indicate which party submitted it. There is no need for a second order to move an amendment. Once moved, you will need unanimous consent to withdraw it.

During debate on an amendment, members are permitted to move subamendments. Approval from the mover of the amendment is not required. Subamendments must be provided in writing. Only one subamendment may be considered at a time, and that subamendment cannot be amended. When a subamendment is moved to an amendment, it is voted on first, and then another subamendment may be moved, or the committee may consider the main amendment and vote on it.

Finally, if members have any questions regarding the procedural admissibility of amendments, the legislative clerks are here to assist the committee. However, they are not legal drafters. Should members require assistance with drafting a subamendment, they must contact the legislative counsel.

I thank members for their attention and wish everyone a productive clause-by-clause consideration of Bill C-61.

With that, let's get into it.

(On clause 2)

The Chair: I would like to propose something before we start with clause 2.

Since there are a few amendments to clause 2, which is the definitions clause, I suggest that we postpone the study of clause 2 until the end. This will allow us to first consider and then make a decision on amendments that could have an impact on the definitions. As a reminder, the definitions clause of a bill is not the place to propose a substantive amendment unless other amendments have been adopted that would warrant amendments to the definitions clause.

With that, I do want to ask the committee if there is unanimous consent that we defer this until the end of clause-by-clause consideration.

Okay. It seems that there is consent. Therefore, clause 2 will be postponed and will be considered after clause 44.

(Clause 2 allowed to stand)

(On clause 3)

The Chair: I will provide the opportunity for someone to move NDP-6.

Ms. Idlout, go ahead.

• (1555)

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

Thank you.

My apologies; I did not understand the process. I do want to eliminate some of the elements that I brought forward. Can I say the numbers, or should I be writing them down?

The Chair: Ms. Idlout, you may say the different amendments that you don't want to move, or you may also just not move them. There's no requirement that you move those ones.

If it would be preferable for you to provide those up front, then it could speed up the process as well.

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

I want to let you know that I will be removing these ones. I will now include the numbers: NDP-15, NDP-18, NDP-26 and also NDP-78.

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

Just for clarification, it was NDP-15, NDP-18, NDP-26 and NDP-78.

Thank you very much.

With that, Ms. Idlout, you still have the floor for NDP-6.

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

Thank you.

I will move NDP-6 with identifier 13377319.

I want to support the people of the Blackfoot Confederacy, who gave us this consideration. It's for the title of "First Nations peoples", the name of the title, if that makes sense.

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

Do we have any members who would like to speak to this amendment?

We'll go to Mr. Schmale and then Ms. Atwin.

Mr. Jamie Schmale: Thank you, Chair.

My question revolves around Bill S-13. I believe that piece of legislation is nearing potential completion in the House, whenever the House leaders do it. It's my understanding this gets repealed if Bill S-13 passes. Is that the non-derogation clause?

Mr. Jaime Battiste: I don't understand, Jamie. Are you saying that the non-derogation clause may lead to a different definition of first nations? I wasn't following.

Mr. Jamie Schmale: No, I just didn't know if it was redundant or not. I guess that was my overall question.

Mr. Jaime Battiste: I don't think they're connected.

The Chair: That may be a question to ask the officials.

We might be able to turn the floor over to Mr. Fairbairn.

• (1600)

Mr. Douglas Fairbairn (Senior Counsel, Crown-Indigenous Relations and Northern Affairs, Department of Indigenous Services): I would say they're not connected. There is a provision later on that deals with non-derogation, but this would be strictly with respect to the definition of whether it's indigenous peoples or first nations peoples.

Mr. Jamie Schmale: Okay.

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

Ms. Atwin.

Mrs. Jenica Atwin (Fredericton, Lib.): I think it differentiates between indigenous rights and first nation rights. The bill is specifically focusing on affirming rights on first nation land, so I think it just reiterates that it's the federal government that's deciding who is considered a first nation under the act, and we want to make sure that communities themselves have that ability to determine who is and who isn't. It's up to them.

I think it's about maintaining the flexibility around that definition, creating space for first nation communities to have that definition for themselves. We'd like to co-develop with those communities, which is I think enshrined within the bill itself. We certainly understand why it's there, but it's about, for me, creating new definitions of first nations on first nations. It's additional layers. I think it's actually limiting to indigenous communities for determining their own identity.

The Chair: Ms. Idlout.

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

I want to answer the question. I've maybe not made it clear. Maybe our advisers can better answer this.

In Bill C-61, when you read "indigenous peoples" there are three distinctions. There's Inuit, first nations and Métis. We're all under the indigenous umbrella. I'm just trying to make it clear that this is pertaining to first nations. It doesn't include Inuit, and it doesn't include Métis people.

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

I have Mr. Melillo up next.

Mr. Eric Melillo: Thank you, Chair.

To Ms. Idlout's point, obviously this act is pertaining directly to first nations. Perhaps it's a question for our witnesses. I'm wondering whether there was a specific purpose in using the terminology "indigenous people" instead of "first nations". It seems to me that, in the context of this bill, it would make more sense to use the term "first nations" because what we're specifically discussing is first nations clean water. Was there any specific reason that "indigenous people" was used in this clause versus "first nations"?

Mr. Douglas Fairbairn: The Constitution refers to "aboriginal peoples of Canada" and includes "Indian", which is the term used in the Constitution, "Métis and Inuit". It was meant to be, essentially, an inclusive term to reflect the Constitution through the change from "indigenous" versus "aboriginal".

Mr. Eric Melillo: Would this change have any tangible impact in terms of changing the substance of the bill? I'll just leave the question at that.

Mr. Douglas Fairbairn: I think that, in the context of this bill, it should not affect other pieces of legislation. For example, it's referring to an element of what's in the Constitution, but it's not trying to limit the rest of the term.

Mr. Eric Melillo: Okay. Thank you.

The Chair: Are there any other members who want to make an intervention?

If not, I'm going to call the vote on this one.

Mr. Marc-Olivier Girard (Committee Researcher): Do you want a recorded vote?

Mr. Eric Melillo: Maybe I'm out of turn, but I don't know. I'd ask the committee. Do we feel we need to have a recorded vote on each of these? I think it might take some time. We're trying to get this through. I would suggest it might make more sense to... I mean, obviously, if there's a contentious issue, that would be different.

• (1605)

The Chair: Let's call a vote on this one. We can determine whether we need to do that later, but we're calling a vote on this one.

(Amendment agreed to: yeas 6; nays 5 [*See Minutes of Proceedings*])

The Chair: With that, we are moving on.

PV-1 is deemed moved, pursuant to the routine motion adopted by the committee on December 15, 2021. Since PV-1 has been moved, BQ-2 and NDP-7 cannot be moved, as they are identical. Also, PV-1, NDP-8 and G-1 seek to introduce similar concepts.

Mr. Jaime Battiste: On a point of order, Mr. Chair, I have a quick question.

As this is an Indigenous Services Canada file, as opposed to a Crown-Indigenous Relations file, I'm wondering whether there's a reason that I went first, as opposed to Ms. Atwin, in terms of the vote. She's guiding the ship on this. I'm looking to her for her moving forward. If the order is alphabetical, it should start with her name, but if there's a reason we're starting with me first, I'd like to know that.

It would simplify things if Jenica went first as opposed to me.

The Chair: Thanks for the the intervention, Mr. Battiste.

My understanding is that it is done alphabetically, but because there were substitutions, it was done based on the original standing members of the committee.

Mr. Jaime Battiste: What does that mean moving forward? A usually comes before B.

The Chair: Going forward, we will start with Ms. Atwin.

With that, I was just about to hand the floor to Mr. Morrice to speak to PV-1.

Mr. Mike Morrice (Kitchener Centre, GP): Thank you, Chair.

I want to start by sharing that all of the amendments I brought forward to the committee on Bill C-61, including this one, come directly from the testimony we heard from the Six Nations of the Grand River. I'm really glad to see that both the Bloc and the NDP have put forward the same amendment.

I'll read out the amendment for the committee. It adds to clause 3, which is the rights section of the bill. It reads:

(3) It is hereby recognized and affirmed that, in accordance with the principle established by Resolution 64/292 adopted by the United Nations General Assembly on July 28, 2010, which recognized access to clean and safe drinking water as a human right essential to the full enjoyment of life and all other human rights, all members of all First Nations residing on First Nation lands are entitled to have accessible drinking water that poses no risks to their health or well-being.

What we heard very clearly from Chief Hill and in correspondence with Six Nations directly is that, in their view, if this bill does not declare the provision of water as a human right, the health and well-being of their on-reserve community members will continue to be negatively impacted. To them, it's self-evident. By putting this forward, I strongly agree that no person, plant or animal can survive without water. It seems like a really critical addition to ensure that this committee enshrines in this bill the very clear human right to water that is not already included.

Thank you.

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

Looking at the speaking list, I have Ms. Atwin first.

Mrs. Jenica Atwin: Thank you Mr. Chair.

Thank you, Mr. Morrice, for being with us today and putting forward this incredibly important amendment. I think you'll notice from the package that there's definite alignment. We absolutely support the human right to water. We've heard from witnesses, as well, how this has impacted communities for decades.

The only issue for me is the expansion of the language. We want to make sure that it actually leads to stronger protections for first nations. We really want a simplified focus, which you'll see in G-1.

I won't be supporting this in its current form because I prefer the language in G-1. I think it's stronger as far as the legal terminology is concerned, and it's simpler for those who might be reading the bill and for its application.

I won't be supporting this piece, but you'll see in G-1 that we absolutely want to support the human right to water.

• (1610)

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

Next on the speaking list I have Mr. Melillo.

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

I, too, want to acknowledge Mr. Morrice for being here and thank him for that.

Obviously, it's a very important amendment. I actually agree with Ms. Atwin. I don't know why I sounded surprised about that, but I do agree. G-1 is simpler and more straightforward from my perspective. I would be more inclined to not adopt the next few here and go toward G-1.

The Chair: Next I have Ms. Idlout.

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

I have a question for the expert.

What is the difference between PV-1 and G-1? Can you explain this, please?

Mr. Douglas Fairbairn: Essentially, both would recognize a human right to safe drinking water on first nations land. They are very similar in their scope and their outcome. I would say there's very little difference.

The Chair: Thank very much, Ms. Idlout.

Are there any other interventions before we move to a vote?

Go ahead, Mr. Melillo.

Mr. Eric Melillo: Mr. Chair, I'll quickly ask a question of our witnesses as well.

Obviously, there's a desire for the sentiment of this. I'm curious if you have thoughts about how this would be upheld as a human right.

I think there are certain challenges, frankly, that could come with it. Obviously, there are labour issues and training issues in terms of water plants. I think there are a lot of things that, in reality, could make it much more difficult than simply affirming it as a human right. That's one thing.

I'm curious if you have thoughts about how that would happen in terms of ensuring that it is actually upheld.

Mr. Douglas Fairbairn: There is some uncertainty now about the scope of the human right to safe drinking water in first nation lands. If it were challenged, in terms of the right, we think it would likely be left to the courts to decide. There's the potential for a judicial review, for example, of a decision that seems contrary to the human right to safe drinking water.

I would note one difference, which is that later amendments refer to this right recognized within the scope of the act. The idea is that courts or decision-makers would look to the act to determine how that right is to be fulfilled. Some of the elements of that are, for example, the minister's requirement to make best efforts to ensure safe drinking water on first nation lands.

Those types of provisions and the provisions dealing with funding would all inform the human right to safe drinking water, at least in terms of the government amendment. That's not as clear in this amendment here before us.

The Chair: Thank you, Mr. Melillo.

Ms. Idlout, go ahead, please.

Ms. Lori Idlout: I'm going to ask this question in English, because I don't know how to ask it Inuktitut.

I also noticed the difference between Bill C-61 and G-1, though, in that when I read Bill C-61, I appreciate it more because it refers to international law and Canada's obligations according to international law.

I wonder what weight that gives to Canada for recognizing the human right to water because of the international obligations it owes.

• (1615)

Mr. Douglas Fairbairn: The international law would inform Canada's recognition of the human right to water if that were to occur. I would say that neither of these would directly import into domestic law the international human right to water. It's an international law. Canada has an obligation to progressively realize the right to safe drinking water for all Canadians.

These provisions, particularly the government amendment, would be targeted at trying to realize that right and strengthen that right.

The Chair: You still have the floor.

Ms. Lori Idlout: I have a follow-up question.

Canada will actually look better if we pass PV-1 because of international law. Are we trying to show that we want to help implement the obligations given through international law?

Mr. Nelson Barbosa (Director General, Community Infrastructure Branch, Department of Indigenous Services): I'm not sure about the term "look better". I think maybe the nuance is that the entrenching of a domestic right compels Canada towards a duty, in this case to provide access to clean and safe drinking water.

The domestic law proposed in say, amendment G-1, clarifies that duty in a crisp way. The inference around the international law is less binding in terms of its compelling nature on the duty to provide access to clean and safe drinking water in first nations land.

I would say that one is more of an international recognition of Canada's commitment in the international space. The other is entrenching a domestic law that compels Canada to essentially provide duty.

Ms. Lori Idlout: Does that mean realistically that PV-1 and G-1 are two very different amendments that can both be passed?

Mr. Nelson Barbosa: In my mind, and I would turn to Doug as well, I think they would be competing. They do both speak to entrenching a duty.

I would just say that particularly in an act that has been reviewed carefully by many first nations people, including witnesses who have come to this committee, clarity of language is abundantly important. If the intent of these clauses, which seem to overlap a little bit, is to entrench a domestic law, I think the objective would be to have the utmost clarity of what that law compels Canada to do.

Doug, do you want to add to that?

Mr. Douglas Fairbairn: Yes, I agree with that.

The government amendment is also a recognition of that right and of how important the Government of Canada and Parliament feel this is.

The government amendment tends to be a little stronger than this one is in some respects. I think the main reason for this is that there is a reference to the other obligations in the act. It's "in accordance with this Act," whereas PV-1 doesn't mention the act itself.

Ms. Lori Idlout: I'm sorry.

The last part of G-1 says, "in accordance with this Act". Does that not limit the human right through this act?

Mr. Douglas Fairbairn: The right is "on First Nations land". That is one of the limitations. However, "in accordance with this Act" will be what directs people to look at the act in order to give life to that human right recognized in the act.

• (1620)

Ms. Lori Idlout: If we were to amend G-1 to say, "in accordance with this Act", would that human right still be generated?

Mr. Douglas Fairbairn: The current G-1 recognizes the human right to safe drinking water. It is a right for which people can look to the courts. Again, we're not exactly certain about the scope and what a court might say in that context. That's because Canada has not recognized a human right anywhere. Quebec is one exception. They have limited recognition.

It is a bit of a new concept, so the scope is unknown.

Ms. Lori Idlout: Okay.

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

Next on the speaking list I have Mr. Morrice.

Mr. Mike Morrice: Thank you, Chair.

I want to call out a few points for the committee.

The first is that PV-1 stands on its own with the reference to the UN General Assembly resolution within those commas. The sentence that it is hereby recognized and affirmed that “all members of all First Nations residing on First Nation lands are entitled to have accessible drinking water that poses no risks to their health or well-being” works. There is also that reference to international law. I think that's something important for the committee to note.

Should the committee wish to pursue G-1, I would encourage members to consider an amendment to G-1, which currently says, “It is recognized that it is a human right”, without the word “affirm”.

I will turn to the witnesses with a question.

Would it not be stronger language to “recognize and affirm” a thing as true, rather than just “recognize” it as true?

Mr. Douglas Fairbairn: Yes, I think you could use both “recognize” and “affirm”.

Mr. Mike Morrice: The question I was hearing from Lori was about which would be the stronger language. I appreciate that clarity from the witnesses.

If the committee pursues G-1, we could consider adding “affirm” to that language.

While I have the floor, I will add that “in accordance with this Act” seems to limit that right, should the act be seen as insufficient. I think the committee could also consider, when it gets to G-1, whether that strengthens it without the additional language.

Thank you, Chair.

The Chair: Thank you, Mr. Morrice.

Next on the list I have Mr. Battiste.

Mr. Jaime Battiste: It's my understanding that G-1 is kind of a historic statement, since the government has never acknowledged the human right to water. This amendment would formally recognize that first nations have a human right to clean and safe drinking water. That is, in itself, recognition by the federal government in Canada, as opposed to our relying on international law. I believe that makes it a stronger statement.

Can you go into a bit of the thinking around why it was important for G-1 to stand on this alone without a reference to international law?

Ms. Rebecca Blake (Acting Director, Legislation, Engagement and Regulations, Department of Indigenous Services): Absolutely, it would be historic to recognize it in domestic law.

In addition to what my colleague has mentioned, international law can be challenging to create a binding circumstance with, whereas in domestic law, it's up to the federal Parliament to ensure that it's binding, so there is that addition.

I would also just mention a couple of things. One is in relation to the implementation. Going back to another question that was asked about “in accordance with this Act,” it does provide guidance on implementation of that right, so that's one core component. In addition, with regard to all members of first nations versus “every individual”, G-1 is drafted to be inclusive of every individual on first

nations lands, so it could be individuals who are not members of a first nation, as well.

Thank you.

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

Next I have Ms. Atwin.

Mrs. Jenica Atwin: I was going to ask specifically about the piece around “in accordance with this Act” for clarification, but you very much did that for me as far as providing guidance on the implementation, so thank you.

The Chair: Are there any others who would like to make an intervention?

Mr. Melillo.

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

I appreciate the discussion that we've had so far. I don't want to look too far ahead, but I did look too far ahead, to the ending of the bill. I'm thinking of clause 43.

If Bill S-13 receives royal assent, it is my understanding that this clause we were discussing amendments to would be removed completely. Did I read that correctly?

Obviously, we're looking to include this human right in clause 3, but if Bill S-13 receives royal assent, what impact would that have on the human right in Canada?

• (1625)

Mr. Douglas Fairbairn: Were you referring to the non-derogation clause that would be...?

Mr. Eric Melillo: I'm referring to clause 43 at the end of the bill. It mentions that if Bill S-13 receives royal assent, clause 3 of this bill would no longer be in force, if I read it correctly.

Please correct me if I'm wrong. I'm curious from that standpoint.

Ms. Rebecca Blake: I appreciate the question.

It is separate. Clause 43 is specific to the non-derogation of indigenous rights, so this would be beyond indigenous rights and would be a recognition of a human right to safe drinking water.

Mr. Eric Melillo: Okay, so, it wouldn't have any impact on that.

Ms. Rebecca Blake: Exactly.

Mr. Eric Melillo: Thank you.

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

I see that Ms. Idlout has her hand up.

Ms. Lori Idlout: Thank you.

If Bill S-13 passes....

The purpose of clause 3 is to outline that there are rights to be upheld because of the Constitution. The two amendments that we've suggested are adding—what's the word? I can't think of it in Inuktitut or English.

The difference between PV-1 and G-1.... When I suggested my own amendment that's very similar, it was because the Blackfoot Confederacy also wanted this clause for them to understand that, if Bill S-13 passes, the removal of clause 3 does not impact their right to water.

The purpose of recognizing that right—whether it's a great, wonderful thing or not, or whether we've made an attempt to enshrine international law into this bill—won't matter anyway if Bill S-13 passes.

Mr. Douglas Fairbairn: If it passes, it would basically replace clause 3, but it shouldn't affect the reference to the human right to water. That clause would still exist if it were adopted by the committee.

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

Next on the list I have Ms. Atwin and then Mr. Lemire.

Mrs. Jenica Atwin: I'm just combining all of our thoughts here. I'm looking at G-1 to add the “recognized and affirmed” piece, but then also after that, the reference to international human rights. Then it's kind of all there. If that's the simpler one....

Mr. Eric Melillo: Yes.

Mrs. Jenica Atwin: Okay. How about the “affirmed”? Are you good with adding that piece? Are we almost there?

Mr. Jamie Schmale: With you and I, it will pass.

• (1630)

Mrs. Jenica Atwin: Okay, that's fine then.

[*Translation*]

The Chair: Thank you, Ms. Atwin.

Mr. Lemire, you have the floor.

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

I just want to mention that the Bloc Québécois will support the consensus reached on amendment G-1.

[*English*]

The Chair: Ms. Idlout.

Ms. Lori Idlout: I would recommend making an amendment to G-1 to remove the last few words that say, “in accordance with this Act” so that it ends at “water”.

The Chair: We'll have to get to that amendment to do that.

We'll circle back to that in a minute.

Mr. Eric Melillo: My question is whether we can supplement something we're not on.

The Chair: It seems like we have consensus at this point.

Will PV-1 carry?

Mr. Jamie Schmale: No.

The Chair: Okay. It's not going to carry. I don't think we need to do a recorded vote on that.

(Amendment negated)

The Chair: Given that BQ-2 and NDP-7 are identical, they also will not be carried.

An hon. member: What about NDP-8?

The Chair: That will be 3.1 afterwards. We need to first vote on clause 3 before we get to NDP-8 and G-1.

Shall clause 3 as amended carry?

(Clause 3 as amended agreed to on division [*See Minutes of Proceedings*])

Ms. Lori Idlout: What is carried?

The Chair: It's clause 3 as amended by NDP-6.

Ms. Lori Idlout: Okay.

The Chair: With that, we are moving to NDP-8.

Would someone like to move NDP-8?

Ms. Idlout.

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

Yes.

Referring to NDP-8, reference number 13370724, it was given to us by the Blackfoot Confederacy. The text is probably the same, but I want the international law to be included in there.

Those are my comments on that.

Thank you.

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

Would anybody else like to make an intervention related to NDP-8?

Mr. Melillo.

Mr. Eric Melillo: Mr. Chair, I think this is a discussion we just had, and we still favour G-1, so we'll be voting against this amendment.

The Chair: Okay.

Shall NDP-8 carry?

Lori, are you asking for a recorded vote?

Ms. Lori Idlout: Yes, because I want to show my vote.

(Amendment negated: nays 10; yeas 1 [*See Minutes of Proceedings*])

• (1635)

Mr. Jamie Schmale: Chair, on a point of order, just to follow up on Mr. Battiste's comment on the voting order, Eric has the lead for this on our side. If he could kick off the voting, I know it might mess people up.

Mr. Eric Melillo: Mr. Epp is new.

The Chair: I'm very grateful to welcome Mr. Epp to the committee today, but there's no reason that we shouldn't be able to start on the Conservative side with Mr. Melillo.

Mr. Jamie Schmale: I don't know if you want to check with the Bloc or the NDP on their voting structure, but who wants to start with them?

The Chair: Colleagues, we're now going to G-1.

Would someone like to move G-1?

Go ahead, Ms. Atwin.

Mrs. Jenica Atwin: Thank you very much.

I move that Bill C-61 be amended by adding after line 8 on page 6 the following:

Right to Clean and Safe Drinking Water

3.1 It is recognized

I believe we should add to that piece “and affirmed”:

that it is a human right of every individual on First Nations land to have access to clean and safe drinking water in accordance with this Act.

I want to include that final piece, because it strengthens it by providing that guidance as far as the implementation piece is concerned. That's specifically how it was drafted, and it helps explain things for me, as well. The key here is also clarity for our partners and for those who will be most affected by this very important piece of the legislation.

In general, I also feel incredibly privileged and honoured to be part of this historic conversation and to put an end, hopefully, to the historic discrimination that has led us to this point. I'm very excited specifically about this piece.

Again, we've all arrived here in a good way. It's been an honour to work with you all to get to this point.

Thank you.

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

Just for clarification, you can't subamend your own amendment, but it's up to colleagues if someone would like to move that subamendment. I want to also remind members that those subamendments need to be submitted in writing so that they can be translated. If someone is interested in moving that subamendment, we'll go through that process.

First we have Mr. Melillo to speak to G-1.

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

We've been talking about this for some time now. I'm still in favour of the wording in G-1. I also support including the terms “recognized and affirmed”. I'm happy to move the subamendment, Mr. Chair. If you'll indulge me, I'll need a second to make sure I have my translation correct and have that circulated. I'm happy to move that subamendment.

Would it be possible to have a brief suspension to give us time to get that circulated?

The Chair: Absolutely, we can briefly suspend here.

That subamendment will be circulated, and then we will continue right after with the list we have here.

We're going to briefly suspend.

• (1635) _____ (Pause) _____

• (1650)

The Chair: Colleagues, I'm going to call this meeting back to order.

At this point, you will have received an email with the text of the subamendment in both English and French.

Mr. Melillo has the floor in moving the subamendment, and I'll turn it back to him.

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

I'm happy to move the subamendment to add the words “and affirmed”. I won't take up much time, but I'll read the passage so everyone is on the same page. It would read as follows:

It is recognized and affirmed that it is a human right of every individual on First Nations land to have access to clean and safe drinking water in accordance with this Act.

It's been discussed, so I think I'll leave it there and move it at this point.

Thank you.

The Chair: Is there anybody who would like to weigh in?

I see Ms. Idlout with her hand up.

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

I have a quick question for the expert witnesses.

Can they identify the difference if this were to be removed with the definition change? Can they explain if they would still be included?

Ms. Rebecca Blake: That, in accordance with the act, really provides that guideline for implementation. That is the core piece. With that added, there is quite a bit of guidance throughout the bill to implement a human right to safe drinking water. With it removed, it would be more up to the courts and less done in consultation and co-operation with first nations.

Ms. Lori Idlout: *Qujannamiik.*

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

Is there anybody else who would like to make an intervention?

Go ahead, Mr. Lemire.

[*Translation*]

Mr. Sébastien Lemire: I don't know if this is the right time, Mr. Chair, but since we are studying amendment G-1 and its components, I would like to come back to clause 43, the coordinating amendment. The clause relates to Bill S-13.

Will clause 3 of the bill be repealed in its entirety? Would the committee not want to keep it, given that we want to give the bill a more historic, established scope?

The Chair: Do you want to ask the witnesses a question?

Mr. Sébastien Lemire: Yes. Basically, will clause 43 stand if clause 3 is amended and new clause 3.1 is added?

Since the committee is clearly stating that it wants to enshrine this historic precedent in law, could we preserve clause 3 and perhaps amend section 43 accordingly?

[English]

Mr. Douglas Fairbairn: Clause 43 is the coordinating amendment that refers to Bill S-13, which would be an amendment to the Interpretation Act, and that would essentially bring a new non-derogation clause that would apply to all federal statutes. That would replace the existing non-derogation clause in clause 3 of this bill if the Interpretation Act amendment were to pass.

[Translation]

Mr. Sébastien Lemire: Is it the will of the committee to enshrine in law the precedent established through amendment G-1 and recognize its historic aspect?

If there is consensus on this and if clause 43 is adopted, we will no longer be creating the precedent we wanted to set.

Is that a problem for the committee?

That's what I'm getting at.

• (1655)

[English]

Ms. Rebecca Blake: Maybe I can assist from a policy perspective. Clause 43 would only impact the existing 3(1). It wouldn't impact any other clauses that would be added.

Should the committee decide to go forward with that historic opportunity, that would be different from the existing 3(1), and there would be no impacts if Bill S-13 did pass.

[Translation]

Mr. Sébastien Lemire: Okay.

The Chair: Thank you, Mr. Lemire.

[English]

(Subamendment agreed to [See Minutes of Proceedings])

The Chair: G-1 is subamended according to the text that was circulated. Does anybody want to make an intervention related to G-1 as subamended?

Mr. Battiste.

Mr. Jaime Battiste: Mr. Chair, I think it would be helpful to the committee in their discussion around clause 43, if this is 3.1, do we need this to be 3.2 as opposed to 3.1 in order to be consistent with what's being said in clause 43? There continues to be this discussion around the non-derogation clause that is currently 3(1) that we're saying is now 3.1 according to that statement. Is this 3.2 that we just put forward?

A voice: No.

Mr. Jaime Battiste: Clause 3 is the non-derogation, and 3.1 is what we just amended. Is that correct? Then clause 43, if I'm reading it correctly, refers to section 3. We're okay with just the non-derogation clause being clause 3 but this being 3.1 and with that being different. Is that correct?

The Chair: I'll turn to the officials.

One other thing I'll mention is that, at the end of this process, the legislative counsel will go through all of the numbering as well.

Mr. Douglas Fairbairn: Yes, clause 3.1 is different from 3(1) or 3(2). Even if 3(1) and (2) were repealed, clause 43 would not affect clause 3.1.

The Chair: Thank you very much for that clarification, Mr. Fairbairn.

Are there any other members who would like to weigh in before we move to a vote on G-1 as subamended?

Mr. Melillo.

Mr. Eric Melillo: I'm sorry, Chair. I don't want to belabour this because I think we got to an understanding here.

Would it be appropriate to ask a question related to clause 43, since it was brought up, or should I hold on to that for now? I'm just wondering because it's fresh in my mind.

The Chair: Mr. Melillo, if you'd like to ask a question related to that now, that's fine. We will get to that but not for some time.

Mr. Eric Melillo: I hope this doesn't spiral, but because it was brought up, is the intent of clause 43 to remove clause 3 based on it becoming redundant? Is that the idea of why it would be removed?

Mr. Douglas Fairbairn: That's right. The Interpretation Act would have a standard non-derogation clause because there are differences in each of the federal statutes. Some of them are worded differently, so it would be a standard provision that would apply to all federal acts, and the existing non-derogation clauses would be repealed in this act and in all other federal acts.

Mr. Eric Melillo: Thank you, Chair.

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

(Amendment as amended agreed to [See Minutes of Proceedings])

The Chair: We're going to move to clause 4.

• (1700)

Mr. Eric Melillo: Chair, I don't know if this is a point of order, but do we have to formally vote on clause 3 first?

The Chair: Mr. Melillo, we already voted on that one before, but because we added the amendments afterwards, we don't vote on it again.

Mr. Eric Melillo: I'm just keeping you on your toes.

The Chair: Thanks for that clarification, Mr. Melillo.

(On clause 4)

The Chair: The first amendment we have is NDP-9.

Ms. Idlout, you have the floor.

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

Thank you, Chairperson.

NDP-9, reference number 13369427, would amend clause 4.

We want this clause amended the way it is written.

Thank you.

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

Ms. Atwin, I'll turn the floor over to you.

Mrs. Jenica Atwin: I think it adds further clarity. That's what we've all been looking for, and partners as well, so we certainly support the amendment.

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

Next is Mr. Melillo.

Mr. Eric Melillo: I'm happy I got that on the record.

I definitely understand what NDP-9 is hoping to achieve. I have a question about how it fits with some of the rest of the bill, considering that clause 6 and paragraph 6(1)(b) highlight that first nation laws would be applied based on consultation and co-operation with provinces and territories as well.

I suppose this is a question for the witnesses.

Would NDP-9 contradict that in any way as it's written?

Mr. Nelson Barbosa: Thank you for the question.

In short, no, it wouldn't contradict.

As the bill is written, the protection zone must be agreed to, as you know, by provinces, territories and willing first nations, so should a protection zone exist, it would be agreed to bilaterally or trilaterally with those partners.

To your question of whether NDP-9 contradicts or undermines provision 6, I would say that it does not.

Mr. Eric Melillo: Thank you.

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

[*Translation*]

Mr. Lemire, you have the floor.

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

I would just like to mention one point. The Bloc Québécois basically had the same concern at the outset. However, we believe that inherent rights cannot be determined in relation to a zone that can be modified and that can straddle non-first-nations lands.

Therefore, we will be voting against the amendment.

The Chair: Thank you, Mr. Lemire.

[*English*]

Mr. Schmale.

Mr. Jamie Schmale: I have a question for our officials.

Just to clarify here, we're talking about the source water in protection zones. Unless I missed it, do we have a definition of what a protection zone is yet?

Mr. Douglas Fairbairn: No.

Mr. Jamie Schmale: I think I'm landing with Sébastien on this one.

We are making some changes to a section of the bill that we have yet to define in this legislation. I guess it potentially depends on

how this plays out with the minister and his or her best efforts, but that's still to be determined as we get through this.

At this point I think we're leaning towards Sébastien here.

What about source water? Have we defined source water yet?

• (1705)

Mr. Douglas Fairbairn: No.

Mr. Jamie Schmale: We haven't defined source water and we haven't defined protection zones. I think that's a touch concerning. I know that might get defined as we go along here, but especially if we are starting to add it to sections that haven't been defined, I think that's a bit problematic.

At this point, unless we are able to get through this and define it, I think we're going to vote no as well.

The Chair: Thank you, Mr. Schmale.

Go ahead, Mr. Battiste.

Mr. Jaime Battiste: I'm wondering where this would go—line 20? If you could, just explain how this strengthens this paragraph, because I'm not really sure it does. I'm trying to figure out how it strengthens it in this, especially in light of the fact that there's no definition.

That's a question for...

Actually, I think I understand. I'm okay.

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

Go ahead, Ms. Idlout.

Ms. Lori Idlout: I was going to ask the witnesses if they could elaborate on the differentiation between what the current 4(b) is and what adding my proposal would mean and if you could describe it.

Ms. Rebecca Blake: I appreciate the question.

In essence, in clause 6, in (a), which other folks have already raised, it does affirm the "inherent right" to "water, source water, drinking water, wastewater and related infrastructure" on first nation lands, as well as water and source water in protection zones if provinces and first nations in Canada agree on an approach to coordinate laws.

In essence, in the purpose of the bill, the proposed amendment would reiterate some of those commitments that are later in the bill in clause 6, under "Purpose".

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

Next I have Mr. Zimmer.

Mr. Bob Zimmer (Prince George—Peace River—Northern Rockies, CPC): Similarly, I'm questioning the protection provision. We've heard from so many witnesses who had similar concerns around it—provinces as well—that I think it deserves at least a definition and very specific language around what that means because its implications could be vast.

If we don't get that right.... We all want to accomplish what this bill sets out to do, but that is concerning, I'd say, for me, being from northern B.C. specifically.

Thank you.

The Chair: Thank you, Mr. Zimmer.

Next I have Mr. Melillo and then Ms. Idlout.

Mr. Eric Melillo: Thank you, Chair.

I have a couple of quick questions for the witnesses.

At this point in the bill, would this change have a mechanical or tangible impact or would it be more of a legal principle change, if that makes sense?

Ms. Rebecca Blake: It would be more of a legal principle than a tangible impact.

Mr. Eric Melillo: Okay. I appreciate that.

Maybe Ms. Idlout could speak to this a bit.

I know there are many amendments and we're going to have a lot of further discussion around protection zones and first nation consent in defining those protection zones. Would there be any concern—I'll just put this out if you want to comment on it, Ms. Idlout—that including protection zones at this point, before we've done that work to include first nation voices...I don't know if "overstepping" is the right word, but is it superseding some of those future amendments, just for discussion...?

• (1710)

The Chair: Thank you, Mr. Melillo.

I'm going to turn the floor over to Ms. Idlout.

Ms. Lori Idlout: Thank you for the clarification. Maybe we need more clarification, because the way I understand NDP-9 it adds further clarity. I like the way Jenica said it. With it being a proposal by the Assembly of First Nations, I do wonder what the whole process was.

I don't know if you guys were part of the process. The way Bill C-61 was explained to us by the Minister of Indigenous Services was that this was co-developed. If this was co-developed, and it was co-developed with the Assembly of First Nations, I'm surprised to see the Assembly of First Nations submitting amendments. I'm wondering if during the co-development process the assembly had submitted these as provisions they wanted included in Bill C-61, but they weren't, so they're hoping to still have them included through the committee stage. I don't know if you can answer that, but it would be helpful to understand that one, first of all.

Also, when we haven't discussed yet any kind of clarity for protection zones, if we do add clarity about what we mean by protection zones, how will that impact subclause 4(b) in adding this?

Mr. Nelson Barbosa: On the first question about the years of work with the Assembly of First Nations, and rights holders themselves, we heard a myriad of voices, and you heard many of those at the table. I certainly respect the fact the AFN submitted suggestions in order to improve the bill, and that's what's being deliberated today. As my colleague had mentioned, the language being proposed in NDP-9 is analogous with language found in clause 6. It's very similar. It's affirming it in the "Purpose", as opposed to in clause 6.

On the second question on protection zones, the committee will speak at length about that. As currently written, the bill speaks about a consultation and co-operation process in order to define that, including with provinces and territories. I think that is clear in the bill. Whether or not that's how it translates in the future is maybe something else. But as written in your amendment, in NDP-9, I would say it affirms some of the language that is found later on and brings it to the "Purpose" section. It does come from language that we've heard from many partners through the consultation process, so I would acknowledge that as well.

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

Next on the list I have Mr. Schmale.

Mr. Jamie Schmale: I still want to continue this discussion about defining it, adding these terms and not actually defining it.

We've seen in previous pieces of legislation where we did not define certain words there were some issues later on down the road. If we choose not to define this at any point—this could be later on down the path of this legislation—what risks are we running here?

Mr. Nelson Barbosa: What risks? Definition brings clarity, absolute clarity in law, which provides a rubric or a boundary over how a protection zone will be applied. The ancillary point to that or the opposite point to that is it does become rigorous.

As you've heard from many witnesses, the fabric and the realities of many first nations vary considerably. The definition for protection zone should potentially respect the geographic and historical differences across this country, including the relationship with provinces and territories. The question is around entrenching in law a definition that does provide clarity. The opposite side of the same coin is the rigidity of that language and the difficulty of changing that language once a bill becomes law.

• (1715)

Mr. Jamie Schmale: Okay. I think, too, during the testimony, based on the differences we heard, would it be fair to also say that unless we define it, it could mean different things to different people?

Mr. Nelson Barbosa: Yes. I think it is about aligning laws across multiple jurisdictions. Those laws can cover a variety of things from clean drinking water to sanitation, to quantity, to flow, to fire protections—many of the things that this bill speaks to. It certainly could be applied differently across the country based on the joint agreement between a province territory and a first nation.

Mr. Jamie Schmale: Okay.

I think at some point before he finishes up, we might have to have, as you said earlier, some kind of direction in which way we're going, or this could be very problematic. We could define it before we finish this whole process or have some guards where the minister would have to consult, or something like that.

Again, I think if we're leaving this based on what you just said, which to me is pretty serious, I do have concerns about not actually defining these key pieces that actually bring everything together in this whole bill that we're calling Bill C-61. I think that's a big risk, given the fact that we don't have a definition, and it means something else to somebody else. I think we might be doing a disservice if we don't work out this clarity with definitions before the end of it. I'm not saying we do it right now. We saw here in this committee where definitions were not provided in other pieces of legislation, which made everything very interesting and was problematic for certain groups. I think we should definitely think about this before we get through this whole thing.

Again, the fact is that we don't have the definitions. I know Ms. Idlout was saying it does allow clarity, but at the same time, if we start adding in amendments like this without definitions, I think we open ourselves up—and the Crown itself—to potential issues down the road, which doesn't actually solve anything that we're trying to do.

I will leave it at that until I hear other questioners and maybe add some more.

The Chair: Thank you, Mr. Schmale.

On the speaking list I have Ms. Idlout, then Ms. Atwin, then Mr. Melillo.

Ms. Lori Idlout: Thank you.

I forget what the processes are for parking the vote until we get to protection zones.

While you're thinking about what the answer will be, I do want to say again what I've said about this bill since we started studying it, and that is just to remind all parliamentarians that we got to this state of Bill C-61 because of what was stolen from first nations.

What was stolen from first nations is their authority and jurisdiction to manage and use their right of water through colonialism, through the Indian Act, through all these other pieces of legislation. Bill C-61, as we understand it, is one form of reconciliation where there's an attempt to give back that jurisdiction to first nations. To limit giving that jurisdiction back is just another form of injustice for first nations.

I hope that you consider, with this draft amendment, that in strengthening this bill you're strengthening reconciliation with first nations. For too long, we all know, all past governments have not done enough to invest in their infrastructure; but we also want to make sure that we're creating legislation that respects their authority, that respects their rights, so that we are doing the best we can to give back the jurisdiction that originally belonged to them, as whole as possible, and not in small parts here and there, including protection zones.

● (1720)

The Chair: Thank you, Ms. Idlout.

Next up is Ms. Atwin.

Mrs. Jenica Atwin: I agree with Ms. Idlout. It's really about stating clearly that first nations have that law-making authority, as

they always should have had, and so that further assurance, I think, is really what our partners want to see.

I certainly hear the concerns from Mr. Schmale about the definitions. I know we'll get to the definitions clause as a committee as well. I think that, with a vote, we could probably move on from this one. I'd rather not stand it. I'd rather keep going, if possible.

The Chair: Thank you, Ms. Atwin.

Go ahead, Mr. Melillo.

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

I agree. It's up to Ms. Idlout, of course, if she wants to park it. I don't think it needs to be parked, necessarily. I think we can move forward from this.

Not to take away from what Mr. Schmale said—I agree with much of his sentiment—I would urge caution in the discussion. Obviously, there are a lot of amendments dealing with protection zones. I think it's important that we have a fulsome discussion about that at the appropriate time. I also think it's very important that we as a committee understand our role. In my opinion, it should be to ensure that first nation voices, provincial and territorial voices, can be heard, and that there is free, prior and informed consent by first nations, for example. I think that it's not necessarily time to get too rigid on that aspect of it.

I'll end it there. I think we got a little bit deeper than just this amendment in our discussion, but I'm also happy to move this along to a vote if Ms. Idlout's agreeable.

The Chair: Thank you, Mr. Melillo.

Maybe some of the discussions we're having at this point will make the discussion a little more streamlined as we get further along in the bill.

I'm not seeing any more interventions at this point. Maybe we can move it to a vote.

(Amendment agreed to on division [*See Minutes of Proceedings*])

The Chair: We're moving to NDP-10. If it's moved, NDP-11 cannot be moved as it's identical.

Would someone like to move NDP-10.

Ms. Lori Idlout: I have a quick procedural question while I have the floor. When are we going to end our committee? Do I need to move to adjourn or something?

● (1725)

The Chair: Thanks for that question, Ms. Idlout. Today we have resources until 7:30. I want us to take a health break fairly soon, but we have resources up until that point.

Ms. Lori Idlout: If I move to adjourn, is there a discussion?

The Chair: If you move to adjourn, it's a dilatory motion and we'll have to vote on it right away.

Ms. Lori Idlout: We would normally end....

The Chair: Ms. Idlout, we were notified last Thursday that we had additional resources today, that we could go for until 7:30, but if you would like to move that motion, we can vote on it.

Ms. Lori Idlout: Okay. I would like to move that motion.

The Chair: We'll have a recorded vote.

(Motion agreed to: yeas 6; nays 5 [*See Minutes of Proceedings*])

The Chair: With that, the meeting is adjourned.

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