



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

**REPORT ON PART 3 ON BILL C-38
(RESPONSIBLE RESOURCE DEVELOPMENT)**

**Report of the Standing Committee on
Finance**

**James Rajotte, M.P.
Chair**

**Subcommittee on Bill C-38 (Part 3) of
the Standing Committee on Finance**

**Blaine Calkins, M.P.
Chair**

JUNE 2012

41st PARLIAMENT, FIRST SESSION

Published under the authority of the Speaker of the House of Commons

SPEAKER'S PERMISSION

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Standing Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Additional copies may be obtained from: Publishing and Depository Services
Public Works and Government Services Canada
Ottawa, Ontario K1A 0S5
Telephone: 613-941-5995 or 1-800-635-7943
Fax: 613-954-5779 or 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
<http://publications.gc.ca>

Also available on the Parliament of Canada Web Site
at the following address: <http://www.parl.gc.ca>

**REPORT ON PART 3 ON BILL C-38
(RESPONSIBLE RESOURCE DEVELOPMENT)**

**Report of the Standing Committee on
Finance**

**James Rajotte, M.P.
Chair**

**Subcommittee on Bill C-38 (Part 3) of
the Standing Committee on Finance**

**Blaine Calkins, M.P.
Chair**

JUNE 2012

41st PARLIAMENT, FIRST SESSION

STANDING COMMITTEE ON FINANCE

CHAIR

James Rajotte

VICE-CHAIRS

Peggy Nash

Hon. Scott Brison

MEMBERS

Mark Adler

Guy Caron

Shelly Glover

Randy Hoback

Brian Jean

Hoang Mai

Wayne Marston

Cathy McLeod

Dave Van Kesteren

OTHER MEMBERS OF PARLIAMENT WHO PARTICIPATED

Robert Chisholm

Kirsty Duncan

Richard M. Harris

Megan Anissa Leslie

CLERK OF THE COMMITTEE

Guyanne L. Desforges

LIBRARY OF PARLIAMENT

Parliamentary Information and Research Service

Mark Mahabir, Analyst

Brett Stuckey, Analyst

SUBCOMMITTEE ON BILL C-38 (PART 3) OF THE STANDING COMMITTEE ON FINANCE

CHAIR

Blaine Calkins

MEMBERS

Mike Allen

Stella Ambler

David Anderson

Robert Chisholm

Kirsty Duncan

Randy Kamp

Megan Leslie

Julian Peter

Anne Minh-Thu Quach

Michelle Rempel

Brian Storseth

OTHER MEMBERS OF PARLIAMENT WHO PARTICIPATED

Hon. Carolyn Bennett

Dennis Bevington

Jean Crowder

Nathan Cullen

Dean Del Mastro

Linda Duncan

Jack Harris

Randy Hoback

Ted Hsu

Brian Jean

François Lapointe

Elizabeth May

Jamie Nicholls

James Rajotte

Blake Richards

Robert Sopuck

Philip Toone

Brad Trost

Nycole Turmel

Mark Warawa

John Weston

CLERKS OF THE SUBCOMMITTEE

Jean-François Lafleur

Guyanne L. Desforges

Jean-Francois Pagé

Julie Lalande Prud'homme

Michelle Tittley

LIBRARY OF PARLIAMENT

Parliamentary Information and Research Service

Penny Becklumb, Analyst

Kristen E. Courtney, Analyst

Mark Mahabir, Analyst

Brett Stuckey, Analyst

THE STANDING COMMITTEE ON FINANCE

has the honour to present its

NINTH REPORT

Pursuant to its mandate under Standing Order 108(2) the Committee has studied Bill C-38, Part 3 (Responsible Resource Development) and has agreed to report the following:

TABLE OF CONTENTS

INTRODUCTION.....	1
ECONOMIC DEVELOPMENT	3
STRENGTHENING ENVIRONMENTAL PROTECTION.....	5
ABORIGINAL CONSULTATIONS.....	9
FISHERIES	11
PREDICTABLE AND TIMELY REVIEWS	13
REDUCING DUPLICATION	15
CONCLUSION	17
RECOMMENDATION	19
APPENDIX A: LIST OF WITNESSES	21
APPENDIX B: LIST OF BRIEFS	25
REQUEST FOR GOVERNMENT RESPONSE.....	27
DISSENTING OPINION BY THE NEW DEMOCRATIC PARTY OF CANADA	29
DISSENTING OPINION BY THE LIBERAL PARTY OF CANADA.....	35

INTRODUCTION

The Subcommittee on Bill C-38 (Jobs, Growth and Long-term Prosperity Act) was established to examine the clauses contained in Part 3 (Responsible Resource Development) of the bill. The mandate given to the Subcommittee from the Standing Committee on Finance is as follows:

Pursuant to Standing Orders 108(1)(a) and 108(1)(b), a Subcommittee on Bill C-38 (Jobs, Growth and Long-term Prosperity Act) be established to examine the clauses contained in Part 3 (Responsible Resource Development) of the bill, provided that:

- (i) The Subcommittee be composed of twelve (12) members including seven (7) from the Conservative Party, four (4) from the New Democratic Party, and one (1) from the Liberal Party, to be named following the usual consultations with the Whips,
- (ii) The chair of the Subcommittee be a member of the Conservative Party,
- (iii) The Subcommittee be empowered to send for persons, papers and records, to receive evidence, to sit during a time when the Committee is not sitting in Ottawa, to sit when the Committee is sitting outside the Parliamentary Precinct and to sit during periods when the House stands adjourned,
- (iv) The Subcommittee adopt the routine motions of the Standing Committee on Natural Resources, other than the creation of a Subcommittee on agenda and procedure, and
- (v) The Subcommittee finish its examination no later than 5:30 p.m. on Monday, June 4, 2012, and report its findings to the Standing Committee on Finance at the next available opportunity, provided that if the Subcommittee has not reported by that time, it shall be deemed to have reported a recommendation that the clauses contained in Part 3 of Bill C-38 be carried.

The Subcommittee heard from a wide range of witnesses over a significant period of time including federal ministers, various associations, municipalities, academics, chambers of commerce, unions, environmental organizations, and First Nations, on the topics contained in Part 3 of Bill C-38, such as the economic impacts of resource development, environmental protections and Aboriginal consultation, reducing duplication of jurisdictions, timelines, and changes to the *Fisheries Act*.

ECONOMIC DEVELOPMENT

Canada has an abundance of natural resources from coast to coast to coast. Natural resources have been the cornerstone of the Canadian economy, and will continue to be in the future. Across Canada, over 500 major projects are underway or being planned over the next 10 years, representing half a trillion dollars of new investments (Jayson Meyers, Canadian Manufacturers & Exporters, May 28). These investments will be in every sector of the Canadian economy, from the resource to the manufacturing to the services sectors. There is resource potential in every province and territory of Canada, and investment in our resources will touch every region of the country.

Jayson Meyers explained how investments in the resource sector impact the manufacturing sector, stating “these private sector investments will give a badly needed short-term boost to our economy and to jobs. In the long run, they represent a significant part of our industrial infrastructure, offering long-term employment and export growth. However, they also offer something that is much more significant. Canada’s real long-term opportunity is to develop a world-class manufacturing technology and services supply chain for these natural resource projects that will create high-paying, value-adding jobs on the basis of expertise that can be exported globally” (May 28).

Ray Orb from the Saskatchewan Association of Rural Municipalities explained that “the province of Saskatchewan is experiencing rapid growth with our natural resource sector. Therefore, allowing for a more streamlined approval process that could mean increased economic activity to our provinces will benefit our members, the province, and the country as a whole” (May 28). Lorne Fisher, representing the District of Kent in British Columbia, commended the federal government for the initiatives in Bill C-38 to simplify the approval process for major projects (May 30).

Chief Clarence (Manny) Jules summed up the importance of attracting investment with his statement “investment creates jobs” (May 29). Chief Jules agreed that changes in Part 3 of Bill C-38 could lead to increased jobs for Aboriginal Canadians, stating “any opportunity where you have a streamlining of reviews and whatnot, people will benefit from that” (May 29). Chief Shawn Atleo from the Assembly of First Nations told the Subcommittee that First Nations are not opposed to development” (May 29).

As well as speaking of the benefits increased investment in Canada’s natural resource sector will provide, witnesses also noted that Canada cannot take these potential investments for granted. Canada is competing with countries around the world for these investments. Warren Everson from the Canadian Chamber of Commerce (the Chamber) told the Subcommittee that they identified regulatory inefficiency as one of the top 10 barriers to Canadian competitiveness (May 31). Mr. Everson told the Subcommittee that the businesses the Chamber represents

are not calling for weaker regulations, but for better regulations (May 31). Jacob Irving, President of the Canadian Hydropower Association, told the Committee that “according to a recent study we conducted with the University of Montreal, hydropower developers are contemplating investing more than 125 billion dollars in Canada over the next 20 years. This new capacity would help satisfy domestic and export demand. The study estimated it would also create over a million new person years of employment across the country. To make these investments with confidence, the hydropower industry needs regulatory efficiency and predictability. Unfortunately, the current federal environmental assessment and authorization regime cannot adequately provide this” (May 30).

Jayson Meyers from the Canadian Manufacturers & Exporters explained that “today’s approach to environmental reviews has created an uncoordinated, duplicative, cumbersome, and uncertain process for both domestic and foreign companies. This process is acting as a direct barrier to foreign investment in natural resources, and it’s limiting our members’ ability to capitalize on new supply chain opportunities. We believe a better approach is a “one project, one review” process with a clearly defined time period” (May 28). Similarly, Dave Collyer, President of the Canadian Association of Petroleum Producers, noted “Australia and other countries are not standing still, nor are our markets necessarily waiting for us to supply those particular markets. We need to be competitive and a key part of that is the regulatory regime under which we operate. In our view the bill sets out a framework for legislative change that will significantly improve the regulatory review process for natural resource development projects without compromising Canada’s strong record of responsible environmental performance and environmental outcomes” (May 28).

Canada must diversify its export markets to developing countries that have a need for resources of every kind, from energy to metals. As stated by Christopher Smillie from the Canadian Building Trades, “if Canada is serious about moving down the continuum of a developed country, we need to seriously consider diversifying our market beyond the United States...the position of our organization is that we support changes to the system to facilitate large projects, though not at the expense of safety or an environmental review” (May 28).

STRENGTHENING ENVIRONMENTAL PROTECTION

The Government of Canada has already implemented many measures to strengthen environmental protections. For example, the Government permanently increased resources to environmental enforcement by \$21 million annually to ensure we have the officers, the equipment, the forensic science and the tools to do the job. Today there are 50% more enforcement officers than there were just five years ago.

A theme of section 3 of Bill C-38 is strengthening environmental protection. This legislation ensures that resources are allocated for the projects that are most likely to result in significant potential impacts on the environment, and will increase environmental protection by focusing our resources on major projects. The Subcommittee heard from Scott Vaughn, Commissioner of the Environment and Sustainable Development, who said 99.9 percent of environmental assessments (EAs) are screening levels, and agreed that allocating resources to larger environmental projects would be a good use of the *Canadian Environmental Assessment Act's* resources (May 29). According to Denise Carpenter, President of the Canadian Nuclear Association, “reduced overlap and duplication will strengthen the environmental protection. Limiting one project to one review is not only more efficient, it’s more cost-effective, allowing resources to be applied where they can achieve the greatest environmental benefit” (May 28). Ms. Carpenter also explained “If we have a limited amount of resources from a corporate point of view, from a government point of view, and from an NGO point of view, and those resources are being deployed doing environmental assessments over and over again to the same outcomes, what could we do with that resource if we weren't doing repetitive work. We could reassign that resource to do things that really mattered for the environment whether it be compliance or monitoring in the future” (May 29).

Jayson Meyers from the Canadian Manufacturers & Exporters said: “we support Bill C-38 because we believe that Canada needs to maximize our economic opportunities while maintaining the right balance between environmental protection and economic growth. We believe the approach proposed in this bill will continue to support responsible environmental protection and oversight, while greatly speeding up approval processes” (May 28). Pam Schwann from the Saskatchewan Mining Association said “we see the designated projects approach as a means to ensure EAs are required where appropriate” (May 30).

The Subcommittee heard from witnesses that this legislation will not lessen environmental standards, but will in fact increase standards. In fact, Mr. Gratton from the Mining Association of Canada said that due to the changes proposed in Bill C-38, more projects may end up being assessed than currently are, stating “we actually may see more projects assessed, but they will be assessed in a more timely manner” (May 28). Mr. Gratton also said “there are many measures in this

proposed legislation with respect to CEAA that will improve the environmental assessment process. For example, it's going to be much clearer than it used to be. They're eliminating dead time and confusion at the front end of projects and throughout the process" (May 28). Stephen Hazell agreed that Mr. Gratton could be correct in his statement about more mining projects undergoing assessments after the passage of Bill C-38 (May 30).

Dave Collyer said the legislation will not in any way impact or degrade environmental standards, noting "I think there are a number of elements of what's being proposed that would bring more resources to bear on those projects that have potential for greater environmental impact. Therefore, I would argue at least maintain, and I think reasonably it could be expected to enhance environmental outcomes" (May 28). Mr. Myers agreed, saying "I don't think there's anything in this bill that would undermine the effectiveness of our environmental process (May 28). Ms. Carpenter stated that "ultimately I believe if we have one project, one review, in a clearly defined time period, in a clearly defined process, that's going to be better for the environment" (May 28). Ward Prystay, representing the Canadian Construction Association, said "I don't anticipate any less scientific rigour in any of the reviews. The process is going to include both federal, provincial or territorial environmental assessment processes regardless, so we don't anticipate any reduction in the quality of the work or the level of rigour that goes into an environmental assessment" (May 28). Mr. Rees from the Federation of Ontario Cottagers' Association told the Subcommittee "I'd like to dispel the fact that this is a jobs-versus-environment conversation. I think sustainable, smart development is something that can happen" (May 28).

The view of the Canadian Manufacturers & Exporters is that Bill C-38 represents a responsible and modern approach to regulatory management and oversight (Jayson Meyers, May 28). The Canadian Association of Petroleum Producers said Bill C-38 "sets out a framework for legislative change that will significantly improve the regulatory review process for natural resource development projects without compromising Canada's strong record of responsible environmental performance and environmental outcomes" (Dave Collyer, May 28).

Many witnesses stated that changes in this legislation will affect processes, not outcomes. For example, Mr. Prystay said this legislation "removes uncertainty about the need for environmental assessment and will improve project planning. It will also free up federal resources from a bureaucratic interdepartmental coordination process that really has no value from an environment protection perspective" (May 28). Terry Toner, speaking for the Canadian Electricity Association (CEA), said "the efficiencies realized by the changes in Bill C-38 will in no way diminish the efforts and actions of CEA member companies in protecting the environment throughout project design, construction and operation" (May 31). Pierre Gratton said the changes are "all about process, it has nothing to do with the quality of environmental assessment, and the extent to which there are measures in here that you could say do affect the quality of the review, I think it enhances them" (May 28). Mr. Gratton also said "this proposed legislation is one of the finest pieces

of work we've seen coming out of the federal government with respect to EAs ever" (May 28).

Bill C-38 will introduce monetary penalties across the system to enforce violations of our environmental rules and ensure accountability. The bill will require follow-up programs to verify the accuracy of an environmental assessment and determine the effectiveness of mitigation measures for all environmental assessments. These requirements will be included as conditions, along with mitigation measures and an enforceable decision statement, with which the proponent must comply. Penalties for violations range from \$100,000 to \$400,000. Dr. David Schindler agreed that tougher mitigation penalties will be beneficial (May 29).

Bill C-38 will create a new Canadian Environmental Assessment Act 2012 (CEAA 2012). Ed Wojczynski from the Canadian Hydropower Association stated the Canadian hydropower industry welcomes the new Canadian Environmental Assessment Act, explaining that "it will reduce federal-provincial overlap and duplication which cost taxpayers, electricity ratepayers and project proponents. C-38 reforms will concentrate the federal process on areas of federal jurisdiction. They will put the emphasis on projects that are likely to have significant impacts. The process improvements should allow the system to comfortably accommodate the timelines proposed in CEAA 2012 and provide quality environmental assessments. Proponents will be able to dedicate resources to really solving priority environmental issues without being side-lined by process distractions that do not contribute to actual environmental outcomes" (May 30). Likewise, Denise Carpenter stated that "Amendments to the *Canadian Environmental Assessment Act* will allow the delegation or substitution of one environmental assessment process for another. This has the potential to reduce multiple layers of overlapping environmental assessment processes to a single, effective process" (May 28).

The Government of Canada has also committed to increase pipeline safety through a \$13.5 million investment to increase inspections from 100 to 150 and doubling the amount of audits, and to increasing tanker safety with double-hulled tanker requirements, mandatory pilotage and increased navigational tools. The Subcommittee views these additional initiatives as an important complement to the environmental protection measures within Bill C-38. Captain Fred Denning, President of the B.C. Coast Pilots Ltd., told the committee that they "manage to pilot thousands of vessels in and out of B.C. waters every year, virtually without incident" (May 29), and made it clear that the coast pilots welcome strong safety standards. Captain Kevin Obermeyer of the Pacific Pilotage Authority agreed that making some of the rules around tanker operations, including piloting, a little bit more strict would be a positive thing and would help ensure that their positive track record continues (May 29).

Minister Oliver told the Subcommittee "the fact is our new plan will strengthen environmental safeguards, including tanker and pipeline safety. For the first time, it will provide enforcement of environmental assessment conditions under

the *Canadian Environmental Assessment Act*. It will also strengthen enforcement with monetary policies respecting the National Energy Board conditions on new pipeline projects. So our changes make sense from both an economic and an environmental perspective” (May 17).

Witnesses from the Canadian Hydropower Association told the Subcommittee “we see Bill C-38 positively addressing many of the regulatory problems. The proposed improvements will not adversely affect our industry’s environmental performance. Instead, they will help encourage further investment in clean and renewable hydropower. This will help Canada reduce North American greenhouse gas emissions and air pollution” (May 30).

ABORIGINAL CONSULTATIONS

The current review system suffers from consultation fatigue, where Aboriginal groups have to repeat the same message to numerous different departments. Testimony indicated the changes in Bill C-38 attempt to better integrate Aboriginal consultations by designating a lead department or agency as the federal coordinator on specific projects. Jean-Francois Tremblay told the Subcommittee that one point of contact was requested by Aboriginal groups (May 30). Mr. Tremblay also noted that court decisions have urged the federal government to better coordinate consultation within the federal family (May 30). Chief Jules explained that “just having one lead on these issues would be a tremendous burden off of the shoulders of the local First Nations communities” (May 29).

Bill C-38 makes a commitment to provide funding to support consultations while establishing protocols or agreements with Aboriginal groups to clarify consultation expectations for a given project. Mr. Tremblay noted that “If you want consultation to be meaningful, you have to make sure that the participants will have the capacity to participate in the negotiation, and that’s what the proposal actually offers” (May 30).

Minister Kent told the Subcommittee that “changes to the environment that affect Aboriginal peoples, including their current use of the land and resources for traditional purposes, are one of the ‘environmental effects’ specifically referred to in this bill. There are also logical points in the process to directly obtain input from Aboriginal groups to learn of their concerns and to develop means to avoid or reduce negative effects. For these reasons, the government will continue to integrate, to the extent possible, Aboriginal consultations into the environmental assessment process” (May 17). Speaking on behalf of the Mining Association of Canada, Pierre Gratton told the Committee that “as an industry which operates outside of urban Canada, we are pleased that Bill C-38 recognizes the importance of Aboriginal consultation” (May 28).

Chief Clarence (Manny) Jules told the Subcommittee that First Nations have to be an integral part of the Canadian economy and share in the benefits of resource development (May 29). For example, speaking of a partnership near Kamloops BC with a First Nation and a mining company, which includes the First Nation being a joint venture partner of the mine development and a comprehensive training and employment program for Aboriginal men and women, Chief Jules said “it is going to be an incredible amount of jobs that are created for the First Nations...not only do the First Nations communities benefit but the entire region, and I see that happening as a potential right across the country” (May 29).

FISHERIES

Minister Ashfield explained that “the proposed changes to the *Fisheries Act* do three things related to the protection of fisheries in Canada. First, it's about focusing our protection efforts where they are needed. Second, it's about regulatory clarity and efficiency. Third, it's about enabling partnerships with provinces and territories, aboriginal groups, conservation organizations, and others that care about fisheries protection” (May 17).

The Subcommittee heard that changes to the *Fisheries Act* in this legislation will bring a focused, common sense approach to the protection of fisheries and fish habitat in Canada. The changes focus protection rules on real and significant threats to fisheries and the habitat that supports them while setting clear standards and guidelines for routine projects. Bill C-38 will allow the Minister to enter into agreements with groups — like conservation groups — so that they can work together on fisheries protection ideas and developing standards. The Ontario Federation of Anglers and Hunters said “we appreciate that the government has made it clear to us that we share the fundamental principles as we collectively move forward, namely: avoid harm to our fisheries; protect productivity of our fisheries; improve habitat protection and fish passage” (May 28). The Canadian Federation of Agriculture also expressed support for the common sense changes to the *Fisheries Act* contained in Bill C-38, stating that the changes the bill is proposing give more indication to the types of things that need to be protected (May 29).

For example, the proposed changes will improve several conservation tools and will identify ecologically sensitive areas that require enhanced protection; make the conditions associated with *Fisheries Act* authorizations enforceable; and align infractions under the *Fisheries Act* with the *Environmental Enforcement Act*, which provides higher maximum penalties.

Bill C-38 will also allow regulations to be made that prohibit the import, transport and possession of live aquatic invasive species. Dr. Terry Quinney from the Ontario Federation of Anglers and Hunters told the Committee “we appreciate that the Government of Canada has explicitly recognized that Canada’s fisheries are important to Canadians and is committing to improve protections associated with our fisheries, including regulations that will prevent harmful aquatic invasive species, such as Asian Carp” (May 29).

The Subcommittee heard about the need for consistency of the application of rules across the country. For example, according to Mr. Prystay, one of the current problems with the *Fisheries Act* (the Act) is that there is a substantive difference in how the Act is applied across Canada in terms of the level of data that are required to support a review and the level of habitat compensation that is required when a project requires an authorization. He noted that “the changes to the *Fisheries Act* will clarify the intent of the legislation to protect fisheries and

ensure greater consistency in application of the Act across Canada” and said “I think the focus of Fisheries and Oceans going forward is going to be on the really important habitats that exist within Canada” (May 28). Dr. David Schindler also stated “what we want is consistency” (May 29).

The changes will also allow the creation of new, clear and accessible guidelines for Canadians to follow for projects in or near water. Ray Orb, representing the Saskatchewan Association of Rural Municipalities, said that “currently, the *Fisheries Act* applied the same protection to rivers and streams as municipal drains and farmers irrigation canals. This adds unnecessary costs and extended timeline to routine municipal road construction projects” (May 28). He stated that “the changes to the Act provide the long-awaited distinction between vital Canadian waterways that support fish populations and smaller bodies of water that do not house fish” (May 28). Lorne Fisher told the Subcommittee “For the District of Kent, whose major industry is agriculture, 80 percent of the drainage costs are due to direct and indirect costs of getting approvals and permits from DFO.” (May 30).

Ron Bonnett from the Canadian Federation of Agriculture said “C-38 puts in place a process to bring improvements in how the *Fisheries Act* is implemented in minor works, so that you don’t get hung up on frustration, cost and overlap of jurisdictions” (May 29). It is the view of the Subcommittee that Bill C-38 will bring focus and the needed consistency to the protection measures of fisheries and fish habitat in Canada.

Questioned on whether legislative changes are necessary for the *Fisheries Act* or whether better enforcement would produce the same result, Gregory Thomas from the Canadian Taxpayers Federation stated “We believe that changes to the legislation are absolutely essential” (May 30). On the other hand, the Honourable Tom Siddon told the Subcommittee that the 144-year old *Fisheries Act* did not need to be modernized.

PREDICTABLE AND TIMELY REVIEWS

Testimony from witnesses clearly noted that in our current regulatory process, major projects with the potential to create thousands of jobs and billions of dollars in economic growth are often stuck in an inefficient regulatory system for too long. Pierre Gratton from the Mining Association of Canada explained that uncertainty in the review process is a major issue, because, for example, “if you’re a junior company trying to bring a mine into production, time is everything and delays in projects or the uncertainties built into projects, that can lead to delays, can literally kill a project” (May 28).

Currently, projects are stuck in a system with 40 federal departments and agencies involved. Terry Toner, representing the Canadian Electricity Association, told the Subcommittee that “in some cases, regulatory approval processes, combined with construction periods, have totalled more than 10 years from project initiation to grid connection. Of those 10 years, approximately 4 years are spent in the federal EA process. Delays often take place before a review has even begun. Under the current system, it can take a surprising amount of time to mobilize federal officials from the various agencies and departments that are required to be involved and for them to decide whether they’re going to participate at all, and if so to provide early input, such as terms of reference for an assessment“ (May 31).

Dave Collyer explained “the current regulatory process has often led to project delays and cost-escalation which will defer and reduce the employment and revenue benefits accruing to Canadians from these investments. In some cases projects have unfortunately been cancelled or deferred for many years without any discernible improvement in environmental performance or outcomes. In our view, that is clearly not in the public interest” (May 28). Speaking about the proposals in Bill C-38, he said “rather than having a multitude of departments or agencies involved in the review process, single point accountability goes a long way to making process work better. I think it’s as simple as that. It’s consolidating the review responsibility in an agency or department that has the capability to do it” (May 28).

The Subcommittee heard that massive delays in the system do not lead to better outcomes. Pierre Gratton explained that timelines help bring rigour and discipline to the review process (May 28). Speaking about the one project, one review concept proposed in Bill C-38, Pam Schwann from the Saskatchewan Mining Association said “Yes, we’d agree that it does definitely assist in predictability for the industry in terms of knowing what their time frame will be for their investment, and it also ensures that the outcomes are well-understood as you go into an environmental assessment process” (May 30). Mr. Prystay said the Canadian Construction Association “is pleased with the legislation because of the regulatory certainty that it provides. It lays out the steps and the environmental assessment processes and provides timelines so that we can predict looking

forward how a project will proceed” (May 28). Mr. Prystay also said the employment opportunities from projects that are subject to environmental assessments range from tens to thousands of construction jobs and tens to hundreds of permanent full-time jobs, and timelines provide more certainty for the process which gives investors greater confidence and greater likelihood to invest in projects in Canada (May 28).

Bill C-38 will establish fixed beginning to end timelines to ensure predictability for investors (24 months for CEAA projects, 18 months for NEB projects and 12 months for standard EAs). These timelines only apply to government time. To ensure flexibility, the Minister can extend timelines by three months, with cabinet able to extend further if necessary. The legislation will also make the system more accountable by ensuring elected representatives make the final decision on NEB projects, putting it in line with CEAA.

As explained by Mr. Prystay, “the proposed changes to the *Canadian Environmental Assessment Act* don’t actually reduce the timelines. They actually provide timelines for the environmental assessment process, which is a significant benefit” (May 28). He noted that the provincial environmental assessment process in British Columbia legislated timelines in 1995, and that this legislation will give the federal government 365 days to do what the province does in 180 days, stating “I think this demonstrates that the timelines here are generous” (May 28).

Mr. Wojczynski, speaking from the perspective of the hydropower industry in Canada which provides 60 percent of Canada’s electricity, said “I’d like to emphasize that predictability and timeliness in project review and authorization are critical to our industry. Currently, the approvals for major projects in Canada take about four years. And developers usually begin environmental studies many years before the official EA starts. This is too long for investments that are sensitive to market timing” (May 30). He used the example of Manitoba Hydro to explain why timelines for the review process are critical for Canada’s clean energy sector, stating “We are a preferred supplier. Our electricity is clean, renewable and reliable. We will act as a battery to support windpower in the Midwest of Canada and the United States. Our hydro would displace thermal generation and reduce GHGs and air pollution in North America. If the EA process runs more slowly than expected and we miss our contract deadlines, the contracts can be cancelled. Manitobans and Canadians would suffer significant economic losses. Just as important though – our customers would turn to US coal or gas-fired generation to meet their needs. The advantages of reducing greenhouse gases and air pollution by using Canadian hydropower would be lost” (May 30). He also told the Subcommittee it can cost an extra \$30 million a year for a review process that is four years rather than two years.

REDUCING DUPLICATION

Currently, the system can have numerous different departments and levels of government reviewing the same project. According to the Canadian Nuclear Association “it’s not difficult to imagine how some 40 different agencies, each with their own regulatory processes, could draw resources, valuable human resources, away from what matters to the environment. Resources, such as time and budget, could be and will be dedicated to improving oversight and therefore compliance...we appreciate the renewed focus that the budget bureau brings to what matters to the environment” (May 28). Mr. Prystay said “the consolidation of responsibility for conducting environmental assessments to the Canadian Environmental Assessment Agency, the National Energy Board, and the Nuclear Safety Commission will result in the Government of Canada making one common decision for a project. It will no longer make the same decision five or more times for a single project through various departments” (May 28). Mr. Fisher also testified that efficiency of process could be improved, and said he is hopeful Bill C-38 will do so (May 30). David McGuinty, Member of Parliament, who testified at the Subcommittee, said “I don’t think there’s a single Canadian who’s saying, ‘Yes, let’s delay projects for the sake of delaying them. Let’s make them more difficult and more costly.’ Everyone wants to see improvement” (May 29).

Bill C-38 will allow the provinces to take over reviews to reduce duplication in the system. However, provinces will only be allowed to take over a review if they can demonstrate that their process will meet or exceed federal standards. Pierre Gratton explained that “if you look at where substitution will exist or equivalency will exist it will be in jurisdictions where the provinces have been able to demonstrate that their systems of environmental assessment are comparable and equivalent to that of the federal government” (May 28). He also stated “we fully expect every mine to be subject to an environmental assessment. Whether it’s substituted to a provincial government or not, it will be reviewed. We fully expect that and accept that as part of our responsibility” (May 28). Jacob Irving, speaking on behalf of the Canadian Hydropower Association, said that in the current system “our projects undergo federal EAs and must secure authorizations under other federal statues, while at the same time dealing with provincial EAs. The result is duplication, delay and uncertainty. This can discourage investors from supporting renewable electricity in Canada” (May 30). Mr. Irving added that “we believe all stakeholders would benefit from an efficient, timely, predictable and consistent federal EA and authorization regime that also works smoothly with provincial EA processes and environmental regulations. C-38 is helpful in addressing many of these issues” (May 30).

William Amos from EcoJustice stated “we know that there is a need to reduce overlap and duplication” (May 29). The Saskatchewan Mining Association told the Subcommittee “Make sure that any substitution or equivalency process is actually manageable, that it’s not more bureaucratic than the existing system.

So making sure that if there are equivalency provisions and substitution provisions, they're actually of benefit and doable; so making sure that the details in the regulations don't make things too burdensome" (May 30).

Some witnesses, such as the Canadian Nuclear Association and the Saskatchewan Mining Association, expressed disappointment that Bill C-38 does not allow for federal-provincial equivalency in the uranium mining sector.

Witness testimony indicated that measures contained in Part 3 of Bill C-38 will better reflect the shared federal, provincial and territorial responsibility for environmental protection by avoiding duplication of efforts by different levels of government. Bill C-38 better reflects the concurrency of jurisdictions in the review process, and its consolidation of responsibilities will move Canada to a one project, one review system that will be modern, efficient and effective.

CONCLUSION

The Government of Canada has already taken steps to improve our economy, from reducing corporate taxes to reducing red tape, however, it is clear from the testimony heard at Committee that we must pass Bill C-38 in order to reform our duplicative and inefficient regulatory system to fully grasp Canada's potential.

It is the Subcommittee's view from evidence gathered that the modern, efficient regulatory system proposed in Part 3 of Bill C-38 does not mean lesser environmental standards.

It is the view of the Subcommittee that the measures within Part 3 of Bill C-38 will promote positive and long-term relationships with Aboriginal communities in order to facilitate greater direct and indirect benefits on new resource projects. It is clear that the federal government will continue to respect its legal duty to consult Aboriginal Canadians and where appropriate, accommodate.

It is the Subcommittee's view that Part 3 of Bill C-38 will promote economic development through the streamlining of Canada's review process of major resource projects, while at the same time strengthening environmental protection. This legislation will provide clarity for consultation with Aboriginal Canadians, and timely and efficient reviews will end needless delays to job-creating projects that Canadians in all regions of the country, including rural and Aboriginal communities, will benefit from. This legislation will amend the *Fisheries Act* to focus protection on real and significant threats to fisheries and the habitat that supports them while setting clear standards and guidelines for routine projects. Additionally, it aligns infractions with the *Environmental Enforcement Act*, thus ensuring higher maximum penalties for those who break the rules.

It is the Subcommittee's view that the measures contained in Part 3 of this legislation will ensure major resource projects in Canada are reviewed in a timely manner while strengthening environmental protections and enhancing Aboriginal consultation.

It is clear from the testimony heard at the Finance Subcommittee on Part 3 of Bill C-38, that the passage of this legislation will serve to enhance the future prosperity of Canada.

RECOMMENDATION

The Subcommittee recommends to the Standing Committee of Finance that the clauses contained in Part 3 of Bill C-38 be carried as written.

APPENDIX A LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
<p>Canadian Environmental Assessment Agency</p> <p>Helen Cutts, Vice-President, Policy Development Sector</p> <p>Steve Mongrain, Senior Policy Advisor, Policy Development Sector</p> <p>Department of Fisheries and Oceans</p> <p>Keith Ashfield, Minister of Fisheries and Oceans and Minister for the Atlantic Gateway</p> <p>Kevin Stringer, Assistant Deputy Minister, Program Policy</p> <p>Department of Indian Affairs and Northern Development</p> <p>Jean-François Tremblay, Senior Assistant Deputy Minister, Treaties and Aboriginal Government</p> <p>Department of Natural Resources</p> <p>Adam Hendriks, Director of Operations Western Canada, Major Projects Management Office</p> <p>Jay Khosla, Assistant Deputy Minister, Major Projects Management Office</p> <p>Joe Oliver, Minister of Natural Resources</p> <p>Department of the Environment</p> <p>Coleen Volk, Assistant Deputy Minister, Environmental Stewardship Branch</p> <p>Peter Kent, Minister of the Environment</p> <p>Department of Transport</p> <p>Helena Borges, Assistant Deputy Minister, Programs</p>	2012/05/17	1
<p>Building and Construction Trades Department, AFL- CIO, Canadian Office</p> <p>Christopher Smillie, Senior Advisor, Government Relations and Public Affairs</p> <p>Canadian Association of Petroleum Producers</p> <p>David Collyer, President</p> <p>Canadian Construction Association</p> <p>Ward Prystay, Principal, Environmental Services, Stantec Consulting Ltd.</p>	2012/05/28	2

Organizations and Individuals	Date	Meeting
Canadian Manufacturers and Exporters - Ontario Division Jayson Myers, President and CEO	2012/05/28	2
Canadian Nuclear Association Denise Carpenter, President and Chief Executive Officer		
Federation of Ontario Cottagers' Associations Terry Rees, Executive Director		
Mining Association of Canada Pierre Gratton, President and Chief Executive Officer		
Ontario Commercial Fisheries' Association Peter Meisenheimer, Executive Director		
Saskatchewan Association of Rural Municipalities Ray Orb, Vice-President		
As individuals David W. Schindler, Professor of Ecology, Department of Biological Sciences, University of Alberta David J. McGuinty, M.P., Ottawa South	2012/05/29	3
Assembly of First Nations Shawn A-in-chut Atleo, National Chief		
British Columbia Coast Pilots Ltd. Fred Denning, President		
Canadian Federation of Agriculture Ron Bonnett, President		
Ecojustice Canada William Amos, Director, University of Ottawa - Ecojustice Environmental Law Clinic		
First Nations Tax Commission Clarence T. Jules, Chief Commissioner and Chief Executive Officer		
Office of the Auditor General of Canada Scott Vaughan, Commissioner of the Environment and Sustainable Development		
Ontario Federation of Anglers and Hunters Terry Quinney, Provincial Manager, Fish and Wildlife Services		

Organizations and Individuals	Date	Meeting
Pacific Pilotage Authority Kevin Obermeyer, President and CEO	2012/05/29	3
As individual Thomas E. Siddon	2012/05/30	4
Canadian Hydropower Association Jacob Irving, President Eduard Wojczynski, Chair of the Board of Directors, Division Manager, Portfolio Projects Management, Manitoba Hydro		
Canadian Taxpayers Federation Gregory Thomas, Federal and Ontario Director		
Corporation of the District of Kent Lorne Fisher, Councillor		
Department of Indian Affairs and Northern Development Jean-François Tremblay, Senior Assistant Deputy Minister, Treaties and Aboriginal Government		
Ecovision Law Stephen Hazell, Senior Counsel		
MiningWatch Canada Jamie Kneen, Communications Coordinator		
Nature Québec Christian Simard, Executive Director		
Saskatchewan Mining Association Pamela Schwann, Executive Director		
Canadian Chamber of Commerce Warren Everson, Senior Vice-President, Policy	2012/05/31	5
Canadian Electricity Association Geoff Smith, Director, Government Relations Terry Toner, Chair, Stewardship Task Group, Director, Environmental Services, Nova Scotia Power Inc		
National Energy Board Robert Steedman, Chief Environment Officer		
West Coast Environmental Law Association Rachel Forbes, Staff Counsel		

Organizations and Individuals	Date	Meeting
World Wildlife Fund (Canada) Tony Maas, Director, Freshwater Program	2012/05/31	5

APPENDIX B LIST OF BRIEFS

Organizations and Individuals

Barreau du Québec

Canadian Electricity Association

Canadian Federation of University Women

Canadian Hydropower Association

Green Action Centre

Law Foundation of British Columbia

MiningWatch Canada

Port Metro Vancouver

Schindler, David

West Coast Environmental Law Association

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant *Minutes of Proceedings* ([Meeting No. 69](#)) is tabled.

Respectfully submitted,

James Rajotte, M.P.

Chair

DISSENTING OPINION BY THE NEW DEMOCRATIC PARTY OF CANADA

Dissenting report – FINA Subcommittee on Part 3 of C-38

New Democrat members of the Finance Subcommittee object in the strongest terms to the Conservative Government's decision to bury extensive changes to environmental, fisheries, species at risk, and energy legislation a budget bill. The extensive and complex changes proposed, the rushed and often interrupted committee hearings, the extremely limited consultation, and the lack of opportunity to draw on the expertise of the standing committees on Environment, Fisheries, and Natural Resources have prevented a proper and robust evaluation of the proposals contained in Part 3 of C-38. New Democrats note that witnesses were given extremely short notice of an invitation to appear, and those that were able to testify had little or no time to prepare. The subcommittee had no written briefs to consult and the public had little opportunity to participate in the hearings. The main report developed by the subcommittee is highly selective and grossly mischaracterizes the expert opinion that numerous witnesses presented to the Committee. As the main report does not accurately reflect the numerous concerns raised in witness testimony and by Canadians about this process and the sweeping changes proposed in this bill, New Democrats offer below a dissenting report on Part 3 of C-38.

The Conservative's Trojan horse budget bill will result in less protection for the environment, weaker regulation for resource project assessments, reduced public accountability and more discretionary power in the hands of Ministers to make sensitive environmental decisions. Witness after witness raised concerns about the scope of the changes contained in the bill and the lack of government consultation, and urged the government to split the bill to allow for proper study. Former Progressive Conservative Fisheries Minister Thomas Siddon suggested that "responsible members of parliament from all parties would take those environmental provisions of clauses 52 to 169 and bring forth a separate piece of environmental modernization legislation."

Bill C-38 contains a wholesale repeal of the Canadian Environmental Assessment Act (CEAA), replacing it with new legislation that will reduce the number of projects that will be assessed and allow the Minister substantial latitude to exclude projects from a review of their environmental, social and economic impacts. The “CEAA 2012” introduced by C-38 will subject assessments to artificial time limits and even allow the Minister to exempt projects from review all together.

The full impact of these changes were brought sharply into focus by Will Amos of Ecojustice, who stated that “improvements to CEAA are achievable, but not by eviscerating the federal role in environmental assessment, devolving reviews to provincial/territorial governments, and by imposing artificial timelines on a much smaller number of projects.” With respect to the Conservative’s inaccurate contention that unnecessary duplication is rife in the present environmental assessment process, New Democrats note that this issue has largely been addressed by previous changes. An Environment Canada presentation, dated September 6, 2011 and released through access to information, explains: “Amendments made in 2010 have made the CEA Agency responsible for most comprehensive studies; this change is yielding positive results as all agency-led comprehensive studies have started in alignment with provincial reviews, preventing process duplication [...] All provinces have EA (environmental assessment) processes; harmonization agreements and project-specific arrangements are intended to prevent duplication.”

Witnesses also raised serious concerns about the risk of increased litigation, noting that a weak environmental assessment process increases the chance of costly legal challenges for project proponents down the road. Chief Shawn A-in-chut Atleo of the Assembly of First Nations underscored this problem: “In its current form, part 3 of C-38 clearly represents a derogation of established and asserted first nations rights. If enacted, it will increase the time, costs and effort for all parties and governments, as first nations will take every opportunity to challenge these provisions.” Jamie Kneen of MiningWatch Canada pointed out that weak social license to will cost industry more in the long run: “Lawsuits and direct action will also create greater uncertainty and unpredictability, and can be reasonably expected to more than counter any anticipated efficiency gains.”

In addition to curbing the timeline of the review process and limiting the number of projects that will be reviewed, C-38 also excludes many Canadians from giving their input on major resource projects. In order to participate in public hearings, Canadians will now have to be “directly affected” by the project or be deemed to have “relevant information or expertise”, terms that are subject to conflicting interpretation and would potentially exclude many from the consultations. New Democrats find it particularly concerning that the Minister was unable to define what “directly affected” means.

Environment Commissioner Scott Vaughn summed up the result of these changes: “What is clear is that there will be significantly fewer environmental assessments. The range is from currently 4,000 to 6,000 a year to probably 20 to 30 a year which will be under the federal regime.”

In addition to dramatically reducing federal involvement in environmental assessments, the Conservative budget bill also contains serious and extensive changes to the Fisheries Act. Presently, the Fisheries Act is the cornerstone of Canadian fisheries management and is counted among the world’s best frameworks to protect fish and fish habitat for future generations. Peter Meisenheimer, Executive Director of the Ontario Commercial Fisheries Association, pointed to the critical role of fish habitat protection in section 35 of the current Act: “That is a lynch-pin of fisheries management in this country.”

Numerous witnesses expressed concern that the changes in C-38 would dismantle this critical fish habitat protection, limiting it to very narrow circumstances. The additional element of increased ministerial discretion for Cabinet to decide which projects are reviewed and over-rule regulatory agencies raised particular concern. Preeminent scientist Dr. David Schindler warned that rules must be “specifically worded in the legislation [...] and not left to the whim of a minister who has no scientific background, period.” Mr. Siddon deplored that the changes in C-38 will erode the provisions of 144 years of history, makes “Swiss cheese” out of the Federal Fisheries Act with the serial list of exceptions and exemptions opening up a field day for court challenges.

National Chief Atleo was highly critical of the Conservative’s failure to consult on C-38, noting that this disregards a core federal duty towards First Nations. He warned that “First nations will

vigorously oppose any attempts by the crown to erode or evade lawful obligations and responsibilities.”

New Democrats regret that the committee process imposed by the Conservatives did not allow these and many other elements of the bill to be fully studied. Terry Reese, Executive Director of the Ontario Federation of Cottagers’ Associations, summed up the concerns of many witnesses when he stated that this bill “diminishes the existing law, and as a result, is bad for Canadians.”

The overwhelming recommendation of a significant number of witnesses was that these sweeping changes require better scrutiny.

- National Chief Atleo of the Assembly of First Nations: “Part 3 of Bill C-38 needs to be withdrawn to take the time to work with first nations to ensure their rights and interests are reflected and will not be compromised through such legislation. Failing that I would recommend that the legislative amendments in part 3 be separated from the main bill to ensure appropriate study and amendments can take place with engagement and input from first nations.”
- Will Amos of EcoJustice: “It's our opinion that this is the most significant and devolutionary set of environmental law reforms that have ever been presented to Parliament. There is no law that we can recall that has ever in such a broad and structural manner changed the federal environmental governance regime. Thus, our main message here is that Canadians are not ready for this. Parliament is not ready for this. There has been inadequate process to consider the transformative changes that are being proposed and we would urge this committee to recommend back to the finance committee that Part 3 of Bill C-38 be excised and be separated and re-tabled, if the government deems appropriate, in a stand-alone bill.”
- Former federal Fisheries Minister Thomas Siddon: “I think it's extremely important you separate the bill. That was the message in the letter that four ministers signed to the

Prime Minister. [. . .] This is the wrong way to go about it. This is the wrong committee to be dealing with these questions and responsible members of Parliament of all parties would take those environmental provisions of clauses 52 to 169 and bring forward a separate piece of environmental modernization legislation, whatever you want to call it.”

- Christian Simard of Nature Québec: “Considering what has been put before us, how many natural lakes and rivers will be used for routes without any assessment, analysis or protection, and possibly for other tailings sites? While there are peat bogs in Northern Quebec and Northern Canada, these wetlands are not necessarily fishable but are essential to the ecosystems. It is crucial that we do not establish this type of discretionary system that functions by exception. That is why Nature Québec is calling for a major change and the withdrawal of these provisions of the budget implementation bill.”
- Jamie Kneen of MiningWatch Canada: “I’m here to urge you to ensure that the environmental provisions of Bill C-38 are given proper consultation and debate. Part 3 of C-38, with which we are concerned today, is seriously flawed and in our view, to allow it to proceed without very major amendment would be irresponsible. With all due respect to the experience and knowledge of this committee, there is simply no way of adequately addressing part 3 as part of C-38. These provisions must be separated and debated on their own and, if needs be, removed and re-submitted to a new legislative process.”
- Terry Rees of Federation of Ontario Cottagers' Associations: “I’m disappointed I’m not addressing these comments and concerns, frankly, to the fisheries committee, and instead that these important matters are being considered as part of an unrealistically complicated, unprecedented omnibus Finance bill. The timing and design of this

approach short-circuits the democratic process and certainly doesn't allow for the type and amount of reasoned discussion that fundamental important public policy deserves.”

- Tony Maas of WWF Canada: “Urging the members of this committee to use your influence to separate the reforms to the Fisheries Act from Bill C38 so that they can be addressed in a timely but thorough manner through a reasoned, multi-stakeholder, and importantly a science-based consultation process so we can together work towards a goal of creating solutions to protect and restore the health of our remarkable freshwater fisheries and the habitats and ecosystems that sustain them.”

Consequently, **New Democrats present a single recommendation to the Standing Committee on Finance: that Bill C-38 be split into two or more pieces of legislation, and that Part 3 be referred to the appropriate committee or committees for thorough study and consideration.**

DISSENTING OPINION BY THE LIBERAL PARTY OF CANADA

Liberal Party of Canada Dissenting Report Bill C-38, Part 3

Kirsty Duncan, Member of Parliament

Introduction

This dissenting report first thanks all witnesses who testified during the subcommittee's review of Part 3 of the over 400-page, omnibus, budget implementation bill, which devotes an astonishing 150 pages to destroying 50 years of environmental oversight. The report thanks witnesses for their good faith and good will.

Sadly, not all perspectives are to be found in the subcommittee's report, but rather largely those voices that support the government's ideological and narrow perspective or a quote cherry-picked from lengthy testimony that could be construed as supportive of the government's agenda: namely, the gutting of environmental protection to fast-track development, rather than the promotion of sustainable development--development that meets the needs of today without compromising those of the future.

It is extremely unfortunate that the subcommittee's report does not strike the necessary balance between the economy and the environment, but instead focuses largely on development. Hence, this report will centre on the environment in order to give the perspective which is largely missing from the subcommittee's report.

While the government claims a balanced approach to protecting the environment and promoting economic growth, its actions are in direct opposition. The government should: (a) recognize that it does not face a choice between saving our economy and saving our environment, but rather between being a producer and consumer in the old economy, and being a leader in the new economy; (b) initiate discussions with provinces, territories, municipalities, labour organizations, industry sectors, First Nations and others to develop a green economy strategy for Canada, with goals for 2015, 2020, 2025 and 2030; and (c) ensure that its development strategy include skills development, training programs, certification courses, and transitional policies for workers and communities.

Real democracy would have allowed for: fulsome debate on this "kitchen-sink" bill; the subcommittee to invite the three relevant ministers (whoever took the decision to schedule the three ministers for one hour was not acting on the authority of the subcommittee); and the environment sections to be separated out, and to have been sent to the environment committee for clause-by-clause scrutiny--rather than being buried at the finance subcommittee.

If the Minister of the Environment, whose job it is to stand up for the environment and to conserve our country's natural heritage, really believes that Bill C-38 is good for the environment, he should have the courage to end this affront to our democracy and ensure careful, public study of the Bill's changes.

Recommendation 1: That the environment sections of Bill C-38 be removed, presented as a stand-alone bill, and be sent to a legislative committee for clause-by-clause study.

National Chief Shawn Atleo stressed that Canada endorsed the United Nations declaration on the rights of indigenous peoples which reflects the recognized customary international legal standard of free, prior and informed consent in November, 2010. Free, prior and informed consent, he reported, is not mentioned anywhere in Bill C-38.

The National Chief said: "To date, First Nations have not been engaged or consulted on any of the changes to the environmental and resource development regime proposed within Bill C-38 ...In its current form, part 3 of C-38 clearly represents a derogation of established and asserted First Nations rights. If enacted, it will increase the time, costs and effort for all parties and governments, as First Nations will take every opportunity to challenge these provisions."

The Union of BC Indian Chiefs wrote in an open letter, "Unacceptable Request for Comments on Proposed Regulations to Implement CEAA 2012": "The federal government's unilateral and draconian approach to amending the environmental assessment process is not being quietly accepted by First Nations, environmental organizations, or the general Canadian public."

Recommendation 2: That the government engage in regulatory overhaul for environmental laws that respect constitutionally protected Aboriginal Title, Rights and Treaty Rights, with appropriate engagement across the country.

After a mere 16 hours to study what the Environment Commissioner calls among the most significant policy developments in 30 to 40 years, the committee is left with many questions: for example, what proportion of current assessments will no longer receive federal oversight given the repeal of the Canadian Environmental Assessment Act (CEAA); what are the projected costs of changes to the CEAA for each province and territory; what assessments of the adequacy of the environmental assessment process in each province and territory have been conducted; how will a federal project define whether or not a provincial process is equivalent to the federal process, etc.

Recommendations: 3 That the government table in the House of Commons what types of projects will be included/excluded under the proposed changes to CEAA, and specifically, the proportion and types of current assessments that will no longer receive federal oversight.

Recommendation 4: That the government table in the House of Commons assessments of the environmental assessment process in each province and territory, how the government will define whether or not a provincial process is equivalent to the federal process, and how assessment of cumulative impacts will be undertaken.

Recommendation 5: That the government table in the House of Commons the projected costs of changes to the CEAA for each province and territory.

The subcommittee heard from, among others, the Hon. Thomas Siddon, who had previously been quoted as saying: “They are totally watering down and emasculating the Fisheries Act”. “They are really taking the guts out of the Fisheries Act and it’s in devious little ways if you read all the fine print ... they are making a Swiss cheese out of [it].” ... “The real scary part of this is that the one minister in Canada who has the constitutional duty to protect the fishery, which includes habitat, is the Fisheries Minister and these amendments essentially parcel out and water down his fiduciary responsibility, to the point that ... he can delegate his responsibility to private-sector interests and individuals.”

At subcommittee, the Hon. Thomas Siddon reported: “I’d refer to clause 147, the ‘let them off lightly clause’ ... ‘the minister cops out clause’, clause 150. I think this is probably one of the most important defects in this legislation, that the minister is able to download not only to provincial government under a previous clause, but even to private sector interests, even to delegating enforcement. ... I’d be happy to hear Mr. Ashfield stand up, as all former Ministers of Fisheries that I recall have done, and say, ‘I understand what my job entails. I am there to look after the fish, full stop. That’s what I am appointed by the Prime Minister to do, period.’ ... The bottom line, and my message—if this is my final word, Mr. Chairman—is to take your time and do it right. To bundle all this into a budget bill with all of its other facets, is not becoming of a Conservative government, period.”

Recommendation 6: That the government protect fish and fish habitat, not erode 144 years of history, and that the Department develop new fisheries act policies and regulations in collaboration with all stakeholders.

Recommendation 7: That the government define which fish will fall under Aboriginal, commercial, and recreational fisheries, and the criteria used.

Recommendation 8: That the government table in the House of Commons the projected costs to each province and territory resulting from the downloading of responsibilities from the Department of Fisheries and Oceans.

Recommendation 9: That the government table in the House of Commons the projected costs to Canadian fishers resulting from the ability of the Minister of Fisheries and Oceans to take fish quota, fishing gear, or equipment away from them in order to finance scientific and fisheries management activities, and a complete analysis of why such measures would be taken, and when they would be taken.

Unfortunately, it is impossible to highlight all problems with the subcommittee’s report in a short dissenting report.

In summary, therefore, this report makes the following over-arching recommendations:

Recommendation 10: That the government table any and all analysis to justify or substantiate all of the individual measures.

Recommendation 11: That the government table any and all consultations.

Recommendation 12: That the government take the time to consult, to undertake the necessary clause-by-clause study, in total, “to do it right”.

Mr. Stephen Hazell, Senior Counsel, Ecovision Law said: “Less haste will yield more speed, and a better law. My recommendation is that this subcommittee remove the proposed CEAA 2012 from Bill C-38, and propose to the finance committee overall that it be referred on to the House of Commons environment and sustainability committee for its review. I would further suggest that review be done in collaboration with some multi-stakeholder group. I would have suggested the national round table on environment economy, but obviously that's not possible.”

Unfortunately, the “blues” from Thursday, May 31st are not yet available, as I would very much like to directly quote Rachel Forbes, Staff Counsel West Coast Environmental Law. As such, I will paraphrase from her testimony yesterday. The government’s four stated pillars of its plan are to have more predictable and timely reviews, less duplication in reviewing projects, strong environmental protection, and enhanced consultation with Aboriginal peoples. Ms. Forbes said that we do not believe the proposed amendments and the new legislation in Part 3, Bill C-38, as currently drafted will accomplish any of the pillars, and may actually hinder them.

Governments worldwide are concerned with making the shift to the green economy—to stimulate growth, create new jobs, eradicate poverty and limit humanity’s ecological footprint. One of Canada’s reforms must be a shift to the green economy. It is therefore extremely unfortunate that the bill pits the economy against the environment, and that the debate was so polarized; Canadians deserved a real discussion

Conclusion

The bottom line is that our world-renowned natural heritage is at-risk, and being further imperilled by a government that is destroying 50 years of safeguards through Bill C-38 and Economic Action Plan 2012 — namely, severely cutting the budget to Environment Canada, gutting environmental legislation, canceling the National Roundtable on the Environment and the Economy, silencing dissent from environmental non-governmental organizations, and continuing to muzzle government scientists — and in so doing, impacting our economy today and in the future.

Finally, it is absolutely negligent that the government, which inherited a legacy of balanced budgets, would sacrifice the environment and the health and safety of Canadians in order to satisfy one particular short-term private financial interest, and cover-up its own economic mismanagement.