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# Standing Committee on Indigenous and Northern Affairs

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Chair: Mr. Patrick Weiler





## Standing Committee on Indigenous and Northern Affairs

Wednesday, November 6, 2024

• (1905)

[*English*]

**The Chair (Mr. Patrick Weiler (West Vancouver—Sunshine Coast—Sea to Sky Country, Lib.)):** Welcome to meeting number 129 of the House of Commons Standing Committee on Indigenous and Northern Affairs.

As always, 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 are able to do the important work of this committee on lands that they've stewarded since time immemorial.

Before we get started this evening, I want to thank members for gathering tonight at an unusual time for us. I also want to mention that tomorrow morning there are going to be tributes for the Honourable Murray Sinclair at 10 a.m. We are going to end our committee meeting slightly early tomorrow morning so that members have an opportunity to participate.

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

To help us with clause-by-clause consideration of Bill C-61, I would like to again welcome our witnesses to the committee.

We have, from the Department of Indigenous Services, Nelson Barbosa, director general, community infrastructure branch; Rebecca Blake, acting director, legislation, engagement and regulations; and Douglas Fairbairn, senior counsel for Crown-Indigenous Relations and Northern Affairs.

Before starting, I want to remind members that 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 see that there are a few subamendments that have already been circulated this way. You should have those either in an email or as a paper copy as well.

We finished our meeting on Monday at clause 4. We had just carried NDP-9. Tonight, we are going to start with NDP-10. With that, we can get started.

(On clause 4)

**The Chair:** I'll give the floor to anybody who might want to move NDP-10.

Go ahead, Ms. Idlout.

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

Thank you.

My apologies, but I have forgotten. What was the vote for NDP-9?

**The Chair:** Pardon me, Ms. Idlout. I didn't catch your question.

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

I have a quick question, because I didn't write it down. What was the result of the NDP-9 vote?

**The Chair:** Thank you for the question, Ms. Idlout.

The result of NDP-9 was that it was carried. That has been passed by the committee, and we are therefore going to be moving to the next amendment, which is NDP-10.

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

Thank you.

NDP-10 was brought forward by the Assembly of First Nations to recognize indigenous rights in their jurisdictions.

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

I will open the floor for those who want to make an intervention.

Ms. Atwin has her hand up.

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

I want to thank all members as well for being here this evening. I know it's a busy week and I know we have busy schedules, but this is just such an important piece of legislation. I really appreciate everyone's efforts.

On NDP-10, we certainly support the ability for first nations law to be enforced and agreed upon in protection zones. I'm just wondering if this actually provides any additional practical authorities. If it achieves what I think it's trying to achieve, I don't know if it adds anything to the bill specifically. I don't know if I can turn to our experts on our witness panel here to just give us some insight into what that amendment does.

**Ms. Rebecca Blake (Acting Director, Legislation, Engagement and Regulations, Department of Indigenous Services):** Yes, I appreciate it.

What I think you might be referring to is that the overall “Purpose” section of the bill outlines the key purposes to what follows. Already in paragraph (f), it really covers that source water protection and collaboration amongst provinces, territories, first nations and Canada. That's needed in those protection zones, as they're often off first nation lands, so that would be more the provision that applies to what you're probably trying to achieve through that one.

Thank you.

• (1910)

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

My apologies, but I forgot to mention earlier that because NDP-10 has been moved, NDP-11 cannot be moved. They are identical. I just wanted to make sure I flagged that for members.

Are there any other members who would like to make an intervention?

We will go to Mr. Battiste and then Monsieur Lemire.

**Mr. Jaime Battiste (Sydney—Victoria, Lib.):** I understand that the purpose of this section is to recognize the rights and to ensure that our laws are consistent with UNDRIP and the Constitution of Canada, and that you see this addition from the NDP as not necessarily needed because it's already covered in (f). Is that correct?

**Ms. Rebecca Blake:** That is correct.

**Mr. Jaime Battiste:** Okay.

[Translation]

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

I will now give the floor to Mr. Lemire.

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

Initially, we shared my colleague's concern. However, for the same reason as in the case of amendment NDP-9, we believe that this has an impact on provincial and territorial legislation and that it first requires a bilateral agreement with the provinces and territories.

For that reason, we will be voting against this amendment.

**The Chair:** Thank you very much, Mr. Lemire.

[English]

Are there any other colleagues who would like to make an intervention?

Mr. Melillo.

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

Just quickly, to build off the questions from Mrs. Atwin and Mr. Battiste, this not only seems to be covered in (f) but also seems to be fairly similar to NDP-9, if I'm not mistaken, which was just adopted. In terms of at least the guiding principles, with the addition of protection zones, would it not be covered in NDP-9 as well?

**Ms. Rebecca Blake:** Yes, absolutely.

**Mr. Eric Melillo:** That's good.

Thank you.

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

Unless there are any other interventions, maybe we can just go to a vote.

Shall NDP-10 carry? It sounds like we want a recorded division.

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

**The Chair:** As I mentioned before, NDP-11 cannot be moved because they are identical.

The next amendment we will be moving to is BQ-3.

[Translation]

I know that Mr. Lemire circulated the text of a new amendment and that committee members received it by email and on paper. That will be the new amendment if someone wants to move that motion.

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

The purpose of amendment BQ-3 is to meaningfully recognize and implement the United Nations Declaration on the Rights of Indigenous Peoples; it recognizes that the government has some performance and accountability obligations. We must also see positive changes in the various aboriginal communities.

Moreover, on a first-come, first-served basis, if our amendment passes, the NDP amendment will lapse. We feel that the word “recognized” should be part of the amendment. This is why we are introducing a new BQ-3 that incorporates the words “recognized” and “implemented”.

Therefore, the line would read: “which must be recognized and implemented in a meaningful way”. You can see it in the new version, amendment BQ-3.

• (1915)

**The Chair:** Thank you very much, Mr. Lemire.

Is there any debate?

Mr. Shields, go ahead.

[English]

**Mr. Martin Shields (Bow River, CPC):** Thank you.

I think there was a little confusion between what you said and what I heard. Is “Declaration on the Rights of Indigenous Peoples, which must be meaningfully implemented” what is being proposed?

[Translation]

**Mr. Sébastien Lemire:** Absolutely.

The text of amendment BQ-3 is on a related page.

[English]

Yes.

**Mr. Martin Shields:** Then do you have a definition of “meaningful”?

[Translation]

**Mr. Sébastien Lemire:** That is a good question.

Perhaps I could ask the experts what the meaning of “significantly” is.

There is also the political aspect of it. As I was saying, we need to send a message that positive changes for first nations must be made. That's why we suggested “significantly”, but if there's another interpretation, I'm prepared to put it in, obviously.

[English]

**Mr. Douglas Fairbairn (Senior Counsel, Crown-Indigenous Relations and Northern Affairs, Department of Indigenous Services):** Yes. The first part of the clause refers to ensuring “that laws in relation to water services on First Nation lands, and policies and practices” are implemented.

This “meaningfully recognize” would refer to those laws and policies, so “meaningfully” in this case means that the government must essentially take steps to ensure those laws are adhered to, and it would be done within the spirit of the United Nations Declaration on the Rights of Indigenous Peoples. I think that would be the context of “meaningfully”.

[Translation]

**Mr. Sébastien Lemire:** That is what we wanted the amendment to mean.

**The Chair:** Thank you, Mr. Lemire.

[English]

Mr. Shields, I see that you have your hand up as well.

**Mr. Martin Shields:** Just to follow up on that, it's very different from what you just said, Mr. Fairbairn. You said “must”, and there's no “must” in that. It says “meaningfully”. That's a very different connotation of “meaningfully” when you use the word “must” there.

If I were to interpret what you said, it says “must implement”, but this says “meaningfully”, which...

**Mr. Douglas Fairbairn:** In looking at the amendment, the copy I have says, “which must be meaningfully recognized.” Is that the amendment?

**Mr. Martin Shields:** That's the “must”. The “must” is that you must do it, but what is the definition of “meaningfully”?

If you just left out “meaningfully” and said that we must do it—must implement it—I think it's very clear, but when you put in that adjective, you have now made that fuzzier by putting in the word “meaningfully”.

If you must implement it, implement it. “Must” means you must do it. When you put the word “meaningfully” into it, you've fuzzified this.

**Mr. Douglas Fairbairn:** I think it's to give some emphasis. I agree that “must be recognized” just like that would be sufficient,

but I think the idea with “meaningfully” is that you're emphasizing the recognition.

**Mr. Martin Shields:** Legally, you know what “must” means: You have to do it.

**Mr. Douglas Fairbairn:** Yes, that's right. It means “shall”.

**Mr. Martin Shields:** Yes, so what does “meaningfully” have to do with it? Legally, it doesn't have a standing.

**Mr. Douglas Fairbairn:** Legally, yes, you could go with just “must be recognized” and that would be sufficient.

**Mr. Martin Shields:** I'm just trying to make it as clear as possible. By putting in adjectives, you make it fuzzy.

• (1920)

**The Chair:** Thank you very much, Mr. Shields.

Does anybody else want to weigh in on this before we get to a vote?

Go ahead, Mr. Melillo.

**Mr. Eric Melillo:** Chair, if I could, I'd like to build off the point that I believe my colleague was getting at.

In having the inclusion of this amendment and having it be “meaningfully” recognized and implemented, I suppose the question is this: Does it make any tangible change to the bill? UNDRIP is already mentioned in the bill. It's already law in Canada.

Again, is this more of a principle that we can get behind, or does it actually make a tangible difference in this legislation?

**Mr. Douglas Fairbairn:** The first part refers to ensuring “that laws in relation to water services” are implemented. I would say that you don't need this extra sentence to give meaning to what the clause already says. It gives some extra emphasis, I suppose, but it wouldn't change the actual meaning, legally.

**Mr. Eric Melillo:** Thank you.

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

I see Ms. Idlout has her hand up.

**Ms. Lori Idlout:** I have a quick technical question.

I know that, when we want to submit subamendments, they need to be written, especially if we're adding new words. Is that still the same condition if we want to delete words?

**The Chair:** That's a good question, Ms. Idlout.

Ideally, it would still be circulated, because it's not just about what it might be in English. It's also about what that translation might be in French. To be safe, that would be ideal. If members all agree it's not necessary, we don't have to. However, it avoids some potential risks if we go through the process of circulating it in written form first.

Thank you, Ms. Idlout. Unless there are any other colleagues who want to make an intervention, let's go to a vote.

Shall BQ-3 carry?

(Amendment agreed to [See Minutes of Proceedings])

[Translation]

**Mr. Sébastien Lemire:** Mr. Chair, this is the new amendment BQ-3 and not—

**The Chair:** Yes, of course, it's the new BQ-3.

**Mr. Sébastien Lemire:** Perfect, thank you.

[English]

**The Chair:** We will be moving to our next amendment, which is NDP-12.

I'll open the floor to Ms. Idlout.

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

Thank you, Chair.

NDP-12 was requested by the Assembly of First Nations. We discussed this beforehand.

I move this amendment.

**The Chair:** Thank you, Ms. Idlout.

NDP-12 is moved. We have a speaking list.

Mrs. Atwin, you're first.

**Mrs. Jenica Atwin:** Thank you, Mr. Chair.

We find that it's simply reiterating something we've already established, so it's kind of a redundancy.

I won't support it only because it's already in the bill.

**The Chair:** Thank you, Mrs. Atwin.

Are there any other colleagues who would like to weigh in, at this point?

Mr. Melillo.

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

I simply agree with everything Mrs. Atwin said. It's very similar to other amendments that have passed.

As we move through clause 4.... Last time, I think Mr. Schmale asked about a definition of "source water". If I'm not mistaken, there is no definition of "source water" in Bill C-61.

For the witnesses, I'm curious about whether there's a definition of "source water" used in any other pieces of government legislation, or in government law now. If you don't have that off the top of your heads, I would appreciate it if you could get back to us, because I think it is an important thing to clarify.

• (1925)

**Mr. Nelson Barbosa (Director General, Community Infrastructure Branch, Department of Indigenous Services):** Yes, absolutely. We'll return with that.

**Mr. Eric Melillo:** Thank you.

**The Chair:** Thank you, Mr. Melillo.

If there are no further interventions, let's go to a vote.

Shall NDP-12 carry?

(Amendment negatived [*See Minutes of Proceedings*])

**The Chair:** Our next amendment is NDP-13.

I'll open the floor for a mover of NDP-13.

Ms. Idlout, you have the floor.

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

Thank you.

I was not too sure how to say this. Thank you, Sébastien, for helping me out.

The File Hills Qu'Appelle Tribal Council has made this request. It's trying to make it clearer that the Government of Canada needs to collaborate.

**The Chair:** Thank you, Ms. Idlout. NDP-13 is moved.

Are there any colleagues who would like to make an intervention related to NDP-13?

Monsieur Lemire.

[Translation]

**Mr. Sébastien Lemire:** We will be voting against amendment NDP-13 because we believe it would have an impact on provincial and territorial legislation and that what is mentioned is not under federal jurisdiction.

**The Chair:** Thank you very much, Mr. Lemire.

[English]

Are there any other colleagues who would like to weigh in?

In that case, we can move to a vote.

Shall NDP-13 carry?

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

**The Chair:** Next, we will move to NDP-14.

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

Thank you.

I move NDP-14.

It's also being requested by File Hills Qu'Appelle Tribal Council. I thank them for supporting it.

I'm trying to make this.... A previous member of Parliament, Romeo Saganash, helped me prepare this and make it more understandable. I thank him for that. He helped me with this. I wanted to state that.

It pertains to our fresh water.

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

I have a speaking list here.

First, I have Mrs. Atwin.

**Mrs. Jenica Atwin:** Thank you, Mr. Chair.

We accepted the previous amendment because it's about ensuring collaboration occurs. It's putting the onus on the federal government to be that convener.

I think this NDP-14 amendment, though, oversteps that jurisdictional boundary and opens the bill up to potential constitutional challenges. We can't take that risk. Therefore, we won't be accepting this one.

• (1930)

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

[*Translation*]

Mr. Lemire now has the floor.

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

My question is for the officials.

If discussions fail or an impasse is reached, what mechanisms in Bill C-61 could resolve this impasse?

Do we have to go through the courts, do we have to go through a mediation process, or do we just do nothing?

[*English*]

**Mr. Nelson Barbosa:** Thanks for the question.

The question is not in relation to this amendment. I think it's broader. We'll get to some of the sections about protection zones. Essentially, is there willing co-operation among provinces, territories and first nation governments to align those laws? As currently drafted, there is no compelling mechanism to bring parties to the table, or to create binding mechanisms to superimpose laws, should there not be willing partners.

[*Translation*]

**Mr. Sébastien Lemire:** Thank you.

**The Chair:** Thank you very much, Mr. Lemire.

[*English*]

Next, I have Mr. Melillo on the list.

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

I'm also inclined to vote against this. Based on much of what was discussed already, I think this potentially has a lot of implications for provincial jurisdiction, and perhaps even beyond. I think the word "transboundary" is one that raises some flags for me. I'm thinking of my geography. Folks know I come from Kenora. I'm right on top of Lake of the Woods, which is an international body of water. It's an area shared among Ontario, Manitoba and Minnesota. I think there could be a number of concerns, even from an international standpoint, if this were to move forward.

I don't know whether officials have any comments on that, specifically, but I wanted to raise that concern.

**Ms. Rebecca Blake:** Yes, I appreciate the concern.

In the scope of federal Parliament, a bill can apply only in Canada—in case that helps, in terms of mitigating that. The co-operation that already exists around the lake near where you live would still remain in place. There would be no impact on that.

**Mr. Eric Melillo:** Absolutely. I didn't want to insinuate that. Maybe I wasn't clear. It would not impose itself on American waters or anything like that, but I think the fact that it is a shared body of water used as a source of water, recreation and a number of.... I think it could cause some concern.

I appreciate that response. Thank you.

**The Chair:** Thanks very much, Mr. Melillo.

Next, I have Mr. Zimmer. After that, it's Ms. Idlout.

**Mr. Bob Zimmer (Prince George—Peace River—Northern Rockies, CPC):** Thank you.

I agree with my colleague Mr. Melillo.

I'm from British Columbia. We have the Columbia River system. I have the Peace River in my riding, which affects Northwest Territories and beyond. Again, the Columbia River affects British Columbia and the U.S. Anything we do is going to have an effect on other jurisdictions. To me, the possible impact of this—despite your saying that it's limited by its scope—could still have a dramatic effect on water in those jurisdictions, plain and simple.

I'm concerned about this provision.

**The Chair:** Thank you very much, Mr. Zimmer.

I have Ms. Idlout on the speaking list.

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

Thank you.

I want to ask our expert witness this: Can you give us an idea of what it would look like if NDP-14 were to go ahead?

**Mr. Nelson Barbosa:** Thanks for the question.

As written—if it were entrenched in law—my interpretation would be that, in the case where an agreement between a first nation and a province or territory couldn't be affirmed, first nations laws would apply in lands that are not section 91(24). They would apply to lands off reserve.

That's my interpretation, if this comes into force.

• (1935)

**The Chair:** Thank you, Ms. Idlout.

I'm not seeing any other interventions or hands up. We can go to a vote on NDP-14.

(Amendment negated [*See Minutes of Proceedings*])

(Clause 4 as amended agreed to on division)

(On clause 5)

**The Chair:** We're making some good progress, colleagues. We have BQ-4, which was withdrawn. We will be moving on to G-2.

I'll open up the floor for Mrs. Atwin to move G-2.

**Mrs. Jenica Atwin:** Thank you very much, Mr. Chair.

I would like to move that Bill C-61, in clause 5, be amended by replacing lines 19 to 22 on page 8 with the following:

(3) The making of any decision under this Act is to be guided by the United Nations Declaration on the Rights of Indigenous Peoples, including the principle, referred to in the Declaration, of free, prior and informed consent.

It's about further enshrining our commitment to UNDRIP and implementing it. It underscores the importance of that co-development as described in UNDRIP. Specifically, that "consult and cooperate" language is very important for clarity. It also helps with additional definitions and a clarity piece throughout the bill. As well, it's consistent with my province, New Brunswick, where we have a "free, prior and informed consent" clause.

This is a very important amendment that I'd like to put forward.

Thank you.

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

[*Translation*]

Mr. Lemire, you have the floor.

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

In principle, I agree. I will still propose a subamendment to amendment G-2. You've already received the wording.

I have a question for the officials. Is this a commitment to be met, pursuant to articles 10, 29(2) and 32(2) of the United Nations Declaration on Indigenous Peoples? Those articles require the express consent of indigenous peoples before projects affecting their lands are approved.

[*English*]

**Ms. Rebecca Blake:** Unfortunately, I don't have that proposal right in front of me.

In context, the principles section is about guiding decision-making for all parties through the implementation of the bill. Take it as aligning UNDRIP with federal decisions and first nations' decisions. It's about collaboration among all parties, including provinces and territories—collaboration guided by all articles in that declaration. Again, it's about guiding decision-making, not necessarily that all decisions must rest on and fully check all of those boxes before that decision is made.

[*Translation*]

**Mr. Sébastien Lemire:** This doesn't require the explicit consent of indigenous peoples before projects affecting their lands are approved. The bill therefore doesn't ensure that first nations must give their express consent before a project is approved.

[*English*]

**Ms. Rebecca Blake:** It doesn't in the context of this bill, no.

[*Translation*]

**Mr. Sébastien Lemire:** In that case, Mr. Chair, I move a subamendment to amendment G-2. You received the printed wording. The subamendment is to incorporate articles 10, 29(2) and 32(2) of the United Nations Declaration into amendment G-2.

The subamendment would add text after the word "cause". As I said, it would also add articles 10, 29(2) and 32(2) of the declaration.

I can explain that, if you want.

• (1940)

**The Chair:** Yes, of course.

**Mr. Sébastien Lemire:** There are several elements. We want to protect first nations with regard to the movement of populations and the storage of hazardous waste, particularly on traditional lands. Such a situation requires the express consent of the peoples concerned. That seems fundamental to me.

Article 19 of the United Nations Declaration on Indigenous Peoples also directs states to consult with indigenous peoples to obtain their consent when adopting legislation or policies that may affect the free exercise of their rights. However, the focus is on article 32, which makes explicit reference to the economics of natural resources.

Article 32(2) says the following:

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

We want the prior consent of first nations before any project is adopted, in accordance with the articles mentioned in the United Nations Declaration on Indigenous Peoples and their scope.

**The Chair:** Thank you very much, Mr. Lemire.

[*English*]

I have a speaking list going here.

First, I have Mr. Schmale, and then Mr. Shields and Mr. Melillo.

**Mr. Martin Shields:** I'll go back to the original motion, not this one.

**The Chair:** We're now debating the subamendment.

**Mr. Martin Shields:** Yes. I'm out.

**The Chair:** I have Mr. Schmale first, and then Mr. Melillo.

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

Thank you, again, to our witnesses.

Thanks to the Bloc for their subamendment.

Either through this legislation or any other piece of government legislation, have we defined "free, prior and informed consent"?

**Ms. Rebecca Blake:** I'm not aware that we have.



**Mr. Jamie Schmale:** We're adding in this very important piece, but we haven't defined "source water", "protection zone" or "free, prior and informed consent". We will move forward with that piece of legislation, if it passes.

I'll repeat my question from Monday. What risks are we opening ourselves up to here?

**Mr. Nelson Barbosa:** Thanks for the question.

Per our conversation on Monday, there are both limitations and risks when we entrench things in law. On Monday, we spoke about limitations and risks associated with a definition around "protection zone". The same could apply to "source water" and "free, prior and informed consent".

For me, personally, the balance is between the strength of language in law and the rigidity of that law. That's difficult, sometimes, to undo.

**Mr. Jamie Schmale:** I remember that whole discussion when we were debating and discussing the UN declaration legislation at this committee. One of the issues we, the opposition, had was with the definition of "free, prior and informed consent" and what that actually meant. I remember I said—and so did many others on this side—that, if we don't do the work and start defining some of the major pieces in the legislation, we're going to wind up in trouble at some point and potentially in court.

Sure enough, Bill C-53 came along. Again, nobody had defined "free, prior and informed consent". Yes, that laid a lot on us—probably the vast majority around the legislature, those sitting at this committee and others in the House who don't belong to this committee. Nobody gave direction, through government legislation, on who needed to be consulted. We had first nations saying that they wanted to be consulted and Métis saying, "No, we don't need to consult them, because it's our own self-governance issue and it doesn't involve anyone." We didn't have that definition, which led us down a very bumpy road.

Having said that, we're talking about the very important issue of clean drinking water, but we are still a little vague in regard to three very important pieces. I think this committee should do the work and think about what that actually means, potentially adding a definition, as best we can, to this legislation, so that everybody knows what we are talking about when this bill gets passed. Otherwise, you're not going to be able to provide certainty to the first nations waiting for clean water. You are not going to be able to provide certainty to industry, which may or may not want to start an operation.

This is very concerning to me. I'd like some indication around this table that we are hopefully going to get to that before we wrap up the clause-by-clause at the end.

Obviously, that's not to the officials. It's to the group around the table.

I just happen to be looking in your direction, because you're right in front of me.

• (1945)

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

Next, I have Mr. Carr.

**Mr. Ben Carr (Winnipeg South Centre, Lib.):** Very quickly, Mr. Chair, to the officials....

I'm a little confused about the line of argument from Mr. Schmale. I understand where he's coming from. However, if the Parliament of Canada already adopted UNDRIP, which is inclusive of the language "free, prior and informed consent", then absent a definition of that language—which, as you answered a few moments ago, legislation already passed through Parliament—it's unclear to me what difference this would make.

In other words, we already passed a law that didn't define this but is guided by the principle of it. What difference would lacking a definition make, if that piece of legislation has already made its way through Parliament? I'm just trying to understand this for some clarity there.

Thank you.

**Mr. Nelson Barbosa:** Thank you for the question. I think you answered some of the finer points with some of the question.

I think UNDA and UNDRIP have been passed and acknowledged. They make reference to a series of provisions including free, prior and informed consent. Definition aside, to turn back to the motion, it would be referencing essentially provisions that are already entrenched in Canadian law.

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

Next, I have Mr. Shields, Mr. Melillo and then Mr. Zimmer.

**Mr. Martin Shields:** Thank you, Mr. Chair.

I'm following up on Mr. Schmale's point.

It was enacted in law and putting it in this one would then activate it, I believe. If it's activated and we have no definition, then it's going to be in the courts. We can give it some direction, or we can leave it to be dealt with by the courts. This activates that particular principle. It really does. It was passed in legislation before, but this piece of legislation would activate it.

I think that's the difference. We're talking about its having been in law in principle versus in legislation, which would activate it. That would be the challenge we have here of leaving it that way.

Maybe it's something we want to do, but then we have to understand that somebody else will have to give it a definition.

**The Chair:** Thank you, Mr. Shields.

I have Mr. Melillo, then Mr. Zimmer and then Mr. Carr.

**Mr. Eric Melillo:** I'll allow Mr. Carr to take that time.

**Mr. Ben Carr:** Thanks, Eric.

Very quickly, this is to Mr. Shields' point, and I would direct this to our Department of Justice folks.

Does the language that precedes the reference to it here matter? I'm talking specifically about the words "guided by".

Can you provide the legal explanation as to whether or not the fact that the language is preceded by "guided by" would therefore soften perhaps some of the concerns that my colleagues have raised?

• (1950)

**Mr. Douglas Fairbairn:** Yes, I would agree that it does. The making of decisions is guided by the principle of PIC as well as by article 10 and article 32.

I would say—

**Mr. Ben Carr:** In other words, just so I can summarize the last two points, we're now talking about guided by the spirit of a definition that perhaps is lacking here and perhaps lacking in legislation that's already passed. Nonetheless, we're talking about being guided by the spirit of something that is defined in a piece of legislation that is already the law of the land.

Tell me if I'm putting words in your mouth, but in your view, that could legitimately—and I understand where my colleagues are coming from—decrease the concern around the lack of a definition. Do I have that right?

**Mr. Douglas Fairbairn:** Yes, that's right.

The UNDA has essentially indicated Canada will be adhering to the United Nations Declaration on the Rights of Indigenous Peoples, and this, of course, is consistent with that.

**Mr. Ben Carr:** Thank you.

**The Chair:** Thank you, Mr. Carr.

Next, I have Mr. Zimmer.

**Mr. Bob Zimmer:** I have similar comments to what I think were made by my colleague Mr. Schmale.

In essence, this is what you're doing here. We all know that you could have had water yesterday. You could. You could have had it done in 2021 like you promised. What putting this kind of language into legislation like this puts you at risk of is, instead of having a free runway for getting water done, you're going to possibly put this before the courts. I shouldn't say you'll possibly put it before the courts. You will be putting it before the courts, because we've already had provinces concerned about this legislation and the protection of source water in those provisions. We've had a countless number of first nations speak to this committee on this very issue.

Instead of just having an unlimited capacity to get water to first nations, what you're doing by doing this is putting it into the courts. I think the public who are watching this right now need to understand the risk that you're putting this under by having these provisions in it.

Thank you.

**The Chair:** Thank you, Mr. Zimmer.

Next, I have Mr. Melillo, Mr. Schmale and then Mrs. Atwin.

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

I apologize for the confusion of raising and lowering my hand so often, but thank you for recognizing me again.

I appreciate the discussion. I think it's an important one.

I think I agree with much of what Mr. Carr said, especially the first time he had the floor, about the fact that UNDRIP has passed. It is law. I don't believe that what we're debating will actually have much of a tangible impact or change the legislation itself.

However, now that we are discussing it, there are some important clarifying questions that I have. There are some other amendments that will be coming that mention free, prior and informed consent. I'm wondering this: Without the amendment, would just this clause here already mentioning FPIC then ensure that free, prior and informed consent is necessary throughout all aspects of this legislation?

I'll start with that question.

**Ms. Rebecca Blake:** No. It's a guiding principle for decision-making. It's not necessary in terms of moving forward on decision-making.

**Mr. Eric Melillo:** Okay. It's just a guiding principle. There are some other amendments that want to put it explicitly into other aspects. Those amendments would still need to be moved for that to happen.

**Ms. Rebecca Blake:** I'm not sure if I understand the question correctly, but I'll take a stab at it. In essence, with a guiding principle, it's that any decision-making take into account that free, prior and informed consent. It does not mean that consent needs to be achieved in order to make a decision.

**Mr. Eric Melillo:** Given the fact that the UNDRIP has already passed in the House of Commons—free, prior and informed consent is already necessary through the UNDRIP—I'm wondering whether there are examples that the government can look to where it has been exercised and implemented.

• (1955)

**Mr. Nelson Barbosa:** We're happy to return with that as well.

**Mr. Eric Melillo:** I would appreciate it if you could. I'll just make a note of that.

Perhaps I'll ask another question.

Again, since UNDRIP has already passed, are there specific measures or...? What is the accountability mechanism for it within the government to ensure that the government is living up to it?

**Ms. Rebecca Blake:** I'll ask my colleague from the Department of Justice to also help on this one, but there is the report on implementation of the act. That is one of the key accountability measures.

I would also point to the committee's work, section 5 of UNDA, as we like to call it, which is to, "in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure" that federal laws are aligned with the declaration. That's part of the work that's ongoing through your committee today.

**Mr. Eric Melillo:** Thank you.

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

Next, I have Mr. Schmale.

**Mr. Jamie Schmale:** Thank you, Mr. Chair.

I'll just reiterate what Mr. Carr said. We know that the UN declaration is law, but—just so it's on the record—we do not have a definition for “free, prior and informed consent”. Is that correct?

**Mr. Douglas Fairbairn:** Yes, that's correct.

**Mr. Nelson Barbosa:** That is correct.

**Mr. Jamie Schmale:** Okay.

Again, this goes back to what I mentioned earlier when we said that this was going to be an issue back when we were discussing that very important piece of legislation. We agreed to the principles. We agreed with the vision. We agreed with everything in that UN declaration and the implementation legislation.

What we had an issue with was the definition, or lack thereof, of “free, prior and informed consent”, and we knew this was going to be a problem—maybe not right away but maybe years down the road. Sure enough, as I said earlier, Bill C-53 came along. Because that was not defined—and we heard it many times as witness testimony—nobody was really clear on what was going on.

I agree with Mr. Zimmer. We could be sending this into a battle in the courts at some point because a bunch of things, important terms, are not defined, especially “free, prior and informed consent”.

Again, I go back to Bill C-53. There are groups threatening court action on Bill C-53. I know it's in limbo right now, but at the same time, there are groups threatening court action. Why? It's because it was not defined at the time. We did not do our work. Of course, it was rushed through by the other parties. Nobody wanted to take the time to get it right.

Again, we're having major issues with some definitions. I would like to know, hopefully—or get a sign from someone in the room—that we will be getting to a definition at some point so that we know exactly what it is we are talking about, not some aspirational document that doesn't really define what source water protection zones are or what a protection zone is or what source water is. This is a piece of legislation that is severely lacking if we don't do our work here—absolutely severely lacking.

Thank you, Mr. Chair.

**The Chair:** Thank you, Mr. Schmale.

Next, I have Mrs. Atwin and then Ms. Idlout.

**Mrs. Jenica Atwin:** Thank you, Mr. Chair.

Just quickly, on the Department of Justice website, there's a public backgrounder for the United Nations Declaration on the Rights of Indigenous Peoples, which details:

More specifically, [free, prior and informed consent] describes processes that are free from manipulation or coercion, informed by adequate and timely information, and occur sufficiently prior to a decision so that Indigenous rights and interests can be incorporated or addressed effectively as part of the decision mak-

ing process—all as part of meaningfully aiming to secure the consent of affected Indigenous peoples.

It appears the Department of Justice has a definition that we can look to.

These are interesting arguments that I would probably like to refer back to when we come to different amendments with similar language down the line, but I appreciate seeking this clarity. We've heard from our experts that it's really just that guiding principle and we've already adopted UNDRIP, so I don't see an issue with it.

● (2000)

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

Next, I have Ms. Idlout. You have the floor.

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

First, I would like to say that, when Bill C-53 is being referred to, I don't recall what was in it. What I can recall is that Bill C-53 was not able to go through due to different factors with free, prior and informed consent. To me, it doesn't look like it will diminish the strength or make it weaker.

I support the amendments of both G-2 and what's being proposed. I support both of them because, even if they are not clearly defined, they will not create a roadblock. We are trying to plan ahead to the future. I don't know if the courts will need to define this, but even if it's brought forward to the court, I don't think it will be a roadblock.

I will support this amendment once we come to a vote on it.

Thank you.

**The Chair:** Thank you, Ms. Idlout.

Next on the speaking list, I have Mr. Schmale.

**Mr. Jamie Schmale:** Thank you, Chair.

I know when I ask this question, I'm speaking more to lawyers than to the policy or the actual department, but I'm hoping, through you, Chair, that either the officials could go back to their departments and get this information or the members across the way could text their department and get this information. That would be helpful.

For the witnesses, there are huge bonus points if you know the answer to this one. It's about the national assessment completed in 2011 of the first nations water and waste-water systems. Let's test some people's memories here.

Only 54% of water systems in first nations communities had fully certified primary operators, while 81% had backup operators. The report goes on to list that:

The ability to develop and retain suitable certified operators is critical to having a well run water or wastewater system. Certified operators are more likely to operate facilities in compliance with applicable guidelines and legislation. The absence of a certified operator may impact other issues such as monitoring, reporting and record keeping, and increases the risk associated with these components.

The assessment also found that there is a lower percentage of certified operators as the remoteness of the community increased.

Has that number moved? Again, I don't expect you to know that, but perhaps someone could text the department—not now, and probably not tomorrow morning. I know we meet early and you probably won't be...but at some point I wouldn't mind knowing that because it leads me to a bunch of new questions. I pose it now because it was at the top of my mind, and there are a couple of amendments for which that answer might be key.

Thank you.

**Mr. Nelson Barbosa:** I'm happy to speak to it, quickly.

**Mr. Jamie Schmale:** Really?

**Mr. Nelson Barbosa:** Yes.

**Mr. Jamie Schmale:** Wow.

**Mr. Nelson Barbosa:** I think you're referring to the Neegan Burnside review in 2011.

**Mr. Jamie Schmale:** Yes. It's the national assessment.

**Mr. Nelson Barbosa:** Certainly, that was a comprehensive spot check on systems and operators. I think the question is incremental difference. I don't have the comparability on stats, but I can say a couple of things.

There has been a significant investment in operators since 2011. There has been a 400% increase in operations and maintenance. I can stand corrected, but there has been a significant increase in operations and maintenance, including reviews of operator salaries to support recruitment and retention of operators on reserve. There's been a series of third party operator trainers and supports like the circuit rider training program, which was expanded considerably since 2011.

While Neegan Burnside was an excellent spot check, I think the question is about what the difference has been. I think there has been considerable investment in first nations operators. Those are really the quiet heroes behind the scenes who support the operations and maintenance systems in all first nations communities.

● (2005)

**Mr. Jamie Schmale:** Thank you. That's some very good institutional knowledge. I do appreciate those stats. That will come in handy a little later on.

Thank you.

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

I guess there were some bonus points there. I think we can get a gold star if we vote the subamendment.

**Voices:** Oh, oh!

**The Chair:** I don't see any more interventions.

Shall the subamendment carry?

(Subamendment agreed to [*See Minutes of Proceedings*])

[*Translation*]

**Mr. Sébastien Lemire:** Is it a majority or is it unanimous?

[*English*]

**The Chair:** It looks like unanimity.

**Mr. Jamie Schmale:** Can you suspend for a second before we take that vote? It would be for just a second.

**The Chair:** For the motion as...?

**Mr. Jamie Schmale:** For the subamendment, we need just two seconds.

**The Chair:** We just voted on the subamendment.

**Mr. Jamie Schmale:** Okay. All right.

**The Chair:** We now have amendment G-2 as subamended. That's where we're going now.

Does anybody want to say anything before we vote on it?

**Mr. Jamie Schmale:** Can we suspend for two seconds, please? Thank you.

**The Chair:** Okay.

● (2005)

(Pause)

● (2005)

**The Chair:** I call this meeting back to order.

Mr. Melillo.

**Mr. Eric Melillo:** I do not have anything to add.

**Voices:** Oh, oh!

**The Chair:** Great. Thanks for that.

Mr. Schmale...?

It doesn't look like anyone else wants to add anything at this time, so let's go to a vote on G-2 as amended.

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

(Clause 5 as amended agreed to on division)

(On clause 6)

**The Chair:** Colleagues, the first amendment we have for clause 6 is NDP-15.

Just for colleagues' awareness, if it is moved, then—

● (2010)

**The Clerk of the Committee (Ms. Michelle Legault):** It was withdrawn.

**The Chair:** Okay. I take that back. NDP-15 was withdrawn.

We will now move to amendment G-3.

Ms. Atwin, the floor is yours.

**Mrs. Jenica Atwin:** Thank you, Mr. Chair.

I move to amend Bill C-61, in clause 6, by replacing lines 29 to 33 on page 8 with the following:

(b) water and source water in a protection zone, if a First Nation governing body, the Government of Canada and the government of the province or territory in which the protection zone is located have

What that does is it creates that additional clarity around the definition of protection zones by removing “adjacent to”. We heard that from many witnesses. It's also further clarity around who is involved in determining the parameters of a protection zone. You'll see as we get there that it's about allowing indigenous communities to have that control. It responds to requests from first nations and legal experts.

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

Do any colleagues want to make an intervention before we go to a vote?

Mr. Melillo.

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

With removing “adjacent to”, could I ask the officials what effect that would have? I know it was mentioned that it was something brought forward by witnesses, but I think there is some concern around that.

Maybe I will let my question stand before I expand anymore. What would that removal of adjacency mean?

**Mr. Nelson Barbosa:** Thanks for the question.

Protection zone, again, is defined by partners. Laws are defined by partners, and the zone is created by partners, so adjacency, in my mind, is secondary to that collaborative effort.

**Mr. Eric Melillo:** When the protection zone is defined—and we know that we can't do that at this point because there's a collaborative process that has to happen—I suppose from a practical standpoint, I'm confused about why adjacency would have to be removed.

I don't want to put Mrs. Atwin on the spot, but if she has any comments from witnesses she wants to turn to, I would appreciate it. We're talking about source water protection zones, of course, and I'm not sure of instances where nations would be drawing water from somewhere that is not adjacent to them. I'm just curious about the practicality of that.

**Mr. Nelson Barbosa:** Thanks for the supplemental question.

As we've discussed and have heard from many, water sources in this country are large. They can be as long as some provinces, like the Athabasca watershed. Therefore, it's about utilization, and about collaboration and partnership. The agreements between parties would define that. It's less about geographic proximity and more about the agreement to align laws.

**Mr. Eric Melillo:** I have one more question, if I may, Mr. Chair.

Obviously adjacency was included by the government, and now the government is looking to remove it. I'm wondering if you could speak to why adjacency was originally included in this section.

**Mr. Nelson Barbosa:** Would you like me to speak to why it was included?

**Mr. Eric Melillo:** Why was adjacency originally included in this section?

**Mr. Nelson Barbosa:** I can't speak to that.

**Mr. Eric Melillo:** You can't speak to that.

**Mr. Nelson Barbosa:** No, not specifically. I think it was drafted as part of the efforts to table a bill based on years of collaborative efforts, and I'm glad that it is being assessed here today.

**Mr. Eric Melillo:** I can appreciate that.

I would assume that there would be some rationale for why it was included. I don't know if any government members can assist me with that or not, but it just seems strange that it was included by the government, and the government now does not want it included.

I'll let that question stand for now if we're unsure, and I'll cede the rest of my time.

Thank you.

**The Chair:** Thank you, Mr. Melillo.

Next, I have Mr. Shields.

**Mr. Martin Shields:** Thank you, Mr. Chair.

Going back to what you said, by taking the definition out, you're suggesting that adjacent.... I think we would understand “adjacent”. He's adjacent to me, and you're not. You would suggest that the definition changes to.... If I'm talking about the Saskatchewan River basin, that goes from B.C. to Hudson Bay. Are we talking that broad here, when you take adjacent out? Is that what you're saying?

**Mr. Nelson Barbosa:** Thank you for the question.

In my mind, it would be difficult to define adjacency as well. Water does flow. It could flow from me to you or flow from anywhere, including large bodies of waters, which we've talked about, including transboundary waters, which are international. I feel that the point is about the collaborative efforts, the agreement and the coming into force, and less about the geographic or geospatial relationships.

• (2015)

**Mr. Martin Shields:** I understand what you're saying, but I think we understand what adjacent means. When you say that's not clear, I think it's really clear. He's adjacent to me, and you're not. However, what you're saying is that there's something else that you would say overrides this through the discussion, so that this doesn't become as relevant; it becomes secondary. I think that's a risk.

To say if we take “adjacent” out, then the other part is not as important because you will have done something else more important because of what the clause says, that's a concern for me, because I understand what adjacent means and you just said something else is going to override the concern on that. That's a real concern for me.

**The Chair:** Thank you very much, Mr. Shields.

I'm not seeing any other hands up, so let's move....

Mr. Zimmer.

**Mr. Bob Zimmer:** We've had a member from Alberta. I'll speak from a British Columbian's perspective.

I spoke about the Columbia River system before, and I spoke about the Peace River system and its connection to the Northwest Territories and the Arctic. By removing that adjacency, for one particular project, you could say that protecting source water could affect almost an entire province, potentially, in the so-called protection zone.

I'd be concerned that its implications could be vast. You said the definition is loose, but its effects could be very impactful to the province, so I would be very concerned about this provision as well.

**The Chair:** Thank you, Mr. Zimmer.

With that, we'll go to a vote. Shall G-3 carry?

(Amendment agreed to on division)

**The Chair:** That brings us to NDP-16. I'll open up the floor to Ms. Idlout.

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

Thank you, Mr. Chair.

NDP-16 was given to me by the B.C. Assembly of First Nations. It's trying to strengthen clause 6 and make the details clearer about when there's collaboration. It's trying to make it more understandable and clearer. For example, if there were a disagreement, they would refer to first nations laws.

Does that make sense?

**The Chair:** Thank you, Ms. Idlout.

NDP-16 has been moved. Is there any debate?

I see Mr. Melillo and then Mr. Lemire.

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

I'm just curious about the scope of this. It seems to me like it is putting a lot of onus on the provinces that we, as a federal government, don't necessarily have the authority to do, unless I'm misreading it.

**Mr. Nelson Barbosa:** I don't know about an onus, but it certainly puts on an obligation. That's a much better word.

**Mr. Eric Melillo:** You would agree that this is placing an obligation.

**Mr. Nelson Barbosa:** It's similar to the previous one we talked about regarding provincial obligations. I forget the provision.

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

That's all.

**The Chair:** Thank you, Mr. Melillo.

[*Translation*]

Mr. Lemire, you have the floor.

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

At first glance, we will be voting against amendment NDP-16, but I would still like to ask a question.

Does Bill C-61 mean that first nations can only legislate on their lands?

[*English*]

**Mr. Nelson Barbosa:** The defining characteristics of the legislation are about the law-making ability for first nations on first nations lands. Protection zones are about collaboration, but the overarching intent is laws on first nations lands.

• (2020)

[*Translation*]

**Mr. Sébastien Lemire:** What would be the impact of the proposed amendment? What would this amendment do?

[*English*]

**Mr. Nelson Barbosa:** Thank you for the question.

Subclause 6(3) reads, "must enter into a coordination agreement". That creates an obligation off first nations lands, which isn't currently considered in the draft bill.

[*Translation*]

**Mr. Sébastien Lemire:** Okay. Thank you.

**The Chair:** Thank you, Mr. Lemire.

[*English*]

Next, I have Mr. Zimmer on the list.

**Mr. Bob Zimmer:** Subclause 6(3) reads, "At the request of a First Nation governing body, the Minister and the government of the province or territory in which the protection zone is located must enter". I'm curious about jurisdiction. Is the federal government in a position to tell a province, especially about a resource, that it must enter into this particular coordination agreement?

That's a question I'll ask of you.

**Mr. Nelson Barbosa:** The answer in relation to this legislation is no.

**Mr. Bob Zimmer:** Thank you.

**The Chair:** Thank you, Mr. Zimmer.

I'm not seeing any other hands up. Let's move to a vote.

Shall NDP-16 carry? It looks like NDP-16 is defeated.

**Ms. Lori Idlout:** I have a point of order.

**The Chair:** Go ahead, Ms. Idlout.

**Ms. Lori Idlout:** I want to make sure that my vote is recorded.

**The Chair:** Let's go to a recorded vote.

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

(Clause 6 as amended agreed to on division)

**The Chair:** With that, we are moving to new clause 6.1 and NDP-17.

Ms. Idlout, I'll hand the floor over to you.

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

Thank you.

This was given to me by the Nishnawbe Aski Nation. It was trying to make clear that the law would have to be applied and be binding on His Majesty the King and the provinces.

**The Chair:** Thank you, Ms. Idlout.

Go ahead, Mr. Melillo, on NDP-17.

**Mr. Eric Melillo:** Similar to the last amendment, would the government have this authority?

**Mr. Nelson Barbosa:** In relation to a court of a province, the answer is no.

**Mr. Eric Melillo:** There's a little bit there to wonder. I want to throw this out there, because I get the spirit of what's trying to be achieved. It doesn't seem like there's a will among the committee to move this forward as is.

Would it be more simplified, if you simply removed the province?

**An hon. member:** [*Inaudible—Editor*]

**Mr. Eric Melillo:** I know. I'm looking at you, because you're sitting adjacent to me. I want to get a feel from the room on that. If the desire is to vote it down, I would also be okay with that.

I'm going to stop talking. Thank you.

• (2025)

**The Chair:** Thanks, Mr. Melillo.

Go ahead, Mr. Lemire.

[*Translation*]

**Mr. Sébastien Lemire:** I think the intentions are clear, but I'm still curious. Maybe it's just a personal curiosity, but I was wondering what it would add to the responsibilities of His Majesty in right of Canada if it were quoted as such in this bill.

[*English*]

**Mr. Nelson Barbosa:** If it's His Majesty in right of Canada, that is what this act is affirmed to do. If it is His Majesty in right of Canada or a province, that would be a jurisdictional quandary.

[*Translation*]

**The Chair:** Thank you, Mr. Lemire.

[*English*]

We have a point of order.

**Mr. Eric Melillo:** Thank you.

I was heckled a lot during my intervention. I want to make sure that all members understand there shouldn't be any crosstalk during committee proceedings.

**The Chair:** Thank you, Mr. Melillo. I'm not sure it was a point of order, but in any event, let's go to a vote.

Shall NDP-17 carry? We'll have a recorded division.

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

(Clause 7 agreed to on division)

(On clause 8)

**The Chair:** That brings us, colleagues, to clause 8.

BQ-5 is the next amendment that we have up. I understand that new language for BQ-5 has been circulated.

[*Translation*]

Dear colleagues, you received a hard copy of the new version of amendment BQ-5, and you also received it by email.

I'll give the floor to Mr. Lemire to present this new version if he wishes.

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

Indeed, to avoid line conflicts, we're proposing to incorporate elements of amendment NDP-19 that we find interesting. It's a bit of a mix of BQ-5 and NDP-19 that we're proposing in the new version of BQ-5.

Essentially, the purpose of the motion is to be consistent with the testimony heard at this committee on clause 8 of Bill C-61.

Do you want me to give you some time to read it? You have the hard copy. That's fine.

We want to ensure that the status quo applies to the St. Lawrence Seaway, among other things, and that the parties involved apply the consultation mechanisms provided for and the implementation of the United Nations Declaration on the Rights of Indigenous Peoples, but we want to avoid the conclusion.

In terms of incorporating elements of NDP-19, there really needs to be a reference to the government taking steps to consult and work with first nations. Recent agreements can cause harm to the fishing industry, whether in British Columbia, Quebec or the Maritimes. For first nations, fishing is a fundamental right, but it's being denied in many situations. In the circumstances, I find it interesting or important that this aspect be included in the bill. This is mainly because some communities weren't consulted on Bill C-61, or didn't see the final version that was presented to Parliament. We want this bill to be limited to the acts cited in the amendment that's being proposed here.

In short, here is the new version of amendment BQ-5. I can read it, but I think you've already read it anyway.

**The Chair:** Thank you very much, Mr. Lemire. I think all committee members received the new version of amendment BQ-5.

• (2030)

[English]

BQ-5 has been moved. I'll just inform members that if BQ-5 is adopted, NDP-19 cannot be moved because of a line conflict.

[Translation]

Thank you very much, Mr. Lemire, for your explanations.

Is there any debate on the new version of amendment BQ-5?

[English]

I have Ms. Idlout and then Mr. Schmale.

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

I would like to ask the expert witnesses this regarding the BQ-5 amendment and NDP-19: How different are they? Which one has more strength? From my understanding or from my thoughts, the subamendment, if it were to be added to NDP-19, would it be the same?

**Mr. Douglas Fairbairn:** The existing clause 8 refers to a number of federal statutes that are not in BQ-5. BQ-5 would take out the Canadian Navigable Waters Act, the Canada Marine Act, and the Canada Shipping Act. Those were included because there is a national interest to ensure that not just first nations laws, but also provincial laws, don't affect shipping and so on. The idea is that federal laws would be paramount over all provincial laws, first nations laws and so on. That is the first significant part of BQ-5.

In reference to NDP-19, it would introduce a new element of consultation and co-operation into this. Right now, it's a very strict statement saying these federal laws are, in effect, paramount over any other laws that might conflict. Introducing NDP-19 would mean that the federal government has to consult and co-operate with first nations before that limitation could come into effect. It basically changes a strict paramountcy clause into a more conditional paramountcy clause, whereby the federal government must first make these consultation efforts and then the clause could potentially kick in.

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

Can I have a supplemental question?

Regarding BQ-5, would it touch on the federal government's jurisdiction? For example, if the Canadian Navigable Waters Act were to be taken out, what would the effect be?

**Mr. Douglas Fairbairn:** The effect would be that, if a first nations law was enacted, for example, by a coastal first nation that somehow affected shipping, and that first nations law conflicted with the federal navigable waters protection act, for example, you could have a situation where it's not clear whose act is to prevail. The first nation might say its act should prevail because it's in its jurisdiction in its coastal waters.

The idea of the federal paramountcy here is to ensure that there's a rule to address a conflict in that sort of situation.

• (2035)

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

If I understood it correctly, with NDP-19, there's a bit of a difference in that first nations laws would have more strength, if it were to be added to BQ-5.

**Mr. Douglas Fairbairn:** NDP-19 wouldn't necessarily give more strength to those first nations laws, but it would introduce a new step. The Government of Canada would have to consult and co-operate in relation to this paramountcy clause. Right now, it's a very strict statement saying which laws are paramount. There would be a more conditional stage before that.

**Ms. Lori Idlout:** Okay. I think my question was misunderstood, so I'll ask it in English.

On the subamendment, which adds NDP-19.... I appreciate that attempt to incorporate language from NDP-19 into your subamendment. I am still concerned about the original BQ-5.

What would the impacts on the federal jurisdiction be if some of those acts were removed?

**Mr. Douglas Fairbairn:** If the bill passes, first nations can make laws on drinking water, and those laws can coexist with federal laws, but if there were a conflict with a federal law, then that federal law would take precedence, essentially. Right now, if the Canadian Navigable Waters Act, for example, were taken out, a first nation law could potentially govern some aspect of navigation, whereas, right now, the bill ensures that there is a rule, basically, in this provision that says that, if the laws conflict, the federal law would prevail.

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

Let's go to the vote. Will BQ-5 carry?

[Translation]

**Mr. Sébastien Lemire:** Mr. Chair, I would ask for a recorded vote.

[English]

**The Chair:** We'll do a recorded vote.

(Amendment negatived: nays 9; yeas 2 [*See Minutes of Proceedings*])

**The Chair:** The next amendment is NDP-19.

I'm providing the floor to Ms. Idlout.

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

Thank you.



I think it's clear enough. I've been talking about it recently, not just now. It's telling the government to do consultations with first nations and for first nations laws to be applied.

● (2040)

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

Let's go to a recorded vote.

(Amendment negatived: nays 9; yeas 2 [*See Minutes of Proceedings*])

(Clause 8 agreed to on division)

(On clause 9)

**The Chair:** The first amendment we have is NDP-20.

I'll provide the floor to Ms. Idlout if she'd like to move NDP-20.

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

Thank you.

Regarding NDP-20, it was given to me by the Nishnawbe Aski Nation.

I want to remind you that it's been brought by the NDP, and it's been requested by the first nations peoples. It's supposed to add to clause 9 that, if a first nation law was to be amended, there should be a starting point.

Thank you.

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

NDP-20 has been moved. Is there any debate on NDP-20?

Mr. Shields.

**Mr. Martin Shields:** Thank you.

This is for our experts today. When I read this, we have laws made by different levels of government. They can't be in conflict with each other, but ruling over them.... I think this particular amendment could be a conflict.

What is your opinion?

**Mr. Douglas Fairbairn:** First nations laws are intended to apply on first nations lands, and first nations can make their own laws. Having the force of law is not needed. Basically, the force of law is intended to clothe first nations laws with the strength of federal laws. Because this applies on first nations lands, in clause 6, Parliament is saying first nations have an "inherent right" to make laws.

It would seem a bit contradictory to say that in order for those laws to actually have force, you need the force of federal law. They should be able to apply on their own force on first nations lands. This provision would seem to be inconsistent with paragraph 6(1) (b) and the recognition of inherent right.

**Mr. Martin Shields:** You believe this currently says that, if they passed a law on their land, it wouldn't have the force of law outside of their lands and could be enforced by any other enforcement agency.

**Mr. Douglas Fairbairn:** The law would not have the force of law outside first nation lands, but a first nation could enter into agreements with provinces, for example, to seek assistance in implementing its laws on first nations lands.

● (2045)

**Mr. Martin Shields:** I understand that clearly, but this would suggest that you couldn't have a first nation law that can be enforced off their particular land by whomever, whether it's them or a contracted agency.

**Mr. Douglas Fairbairn:** Yes, that's right.

The law is supposed to apply on first nations lands. It has its own inherent force on first nation lands, but because the bill is focused on first nations lands, that is the limit of the jurisdiction of the first nations law.

**Mr. Martin Shields:** If a municipality, let's say the City of Calgary, decided to have a law within the city of Calgary, it wouldn't have to have any reference to federal law. Why do we need it here?

**Mr. Douglas Fairbairn:** That's right. You don't need a reference to the force of federal law here. The first nations law would have its own inherent force on first nations lands.

**Mr. Martin Shields:** That's right.

Thank you.

**The Chair:** Thank you, Mr. Shields.

Next, I have Mr. Schmale on the speaking list.

**Mr. Jamie Schmale:** Actually, Mr. Shields asked all the questions I was going to ask.

In this case, I don't know if it is clear or not, and I apologize if this question has been answered before. You three might not know the answer. I might have to ask Ms. Idlout.

When she's talking about the first nations law and where it applies to first nations land, is it meant for their traditional land or the reserve land and the boundaries proper?

**Mr. Douglas Fairbairn:** It is the reserve land.

**Mr. Jamie Schmale:** It's the reserve land. Thank you.

**The Chair:** Thank you, Mr. Schmale.

Next, I have Mrs. Atwin.

**Mr. Eric Melillo:** On a point of order, Mr. Chair, I'd like to ask if I understood something correctly.

I thought Ms. Idlout mentioned that this is something that was advocated for by first nations. I'm wondering if she can speak to any more specifics about that.

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

It was the Nishnawbe Aski Nation that wrote to us. There's a summary on page 8. They tried giving us.... They asked, when people have a right, for example, to fresh water, will Bill C-61 have a foundation? They want this affirmation. They said they're concerned because Bill C-61 is not clearly defined. For example, they want the federal government to.... The Nishnawbe Aski Nation is trying to make this more visible or to put this out more clearly. When provinces have their own laws, will they be applied to first nations laws? This is trying to strengthen.

When first nations create laws, they want their laws to have more effect—not just be written down. Here in the federal government, laws can change. For that reason, if first nations laws were to change, they should be written down and have the same level as federal laws.

Is this understandable?

• (2050)

**The Chair:** Thank you, Ms. Idlout.

I hope, Mr. Melillo, that this answers your question.

**Mr. Eric Melillo:** It does.

**The Chair:** Seeing no other hands, let's move to a vote.

Mr. Schmale.

**Mr. Jamie Schmale:** If I may, Ms. Idlout, as we're studying indigenous policing and the problems there, this amendment might fit in quite nicely and fix some of the issues many chiefs have brought up.

**Mr. Jaime Battiste:** I'd be happy to get on with that study, once we're done here.

**Voices:** Oh, oh!

**Mr. Jamie Schmale:** We still have to finish the excise tax one.

**The Chair:** Thank you, Mr. Schmale. We can file that one away for later.

Shall NDP-20 carry?

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

I would like the vote to be recorded.

**The Chair:** It's a recorded division.

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

(Clause 9 agreed to on division)

(Clause 10 agreed to on division)

(On clause 11)

**The Chair:** The first amendment we have is NDP-21.

I will open the floor up to a mover for NDP-21.

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

Thank you.

This has been given to me by the British Columbia Assembly of First Nations. In this clause, it's on sections 5 to 16 of the act.

Thank you.

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

NDP-21 has been moved.

On debate, we have Mr. Melillo.

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

While we're having a side discussion here, I might as well bring it to the forefront. I understand the change. I think it's fairly minimal, but what it would do—and please correct me if I'm wrong—is remove section 8, because, as it's currently written, it says “7 to 9”, and this would be “5, 7, 9”. I just want to make sure that I'm understanding this.

I'm seeing nodding.

Thank you. That's all I have for now.

**The Chair:** Thank you, Mr. Melillo.

I'm not seeing any other hands up. Let's go to a vote. Shall NDP-21 carry?

Ms. Idlout, would you like a recorded division?

• (2055)

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

Yes.

**The Chair:** Let's do a recorded division.

(Amendment negatived: nays 9; yeas 2 [*See Minutes of Proceedings*])

**The Chair:** Next, we had BQ-6, but BQ-6 was withdrawn, which takes us to the new NDP-22.

I'll open up the floor. I understand that a new version of NDP-22 was sent out yesterday. That should have been circulated to colleagues. I'll open up the floor to a mover for NDP-22.

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

Thank you.

Thank you, Sébastien, for handing me this.

We added to BQ-6. It was to add the traditions and customs of first nations to (2)(b). This was given to us by the Assembly of First Nations. They have stated that, for first nations laws, if they are not in agreement with other first nations laws, there should be negotiations with other first nations governments.

The text is clear. I'll leave it at that.

**The Chair:** Thank you, Ms. Idlout.

NDP-22 has been moved.

On debate, I have Mr. Melillo.

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

This is a point of clarification before we get into the discussion. I'm not sure if I have the up-to-date amendment.

Did you say that it was circulated yesterday?

**The Chair:** I'm not sure if that was clear on the microphone, but it was in the second package of amendments that was circulated on Monday.

**Mr. Eric Melillo:** Maybe we could pause for a couple of minutes just to make sure that we all have the right amendment. I think there's some confusion.

**The Chair:** Sure. We'll just pause for a brief second here.

Colleagues, we just sent it back around. It was sent on Monday. It would have been in the package that folks would have received.

We're fast approaching 9 p.m., which was the time we had scheduled to go until tonight. I think there might be unanimous consent to recognize the time as 9 p.m. right now and adjourn until tomorrow morning.

Is it the will of the committee to adjourn?

**Some hon. members:** Agreed.

**The Chair:** The meeting is adjourned.

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