



HOUSE OF COMMONS  
CHAMBRE DES COMMUNES  
CANADA

44th PARLIAMENT, 1st SESSION

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# Standing Committee on Indigenous and Northern Affairs

EVIDENCE

**NUMBER 134**

Tuesday, November 26, 2024

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Chair: Mr. Patrick Weiler





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• (1005)

[English]

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

Good morning, colleagues. Welcome to meeting number 134 of the House of Commons Standing Committee on Indigenous and Northern Affairs.

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

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 nations lands.

To help us with clause-by-clause consideration of Bill C-61, I would like to rewelcome our witnesses today.

From the Department of Indigenous Services, we have Nelson Barbosa, director general, community infrastructure branch; and Rebecca Blake, acting director, legislation, engagement and regulations. From the Department of Justice, we have Douglas Fairbairn, senior counsel.

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

I know we'll have a very long day today, but there will be food to keep people going throughout the day, plus coffee and anything else. We should be set for a very good day today.

(On clause 27)

**The Chair:** With that, let's resume where we left off yesterday, which was at clause 27. NDP-55 is the next amendment up for consideration.

I want to welcome Ms. May to the committee here today.

I'll hand the floor over to Ms. Idlout for NDP-55.

**Ms. Lori Idlout (Nunavut, NDP):** *Ulaakut.*

Welcome, Elizabeth, for joining our committee today.

NDP-55 is an amendment submitted to us by the File Hills Qu'Appelle Tribal Council. They would improve Bill C-61 in clause 27 by replacing line 4 on page 15 with the following:

First Nation governing bodies, based on their own consultation policies, in respect of a framework

*Qujannamiik, Iksivautaq.*

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

NDP-55 has been moved. We'll open it to debate.

First, I see that Mr. Melillo has his hand up, so I'll turn the floor over to him.

**Mr. Eric Melillo (Kenora, CPC):** Thank you, Mr. Chair. It's good to see you again.

It's good to see everyone at the committee. I hope you all feel the same about me, but we'll find out.

I appreciate this being brought forward by Ms. Idlout. I think it's clear that, throughout the process here, I've been a fan of consultation and co-development wherever possible.

I have a question for the officials here.

The words "based on their own consultation policies", to me, make things a bit unclear on what exactly the obligation of the federal government would be.

Could you describe how you view that?

**Mr. Nelson Barbosa (Director General, Community Infrastructure Branch, Department of Indigenous Services):** Thanks for the question, and for having us back.

I don't think all first nations have consultation policies that they have enshrined as part of their governance makeup. While that could apply to File Hills Qu'Appelle and other first nations, I think it's fair to say that not all first nations have enshrined consultation policies and engagement with the Crown or other parties, including in the private sector.

• (1010)

**Mr. Eric Melillo:** Given that, would this perhaps create a bit of uncertainty on what the expectation is of first nations governments and the federal government?

**Mr. Nelson Barbosa:** I think it would create inconsistencies, yes.

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

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

Next, we'll go to Ms. Idlout.

**Ms. Lori Idlout:** I would be willing to consider a subamendment to reword it so that it says it's for those that do have them.

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

If a member wants to move a subamendment, this is the opportunity to do that. Of course, we would need that subamendment to be submitted in writing and shared with the committee.

Ms. Idlout.

**Ms. Lori Idlout:** Given that it is a first nation that is requesting this amendment, I do hope that another party sees fit to send us a subamendment, so that we all as MPs are listening to the first nations who are requesting improvements to this bill.

As I said, this amendment was submitted to us by File Hills Qu'Appelle Tribal Council, who, because they possibly have their own consultation policies, would like to have it incorporated, so I encourage an MP to submit that subamendment.

*Qujannamiik.*

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

We'll give the opportunity here if there is a member who would like to do so. Of course, the mover of an amendment cannot subamend their own amendment.

**Mr. Eric Melillo:** Can I have the floor?

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

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

I just wanted to make it clear that you knew what I was raising my hand for.

Again, I appreciate what I believe the intent of this is, but, given the comments we heard about inconsistencies, I still think that inconsistencies would be created even with that hypothetical subamendment, so we won't be moving that subamendment.

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

I'm not seeing any hands up. I guess at this point we can move to a vote.

(Amendment negated: nays 10; yeas 1)

**The Chair:** This takes us to CPC-9.

I'll open the floor to Mr. Melillo.

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

I am happy to move CPC-9, which I think falls in line with many of the amendments we have been bringing forward from our side.

As it would read, it would include "co-develop the framework with those bodies."

Let me just come back here. Subclause 27(1) currently reads:

The Minister must consult and cooperate with First Nation governing bodies in respect of a framework for assessing needs—and the making and implementing of funding allocation decisions—respecting water services on First Nation lands.

This would add, after "water services on First Nation lands":

and must co-develop the framework with those bodies.

That ensures that first nation governing bodies, once again, have a direct say and input to be able to guide this process.

I'm not going to belabour the point, because we've heard a lot of quotes already from witnesses. We've heard from chiefs and community leaders who came and told us that they did not feel adequately consulted on this legislation and had some concerns with the authority afforded to the minister. Although there is that "consult and cooperate" language, this hopes to take it a step further and ensure that there is co-development and that the minister is unable to make any decisions that the first nation may not approve of without that direct involvement.

Again, I said I did not want to belabour it, but I think I went on a bit of a ramble there, so I'll cede the floor now and open it to any comments from my colleagues.

● (1015)

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

CPC-9 is moved. I want to inform members that if CPC-9 is adopted, NDP-56 and PV-6 cannot be moved, due to a line conflict.

With that, I will open it up to debate if there are any members who would like to make an intervention at this time.

**Mr. Jaime Battiste (Sydney—Victoria, Lib.):** On division.

**The Chair:** Okay.

Go ahead, Ms. Idlout.

**Ms. Lori Idlout:** Could you explain where that conflict happens? If we pass CPC-9, where CPC-9 seems to be about co-development of the framework with those bodies, this seems to be quite a different intent from what NDP-56 means. NDP-56 talks about meeting, as a minimum, obligations set out in clauses 31, 33 and 34.

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

Just to be clear, this isn't a matter of the substance of each of the different amendments put forward. Rather, the actual line in the legislation conflicts. This is line 7 on page 15. They all make an amendment to the same line of the bill. Unfortunately, if one is adopted, the other ones can't be moved.

Ms. Idlout.

**Ms. Lori Idlout:** If I understand clearly, before debating NDP-56, what we need to consider is the intent of co-development, as opposed to ensuring minimum obligations are met, as included in section 31, section 33 and section 34.

**The Chair:** Thanks, Ms. Idlout.

I think that's fair to say, because, if this amendment is adopted, the other two cannot be moved. It is a good time to consider the other two amendments as well.

Ms. Idlout, you have the floor.

**Ms. Lori Idlout:** Could the experts give us an analysis of whether either amendment is reflected anywhere else in Bill C-61?

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

Co-development has come up in previous discussions at this committee. However, it is not otherwise in the existing draft, aside from the work of the committee. In terms of standards, there are sections on those to ensure they apply.

That would be the key difference. One amendment is introducing the terms of co-development, whereas the other looks to ensure standards are reflected in the funding framework to be developed in consultation and co-operation with first nations.

**The Chair:** Ms. Idlout.

**Ms. Lori Idlout:** Because I feel both are important, I don't think they should be competing provisions.

Could I submit a subamendment to add NDP-56 wording to CPC-9?

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

As always, we need to have any subamendments submitted in writing.

Perhaps we can pause briefly to sort out what that might look like. We can return once we have that submitted to the members in writing.

We'll pause for a minute.

• (1015) \_\_\_\_\_ (Pause) \_\_\_\_\_

• (1040)

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

Ms. Idlout had put forward a subamendment, which has now been submitted in writing, translated and circulated to all members of the committee.

I'll turn the floor back over to Ms. Idlout to speak to this subamendment.

**Ms. Lori Idlout:** *Qujannamiik, Iksivautaq.*

I appreciate everyone's patience on this. I know that if I had been told earlier that there were line conflicts, I would have done my analysis sooner, so that I could work on a subamendment earlier, so that we wouldn't have to suspend. If there are line conflicts with any of my amendments, it would be helpful to tell me right away, so I can submit potential subamendments to avoid these suspensions.

The reason I feel that CPC-9 and NDP-56 are both important is that they have different intentions. I'm very thankful to the committee for its patience in allowing me to submit a subamendment.

The main wording of NDP-56 was submitted by the First Nations Advisory Committee on Safe Drinking Water. I thank them for the

work they did to see that Bill C-61 could be improved by adding this subamendment to CPC-9.

It is to add, after “bodies”, the following words:

and meet the obligations set out in sections 31, 33 and 34.

*Qujannamiik.*

• (1045)

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

I want to pass the floor over to Ms. May, because if this is adopted, it'll mean that PV-6 cannot be moved.

I'll turn the floor over to Ms. May.

**Ms. Elizabeth May (Saanich—Gulf Islands, GP):** Thank you, Mr. Chair.

In this context, PV is *Parti vert*. They decided long ago—trivia for committee members—not to use G for “green” because it kind of looks like “government”.

I appreciate taking the floor long enough to say that we also are very grateful for the work of the First Nations Advisory Committee on Safe Drinking Water. The amendment submitted by the Green Party is indeed identical to the NDP subamendment that you're about to vote on. If I had a vote, of course, I'd be voting for it.

Thank you for your time.

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

Is there other debate on the subamendment to CPC-9?

(Subamendment agreed to on division)

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

**The Chair:** NDP-56 cannot be moved, nor can PV-6. That will take us to CPC-10.

I'll pass the floor over to Mr. Melillo to speak to CPC-10.

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

I'm happy to move CPC-10.

CPC-10 is not introducing a new idea from the perspective of our amendments, including that this hopes to include co-development directly into the framework, which is currently lacking.

Subclause 27(2) now reads, “The Minister's consultations and cooperation in respect of the framework for assessing needs may involve, among other things, the following matters”, and then the list goes on.

After “assessing needs”, we would add “and the co-development of the framework”, just to strengthen that co-development aspect, ensuring that first nations have that direct involvement. This is very similar to the one we just approved.

I'm hopeful that we can move quickly to get this passed.

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

CPC-10 has been moved. I'll open the floor up if there is any debate on CPC-10.

Ms. Idlout.

**Ms. Lori Idlout:** I do support this amendment. I just have a quick question in preparation for later amendments.

In my notes, with my work with others in preparation for going through clause-by-clause, I've noted that I have a question about paragraph 27(2)(c), which is "monitoring".

If you'll just bear with me, I might want to submit a subamendment based on the response, but I want to buy time before we get to it, so that we can make sure to avoid a long suspension based on the response.

For example, with regard to "monitoring", I have a question for the experts. When we include "monitoring", I'm wondering about the laboratories. I know that there are licensed laboratories that perform tests. When we're including "monitoring", is there a consideration of the lack of resources that exists in northern communities?

Here's an example. When the James Bay Cree in northern Quebec need to perform drinking water tests, they don't have a licensed laboratory close enough to them, so their drinking water tests are performed in Thunder Bay. I don't know how long it would take to get those specimens to Thunder Bay.

Another example that I can speak directly to is this: Right after I was elected in Nunavut in 2021, Iqaluit experienced major issues with water. We had a boil water advisory for months. We had bottled water flown in by jets for months. Because Nunavut doesn't have its own licensed laboratories, I believe, to perform that drinking water test to monitor it, I believe the water had to be sent to Winnipeg—I'm not too sure.

I'm just wondering, when we're talking about "monitoring" in paragraph 27(2)(c), if that helps to ensure that those scenarios are covered, or if we need to make sure that licensed laboratories that perform drinking water tests in northern communities need to be included to reflect the need for those resources.

● (1050)

**Mr. Nelson Barbosa:** The "monitoring", as you've mentioned, refers to general environmental public health factors on anything from potential foreign-born contamination to things called turbidity, which are things in the water...

There are two sets of environmental public health officers: ones who are employed by either communities or tribal councils, and then others who are supported by the first nations and Inuit health branch as part of Indigenous Services Canada. That test is happening.

The testing locations can vary greatly. I would say that, in many remote contexts, those samples are sent to southern facilities for testing for environmental public health factors. The ones south of 60 or in Canada along the U.S. border have been more proximate to first nations.

This is about the funding framework. It would consider the monitoring of those needs. It doesn't consider capital or the creation of new environmental health establishments as part of that review. It's

more about whether the monitoring—and the quality of that monitoring relative to the standards and laws that first nations have put in place, whether it be Canada's drinking water guidelines or above and beyond those—is happening. Are those costs accounted for, and are they being monitored on a frequent and appropriate basis?

**Ms. Lori Idlout:** Thank you.

I have a quick follow-up question. Can the wording of subclause 27(2) be strengthened to say when that monitoring needs to happen? We have so many first nations who are in rural and remote communities that don't have access to those licensed laboratories.

Would it improve the bill to say that the monitoring needs to include licensed laboratories to perform drinking water tests in northern communities?

● (1055)

**Mr. Nelson Barbosa:** There's monitoring happening today, following Canada drinking water guidelines. That's how short-term and long-term drinking water advisories become manifest. It's not that there's a lack of monitoring happening today. The framework is saying that the cost must consider a variety of things, including capital, operations, the monitoring for public health guidelines, governance and the actual costs, including comparative and substantive equality costs. It's the full envelope of essentially what first nations control as part of their water system.

The transmission and the testing at different locations aren't expressly considered here, but it is certainly part of the testing regimes that happen now from coast to coast to coast. It's less about proximity, then, and more about whether it is happening and whether those costs are covered, moving it from point A to point B. That's what this provision is speaking to. It's covering the cost for both a physical monitoring of that water and then the testing of that water, wherever it may be in Canada.

**Ms. Lori Idlout:** Thank you so much. You've helped to clarify that this monitoring is actually a really good context to include, because it could include, for example, the licensed laboratories. This is a good indication for first nations that this will be an instrument they could use to ensure that those tests that need to be performed need to be closer to their communities, especially if they're in northern communities. This helps to ensure that this framework is set within it.

**Mr. Nelson Barbosa:** I would say that monitoring wherever it happens in Canada is less about proximity. In my mind, it's about whether that is happening at a licensed laboratory and according to Canada drinking water guidelines, or other guidelines to test water and ensure that it's safe for consumption. That is happening right now. This enshrines in legislation that the cost to cover monitoring will be borne as part of the minister's consultation and co-operation efforts.

**Ms. Lori Idlout:** Thank you.

**The Chair:** Thank you very much Ms. Idlout. I'm not seeing any further hands up for debate. I believe we can move to a vote.

**Mr. Eric Melillo:** I thought we were still on CPC-10.

**The Chair:** It's CPC-10. Shall CPC-10 carry? Enthusiastically on division—I like that.

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

[*Translation*]

**The Chair:** We will now move on to the new BQ-20.

Mr. Lemire, you have the floor.

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

As you can see, the new BQ-20 essentially seeks to integrate amendments BQ-21, BQ-22, BQ-23, BQ-24, BQ-25 and BQ-26, so we could save a lot of time if I had my colleagues' consent to adopt this amendment. Still, I think it's important for me to present my arguments to you.

If this amendment is adopted, we'll drop the others I just listed. If not, we'll do them one at a time. The fact remains that we think it was possible to group them together in a single amendment.

Essentially, we have to obtain certain information when consultations seem important, and the department can decide whether to take them into account. Since this information is considered important by first nations, in this case the Assembly of First Nations and the groups that came to testify, financial organizations, as well as reports from the Office of the Parliamentary Budget Officer, we propose to take it into account during the minister's consultations.

BQ-21 dealt with repairs and replacements. The systems in place are at different points in their useful life, and that aspect seems fundamental for replacement.

BQ-22 was talking about legal fees arising from day-to-day operations relating to the exercise of jurisdiction over water. We all agree that the legal aspect weighs heavily with first nations.

BQ-23 dealt with remoteness costs. This is a concept that has been talked about as well. In fact, the Parliamentary Budget Officer said that the government doesn't take these factors into account when it comes to distortions. I'll give you an example. In Abitibi-Témiscamingue, construction costs are 30% higher than in southern Quebec. I can't even imagine how much higher the costs are for a first nation that isn't connected to other regions by road.

BQ-24 dealt with insurance costs for existing systems. Standards are increasingly being imposed on every building element, and that means huge insurance costs. It's even more true for first nations, and very few insurers want to go there, so there are additional costs.

The same is true of the risk analysis attributed to first nations by their insurers, which was mentioned in BQ-25. There are often persistent biases when it comes to first nations, and all of that generates costs that should be taken into account.

The purpose of BQ-26 was to collect data on the gaps in the standards applicable to water services received by individuals, whereas

the standards are the highest for non-indigenous people, compared to individuals from first nations. So there is an attempt here to create greater equity between ordinary Canadians, if you will, and first nations people.

We propose that all of these proposals be grouped into a single amendment. If that doesn't work, we'll do them separately. The fact remains that, in our opinion, it's essential to integrate each of these elements.

• (1100)

**The Chair:** Thank you very much for making our work easier today by combining several amendments, Mr. Lemire.

[*English*]

Colleagues, just for your information, as Monsieur Lemire said, if BQ-20 is adopted, BQ-21, NDP-57, NDP-59, BQ-25 and BQ-26 cannot be moved due to a line conflict. In addition to that, if BQ-20 is adopted, BQ-22, BQ-23, NDP-58 and BQ-24 cannot be moved, because they are redundant and there are line conflicts in French.

There are quite a few there, so I will repeat that. If BQ-20 is adopted, amendments NDP-57, NDP-59, BQ-21, BQ-25 and BQ-26 cannot be moved because of a line conflict. In addition to that, if BQ-20 is adopted, BQ-22, BQ-23, BQ-24 and NDP-58 cannot be moved, because they are redundant and there are line conflicts in the French version of the Bill.

With that, I open it up to debate. Is there any debate from members?

**Mr. Eric Melillo:** I'm sorry, but I have a couple of questions.

**The Chair:** I go to Ms. Idlout and then to Mr. Melillo.

**Ms. Lori Idlout:** Could we have the experts tell us about the line conflicts? That's to buy me time to analyze all the differences between BQ-20, NDP-57 and NDP-59. I understand the redundancy, but I would love an explanation about NDP-57 and NDP-59.

**Ms. Rebecca Blake:** I appreciate the questions. I might leave it to the chair to explain the line conflicts, just in that role. In terms of the content itself, there are different pieces in each of those specific amendments. For example, NDP-57 discusses adding repairs and replacement to operations and maintenance. Also, in NDP-58, for example, it talks about remoteness factors, which are also included in some of the other previous amendments from the Bloc, and that would be the redundancy. I hope that's helpful.

**Ms. Lori Idlout:** I just have a quick question. NDP-57, I don't mind because I withdrew it anyway, but NDP-59 has proposed paragraph 27(2)(h.1).

I wonder whether that, actually, could be added to BQ-20. I would like to submit a subamendment to BQ-20, to add NDP-59.

• (1105)

**The Chair:** Ms. Idlout, you asked what the line conflicts were.

**Ms. Lori Idlout:** Yes.

**The Chair:** Before getting to your subamendments, should you wish to move one, BQ-20 makes an amendment that would change lines 11 through 21 on page 15, so this is subclause 27(2). All of those amendments that I listed address paragraphs that are within that range, so, if it is adopted, all of those ones could not be moved.

**Ms. Lori Idlout:** Just in response, I'm okay with NDP-57 and NDP-58 because I withdrew them anyway, but NDP-59 is not included in the original list under subclause 27(2), and there are paragraphs 27(2)(a) to (i). The original paragraph 27(2)(h) is "capacity development;" and it ends there, whereas my NDP-59 proposes to add a new matter:

(h.1) distinct cultural practices, Aboriginal rights, lands and laws of each First Nation; and

My proposal is that I'll support BQ-20 if we could subamend it to add my proposed paragraph 27(2)(h.1) from NDP-59 so that all the other redundancies are still addressed, except adding NDP-59.

*Qujannamiik.*

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

We're just having a look at NDP-59. This can be added as a subamendment to this amendment right now. It would go at the very end of it, so we would just add it to the end. That can be done. It would be renumbered by the legislative drafters when we get to the end. Members would have NDP-59 but, Ms. Idlout, as you mentioned, it would just add:

(h.1) distinct cultural practices, Aboriginal rights, lands and laws of each First Nation; and

Accordingly, Ms. Idlout, would you like to move this as a subamendment?

**Ms. Lori Idlout:** Yes, I would.

Thank you.

**The Chair:** We'll open that up to debate.

Is there any debate on this subamendment?

Mrs. Atwin.

**Mrs. Jenica Atwin (Fredericton, Lib.):** I wanted to mention that we were in agreement with the Bloc amendment. We have already added the cultural and spiritual pieces at a different part of the bill, so I feel that this subamendment is a bit redundant. I just wanted to put that out there.

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

Ms. Idlout.

**Ms. Lori Idlout:** Can I be reminded where the redundancy is?

**Mrs. Jenica Atwin:** We already enshrined.... I can look up the amendment where we included the cultural and spiritual piece previously. It's G-4.

**Ms. Lori Idlout:** I understand the cultural and spiritual piece, but in (h.1) from NDP-59, I also have "Aboriginal rights, lands and laws of each First Nation", which I'm not sure is included in there.

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

**Ms. Lori Idlout:** Could we get a reminder, from whoever keeps records, about where we can find it?

**The Chair:** Yes. If we can wait one second here, we can find that.

• (1110)

**Mr. Jaime Battiste:** Maybe we can ask the experts who have developed this to tell us where we've done this already.

**Ms. Rebecca Blake:** I appreciate the question.

In terms of some of the other components that you mentioned around first nation law-making and aboriginal rights, there are non-derogation clauses related to aboriginal rights, up front.

As well, we go through agreements that we discussed yesterday to support what could be financial agreements or to support the exercise of first nation jurisdiction, which would be first nation laws specifically.

**Ms. Lori Idlout:** I'm just looking for the actual amendment or whatever in the legislation. I need to see it for myself.

**Ms. Rebecca Blake:** That's appreciated.

Also, as mentioned in G-4, for the standards, there was the inclusion of cultural and spiritual needs in that water standard. That would be G-4 specifically.

On agreements, I don't know off the top of my head, but they're around clause 26-ish, from yesterday.

I apologize, but my colleague reminded me that agreements are under clause 23.

Thank you.

**Ms. Lori Idlout:** Can I ask a question?

Can you remind me where in the bill we see reference to "Aboriginal rights, lands and laws of each First Nation"?

**Ms. Rebecca Blake:** Of course.

In terms of first nation laws, that is in both paragraph 6(1)(a) and paragraph 6(1)(b), where the jurisdiction is provided through that law-making authority.

In terms of aboriginal rights to ensure that there's non-derogation so that rights are upheld over generations, that is also near the top of the bill. It's under "Rights" in clause 3, but there would have been some amendments made, I believe, also in subclause (2), by the NDP.

**Ms. Lori Idlout:** Thank you for the clarification.



Since it's included in the "Jurisdiction" clause of the bill, when it comes to creating the framework, would the framework have to include "Aboriginal rights, lands and laws of each First Nation" because of what's included in clause 6?

**Ms. Rebecca Blake:** Yes, the framework is not specific. It says, "among other things" in order to leave it as open as possible for consultation and co-operation with first nations.

I would say there are additional avenues as well. In terms of the framework, it's really about coming together, but individual first nations can also enter into agreements to exercise their rights through clause 23. There are multiple choices for first nations.

**Ms. Lori Idlout:** Thank you for the clarification.

For me, because this is part of the framework that will need to happen, it would seem necessary to make sure it's something that first nations.... For example, NDP-59 was submitted to us by the British Columbia Assembly of First Nations. If it seemed absent in other provisions and they saw it necessary to include as an amendment, wouldn't it seem important to ensure first nations are being heard on this clause in order to make sure they realize that?

Maybe, if it's not obvious to them that it's a choice they can make, adding this shows it is a choice they can make.

• (1115)

**Ms. Rebecca Blake:** I appreciate the clarification.

How the funding framework is designed is for all parties to come together on, and it is open. The top of the provision says, "among other things" and can include the following, but that's to leave space. The intention, from a policy perspective, is to leave space for a multitude of voices among first nations rights holders, in terms of what funding needs are present on their lands for water services.

The secondary piece is more about whether specific first nations come together, or whether individual first nations enter into a funding arrangement to exercise rights. That's under section 23 already, but it gives a bit more flexibility for individual nations to take different approaches beyond the funding framework.

**Ms. Lori Idlout:** Thank you.

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

While that conversation was going on, I double-checked. G-4 made an amendment to clause 15, so this is under the water quality standards.

As amended, it will say:

The quality of water available on the First Nation lands of a First Nation must meet the drinking, cooking, sanitation, hygiene, safety, fire protection and emergency management needs of the First Nation, taking into account its cultural and spiritual needs and based on its current and projected water usage needs.

That's the passed amendment that was being referenced.

Ms. Idlout.

**Ms. Lori Idlout:** I will just put this on the record: Even if NDP-59 is not included in BQ-20, it will still be an option for first nations to say that, when it comes to the framework, they will have the option of including the distinct cultural practices, aboriginal rights, lands and laws of each first nation because it's covered in the broad scope of what you just said.

Can you confirm this, please?

**Ms. Rebecca Blake:** I can absolutely confirm that the phrase is "among other things". It's not an exclusive list. It is inclusive of many things.

**Ms. Lori Idlout:** Thank you.

**Ms. Rebecca Blake:** You're welcome.

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

Is there further debate on the subamendment?

I'm not seeing any further debate on the subamendment to BQ-20. I think we can move to a vote.

This is on your subamendment.

**Ms. Lori Idlout:** I can withdraw my subamendment based on the discussion we've just had.

**The Chair:** Great.

(Subamendment withdrawn)

**The Chair:** This takes us back to the amendment.

Is there any debate on the amendment?

Mr. Melillo.

**Mr. Eric Melillo:** I warned you that I have a couple of questions. I'll try to go through them quickly here.

Looking at "(c.1) requirements relating to legal fees for various tasks relating to the day-to-day operations of water services", I'm unclear on what exactly that would mean.

I'm curious about getting your thoughts.

Sébastien, if you want to comment, you can.

I'll also ask the officials what that would look like.

**Ms. Rebecca Blake:** I appreciate the question.

There could be different components of legal fees for a first nation, as a first nation is an order of government in Canada, as they conduct business. One example could be around the creation of first nation laws and having lawyers review their laws, etc., before they come into force. Another example could be in terms of different practices with contracts, to make sure that contract law is all reviewed should the nation be entering into contracts to provide water services, for example.

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

This is my final question, I promise. Well, we'll see what the answer actually elicits.

Looking at the insurance, as I read proposed new paragraph 27(2)(h.1), this would not be any sort of liability insurance. It would be for the actual infrastructure itself.

Is that correct? Would that be what it's referring to?

• (1120)

**Ms. Rebecca Blake:** That would be my read as well.

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

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

Accordingly, let's move to a vote on BQ-20.

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

**The Chair:** It looks like it passed with unanimous consent.

I want to give a special thank you to Monsieur Lemire for combining all of these together. It means a number of things. BQ-21, BQ-22, BQ-23, BQ-24, BQ-25 and BQ-26 can't be moved. As well, NDP-57, NDP-58 and NDP-59 cannot be moved. As a result, we have moved through a number of amendments and are now at NDP-60.

Ms. Idlout, I'll hand the floor over to you to move NDP-60.

**Ms. Lori Idlout:** *Qujannamiik, Iksivautaq.* Thank you, Chair.

Amendment NDP-60 was submitted to the committee by the British Columbia Assembly of First Nations. It would amend clause 27 in Bill C-61 by replacing lines 22 to 25 on page 15 with the following:

(3) The Minister's funding allocation decisions under subsection (1) must be consistent with the principle that the funding for First Nations water services is to

*Qujannamiik.*

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

NDP-60 is moved. I'll open it up for debate.

Just before getting to that, I'll note that if NDP-60 is adopted, NDP-61 cannot be moved due to a line conflict....

NDP-61 was withdrawn.

Mrs. Atwin, I see that you have your hand up. I will turn the floor over to you.

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

We've had a few discussions around "best efforts" with regard to Bill C-61. I believe it does set a high standard as well as aligns with legal precedent. Just to do a little bit of digging and bring it forward for your consideration, we did find that from a 1994 decision at the Supreme Court of British Columbia, Justice Dorgan determined, in her decision, that:

1. "Best efforts" imposes a higher obligation than a "reasonable effort".
2. "Best efforts" means taking, in good faith, all reasonable steps to achieve the objective, carrying the process to its logical conclusion and leaving no stone unturned.

I think this is really strong language. She continued:

3. "Best efforts" includes doing everything known to be usual, necessary and proper for ensuring the success of the endeavour.

4. The meaning of "best efforts" is, however, not boundless. It must be approached in the light of the particular contract, the parties to it and the contract's overall purpose as reflected in its language.

5. While "best efforts" of the defendant must be subject to such overriding obligations as honesty and fair dealing, it is not necessary for the plaintiff to prove that the defendant acted in bad faith.

6. Evidence of "inevitable failure" is relevant to the issue of causation of damage but not to the issue of liability. The onus to show that failure was inevitable regardless of whether the defendant made "best efforts" rests on the defendant.

7. Evidence that the defendant, had it acted diligently, could have satisfied the "best efforts" test is relevant evidence that the defendant did not use its best efforts.

Finally, "best efforts" does not guarantee the result, but it requires the Government of Canada to make every effort to achieve that result.

This is the precedent that's been used by Canadian courts. Again, it helps offer us a process and platform for how we get there and where that standard of "best efforts" can be achieved, and again, where that onus is on proving whether or not those best efforts were actually put into place.

This made me feel a lot better as well. For those reasons, I think it's important we keep "best efforts" in the bill.

Thank you.

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

Is there anybody else who would like to weigh in and debate?

We have Ms. Idlout.

• (1125)

**Ms. Lori Idlout:** Could we ask for that to be sent to us so that we can review it? I don't know if it's in reference to contract law or if it's in reference to a minister's obligation.

**Ms. Elizabeth May:** I apologize, because I know I'm not speaking to one of my amendments, but I missed it when Jenica said the name of the case, so I'd appreciate that being repeated.

**The Chair:** Mrs. Atwin, would you be willing to circulate that to the committee here?

**Mrs. Jenica Atwin:** Yes, we're going to send this around, for sure.

**Ms. Lori Idlout:** Can we suspend for 10 minutes?

**The Chair:** Yes, let's suspend for a few minutes here.

• (1125)

(Pause)

• (1135)

**The Chair:** Colleagues, we're back.

The requested court judgment has been circulated to folks. We did pause briefly when Ms. Idlout had the floor, so we'll open it back up to Ms. Idlout as we are debating NDP-60.

I'll just hand the floor over to Ms. Idlout.

**Ms. Lori Idlout:** I'm sorry. I don't see it yet in my email, but I don't want to delay the rest of clause-by-clause. What I would like to suggest is that we stand—I think that's how I say it—the debate on clause 27 so that we can move on with the remainder of clause-by-clause faster and then come back to it, because even when the rest of the MPs receive the text that Jenica read to us, I'm still going to need my team to analyze it to see what that standard means.

I would like to buy a bit of time for that analysis. I do not want to suspend indefinitely, but I would ask that we stand it so that we can move to the other clauses as a way to expedite this since there seems to be such a big rush to get through it.

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

Ms. Idlout has proposed or moved to stand clause 27. This will go to a vote, but if we decide to do that, it will mean that we'll stand this and come to this at the end, which would mean NDP-60, NDP-62, NDP-63, G-7 and CBC-11 and NDP-64 would be stood and we would come back to them at the very end.

This is debatable, if there's anybody who wants to debate this right now. Is there agreement that we'll stand this clause and come back to it at the end?

(Clause 27 allowed to stand)

**The Chair:** That will take us to new clause 27.1 and G-8.

I'll just give you a moment to get prepared because I know we did skip ahead a number of things here. I'll open the floor up to Ms. Atwin.

• (1140)

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

This is a new clause, and it's responding to the discussions that we had regarding treaty rights, which are incredibly important. I believe if we had upheld our responsibilities we wouldn't be in this conversation currently. However, there were amendments put forward that introduced different concepts of the bill that could also put it into jeopardy, I believe, as far as our outcome and our goals for Bill C-61 specifically are concerned.

What this amendment sets out to achieve is that it's setting the stage for future implementation of the recognition of those treaty rights by following additional review from first nations and the Government of Canada. It's really important that, again, it respects the importance of the treaty relationship, as heard by first nation witnesses at our committee, while ensuring that treaty rights will absolutely be implemented thoughtfully and appropriately.

The amendment is that Bill C-61 be amended by adding, after line 10 on page 16, the following:

27.1 The minister must, in consultation and cooperation with First Nation governing bodies, conduct a study of the asserted treaty right to water.

Again, it uses consultation and co-operation, which is in alignment with the language in UNDRIP, and it also, again, compels the government to do that study, which I think is a bit of a compromise and a nice place to land that, again, brings the importance of those treaty rights into this discussion.

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

G-8 has been moved.

I'll open the floor up to debate.

[*Translation*]

Mr. Lemire, you have the floor.

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

We are in favour of the principle, but doesn't the minister already have that information? If so, why is such a provision necessary? That seems to me to be basic information that a minister must have. Is that the case?

[*English*]

**Ms. Rebecca Blake:** I appreciate the question.

This clause would really.... The desire is to do it in consultation and co-operation with first nations, as there are a myriad of views on the asserted treaty right to water, as well as potentially some modern-day treaties that include that right specifically. That's also in terms of our minister's colleague, the Minister of Crown-Indigenous Relations, who really has that core relationship. The government does have a lot of that information, but in terms of the views, the oral promises, all those components, those are often passed down generation to generation from first nations and are not necessarily in the possession of Canada.

[*Translation*]

**Mr. Sébastien Lemire:** So we're talking about better communications, but on both sides, which I think is legitimate.

Thank you.

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

[*English*]

Next, we'll go to Ms. Idlout.

**Ms. Lori Idlout:** *Qujannamiik*. I struggle with this amendment. It seems to be an amendment in which there's an extension of what a minister must do regarding asserted treaty rights.

I wonder if you could better explain how this amendment would impact how we view asserted treaty rights and how it would impact first nations' ability to argue regarding asserted treaty rights. Why does there need to be a bill or an amendment for the minister to conduct a study?

I struggle to support it because it seems like it has the potential to take away from first nations, who feel strongly about what their treaty rights are.

If you could answer my three questions, I would very much appreciate it.

• (1145)

**Ms. Rebecca Blake:** I appreciate your questions. In terms of a study and how that would propose....

I'll let my colleague at Justice Canada correct me if I'm wrong, but this would likely be the first time in federal law that we've talked about an asserted treaty right to water specifically. It could be historic, in that way, to support first nations in bringing forth their views, not just on a written treaty but on oral promises associated with the treaty relationship.

In addition, we'll just point back to the rights section. Nothing in this bill can lessen existing treaty rights and aboriginal rights of rights holders. They are protected in clause 3 under "Rights", which applies to the entirety of the bill.

The other component is that there are some first nations who may not consider themselves treaty rights holders right now, so this would provide a space for all first nations to engage in the conversation on asserted treaty rights to water.

Thank you.

**Ms. Lori Idlout:** I have a follow-up question. Why is the minister...? No. I shouldn't ask it that way, because that's a political question and we have a minister who only wants to do things by way of best efforts.

What prevents the minister from conducting the study now without this bill?

**Ms. Rebecca Blake:** Nothing prevents a study from happening without a bill. Adding it to a bill would essentially require that study to happen, so it's the opposite of being voluntary.

**Ms. Lori Idlout:** Has there been an analysis of what the fallout could be and what would happen if this were incorporated in this bill, or if the minister chose to use their best efforts to do it right now without the bill?

**Ms. Rebecca Blake:** The analysis that has been completed is really on clause 3, the rights and ensuring that nothing that would be incorporated in the bill, or not incorporated, would derogate from existing treaty and aboriginal rights. That's been the structure of the analysis. It was to really protect existing treaty and aboriginal rights and to provide potential avenues where they could be strengthened in the future.

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

**Ms. Lori Idlout:** I'm done for now.

**The Chair:** Mrs. Atwin has her hand up.

**Mrs. Jenica Atwin:** Absolutely understanding that those aboriginal treaty rights were protected and the non-derogation clause is in play, the purpose here is the belief that the area deserves much more thorough and thoughtful discussion, guided by first nations.

Again, this is compelling. It's within the bill to do that. Certainly the minister could do that, but it wouldn't necessarily be guided by the consultation and co-operation process, for example. There would also be, I believe, discussions around the potential funding that would support that study throughout these conversations.

Really, it's just about further discussing and further compelling this very important understanding that we all need to come to with regard to treaty rights and the assertion of water, specifically. It's just for more thoroughness and more thoughtfulness around this. It's certainly not meant to take away in any way, shape or form.

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

Ms. Idlout.

**Ms. Lori Idlout:** I just need to ask more questions.

Now that we've heard the bureaucrats use the terms that this would be "the first time" and that it would be "historic" if this amendment were to go through in this bill, why was that not considered when we wanted to include "free, prior and informed consent" in favour of consultation and co-operation?

Why did we not use this bill to ensure that first nations provide their free, prior and informed consent? That would be a first time. It would be historic to include that, especially when it comes to water.

Why is it that when it comes to conducting a study, this is considered a first-time, historic type of amendment to include in the bill?

• (1150)

**Ms. Rebecca Blake:** I appreciate the question.

I could be corrected by my colleagues at Justice Canada on this as well, so I'll leave that space open.

However, in terms of that language of "free, prior and informed consent", this committee also had a lot of discussion around the United Nations Declaration on the Rights of Indigenous Peoples Act and the elements covered within that act as well. That might be why it's a bit less historic, given the work already done on UNDA.

**Ms. Lori Idlout:** I'm going to think about a couple more questions. I need a couple of minutes to think about how to frame my next questions.

**The Chair:** Okay.

In the meantime, Mr. Melillo, would you like to weigh in?

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

In the meantime, while Ms. Idlout is thinking about those questions—and I appreciate her questions—I'll just pick up on the comments that others on this side of the table were making.

We also believe that the intention of this is great, but I don't see why this can't be done at our committee or done through the department already. It was indicated that nothing is prohibiting the minister from moving forward on this study presently. I would also argue nothing is prohibiting the minister from providing clean drinking water to all first nations without this legislation, but that's another point.

I just want to make sure that.... For the record, I agree with the comments from the other opposition members on the fact that we don't feel this is necessary or perhaps best placed in this legislation.

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

I'm just waiting to see if there's anybody else who would like to weigh in at this point.

Ms. Idlout.

**Ms. Lori Idlout:** Going back to the responses that we had on a myriad of views on asserted treaty rights, my concern regarding the incorporation of this into the bill is that there are first nations whose rights have not been respected.

In practical terms, let's say that we pass this amendment. Let's say, for example, that Onion Lake Cree Nation, who wrote a letter asking all of us not to approve the whole bill for a few reasons.... What would the implication be for them, for example?

• (1155)

**Ms. Rebecca Blake:** I appreciate the question.

I am not sure which numbered treaty Onion Lake is part of, but I do believe that it is a numbered treaty, so it depends. In terms of Onion Lake, if it chose to be part of the study and to work together with other first nations in Canada on that study, it could bring forward its views on the written treaty that it's a part of, as well as any oral promises related to its treaty relationship with the Crown, what that could mean with regard to an asserted treaty right to water and what that could potentially mean to supporting implementation of that right.

Thank you.

**Ms. Lori Idlout:** Can I have a minute, please?

**The Chair:** Sure.

We'll take a minute here, but we'd like to bring this to a vote fairly soon. We'll give you a minute, Ms. Idlout.

Maybe let's take a couple of minutes to break here. We'll have a short health break, and then we'll return.

• (1155)

(Pause)

• (1210)

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

We left off debating new clause 27.1 and G-8. In the break, there was a bit of back-and-forth.

When we left off, Ms. Idlout had the floor, so I'm going to give the floor back to her.

**Ms. Lori Idlout:** Thank you, everyone at committee, for your patience.

Just knowing that we have international obligations and international studies.... We have the 1999 United Nations Human Rights Committee. We know the treaty right to water already existed. We also reaffirmed it in our previous debate on Bill C-61.

As such, trying to legislate conducting a study does not fall within the principles of the work we're trying to do for the treaty right to water. I think the intention behind the study is not a good one. If I can say this, my spidey senses are really sounding an alarm. I cannot support this amendment. As such, I will not be voting in favour of it.

Thank you.

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

Is there further debate on this?

Mrs. Atwin.

**Mrs. Jenica Atwin:** Thank you.

I appreciate Ms. Idlout's concerns. I disagree that there's anything sinister at all about this amendment, and I take a bit of offence to that. I actually think it is also about including provinces and territories in the study, which is a bit of a compromise on some of the discussion we've had at this table.

The minister could be doing this now, for sure, but this is also about compelling future ministers, which could happen as well. I worry about the future we're trying to legislate for. That's the spirit and the intent behind this.

I think it's very clear what it intends to do. It would be the first time that it is compelling a study to be done. The very critical importance of treaty rights and that assertion are great things to discuss further.

I'm really trying to defend the merits of it, but I'm happy to go to a vote at any time.

• (1215)

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

Not seeing any further hands up, how about we go to a vote on G-8?

(Amendment negatived: nays 6; yeas 5)

(On clause 28)

**The Chair:** The first amendment we have for clause 28 is NDP-65. I'll turn the floor back over to Ms. Idlout.

Before we get into it, I will have something to say about this amendment.

**Ms. Lori Idlout:** *Qujannamiik.*

NDP-65 is an amendment that was submitted to us by the Federation of Sovereign Indigenous Nations. Through their analysis and the work they did—and I thank them for it—they saw that clause 28, which talks about support, could be improved. This is because the way clause 28 currently reads is:

The Minister may provide support to First Nation governing bodies with respect to the entering into of the agreements referred to in sections 23 to 25.

The amendment would change “may” to “must”, so that the minister must provide support to first nations.

*Qujannamiik, Iksivautaq.*

**The Chair:** Thank you very much, Ms. Idlout. Unfortunately, I do need to make a ruling on this amendment because the amendment attempts to create an obligation for financing that does not currently exist in the bill.

As *House of Commons Procedure and Practice*, third edition, states on page 772:

Since an amendment may not infringe upon the financial initiative of the Crown, it is inadmissible if it imposes a charge on the public treasury, or if it extends the objects or purposes or relaxes the conditions and qualifications specified in the royal recommendation.

In the opinion of the chair, the amendment proposes a new scheme that imposes a charge on the public treasury. Therefore, I rule the amendment inadmissible.

Accordingly, that takes us to....

Ms. Idlout, do you intend to challenge the ruling?

**Ms. Lori Idlout:** Yes, I intend to challenge the ruling, because clause 28, having reference to agreements established already in clause 23, does not create new obligations.

*Qujannamiik.*

**The Chair:** We'll go to a vote on whether the ruling of the chair will be sustained.

(Ruling of the chair sustained: yeas 9; nays 2)

**The Chair:** Colleagues, the decision is sustained, which takes us to the question on clause 28.

(Clause 28 agreed to on division)

(On clause 29)

**The Chair:** The first amendment we have here is NDP-66, which was withdrawn.

We are at NDP-67. With that, I'll open the floor to Ms. Idlout.

• (1220)

**Ms. Lori Idlout:** *Qujannamiik, Iksivautaq.*

NDP-67, as you mentioned, looks to amend clause 29, with the heading "Environmental protection". It would be amended by replacing lines 16 and 17 on page 16 with the following::

the Fisheries Act, the Migratory Birds Con-

It would also replace line 20 on page 16 with the following:

tions made under those Acts protect the environment as much as or more than First Nations laws.

The differentiation is that first nations who have stewarded, maintained and lived on these lands since time immemorial have already been governing with the best intentions of protecting the environment even more than what we've seen in the last 150 years or so of past governments and their laws. Basically, it's showing that the amendment would be to help ensure the protection of the environment as much as or more than with first nations laws.

*Qujannamiik.*

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

NDP-67 has been moved. I'll open the floor to debate.

Mrs. Atwin, go ahead.

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

While I'm all in favour of protecting the environment at every possible avenue, the analysis here is that it would actually require additional amendments to those acts in question to align with first nation laws. This is well-intentioned and great, and I think that work can be done, but in order to be in compliance with this piece, we would have to amend those other acts.

Also, given that water flows between jurisdictions, I think that the coordination of those laws through the protection zone agreements, similar to what we saw in the process for education and child and family services agreements, would be a better avenue to work with first nations as well as provinces and territories.

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

Is there further debate?

Not seeing any further debate, let's move this to a vote. Shall NDP-67 carry?

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

(Clause 29 agreed to on division)

• (1225)

[*Translation*]

**The Chair:** That brings us to BQ-27, which proposes the new clause 29.1.

Mr. Lemire, you have the floor.

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

To try to simplify things with respect to clause 29.1 that we're proposing to add, we've divided our proposal into three, in order to make it easier for everyone to understand.

The goal is to protect elements that affect the health of first nations, but especially the way information circulates.

BQ-27 seeks to add the following new clause:

29.1 The Minister must, without delay, inform affected First Nations governing bodies of any significant risk of harm to health or the environment.

I would note that this responsibility would also fall to any other minister, federal agency or other responsible authority.

We want to make sure that first nations are informed in the event of a spill or contaminated effluent. Unfortunately, we hear all too often that this isn't the case. I can give Kahnawake as an example, but there are many others.

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

[*English*]

BQ-27 is moved. I'll open up the floor to debate on BQ-27.

Are there any colleagues who would like to make an intervention? Not seeing any hands up, let's move to a vote.

(Amendment negatived: nays 9; yeas 2)

**The Chair:** That takes us to clause 30.... Could we quickly pause?

• (1225)

(Pause)

• (1230)

**The Chair:** I'm sorry. I was a bit confused.

We still have the new BQ-27.1. This was circulated last Thursday. Just for awareness, the reference number is 13430067.

I'll give the floor back to Monsieur Lemire to move this one.

[*Translation*]

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

This is one of the important points, particularly for Quebec and its first nations, because it concerns the whole issue of the St. Lawrence Seaway.

In this context, the St. Lawrence Seaway is obviously essential to navigation, but there may be elements that affect first nations, in a beneficial way in some cases, but especially in a more negative way in others.

We want first nations to be involved in the governance, management and decision making when it comes to the protection, maintenance and use of the St. Lawrence Seaway. This right to participation helps protect the water source of many nations along the St. Lawrence, such as the Innu, the Abenaki and the Mohawks, to name just a few.

This bill aims to protect water sources, and we really want to make sure that this is also the case for the St. Lawrence River.

For the benefit of the outsiders who are listening to us, I will read subclause 29.1(1), which we are proposing to add:

29.1 (1) The Minister — as well as any other members of the King's Privy Council for Canada, other persons and bodies established under an international agreement that are concerned — must ensure that First Nations directly connected to the St. Lawrence Seaway and its tributaries enjoy a full and meaningful right to participate in governance, management and decision making concerning the protection, maintenance and use of the St. Lawrence Seaway.

After that, there would be subclause 29.1(2), which would read as follows:

(2) The right to participate includes the prior and informed consultation of First Nations and their free, prior and informed consent in respect of any initiative that directly affects their territories, resources or Aboriginal rights.

Thank you.

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

[*English*]

I'll open it up to debate.

First is Mr. Battiste and then I'll see Ms. Idlout.

**Mr. Jaime Battiste:** Can you read how the line would stand now in its totality? We understand the intention of it, but I don't understand the wording of it.

Can you give us the actual wording as it reads? Can you read it for us?

[*Translation*]

**Mr. Sébastien Lemire:** The idea is to add clause 29.1, which would fall after clause 29.

[*English*]

**Mr. Jaime Battiste:** Can you read it?

**Mr. Sébastien Lemire:** Can I read it? Okay.

[*Translation*]

I just did, but I can read it again.

The amendment is that Bill C-61 be amended by adding after line 20 on page 16 the following new clause:

29.1 (1) The Minister — as well as any other members of the King's Privy Council for Canada, other persons and bodies established under an international agreement that re concerned — must ensure that First Nations directly connected to the St. Lawrence Seaway and its tributaries enjoy a full and meaningful right to participate in governance, management and decision making concerning the protection, maintenance and use of the St. Lawrence Seaway.

(2) The right to participate includes the prior and informed consultation of First Nations and their free, prior and informed consent in respect of any initiative that directly affects their territories, resources and Aboriginal rights.

I can give you a concrete example, if you like, with the situation that the Mohawks of Kanésatake came to tell us about and that concerned the City of Châteauguay. If a city ever does an intervention that has an impact on a first nation's water source, the first nation isn't necessarily informed. The fact remains that the quality of its water sources will be affected. As a result, it may have to retreat all the water in its drinking water system, because it wasn't informed beforehand of the presence of a contaminant in the water or of an intervention that was made on its water sources.

If there were a spill in the St. Lawrence, the situation would be somewhat the same. It's simply to enable first nations, who are often at the end of the information chain and don't have the same communication networks as others, to be informed. They must also be allowed to participate in decision making. Their inclusion in the circle of information and decision making will facilitate measures that will help first nations to properly treat their water sources, in keeping with the increased responsibility this bill confers on them in this regard.

● (1235)

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

[*English*]

Mr. Battiste, you still have the floor. I'll then go to Ms. Idlout and Mr. Melillo.

**Mr. Jaime Battiste:** I'm going to go to the officials on this, but it seems like this clause is going to be exactly what we've been discussing about protection zones. Looking at this particular one with the St. Lawrence River, I understand the principle and agree with it, but it seems like we're taking a shortcut for the St. Lawrence River when it's a protected zone.

I think we've come close to getting some consensus around wording that not only respects the first nations but also respects provincial jurisdiction. If we add this clause here, it will take away from what we've been discussing about the protection zones. That's my understanding of it.

I'd ask the officials if this seems like a very specific reference to something that we're discussing in broader terms when we're talking about the protection zones.

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

The protection zone, not to belabour it, is a willingness of all parties—first nations, provinces and territories—to align laws to protect water and sources of water.

Without having the luxury of the text, but having listened diligently, I think this would essentially be creating a protection zone. It would be creating a table implicating first nations and water management parties, including that of the Province of Quebec, to—it sounds like more than “inform”—collaborate and to be joint stewards of that water.

It's an excellent example of what a protection zone could become. This would be entrenching that protection zone in Bill C-61.

**The Chair:** Mr. Battiste.

**Mr. Jaime Battiste:** Because I think there have been some discussions around protection zones and some consensus around language, I think I wouldn't want to have just one for the St. Lawrence River without reflecting also where I come from in the Bras d'Or Lakes, or anyone else's lakes that are in their ridings, and have them asking why we did a shortcut for one but not for all.

I do believe we have some terminology coming on the protection zones that'll help us actually do, in the “protection zone” language, what Mr. Lemire is suggesting for this, but for a broader context. In this case, we'll probably be voting no as a government, but we'll be revisiting this at a later time in an amendment I know the Bloc has seen from me, when we're discussing the broader implications of protection zones.

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

Next we'll go to Ms. Idlout, then Mr. Melillo and then Monsieur Lemire.

**Ms. Lori Idlout:** *Qujannamiik.*

I'm just wondering, when it comes to interpreting legislation that names specific areas such as this, how the legislation is interpreted if they don't include other areas that might want to be considered in the same way.

**Mr. Nelson Barbosa:** The proposed amendment speaks to specific parties, first nations that abut or are adjoined to, connected to—to go back to some previous language—the St. Lawrence Seaway and clearly implicates the Province of Quebec and likely the municipalities. Those would be named parties without actively seeking their consent as being part of of that process. It has no ancillary objective other than that it's really what a protection zone is trying to be, I suppose. It's bringing parties together. This is speaking of a very specific location and saying that these are the parties that would be implicated, if I understood the question correctly.

• (1240)

**Ms. Lori Idlout:** For example, if a first nation in the NWT felt like they wanted to use a similar provision to this, but they aren't named as a party or as a geographical area, what would the implication be for them regarding the Mackenzie River, for example?

**Mr. Nelson Barbosa:** Then I would refer, for parties not implicated in this proposed amendment, them to part of the “protection zone” conversations that we had, which are contingent on willing parties—first nation and provinces, territories and municipalities.

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

Next we'll go to Mr. Melillo.

**Mr. Eric Melillo:** A lot of what I wanted to say was already covered, so I won't reiterate it all. I don't see how I could support this. I

think it does effectively create a protection zone. I know we're doing a lot of work around CPC-5 and different variations, which may or may not take, in order to ensure that first nation consent and provincial agreement is reached in defining a protection zone.

I think this really oversteps all of that and essentially creates a one-off protection zone with the St. Lawrence before there is any direct consent of the first nations or of the provinces, or of Quebec, for that matter. For those reasons, I'll be certainly opposing this, and I would encourage my colleague from the Bloc to support CPC-5 so that we can ensure we can define “protection zones” with the first nations and provinces on board.

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

[*Translation*]

I now give the floor to Mr. Lemire.

[*English*]

Then after that we'll have Ms. Idlout.

[*Translation*]

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

I just want to correct one thing. The intent isn't to create a protected area for the St. Lawrence, but to ensure that the first nations concerned are directly informed of the potential consequences.

It's important to remember that the St. Lawrence Seaway is a waterway that was created. The river is wide enough in some places, but the waterway had to be dug up and widened in other places, which had consequences. Let's look at the history. The decision was made not to build the waterway near the Lachine Canal at Kahnawake or Châteauguay, but rather to move it a little further south. This has led to flooding of first nations lands, isolating some first nations and redefining their territories. These people have suffered the consequences of colonial decisions, without ever having been involved in the process or consulted.

By adding these provisions, we want to ensure that affected nations, such as the Mohawks of Kahnawake, in particular, can be involved and consulted at every stage of decisions related to the waterway.



When we talk about full participation in the governance, management and decision making regarding the protection, maintenance and use of the St. Lawrence Seaway, it's not just at the recreational level. We're talking about a waterway that is one of the main waterways. We agree that this has an impact on the ports of Montreal and that everything that goes to Toronto will go through there. That has a huge impact on first nations. If something happens to the environment, first nations need to know about it directly. Right now, the information chain doesn't reach first nations, either for pre-consultation or for the maintenance, use and protection of the St. Lawrence Seaway.

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

[*English*]

Next we'll go to Ms. Idlout.

**Ms. Lori Idlout:** Thank you.

I do support this amendment, especially after what I heard from the bureaucrats. I don't know if the Conservatives heard the same response that I did, but the way that I interpreted their response to my question was that it would not have a negative impact on other geographical areas, that it would actually help other first nations in their negotiations. I'm just a little bit surprised with the response from the Conservatives because, based on what I heard with my line of questioning on this amendment, it would not have a negative impact on other first nations and what they want to do to participate in governance, management and decision-making concerning water.

Thank you.

• (1245)

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

I'm not seeing any further hands up for debate, so let's move this to a vote. This is on BQ-27.1.

(Amendment negated: nays 9; yeas 2)

**The Chair:** BQ-27.1 is defeated.

[*Translation*]

I will now give the floor to Mr. Lemire to move BQ-27.2, if he wishes.

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

Again, this amendment proposes a new clause 29.1.

I'd just like to respond to the previous vote, on the St. Lawrence Seaway. I sincerely wonder if the vote would have been different if it had been a waterway located in Ontario or in western Canada? It seems that there is often less openness when it concerns Quebec. I'm not surprised to see the lack of interest in these issues, particularly when it concerns first nations that are directly affected by them.

That said, I will now speak to BQ-27.2.

The purpose of this amendment is for the minister to ensure that all organizations subject to the Canadian Navigable Waters Act, the Canada Marine Act and the Canada Shipping Act, 2001, strictly adhere to the principles of the United Nations Declaration on the

Rights of Indigenous Peoples in terms of consultation, collaboration and participation.

Further, I believe that upholding these principles includes incorporating indigenous perspectives into governance processes, as well as establishing collaborative mechanisms that allow for shared decision making with first nations to ensure the protection of ecosystems and the environmental rights of indigenous peoples.

According to the amendment, the minister must also ensure that these principles are not only respected but actively applied in all decisions related to the management and protection of navigable waters and waterways, including in infrastructure and development projects affecting these vital resources.

So the amendment is that Bill C-61 be amended by adding after line 24 on page 16 the following new clause:

29.1 (1) The Minister — as well as any other members of the King's Privy Council for Canada, other persons and bodies established under an international agreement that are concerned — must ensure that every organization subject to the Canadian Navigable Waters Act, the Canada Marine Act or the Canada Shipping Act, 2001 strictly adheres to the principles of the United Nations Declaration on the Rights of Indigenous Peoples respecting consultation, cooperation and participation.

(2) Adhering to those principles must include taking Indigenous perspectives into account in governance processes and establishing cooperation mechanisms that allow for joint decision making with First Nations, in order to protect ecosystems and Indigenous peoples's environmental rights.

(3) The Minister — as well as any other members of the King's Privy Council for Canada, other persons and bodies established under an international agreement that are concerned — must also ensure that those principles are not only adhered to, but also actively applied in every decision about the management and protection of navigable waters and seaways, including in respect of infrastructure and development projects that affect those vital resources.

• (1250)

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

So BQ-27.2 has been moved.

[*English*]

I'll open the floor up for debate.

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

**Ms. Lori Idlout:** I just have a quick technical question because what I was reading in reference number 13430068 is being said slightly differently through the interpreter. There were variations and I wonder which version we are debating.

Is it the paper version or what was said by the interpreter?

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

It will be the paper version that was sent out. Sometimes the interpretation will not give us the exact legal interpretation. They do a fantastic job, but please stick with what we have on paper.

Next we have Mr. Melillo and then Mrs. Atwin.

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

I just want to ask a couple of questions of our officials. I'll seek the clarification and hope we receive the clarification.

In reading this, it mentions that “every organization subject to the Canadian Navigable Waters Act, the Canada Marine Act or the Canada Shipping Act, 2001 strictly adheres to the principles of the United Nations Declaration on the Rights of Indigenous Peoples”.

I think that's a very great principle or thought, but I wonder about how that could possibly be enforced. I mean, there are a number of organizations that have to adhere to those acts. I imagine many of them are not in the control of the federal government.

Could you provide some thoughts on how that could actually be achieved, or if you would agree that it is difficult to achieve?

**Ms. Rebecca Blake:** I agree that the enforcement components could be difficult to achieve for a couple of reasons. One, those federal acts cited are the responsibilities of other ministers, not the lead minister for this bill, so it would really require their involvement in terms of any enforcement along those lines.

As well, to point to the references to international agreements, those would also be with different nation states. There might be specific enforcement mechanisms built into those agreements, and there would be a lot of dependencies on where this act could impose changes on another nation state, for instance.

**Mr. Eric Melillo:** Yes, I think that's enough for me, so thank you.

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

Next we'll go to Ms. Atwin.

**Mrs. Jenica Atwin:** I was going to ask a similar question to the officials about the implications of this in practice.

Maybe I can also ask about joint decision-making as well. Does that imply two parties? Is it kind of vague where it's open up to many parties? I'm just trying to see this in practice, how it would work.

**Ms. Rebecca Blake:** Joint decision-making could be two parties or multiple parties, depending on how it's operationalized. There is vagueness there.

I would also point to the existing principles of UNDA and UNDRIP that have been entrenched through this committee's work around those principles in this bill, as well as agreement-making. Co-management agreements, for example, could come about as part of the implementation of this bill as it is.

**Mrs. Jenica Atwin:** Thank you.

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

[Translation]

I now give the floor to Mr. Lemire.

[English]

After that, we'll go to Ms. Idlout.

[Translation]

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

In other words, we're asking the minister to ensure that his colleagues encourage the protection of water. It's a matter of shaking the habit we all too often have of working in silos when it comes to this kind of measure. All ministers must feel concerned about pro-

tecting waterways and, above all, about the effects that may have on first nations.

In short, we want to make sure that the work is more collaborative. That's what this measure is about.

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

[English]

Next we'll go to Ms. Idlout.

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

I do support this amendment.

In thinking about your response to the Conservatives' questions about other nation states regarding, for example, the United Nations Declaration on the Rights of Indigenous Peoples, can you remind us if the United States signed on to UNDRIP?

• (1255)

**Ms. Rebecca Blake:** Would my colleague Mr. Fairbairn know if the United States has signed on to UNDRIP?

**Mr. Douglas Fairbairn (Senior Counsel, Legal Services, Department of Crown-Indigenous Relations and Northern Affairs and Department of Indigenous Services, Department of Justice):** I cannot say for certain. I believe not, but I don't know for certain.

**Ms. Lori Idlout:** Then can you give us a scenario as to how this provision would work? I wish someone could answer for sure, so could someone look it up quickly and let us know if the U.S. is in agreement with UNDRIP? That's the only other nation that I can think of that would be implicated by this. That's why I'm asking about the United States. Can you describe for us how that would play out, just to get more details in response to what the Conservatives were asking?

**Ms. Rebecca Blake:** As a general principle of law-making, the Parliament of Canada can only make laws that apply in Canada. In terms of this proposed amendment that relates to international agreements, any potential applications of those international agreements would only be as they apply in Canada, so it would be agreement by agreement to look at what the implications would be.

We did get the answer for you, thanks to my colleagues. The United States does support the United Nations Declaration on the Rights of Indigenous Peoples, but I do not believe that it's part of their law.

**Ms. Lori Idlout:** Thank you.

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

I'm not seeing any other hands up. I believe we can go to a vote on BQ-27.2.

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

(On clause 30)

**The Chair:** I want to welcome back Mr. Morrice, because the next amendment we have up is PV-7.

I'll turn the floor over to you, Mr. Morrice.

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

This amendment, like others before it, comes to us from the testimony we heard from the Six Nations of the Grand River. In this case, it mirrors the language they were pushing to have included in clause 26, which we spoke about last night, when it comes to removing “best efforts” and increasing the responsibility of the minister to ensure that access to clean drinking water is provided.

This is the section on funding. The current text in the bill states, “The Government of Canada must make best efforts to provide funding”. The amendment would remove “make best efforts to”. This would clarify the bill and increase the responsibility of the Government of Canada.

With this amendment, the new text would read as follows:

The Government of Canada must provide funding that meets the needs assessed in the framework referred to in subsection 27(1).

Thank you, Chair.

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

I'll say a few things.

First, because PV-7 has been moved, NDP-68 and NDP-69 cannot be moved, because they are identical.

Unfortunately, I do need to make a ruling on this amendment. The amendment attempts to create an obligation for financing that does not currently exist in the bill.

*House of Commons Procedure and Practice*, third edition, states the following on page 772:

Since an amendment may not infringe upon the financial initiative of the Crown, it is inadmissible if it imposes a charge on the public treasury, or if it extends the objects or purposes or relaxes the conditions and qualifications specified in the royal recommendation.

In the opinion of the chair, the amendment proposes a new scheme that imposes a charge on the public treasury. Therefore, I rule the amendment inadmissible.

• (1300)

[*Translation*]

We are now on BQ-28.

I'm going to go to Mr. Lemire.

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

Amendment BQ-28 proposes that Bill C-61, in clause 30, be amended by replacing line 22 on page 16 with the following:

provide funding that meaningfully reflects consultations and cooperation between the Minister and First Nation governing bodies under subsection 27(1) and that meets the needs assessed in the

In this context, we propose that the minister take into account what he finds in his assessment framework and that he meaningfully reflect the consultations and cooperation referred to in clause 27. We want the government to be exemplary in its role as a water supplier. That is the purpose of amendment BQ-28.

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

[*English*]

BQ-28 has been moved. I'll open it up for debate.

Mrs. Atwin, you have your hand up.

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

The current language in the bill is about that comparability piece. Does this amendment actually make it stronger, or is the language in the bill currently stronger?

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

I would refer members to clause 31, which states, “The Government of Canada must make best efforts to provide funding that is adequate, predictable, stable, sustainable” and that meets the needs of the actual costs to first nations. If I were to compare and contrast the current clause 31 with the proposed amendment, I would lean toward having clause 31 make a stronger commitment.

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

Mr. Melillo.

**Mr. Eric Melillo:** To follow up on that, when I read the amendment, the proposal, when I look at 31, I think there are some different words, but I think, at the end of the day, it's essentially saying the same thing to me from a tangible standpoint.

Mr. Barbosa, can you expand on why you would favour the language in clause 31 versus the proposed amendment?

**Mr. Nelson Barbosa:** Thanks. It's a great question.

I'll take it back to some of the iterative drafting that this committee has considered, including the consultation process.

What clause 31 talks about in strong terms is the comparability. The last part of this clause, which I actually didn't read, was:

so that First Nation persons are able to receive water services comparable to those received by persons in non-Indigenous communities.

That is language that was added as part of the consultation process on this bill, and it was iterative across the drafting. In my opinion, it's what makes clause 31 stand out.

**Mr. Eric Melillo:** The point I'm getting at is that if BQ-28 were adopted and it mentions specifically funding that meaningfully reflects the consultations, I think it's maybe a distinction without a difference. Is it not essentially saying the same thing? I'm having trouble understanding the tangible change that would happen should this pass.

**Mr. Nelson Barbosa:** When you stack the language side by side, I see a greater adherence to the concepts of the dialogue that this bill brought forward, including—and not to be verbose—that this clause 31 speaks to adequate, predictable, stable, sustainable, needs-based and comparative costs. Those are the bedrock of the funding dialogue or the funding framework that we just concluded and will return to.

It could be narcissistic in terms of the differences, but I would see this one being a bit more prescriptive and aligned to the language that we've been so diligently reviewing.

**Mr. Eric Melillo:** I appreciate that. I wasn't trying to grill you too hard. I'm just genuinely trying to figure out the differences.

I'm done there. Thank you, Mr. Chair.

• (1305)

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

Next, we'll go to Ms. Idlout.

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

I am supportive of this amendment. I do have some questions.

If this BQ-28 were to pass, how would the government interpret “meaningfully reflects”?

**Mr. Nelson Barbosa:** I think it would be consistent with some of the other dialogue, in that the minister would be consulting, co-operating, and now we've introduced co-developing processes with first nations in respect to a myriad of things, but in this case we'd be talking about funding, so it would be done under that vein.

**Ms. Lori Idlout:** Towards the end it says “that meets the needs assessed”.

Does that mean that the funding would be meaningfully reflected only after there's an assessment? Does that require the assessment? What would happen if there is no assessment of the needs?

**Mr. Nelson Barbosa:** Your interpretation is correct. The paragraph being referenced is the consultation on funding allocations, which is the funding framework. That co-operation with first nations on assessing that need would need to occur.

**Ms. Lori Idlout:** I think this might be my last question. In the current clause 31, it's very interesting language in the first line, because, as much as I appreciate that in the second line you're saying that it strengthens 30 because of the funding that is “adequate, predictable, stable, sustainable and needs-based”, it's prefaced with “best efforts”. What I find interesting about this first line is some of the conversations we've had on the difference between “may”, “must” and “best efforts”.

Here, we have the bill saying, “The Government of Canada must make best efforts”. I wonder if you could explain for us what the difference is between “must make best efforts” and “may” or “must”.

**Mr. Nelson Barbosa:** As point of clarification, it might be my misinterpretation, so I apologize to the member introducing the bill and to the chair.

This is in reference to section 30. The first line would hold, “The Government of Canada must make best efforts to provide funding”, etc. Both provisions contain “best efforts”, and this amendment would not remove the provisions of “best efforts” in section 30. That's something I would just underline.

In terms of the cascade, certainly, “efforts”, “best efforts” and “must”, to me, are a continuum of consecrating action, but I think both of these paragraphs in sections 30 and 31, including the amendment proposed, maintain the concept of best efforts.

I apologize to the member if I'm incorrect.

**Ms. Lori Idlout:** I do apologize. I just have one more quick question.

If there was a subamendment proposed to remove “make best efforts to”, so that it reads only “must”, what would the implication of that be?

**Mr. Nelson Barbosa:** In this case, it is about funding the needs, so it would compel the minister to fund needs, which is a bit similar to PV-7 and NDP-68. I could stand corrected, but it's “must” do.

**Ms. Lori Idlout:** I'm so sorry. I promise that this is probably my last question.

What is the overall intention of Bill C-61 again?

**Mr. Nelson Barbosa:** There are three. One is the affirmation of first nations jurisdiction on law making regarding waters in, on or under their lands for water and waste water. The second is about closing a regulatory gap, the only regulatory gap in Canada, to support the provision of safe drinking water and waste water. The third is interjurisdictional, multi-party agreements to protect sources of water, i.e. protection zones.

• (1310)

**Ms. Lori Idlout:** Learning that there are differences between private members' bills and government bills, which are mainly that private members' bills can't attach funding—that's my understanding—and given that this is a government bill, hasn't part of the intention of this bill been to ensure that first nations have the resources they need to ensure clean drinking water?

**Mr. Nelson Barbosa:** Yes, absolutely. I think I was referring to some of the questions I've received over the last couple of days on what the three paramount objectives of this legislation are.

Absolutely, the provisions that we're speaking to today are about—I won't go through them—creating a framework with first nations to understand what the actual costs are and the provisions of capital maintenance. We talked about monitoring, to publicize that report and to make best efforts to fund that report.

Those are new factors that don't exist today that this legislation would entrench as well.

**Ms. Lori Idlout:** Thank you.

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

I'm not seeing any further hands up to intervene, so let's move to a vote.

Shall BQ-28 carry?

(Amendment agreed to: yeas 6; nays 5)

(Clause 30 as amended agreed to on division)

(On clause 31)

**The Chair:** That brings us to clause 31 and PV-8.

I'll turn the floor back to Mr. Morrice.

**Mr. Mike Morrice:** Thank you, Chair.

This is another amendment proposed by the Six Nations of the Grand River. It follows the amendment proposed for section 30, as well as that from section 26, to remove “best efforts”.

Expecting the ruling that you are about to make on this, similar to what you did on section 30, I'll just say that Six Nations has shared that the best efforts of the Government of Canada have failed first nations for decades. This is why they are particularly strong in their calls to adapt the language to remove "best efforts" and replace it with "must provide funding that is adequate, predictable, stable", and the rest of the text that is already in the bill.

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

First, I'll just note that because PV-8 was moved, NDP-72 and NDP-73 cannot be moved, because they are identical.

Unfortunately, I do need to make a ruling on this amendment, given that it attempts to create an obligation for financing that does not currently exist in the bill. As *House of Commons Procedure and Practice*, third edition, states on page 772:

Since an amendment may not infringe upon the financial initiative of the Crown, it is inadmissible if it imposes a charge on the public treasury, or if it extends the objects or purposes or relaxes the conditions and qualifications specified in the royal recommendation.

In the opinion of the chair, the amendment proposes a new scheme that imposes a charge on the public treasury. Therefore, I rule the amendment inadmissible.

Accordingly, that will take us to NDP-70.

I'll open the floor back up to Ms. Idlout, noting that I will have something to say about this as well.

• (1315)

**Ms. Lori Idlout:** *Qujannamiik, Iksivautaq.*

NDP-70 was an amendment submitted to us by the British Columbia Assembly of First Nations. I thank them for their great work to try to make improvements to Bill C-61, as I'm sure this will have a direct impact on the first nations people they represent.

The amendment reads that Bill C-61, in clause 31, be amended by replacing line 24 on page 16 with the following:

The Government of Canada must

It also would amend Bill C-61, in clause 31, by replacing line 27 on page 16 with the following:

water services on First Nation lands and in protection zones adjacent to First Nation lands so that First Nation

*Qujannamiik.*

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

Unfortunately, I do need to make a similar ruling in this case, because the amendment attempts to create an obligation for financing that does not currently exist in the bill. Again, *House of Commons Procedure and Practice*, third edition, states on page 772:

Since an amendment may not infringe upon the financial initiative of the Crown, it is inadmissible if it imposes a charge on the public treasury, or if it extends the objects or purposes or relaxes the conditions and qualifications specified in the royal recommendation.

Here again, in the opinion of the chair, the amendment proposes a new scheme that imposes a charge on the public treasury. Therefore, I rule the amendment inadmissible.

That takes us to NDP-71. Again, I will have something to say about this amendment, should it be moved.

I'll open the floor up to Ms. Idlout, should she wish to move it.

**Ms. Lori Idlout:** *Qujannamiik, Iksivautaq.*

NDP-71 was an amendment submitted to us by Ermineskin Cree Nation. I thank them for their hard work in ensuring that Bill C-61 could, hopefully, meet their voice, their demands and their rights.

The amendment they submitted reads that Bill C-61, in clause 31, be amended by replacing line 24 on page 16 with the following:

The Government of Canada must

It also amends Bill C-61, in clause 31, by replacing lines 28 to 30 on page 16 with the following:

persons are able to receive clean and safe water that meets the guidelines set out in the Guidelines for Canadian Drinking Water Quality.

*Qujannamiik.*

**The Chair:** Thank you very much, Ms. Idlout. Unfortunately, again, I need to make a ruling, because the amendment attempts to create an obligation for financing that does not currently exist in the bill. As *House of Commons Procedure and Practice*, third edition, states on page 772:

Since an amendment may not infringe upon the financial initiative of the Crown, it is inadmissible if it imposes a charge on the public treasury, or if it extends the objects or purposes or relaxes the conditions and qualifications specified in the royal recommendation.

Here, again, in the opinion of the chair, the amendment proposes a new scheme that imposes a charge on the public treasury. Therefore, I rule the amendment inadmissible.

**Ms. Lori Idlout:** In that case, I want to challenge the chair.

**The Chair:** Okay. That will take us to a vote on whether the ruling of the chair will be sustained.

(Ruling of the chair sustained: yeas 10; nays 1)

• (1320)

[Translation]

**The Chair:** That brings us to BQ-29.

I recognize Mr. Lemire.

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

Amendment BQ-29 proposes that Bill C-61, in clause 31, be amended by replacing line 25 on page 16 with the following:

provide funding that meaningfully reflects consultations and cooperation between the Minister and First Nation governing bodies under subsection 27(1), that is adequate, predictable, stable, sus-

Based on that logic, we're obviously talking about all expenses incurred and how the funds are distributed to meet needs. We propose to specify that funding must also properly reflect the principle of consultation and cooperation. Essentially, we're proposing that the minister take this into account when applying his needs assessment framework.

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

I open debate on the amendment.

Mrs. Atwin, you have the floor.

[*English*]

**Mrs. Jenica Atwin:** Thank you very much, Mr. Chair. I feel that, again, we understand the spirit of the amendment, and it has many merits, but I believe the existing clause 31 is actually a significant commitment for the Government of Canada and is aligned with that substantive equality concept.

To reiterate, clause 5(2) reads as follows:

The making of decisions under this Act is to be guided by the principle of substantive equality in relation to water services, as reflected in the following concepts:

- (a) the distinct needs of First Nations for reliable access to water services must be addressed in a way that respects First Nations rights and their access must be comparable to that in non-Indigenous communities;
- (b) First Nations are, without discrimination, to have control over their water services, including any related information management systems and the data and information they contain, and the design, construction, operation, maintenance and management of their water services; and
- (c) First Nations may, without discrimination, exercise their right to deliver water services through service delivery models designed by them to suit their needs, including through the adoption of innovative approaches and technology.

Therefore, because of this strong language, I feel it's already a significant commitment for the government, so I would not be supportive of the amendment.

Thank you.

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

Next, we'll go to Mr. Melillo.

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

If nothing else, now that we have already supported a previous Bloc amendment to add this wording in the previous clause, I think, for consistency's sake, at this point it would make sense to include it here as well, so we'll be voting in favour.

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

Is there any further debate on BQ-29? Not seeing any further debate, shall BQ-29 carry?

(Amendment agreed to on division)

[*Translation*]

**The Chair:** That brings us to BQ-30.

I'm going to go back to Mr. Lemire.

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

Amendment BQ-30 talks about the principle of substantive equality.

The amendment is that Bill C-61, in clause 31, be amended by replacing line 27 on page 16 with the following:

water services on First Nation lands so that, in accordance with the principle of substantive equality, First Nation

We're talking about first nations individuals who receive water services. The rest of clause 31 remains the same.

The idea is to explicitly name the principle of substantive equality in the context of the bill.

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

I will now open the floor to debate on this amendment.

[*English*]

Not seeing any interventions, let's go to a vote.

Shall BQ-30 carry?

(Amendment agreed to)

**The Chair:** This takes us to clause 31 as amended. Is it agreed to on division?

Oh, I'm sorry, Ms. Idlout.

**Ms. Lori Idlout:** I just want to reflect my vote as "no", because I don't support "best efforts".

**The Chair:** Ms. Idlout, would you like a recorded vote on that?

**Ms. Lori Idlout:** Yes, please.

(Clause 31 as amended agreed to: yeas 10; nay 1 [*See Minutes of Proceedings*]).

**The Chair:** This takes us to new clause 31.1 and PV-9.

I will have something to say about it. It is deemed moved, and I will give the floor back to Mr. Morrice to speak to it.

• (1325)

**Mr. Mike Morrice:** Thank you, Chair.

Recognizing your rulings over the last few amendments I brought forward from Six Nations, I'm aware of and have a sense of what you'll be ruling on this one as well. It is the third attempt, along with many attempts from MP Idlout, to increase the responsibility of the Government of Canada to ensure that funding is provided.

In this case, Six Nations of the Grand River proposed adding to the bill the possibility of first nations' availing themselves of the dispute resolution process set out in the settlement agreement, should actual costs be more than the costs that were provided previously in the bill. This amendment would provide that option for them.

Once again, this comes from Six Nations of the Grand River and would increase the funds required, so I expect a ruling to follow.

**The Chair:** Thank you very much, Mr. Morrice. Unfortunately, as you alluded to, I do need to make a ruling on this. The rules are what they are.

The amendment attempts to alter the conditions of an existing charge in order to extend them. As *House of Commons Procedure and Practice*, third edition, states on page 772:

Since an amendment may not infringe upon the financial initiative of the Crown, it is inadmissible if it imposes a charge on the public treasury, or if it extends the objects or purposes or relaxes the conditions and qualifications specified in the royal recommendation.

Therefore, unfortunately, in the opinion of the chair, the amendment would impose a new charge on the public treasury, and I rule the amendment inadmissible.

(On clause 32)

**The Chair:** That takes us to clause 32 and NDP-74.

Again I mention that I'll have something to say about this one, but I'll hand the floor over to Ms. Idlout to speak to NDP-74.

**Ms. Lori Idlout:** *Qujannamiik, Iksivautaq.*

I'm introducing NDP-74, which is based on the multitude of responses we got from first nations all over Canada, asking that the minister not just be reduced to making "best efforts" but that the obligation for the minister be at its highest. Therefore, NDP-74 replaces "The Government of Canada must make best efforts to" with:

The Government of Canada must

I think that this amendment is very much a request from first nations to have reconciliation with Canada, first nations having for too long been reduced to "best efforts" of previous Liberal and Conservative governments, which, because of their "best efforts" at the time, always resulted in not enough investments for first nations to have clean drinking water. This has resulted in the many hundreds of boil water advisories that first nations have to endure. This is really hoping to change the colonial pattern of underinvesting in first nations.

*Qujannamiik.*

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

NDP-74 has been moved. Unfortunately, again, I need to make a ruling on this amendment, because it creates an obligation for financing that does not currently exist in the bill. As *House of Commons Procedure and Practice*, third edition, states on page 772:

Since an amendment may not infringe upon the financial initiative of the Crown, it is inadmissible if it imposes a charge on the public treasury, or if it extends the objects or purposes or relaxes the conditions and qualifications specified in the royal recommendation.

In the opinion of the chair, the amendment proposes a new scheme that imposes a charge on the public treasury. Therefore, I rule the amendment inadmissible.

(Clauses 32 to 36 inclusive agreed to on division)

(On clause 37)

**The Chair:** That takes us to clause 37, and the next amendment we have is G-9. I will open the floor to Ms. Atwin to speak to G-9.

Just for members' information, this is the new G-9 that has been circulated. The reference number is 13434555.

• (1330)

**Mrs. Jenica Atwin:** I believe I'm reading the updated version. If I'm not, please stop me. This is around liability, just to be clear. I move that Bill C-61, in clause 37, be amended by replacing line 19 on page 17 to line 2 on page 18 with the following:

(2) A First Nation governing body is not liable for loss or damage in relation to acts or omissions of any of its employees or any persons hired by it who are acting within the scope of their duties in the provision of water services on the First Nation lands of the First Nation if the acts or omissions were committed in good faith and the Government of Canada did not make best efforts to provide adequate funding for water services on those First Nation lands.

(3) His Majesty in the right of Canada is not liable for loss or damage in relation to acts or omissions of servants of the Crown for anything done or omitted to be done by them in good faith in the performance, or intended performance, of their duties in relation to the provision of water services on the First Nation lands of a First Nation—and no action or other proceedings for damages lies or may be instituted against such servants of the Crown—if the Government of Canada made best efforts to provide adequate funding for water services on those First Nation lands.

The goal here is to clearly outline where that liability falls between the Government of Canada and first nations in a fair and equitable manner.

This proposed administrative adjustment is to support equity and liability protections. I'd like to say that it's also specifically referenced from our September 23 meeting. The Chiefs of Ontario supported this amendment during their committee appearance.

I'd just like to read a few things from Regional Chief Abram Benedict from the Chiefs of Ontario to back that up as well. He said, "We urge the committee to amend Bill C-61 to clearly define and fairly allocate the liability. We must ensure that the liability is fair and reasonable for our communities and shared with the federal government."

He also went on to say, "I want to clearly highlight that our communities will, reasonably, accept the liability, but will not take on broken and underfunded systems and be expected to be held liable for the federal government's lack of action on their end."

He also made another important point in his testimony by stating, "First nations should not be held liable for Canada's historic failure to properly fund infrastructure, maintenance, operation and training, nor should first nations be held accountable for future failures or underinvestment by the government."

This is where, again, that "best efforts" piece also comes into play.

Furthermore, the Government of Canada is required to fund in a manner that upholds first nations' human right to clean drinking water. This strengthens an already high standard. It also reinforces self-determination, which cannot be achieved without capacity, tools and resources. We believe this wording will help us get closer to self-determination, while still preventing first nations from paying the price for the lasting impacts of systemic underfunding from successive governments.

Thank you.

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

G-9 has been moved.

I'll open it up at this point for debate, should any member wish to make an intervention.

We have Ms. Idlout.

**Ms. Lori Idlout:** I disagree with this amendment, because it takes away the ability of first nations to ensure that they can have action if their rights are not being upheld.

• (1335)

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

Next, I'll go to Ms. Atwin.

**Mrs. Jenica Atwin:** I'd just like to hear a response from our officials on that interpretation.

**Mr. Douglas Fairbairn:** Certainly. This is actually intended to protect first nations. If a first nation governing body acted in good faith and it was sued, the idea here is that the first nation governing body would be protected from lawsuits. It's really in the best interests of first nations. The goal of this is to protect them.

**Ms. Lori Idlout:** What about subclause (3)?

**Mr. Douglas Fairbairn:** In subclause (3), "His Majesty...", there's a similar principle. It basically mirrors the protection of first nations. So, if the Government of Canada has acted in good faith, then it also is protected in a mirror image to first nations.

**The Chair:** Ms. Idlout.

**Ms. Lori Idlout:** I would be willing to support it if subclause (3) was removed.

**The Chair:** Mr. Battiste.

**Mr. Jaime Battiste:** This amendment is directly from some of the fears that first nations have stated around liabilities being passed onto first nations. If we remove that, then we're removing the protection for first nations. That is my interpretation.

I'm wondering if the officials can tell me if the first nations are protected against having to take on this liability, without this portion that our friend from the NDP would like to have removed.

**Mr. Douglas Fairbairn:** If you're talking about clause 3 removal, it would not affect first nations directly, but the idea is that there is an obligation on both parties, first nations and the Government of Canada, to act in good faith and to ensure that they're carrying out their duties properly. If they act in bad faith, for example, there would be no coverage. If the Government of Canada acts in bad faith, it could be sued. It would have no protection from liability.

The idea is to indicate that as long as the government is acting in good faith, it's protected from liability. In a similar situation with respect to first nations, as long as they're acting in good faith, they're also protected from liability.

**Mr. Nelson Barbosa:** Maybe I could just add that, from a policy perspective as well, the latter part of this paragraph, paragraph 3, says, "The Government of Canada must make best efforts to provide", noting that there are a variety of opinions on best efforts. It also places an onus on Canada to demonstrate that it has made those best efforts in order not to be liable in this context. It entrenches this idea that Canada must make good on the elements that are entrenched in the bill as it stands.

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

[*Translation*]

Mr. Lemire, you have the floor.

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

The reason G-9 is being proposed is that the elements it seeks to add to the bill were not part of the bill at the outset, when it was drafted. What elements of protection for first nations does this amendment add to the bill that were not there at the outset? I'd like to understand why we want to add this now.

We also know that there are still boil water advisories and other water-related issues. Some individuals have already been compensated. There is no risk of prosecution yet. So I'd like a clearer understanding of the consequences for the individuals concerned.

[*English*]

**Mr. Douglas Fairbairn:** The difference here is that the bill, as it reads now, protects the employees and people hired by first nation governing bodies.

The amendment would also add protection for first nation governing bodies themselves. The way it's worded, it does refer to "employees", but that's because there is vicarious liability when you have negligence. The idea is that if employees are sued, there would be no liability for the first nation governing body because of the acts of those employees, and also no personal responsibility on the part of the employees themselves.

• (1340)

[*Translation*]

**Mr. Sébastien Lemire:** Thank you.

[*English*]

**The Chair:** Next on the list is Mrs. Atwin, and then Ms. Idlout.

**Mrs. Jenica Atwin:** I just want to be really clear that this amendment will in no way take away the right of first nations to sue the federal government in the case of best efforts not being met, for example, or in any kind of scenario, and that they still have the power to do so.

**Mr. Nelson Barbosa:** That is correct. Arguably, the entrenchment of enshrining into domestic law the right of first nations increases the watermark—no pun intended—for Canada to take actions as part of this bill.



**Mrs. Jenica Atwin:** Thank you.

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

Next, we'll go to Ms. Idlout.

**Ms. Lori Idlout:** Just keeping in mind that I have to go to the House to do my S.O. 31, I do have some questions.

Regarding water laws in Canada, not considering the impacted first nations, where in other legislation in Canada do these kinds of provisions exist?

**Mr. Douglas Fairbairn:** In Ontario, in provincial legislation, there is protection for employees and water operators of the government, for example.

**Ms. Lori Idlout:** [*Inaudible—Editor*]

**Mr. Douglas Fairbairn:** I'll have to check for you. I'll get you the precise name of the bill. It's either the Ontario water safety act or the Ontario water act, but we will look that up for you.

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

I don't see any further hands up at this point, so let's go to a vote.

Shall G-9 carry?

(Amendment agreed to: yeas 9; nays 2)

(Clause 37 as amended agreed to on division)

(Clause 38 agreed to on division)

**The Chair:** Colleagues, this takes us to clause 39. However, it is 1:43 p.m. right now, and I know that there are members who have member statements, so we are going to suspend now. I know there isn't unanimous consent to vote virtually, so we will return after the votes.

I understand that we have four votes today. Maybe they are applied; I'm not sure at this point. As soon as those votes are finished, we will resume the committee meeting within 10 minutes of that.

[*Translation*]

**Mr. Sébastien Lemire:** Why not vote electronically? Otherwise, we're going to waste an hour.

[*English*]

**The Chair:** Mr. Lemire, unfortunately we don't have unanimous consent to vote virtually, so we will return as soon as the votes have finished after question period. Perhaps they're applied, but it means that we'll restart probably sometime between 3:45 p.m. and 4:15 p.m.

With that, we are suspended, but we will return at that point.

• (1340)

(Pause)

• (1550)

**The Chair:** Colleagues, we're back.

We're going to resume consideration of Bill C-61.

We left off just before question period. Just as a reminder to members, we were about to start clause 39.

[*Translation*]

(On clause 39)

**The Chair:** The next amendment we will be discussing is the new amendment BQ-31.

[*English*]

For information purposes for members, this is reference number 13387335.

[*Translation*]

I will now go to Mr. Lemire.

**Mr. Sébastien Lemire:** With all due respect, Mr. Chair, the new amendment BQ-31 is reference number 13387553, not 13387335, unless I have the wrong version.

• (1555)

**The Chair:** Wait a minute, I'll check.

[*English*]

Mr. Lemire is correct. It is actually reference number 13387553.

[*Translation*]

Mr. Lemire, you have the floor.

**Mr. Sébastien Lemire:** Thank you, Mr. Chair. Don't worry. In any event, I will read out the amendment.

Clause 39 of the bill begins to deal with the First Nations Water Commission. As you know, we've asked a number of questions and intervened on a number of occasions regarding this commission, particularly with regard to the consultation leading up to its establishment. Personally, I have concerns about how the opinion of first nations will be incorporated into the makeup of this commission. So most of the amendments we'll be proposing in relation to the First Nations Water Commission will go in that direction.

We're aiming for simple wording, that is to say discussions, consultations and reflections on the establishment of a commission and its mandate. Amendment BQ-31 proposes that Bill C-61, in clause 39, be amended by replacing lines 9 and 10 on page 18 with the following:

39 (1) The Minister must establish working groups, whose members are not paid, and whose purpose is to consult and cooperate with First Nation governing bodies and to grant them decision-making representation that is equal and equitable to that of the other participants, in respect of the develop-

It goes on to talk about the development of terms of reference for the establishment of this first nations-led organization.

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

[*English*]

For information purposes for members, if the new BQ-31 is adopted, NDP-76 cannot be moved due to a line conflict.

With that, I'll open it up to debate.

Mrs. Atwin, I'll start with you.

**Mrs. Jenica Atwin:** I just have a concern that this is quite prescriptive. It sets the terms of engagement for how the Government of Canada must engage with first nations in developing the first nations water commission, which is really meant to be the master of its own destiny and at arm's length from government. That's really critical for the process.

For me, it's too prescriptive in detailing what it's supposed to be. For that reason, I would be voting against it.

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

Mr. Lemire.

[*Translation*]

**Mr. Sébastien Lemire:** Out of curiosity, I'd like to know what my colleague thinks is too much. Is it establishing working groups? Is it the fact that their members are not paid? Is it the fact that their goal is to consult and cooperate with first nations governing bodies? Is it the fact that we want to allow equal and equitable decision-making representation for the other participants? Which of those is too much?

[*English*]

**Mrs. Jenica Atwin:** These are things we certainly hope will be part of the process, but again, it's up to the first nation communities that establish the water commission to decide that. It very well could look like working groups.

These pieces about ensuring equitable and equal representation are great as well, but it's not supposed to have the minister's direct involvement, in my understanding. Perhaps I can go to the officials to see what their interpretation would be. It's the minister piece.

**Ms. Rebecca Blake:** I appreciate the question.

Yes, absolutely. The way the bill is constructed right now is really to have the minister's only involvement in relation to the terms of reference. After that, first nations organizations would take over in terms of the articles of incorporation to create the organization completely separate from government to implement first nation priorities.

• (1600)

[*Translation*]

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

[*English*]

Is there any other debate?

Ms. Idlout.

**Ms. Lori Idlout:** Thank you.

I'm wondering about NDP-76. I see that reference number 13387553 and NDP-76 are quite different from each other. Number 13387553 proposes to require the minister to establish a working group, whereas NDP-76 seems to provide more leeway for the first nations water commission. I wonder where the line conflict is, so that I could consider what to do with both amendments.

Thank you.

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

I'm just looking at the bill. BQ-31 would amend lines 9 and 10 on page 18, and NDP-76 would amend lines 10 and 11. While not similar in substance, they deal with the same line, which is line 10. That is the line conflict that is there.

Colleagues, we're going to suspend very briefly while a little bit of back-and-forth happens.

• (1600)

(Pause)

• (1610)

**The Chair:** Colleagues, we're back.

We ended off with Ms. Idlout having the floor.

Ms. Idlout, I'll turn the floor back to you.

**Ms. Lori Idlout:** Thank you for explaining where the line conflict is. I think I'm ready to vote.

**The Chair:** That's great.

In that case, unless there are any other interventions to be made here, let's go to a vote.

Shall the new BQ-31 carry?

(Amendment negatived: nays 10; yeas 1)

**The Chair:** That brings us to NDP-76.

I will turn the floor over to Ms. Idlout.

**Ms. Lori Idlout:** *Qujannamiik*.

NDP-76 is an amendment submitted to us by File Hills Qu'Appelle, and I thank them for their work. It's too lengthy, so I'm not going to read the whole thing.

Thank you.

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

NDP-76 has been moved.

I'll just mention that if NDP-76 is adopted, CPC-12 and CPC-13 cannot be moved due to a line conflict and the fact that they are consequential.

With that, I'll open it up to debate.

Mrs. Atwin.

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

Once again, where it's prescribing setting the terms of engagement for the first nations water commission, I would not be supportive of it. Most of the provisions that are mentioned are already existing, except for those proposed timelines. The existing language acknowledges the importance of setting a timeline for the development of the FNWC, but it has that built-in flexibility, which is what we heard from partners definitively.

I will be voting against.

• (1615)

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

Not seeing any further hands up for debate, let's move to a vote.

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

**The Chair:** That takes us to CPC-12.

I'll turn the floor over to Mr. Melillo.

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

I will move CPC-12. If adopted, subclause 39(1) would read as follows:

The Minister must consult and cooperate with First Nation governing bodies in respect of the development of terms of reference for the establishment of a corporation under the Canada Not-for-profit Corporations Act that is to be led by First Nations and must co-develop the terms of reference with those bodies.

I don't want to speak more than I have to. This is pretty straightforward. It's looking to add co-development. Once again, this is something we've been aiming to do throughout this legislation to ensure that first nation voices are being represented.

I will end my remarks there.

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

I want to note that the vote on CPC-12 applies to CPC-13 because they are consequential. CPC-13 refers to something mentioned in CPC-12. I want to draw members' attention to that.

With that, we'll open it up to debate.

Mr. Battiste, go ahead.

**Mr. Jaime Battiste:** Can officials tell us if we have ever tried to co-develop something with a non-profit corporation? I can understand the need for co-development with first nations communities. Can you talk to us a little bit about the difference in how it would apply to a first nations water commission? If we accepted what Mr. Melillo has put forward, what would be the implications of that?

**Mr. Nelson Barbosa:** I'm not aware of a co-development precedent. It's analogous to conversations we've had in the past at this committee on clarity of terms used in previous bills. I'm not aware of that context, nor am I aware of a co-development process with a proposed non-profit organization, if that's what this amendment is interpreted to do.

**Mr. Jaime Battiste:** At the end of the day, we're talking about terms of reference that are worked on between the first nations governing body and the minister. It leads me to believe that.... Aren't the terms of reference seen, in a way, as a more direct thing that people can agree to? It's not a contract. It's not an agreement. It's terms of reference. To me, the terms of reference are on the precipice of what they're going to do to work together to put something in place.

I just don't know if it's needed. Is it needed?

• (1620)

**Mr. Nelson Barbosa:** As written, subclause 39(1) speaks to consultation and co-operation in order to develop terms of reference that would bring life to a non-profit organization that is called "first nations water commission". I guess the thread is to bring people together to agree on how an organization would be created. The end result is the terms of reference. How that's achieved can be a vari-

ety of things, but, as written, first the minister must consult and cooperate to bring into force a non-profit organization.

**Mr. Jaime Battiste:** Whether it's co-develop or consult and cooperate, the result is still the terms of reference. Is that correct?

**Mr. Nelson Barbosa:** As written, the intention is to develop terms of reference.

**Mr. Jaime Battiste:** Okay.

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

Are there any other interventions?

Not seeing any, let's go to a vote.

(Amendment negatived: nays 7; yeas 4 [*See Minutes of Proceedings*])

**The Chair:** For clarification, as a result of the vote on CPC-12, CPC-13 cannot be moved.

[*Translation*]

So that brings us to BQ-32.

I recognize Mr. Lemire.

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

Amendment BQ-32 proposes that Bill C-61, in clause 39, be amended by adding after line 17 on page 18 the following:

(a.1) that the corporation must provide its services in both official languages; and

The intention is for services to be provided in indigenous languages when necessary. However, the reason we're specifying that they must be provided in both official languages is because indigenous communities are not exclusively anglophone, and we shouldn't have to tell you that. In many cases, they also use French as a language of reference. That's the case in Manitoba, New Brunswick and Quebec. Indigenous communities are associated with English as a colonial language, but French is useful in many cases. So documents need to be translated into both official languages.

I can't speak for the other territories, but I think it could be English elsewhere. It might even be useful for documents to be in English in certain francophone communities in Quebec or elsewhere, to make it easier for some anglophone members to understand.

We're often overlooked. However, we're very progressive, and people are depriving themselves of what francophone communities can contribute. The Assembly of First Nations learned that the hard way. However, the federal government is just as guilty of the malaise surrounding consultations on funding for first nations children. Nobody bothered to translate the offer that was given to the chiefs to do their consultations. We talked about it last summer. The department did not provide its offer of \$47 billion in both official languages. That would warrant a complaint to the Commissioner of Official Languages. We actually received this information in French in September, when the agreement had been signed in July. This is an aberration that's worth pointing out here in committee, and it should never happen again anywhere else.

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

[English]

BQ-32 has been moved. At this point, we'll open it up to debate.

I have Mrs. Atwin.

• (1625)

**Mrs. Jenica Atwin:** Just generally, I want to put on the record that I believe indigenous communities also believe in the importance of French and English, but also, there are other languages of consideration, and they would be the best to determine the provision of languages for the first nations water commission once it's created.

Having said that, I see the merit of the amendment as well. Maybe I'll just leave it at that for further discussion.

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

Next, we'll go to Ms. Idlout.

**Ms. Lori Idlout:** Thank you.

I think it would have been great to see that the spirit of indigenous languages is not just verbally shared with us, but that it's actually in the amendment. Given that indigenous peoples, first nations, are still forced to speak either English or French, indigenous languages are still being lost. We're still losing too much of first nations languages, be it Cree, Ojibwa or other languages. As such, I can't support this amendment.

Thank you.

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

I'm not seeing any other hands up. Let's go to the vote.

Shall BQ-32 carry?

(Amendment negated: nays 6; yeas 5)

[Translation]

**The Chair:** We will now move on to amendment BQ-33.

I recognize Mr. Lemire.

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

Amendment BQ-33 proposes that Bill C-61, in clause 39, be amended by adding after line 23 on page 18 the following:

(c) that the corporation may, at any time, make a special report to Parliament referring to and commenting on any matter within the scope of the powers and

functions of the corporation where, in the opinion of the corporation, the matter is of such urgency or importance that a report on it should not be deferred until the time provided for transmission of the next annual report of the corporation; and

(d) that the corporation must publish on its website, in both official languages as well as in any Indigenous language of its choice, every report it provides to the Minister within 10 days after it is tabled in both Houses of Parliament.

As we saw in the previous amendment we just voted on, this one specifies that it must be done in both official languages and in any indigenous language the organization chooses. That said, we're giving the commission the right to inform us of any important or urgent situation that cannot wait for the next annual report. That's to ensure transparency and good cooperation with first nations.

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

Amendment BQ-33 has therefore been moved and I will now open the floor to debate that amendment.

[English]

Let's start with Ms. Idlout.

**Ms. Lori Idlout:** *Qujannamiik, Iksivautaq.*

I'm definitely more supportive of this amendment. I don't think it should be "of its choice". I think it needs to be strengthened. In (d), where it says "of its choice", I think that should be replaced with "in as many indigenous languages as possible".

I wonder if the Bloc would be open to that subamendment.

Thank you.

• (1630)

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

I just want to confirm something. You mentioned that it would be amended by saying "as many indigenous languages as possible". I want to note that the subamendment you had circulated by email says "every indigenous language possible". I am hoping you can confirm which of the two you would like to advance through the subamendment.

**Ms. Lori Idlout:** It is the one that I just read out loud: "in as many indigenous languages as possible".

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

It is a slight change, but just to make sure we have the correct translation into French, we are going to briefly suspend to make sure that's accurate.

• (1630)

(Pause)

• (1645)

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

The subamendment that Ms. Idlout moved has now been translated and circulated. You should have that in your inboxes.

We left off with Ms. Idlout having the floor. I'm going to turn the floor back to Ms. Idlout.

**Ms. Lori Idlout:** Thank you for your patience, everyone.

As I mentioned, with my subamendment, I'm hoping to strengthen BQ-33 so that, in the third line from the bottom, it replaces "of its choice" with "as many indigenous languages as possible".

Thank you.

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

The subamendment has been moved.

At this point, we'll open it up to debate on the NDP subamendment to BQ-33. Are there any members who would like to intervene at this point?

Go ahead, Mr. Melillo.

**Mr. Eric Melillo:** I appreciate Ms. Idlout bringing this forward.

Again, similar to some of my other questions, I'd like to ask how this would be achieved. I think there could be some challenges logistically, just with the unfortunate reality that there are, in some cases, very few people who speak some of the indigenous languages. I'm just curious about thoughts from the officials on how this would actually be achieved.

**Ms. Rebecca Blake:** In terms of the proposed amendment as a whole, it would put requirements on the water commission should they want to bring a report forward at any given time, versus annual reports, and then prescribe the posting of that report in multiple languages. It could be quite costly, from a translation services perspective, in terms of all those multiple languages and also in terms of time constraints to get all of the translation done within that time period.

**Mr. Eric Melillo:** I don't know if "anticipate" is the right word, but in your view, with those time constraints, could that lead to any significant delays?

**Ms. Rebecca Blake:** It could potentially lead to delays. Also, from a policy perspective, it could also maybe limit the idea of doing a report with those time considerations and the funding required for all of the multiple languages for translation. That would be another kind of policy consideration for transparency of information.

**Mr. Eric Melillo:** Okay.

If I have the right one in front of me, it mentions "as many indigenous languages as possible". That phrase, "as possible", obviously offers a bit of flexibility. How would you see those words, "as possible", playing out?

**Ms. Rebecca Blake:** "As possible" ultimately would be led—or the interpretation of that in the bill—to any partners in the public domain receiving that information. As with any federal legislation, any elements could be subject to a court challenge, so there might be, potentially.... If there was a language missed, that could potentially be part of a court challenge.

**Mr. Eric Melillo:** I see. Okay.

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

I'm not seeing any further debate. Let's take this to a vote.

Shall the subamendment to BQ-33 carry?

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

**The Chair:** The subamendment to BQ-33 is carried. That brings us back to BQ-33 as amended. I'll open it back up if any members would like to make an intervention.

Not seeing any interventions, we can move to a vote.

Shall BQ-33 as amended carry?

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

**The Chair:** That is carried.

● (1650)  
[Translation]

We will now move on to amendment BQ-34.

I'm going to turn it over to Mr. Lemire again.

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

The amendment proposes that Bill C-61, in clause 39, be amended by adding after line 11 on page 19 the following:

(d.1) considering matters relating to water pollution on First Nation lands and making recommendations to the federal, provincial and territorial governments and First Nations in this regard by taking into account, among other things, existing frameworks and best practices related to pollution caused by certain dangerous substances discharged into the aquatic environments on First Nation lands; and

What we're aiming for here is a monitoring function and a review of best practices with respect to hazardous substances being dumped into aquatic environments. Water, as we know, is constantly evolving. I think the commission should have the necessary means to bring in competent people who can advise it and support first nations in the event of a disaster, such as a spill. This would allow the commission to make decisions that are tailored and based on the most modern science possible.

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

Would anyone like to discuss BQ-34?

Mrs. Atwin, you have the floor.

[English]

**Mrs. Jenica Atwin:** Thank you.

Once again, it's just setting the terms of engagement for how the Government of Canada must engage with the first nations water commission. I do believe that most of these pieces, if not all, are already possible within the existing language of the bill, so I'd rather leave it up to the self-determination of the commission itself, once it's created.

Thank you.

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

Is there any other debate?

I'll go to Mr. Melillo and then to Ms. Idlout.

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

Notwithstanding what Mrs. Atwin said, unless I am mistaken here, this is an optional provision. Is that correct?

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

**Mr. Eric Melillo:** Okay. Given that, I guess it's not too prescriptive.

I've said all I need to say. Thank you.

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

We'll go to Ms. Idlout.

**Ms. Lori Idlout:** *Qujannamiik*.

I had similar questions. As such, I'm going to be supportive of this amendment.

Thank you.

**The Chair:** I'm not seeing any further hands up for debate. We can take it to a vote.

Shall BQ-34 carry?

(Amendment agreed to on division)

**The Chair:** As mentioned earlier, CPC-13 cannot be moved, because CPC-12 was rejected.

This takes us to the end of clause 39.

• (1655)

[*Translation*]

**Mr. Sébastien Lemire:** Mr. Chair, before we vote on clause 39 as a whole, we'd like to check something. Is it possible to suspend?

**The Chair:** Do you want to suspend for a minute?

**Mr. Sébastien Lemire:** No, I don't want to suspend. I was talking about suspending the vote on clause 39. Can we come back to it later or do we absolutely have to vote on it now?

**The Chair:** Can you explain to the committee what your intentions are?

**Mr. Sébastien Lemire:** Following the vote on amendment BQ-32, in hallway discussions, if I can call them that, we were led to believe that this vote could be taken up again after we had made a minor change to this amendment.

There was a bit of a dilemma about including indigenous languages in that. I think that's why the New Democratic Party opposed this amendment. I think that the government representatives also didn't fully understand the importance of the commission translating documents into French.

I don't want to get into a political debate on this, because that would be outside the scope of the committee. That said, we would perhaps like to vote later on amendment BQ-32, after making an amendment that may result in the committee adopting it unanimously.

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

[*English*]

If we want to move ahead with this, we'll have to vote on standing this clause so that we can come back to it at the end.

Before we do that, I see that Ms. Idlout has her hand up.

**Ms. Lori Idlout:** I'm just wondering about the rules about how things operate. We already voted on that.

Because we already voted on it, can we not just vote on clause 39? We already had our vote.

**The Chair:** Thanks for that, Ms. Idlout.

We have already voted on BQ-32. We haven't voted on clause 39 as amended. In order to go back to BQ-32, we would need to have unanimous consent.

What's being proposed right now is to stand the approval of clause 39 so as to enable a bit more debate to happen, if there might be unanimous consent on going back to look at that. Of course, in order to do that, we would first need to vote on whether or not we want to stand the approval of clause 39 until after we finish the other clauses.

Let's move to a vote on whether we would like to stand clause 39.

**Mr. Jaime Battiste:** Can we have a bit more discussion, Mr. Chair?

**The Chair:** Absolutely, we can have that.

Do you want to suspend, then, to do that?

**Mr. Jaime Battiste:** No, no.

**The Chair:** Okay. Go ahead, Mr. Battiste.

**Mr. Jaime Battiste:** Since we haven't voted on the entire clause, what wording would we consider putting in there, by unanimous consent? I think most of us are in the spirit of the intent of this, as long as.... I can understand that we didn't want to give just French without including the indigenous, but now that indigenous is a part of that, I think that's consistent with what our Constitution says and consistent with what we're doing.

What is it that you would like to have moved that we could take care of now, as opposed to coming back to it later on? I think that once the inclusion of indigenous languages came forward and was agreed upon, that just makes it consistent with our Constitution that we also recognize the documents should be created in French as well.

[*Translation*]

**Mr. Sébastien Lemire:** Mr. Chair, if I may, I would like to make a comment.

There's nothing to indicate that it must respect both official languages. In fact, that's why we moved amendment BQ-32.

After obtaining the committee's unanimous consent, we could add something to amendment BQ-32 that requires the organization to provide its services not only in both official languages, but also in any indigenous language it considers necessary. That way, it would be a matter of providing all services in both official languages. This would therefore apply to all of the commission's work, and not just to a special report, as was mentioned in amendment BQ-33.

If this is added, I think the commission would also be required to address francophone indigenous communities in French. They are the majority in Quebec. As it is currently presented, the commission can address anyone in English only, which systematically excludes the possibility of communicating with indigenous communities that do not understand English or whose first language is not English.

It could set what I would call a dangerous precedent. If you want to see something circulating on social media, you can be sure that any elected separatist in Quebec will be able to make a field day of the vote we just held on amendment BQ-32. By the way, I don't want us to play politics on the backs of first nations, but this vote is a slap in the face for Quebecers and French Canadians. I'm giving us an opportunity to come back to this, rather than going through the people's courts.

• (1700)

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

[English]

I see that Ms. Idlout has her hand up, but I'll wait a second before going to her.

I'll pass the floor to Mr. Carr.

**Mr. Ben Carr (Winnipeg South Centre, Lib.):** If I understand correctly, Mr. Lemire, if we imagine that there was agreement and we could go back in time and vote yes on BQ-32, would that be satisfactory? If the answer to that is yes, then can we not simply propose, using the exact language of BQ-32, that, through unanimous consent, we adopt that language? We can't call it BQ-32 without going back, so we'll just take that exact language and propose it.

I'm happy to do that through a motion, but I think it's probably respectful to allow Mr. Lemire to do that, as it was his. Then, if the committee adopted that by UC, we wouldn't have to go back. We've now amended the clause. Mr. Lemire is content, as are we. There's no need to stand it; we just move forward—unless I'm missing something.

[Translation]

Mr. Lemire, I apologize for explaining in English. Having said that, I think that is what you're looking for, isn't it?

**Mr. Sébastien Lemire:** It would indeed be in that spirit. We could refer to the proposal as amendment BQ-37. The text of the amendment has been emailed to the clerk. As I mentioned, this wording includes the requirement that the organization provide its services in both official languages and in any indigenous language it considers necessary.

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

[English]

I think it's a great suggestion, Mr. Carr.

Next, we'll go to Ms. Idlout.

**Ms. Lori Idlout:** There were two languages going on. You were speaking, and I was listening to the interpreter at the same time. I'm so sorry, but what did I just miss?

**The Chair:** Perhaps Mr. Carr can go through what he mentioned before.

If I understand correctly, Ms. Idlout, you were hearing what was being said here and also something separate in translation. For my awareness, Ms. Idlout, was that when Mr. Carr was explaining his suggestion, or was it when Mr. Lemire was doing his explanation?

**Ms. Lori Idlout:** I raised my hand in response to what my friend Sébastien was saying.

I guess I can speak now.

• (1705)

**The Chair:** Yes, please go ahead.

**Ms. Lori Idlout:** There are two things. First of all, we already voted on that amendment, and my understanding is that we can't go back. If we could go back, then I would want to go back to some amendments that we voted on that I wish we had passed. I'm just saying.... Second, nothing in this bill, from my understanding, tells me that either French or English is prevented from being used. There is nothing in the bill currently that prevents either language.

In addition, the Government of Canada and its Crown corporations—I don't know what the language is—are already bilingual institutions. We already have French and English provided for in all these spaces. Knowing that for the first nations water commission, being a creature of this legislation, those resources will be provided for English and French, there is nothing at all preventing either English or French, is there?

What I would like to ask the witnesses, in response to what he was saying.... Could they respond to what he was saying?

**Ms. Rebecca Blake:** In terms of what the policy intent is for the water commission, it is that it would be created as a not-for-profit corporation under the Not-for-profit Corporations Act, and it would be completely separate from the Government of Canada. It wouldn't necessarily be under the same policies and procedures as the Government of Canada.

**Ms. Lori Idlout:** Okay. Are there other not-for-profit corporations that are created by legislation federally?

**Mr. Douglas Fairbairn:** There are corporations created by federal statute. This is a little different, in that it's being created under.... The Canada Business Corporations Act is the act that many corporations are incorporated under.

**Ms. Lori Idlout:** What about the indigenous languages commission?

**Mr. Douglas Fairbairn:** That's not created under the Canada Business Corporations Act.

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

To your earlier point, this is only possible.... We can go back only if we unanimously agree to do that, because we have dealt with it. It is an extraordinary measure to do that, but I think there is a spirit to try to see how we might be able to find that.

I'll turn it over to Mr. Carr next, and I know Mr. Battiste has something to say.

Actually, before we do that, a similar piece of legislation we dealt with in this committee was on the National Council for Reconciliation. I wonder if that was a non-profit that was created and if it would be analogous here. I'm just going to put that out there before going to Mr. Carr, if our witnesses might be able to speak to that.

**Ms. Rebecca Blake:** We are looking for the answer, but we don't have it off the top of our head right now.

**Mr. Douglas Fairbairn:** Yes. Just to answer, the National Council for Reconciliation used a similar model. It would be created under the Canada Business Corporations Act.

**The Chair:** Okay.

With that, I'll go to Mr. Carr.

**Mr. Ben Carr:** Okay, I just want to try to come back to this for a minute. I'll try to summarize it as clearly as I understand it.

Mr. Lemire, quite understandably, wants to ensure that there is no limitation on indigenous languages but that the language of French is included in the work and the publications of the commission. That's the first thing.

The second is that, as our witnesses have told us, because of the way the commission is to be created, it does not fall under the laws that would subject it to the Official Languages Act. Therefore, what we are doing by agreeing with Mr. Lemire is to simply effectively apply what the Official Languages Act cannot do because this would not be a Crown corporation.

My question for Ms. Idlout would be.... If we could go back in time and if we would have voted "yes" on BQ-32, then it's moot. There's nothing that anybody disagrees on here. I'm not sure where my Conservative colleagues stand. Nonetheless, if Mr. Lemire puts forward BQ-37, let's call it, with essentially the same language and if he has the support of the government side and his own support, then it's going to find success.

I'm just not sure that I understand what the opposition is to it. The witnesses have now satisfied the question that there isn't a legal protection built in because it's not a Crown corporation, so we're inserting legal protection through the language that Mr. Lemire has put forward. We're agreeable to that. He's agreeable to that.

I'm just not sure that I understand what Ms. Idlout's opposition to it is. If the NDP supports the Official Languages Act, then how could the NDP not support effectively applying the Official Languages Act to this? I don't understand.

Before I turn over the floor, I'll say this: It doesn't take anything away from the inclusion of indigenous languages. It simply adds French. I understand why that matters to Mr. Lemire and why it would matter to indigenous communities in Quebec. For many of them, the language that they live in is French. It would make sense that we would not take away the language that first nations in Quebec use on a daily basis as part of something that is contributing to their rights through this act.

• (1710)

**The Chair:** Ms. Idlout.

**Ms. Lori Idlout:** The way I understand this bill is that a first nation whose main language is French is not prevented from publicizing anything in French. There's nothing that prevents it from doing that.

What I need to finish saying is that Canada, as a colonial country that still forces first nations, Métis and Inuit to speak or write in either English or French.... For this bill to still want to do that with the first nations water commission is a problem for me, because it will be another form of oppression of indigenous languages. Ensuring that the commission, when there doesn't need to be that legislation.... We've already agreed, as a committee, not to pass that amendment.

For example, if there is a first nation in Quebec, it is not prevented from publicizing or incorporating French in its documents. This bill does not create any barriers for it to do what it needs to do in French. That is what I'm saying.

I supported the second BQ amendment, on the annual reports, because it creates an opportunity for indigenous languages to also be publicized. What we need to understand is that when we're talking about first nations that are still going to be forced to live in these colonial systems, we shouldn't be enforcing language barriers that they struggle with already.

• (1715)

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

Next, I'm going to Mr. Battiste, and then to Mr. Carr.

**Mr. Jaime Battiste:** I'm hearing that accommodating indigenous languages and the French language is an important thing to my colleagues. I've listened to that.

I don't believe that accommodating and supporting the French language in any way takes away from what we're trying to do here. I would hate for us not to be able to move forward in the future on unanimous consent because we didn't respect the French language.

I'm willing to put a subamendment forward. Actually, I don't know if we can amend the current thing. The Bloc had to amend their current amendment. However, I'm willing to put a subamendment forward that speaks to exactly what Mr. Lemire would like to see as a new amendment, if that helps the committee get to a vote on this, which we would support—the official languages.

[*Translation*]

**Mr. Sébastien Lemire:** Mr. Chair, are we—

**The Chair:** Before I give the floor to Mr. Carr, I'm going to go to Mr. Lemire, because I think that deserves an answer.

**Mr. Sébastien Lemire:** Could we distribute the amendment I sent as amendment BQ-37, please, and consider it as an independent version?

**The Chair:** We can do that, but just before we do, I just want to confirm that you want the text of the amendment to begin after line 13 on page 18.

**Mr. Sébastien Lemire:** Yes, that's correct. It would be after subsection 39(1).



**The Chair:** That amendment will be distributed. In the meantime, I'll turn it over to Mr. Carr to start. Then we'll suspend for a few minutes.

[*English*]

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

I want to briefly respond to Ms. Idlout, or perhaps try to understand.

I completely appreciate the commentary about the imposition of the languages as colonial. The lack of understanding I have is that, if you have a first nations community in Quebec that speaks French—which there are—we're not forcing anything on them. We're simply saying, "If you want to use the French language, you could." The piece I don't get here is this. If that's our argument, we shouldn't use English, either. I'm trying to understand that. If the argument is that we can't provide French services because it's a colonial language, we shouldn't be able to provide English services. What would this mean for communities that only speak English?

This is not about opposition to understanding the colonial piece. I completely agree. It's about providing communities that want to operate in their language—whether that's an indigenous language, the French language or the English language—with the ability to do that.

That's perhaps where I'm not clear, Mr. Chair.

I have nothing further to add.

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

I see the new amendment has been circulated by email, so you should all have it in your inboxes.

Given that it's there, I don't know if we need to suspend at this point.

[*Translation*]

I would like to give the floor to Mr. Lemire so that he can present his amendment.

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

Amendment BQ-37 proposes adding, at the end of subclause 39(1), in other words at the end of line 13 on page 18, that the corporation must provide its services in both official languages and in any indigenous language it considers necessary.

The objective is to ensure that all the participants in the commission, whether they speak French, English or an indigenous language, as a mother tongue or not, can sit on this commission, be fully effective, debate and play their role. Language must not be a source of discrimination that prevents anyone from participating in the commission.

• (1720)

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

[*English*]

This amendment has been moved. I want to open it up for debate, if any members would like to speak to it at this point.

Ms. Idlout, the floor is yours.

**Ms. Lori Idlout:** Can I be reminded of the BQ number that the Liberals are changing their minds on? What was that number?

**Mr. Ben Carr:** It's BQ-32.

**The Chair:** Ms. Idlout, just to be clear—

**Ms. Lori Idlout:** I need to find it.

**The Chair:** —this is not BQ-32. This is BQ-37. This is a new amendment that was moved.

**Ms. Lori Idlout:** I just need to see a comparison of the two different amendments, please.

**The Chair:** Okay.

We'll pause very briefly for this.

• (1720)

(Pause)

• (1740)

**The Chair:** Colleagues, we're back.

[*Translation*]

Mr. Lemire, I believe there's a slight change to your amendment. I will give you the floor so that you can explain it.

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

I thank all my colleagues and everyone else around the table for their patience.

The text of the amendment would be inserted where we left off. After subclause 39(4), we would create new subclause 39(5). It is an amendment to clause 39 that adds, after line 22 on page 19, the obligation for the organization to offer its services in both official languages and in the indigenous languages it deems necessary. The new subclause 39(5), which concerns languages, would make sure that everyone who participates in this commission is understood in their language.

Thank you, *meegwetch*.

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

[*English*]

Colleagues, this was circulated by email, so you should have that all in your email.

At this point, I'll open it up if there's any further debate on it.

I see Ms. Idlout has her hand up, so I will give her the floor.

**Ms. Lori Idlout:** I very much want to thank Sébastien and his team for this new amendment.

I just want to share as well that, as an Inuk MP, since I was elected I've very much appreciated the work of former MP Romeo Saganash. It was because of his work that, since I was elected I've been able to, as much as possible, be given the resources to speak Inuktitut in the House of Commons. Today and, particularly, yesterday, it would have been so wonderful to be able to speak Inuktitut, with the group Nunavut Sivuniksavut having been here.

With my Standing Order 31, I had requested to have an interpreter so that I could speak in Inuktitut, but you'll notice that, today and yesterday, I've been forced to speak English and I haven't had the resources to speak Inuktitut, even though we had great work from people like former MP Romeo Saganash to ensure I could do so. That's why I'm very much in support of this new amendment that adds "indigenous languages".

*Qujannamiik.*

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

With that, not seeing any further debate, let's take this to a vote.

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

(Clause 39 as amended agreed to on division)

(Clauses 40 and 41 agreed to on division)

(On clause 42)

**The Chair:** The next amendment we have is NDP-77.

Ms. Idlout, the floor is yours.

• (1745)

**Ms. Lori Idlout:** *Qujannamiik, Iksivautaq.*

NDP-77 was submitted to the committee by File Hills Qu'Appelle Tribal Council. It seeks to amend clause 42, which talks about a five-year review and a report. They see it as requiring improvement.

I move to amend clause 42, in Bill C-61, by replacing line 1 on page 20 with the following:

and cooperation with First Nations,

I would also replace line 3 on page 20 with the following:

to be conducted according to jointly develop criteria, and the Minister must cause a report of

*Qujannamiik.*

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

NDP-77 is moved. Before we vote on it, I want to mention that if NDP-77 is adopted, CPC-14 cannot be moved due to a line conflict.

I will open it up for debate.

Mr. Melillo.

**Mr. Eric Melillo:** I just want to say that I think CPC-14 is a great amendment, and I would encourage my colleagues to support it.

**Voices:** Oh, oh!

**The Chair:** Not seeing any further debate, let's move to a vote on NDP-77.

(Amendment agreed to on division)

(Clause 42 as amended agreed to on division)

(Clause 43 agreed to on division)

(On clause 44)

**The Chair:** The next amendment is new G-10. The reference number is 13447880.

With that, I will open it up to Ms. Atwin to speak to G-10.

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

I move to amend Bill C-61, in clause 44, by replacing lines 14 to 16 on page 20 with the following:

44 This Act, other than section 27.1, comes into force one year after the day on which this Act receives royal assent.

It creates a timeline for implementing the bill. I believe it is in alignment with indigenous witnesses we've heard at committee.

Thank you.

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

Amendment G-10 has been moved. At this point, we'll open it up for debate. The amendment is being circulated so that folks have that as well.

First, we'll go to Ms. Idlout.

**Ms. Lori Idlout:** Did we pass proposed new clause 27.1? Can we get that verified?

• (1750)

**The Chair:** Proposed new clause 27.1 was not passed. It was defeated.

Thank you for that, Ms. Idlout. That's a good catch.

G-10 does refer to section 27.1, which did not pass. It still can be moved without that part of it, should that be changed, but I'll first turn it over to Mr. Battiste.

**Mr. Jaime Battiste:** Would I be able to amend that? Instead of having the reference to section 27.1, it would read as "This Act comes into force one year after the day on which this Act receives royal assent."

**The Chair:** Mr. Battiste has proposed a subamendment, which removes the reference to section 27.1, which, of course, did not pass. I'll open that up to debate if anybody would like to weigh in on that.

Ms. Idlout.

**Ms. Lori Idlout:** I don't know if I should ask my questions after this subamendment. Are we discussing the subamendment?

**The Chair:** We're discussing the subamendment. That's correct.

**Ms. Lori Idlout:** All right. I don't have any questions regarding the subamendment.

**The Chair:** Okay. I don't see any further discussion on the subamendment, so shall the subamendment to G-10 carry?

(Subamendment agreed to)

**The Chair:** This takes us to G-10 as amended. Is there any debate?

Ms. Idlout, do you want to say something?

**Ms. Lori Idlout:** Yes, I want to ask questions about the actual new G-10. From what I remember from testimony from first nations, I can't remember hearing any of them requesting that this not come into force until one year after. Is there an explanation as to why this amendment is being proposed—to wait a year after it has received royal assent—when they've asked for it to begin immediately at royal assent?

First nations have already been waiting decades for a bill such as this.

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

Mr. Battiste.

**Mr. Jaime Battiste:** There have been some discussions around the protected zones, and some of the discussions around the protected zones that we've parked will require action from the minister within six months to come up with agreements between provinces and first nations on what those protected zones are. A lot of the discussion has been around defining what protection zones are while respecting provincial jurisdiction and respecting the principles of UNDRIP.

What we've stated, which will be coming when we return to the discussion around protected zones, is six months from... Right now, within the protection zones conversations, there is no time frame for the provinces to commence discussions on agreements on the protection zones. What I've amended is putting a time frame for the minister to say that within six months of the time that this comes into force, she has to commence agreements with provincial and federal governments to ensure that we get to language on protection zones.

I think you have that in your email. That's one of the reasons for within one year. It's because within six months of the thing being in place, we have to come up with a defined protection zone. It gives the minister a little bit of time to commence those discussions.

• (1755)

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

Next we will go to Mrs. Atwin.

**Mrs. Jenica Atwin:** Thanks.

The current language of this clause about coming into force speaks to an order in council.

The provisions of this Act come into force on a day or days to be fixed by order of the Governor in Council.

It's a tripwire, essentially. It's setting that specified date, rather than having the kind of ambiguity that's in that date being fixed by the OIC.

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

Not seeing any further debates at this point, we can call a vote. Shall G-10 as amended carry?

(Amendment as amended agreed to on division)

(Clause 44 as amended agreed to on division)

(On clause 2)

**The Chair:** This takes us all the way back to the definitions clause, clause 2.

We're at NDP-1.

Before turning the floor over to Ms. Idlout, I'll just mention that I will have something to say about NDP-1 if it's moved.

**Ms. Lori Idlout:** *Qujannamiik*.

NDP-1 is an amendment that was submitted to the committee by the Six Nations of the Grand River. They are hoping that in clause 2, the definition of "First Nation governing body" be slightly amended to read as follows:

First Nation governing body means a legally recognized council, legally recognized government or other entity that is legally authorized to act on behalf or

*Qujannamiik*.

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

This amendment seeks to make a substantive modification to "First Nations governing body" in the interpretation clause. *House of Commons Procedure and Practice*, third edition, states on page 773:

The interpretation clause of a bill is not the place to propose a substantive amendment to a bill unless other amendments have been adopted that would warrant amendments to the interpretation clause.

In the opinion of the chair, the proposed amendment is a substantive amendment to the interpretation clause. Therefore, I rule the amendment inadmissible.

Moving on, the next amendment is NDP-4.

I will open the floor to Ms. Idlout, but also mention that I will have something to say about NDP-4.

**Ms. Lori Idlout:** *Qujannamiik, Iksivautaq*.

I hope you know what that means now, because I've said it so often: Thank you, Chair.

NDP-4 was submitted to us by the File Hills Qu'Appelle Tribal Council. It recommends making an amendment that Bill C-61, in clause 2, be amended by replacing line 30 on page 5 with the following:

and distribution of water intended for drinking or cooking or for

Thank you.

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

We were waiting to make a ruling on this, depending on what kinds of amendments came up through the bill. Similarly to NDP-1, the amendment seeks to make a substantive modification to the "water services" definition in the interpretation clause.

*House of Commons Procedure and Practice*, third edition, states on page 773:

The interpretation clause of a bill is not the place to propose a substantive amendment to a bill unless other amendments have been adopted that would warrant amendments to the interpretation clause.

In the opinion of the chair, the proposed amendment is a substantive amendment to the interpretation clause. Therefore, I rule the amendment inadmissible.

Ms. Idlout, would you like to challenge that decision?

• (1800)

**Ms. Lori Idlout:** Yes, I do want to challenge the chair because NDP-4 was adding “cooking”. I don't know how that is beyond what your ruling is suggesting.

**The Chair:** That will bring us to a vote as to whether the ruling of the chair will be sustained.

**Mr. Jaime Battiste:** We don't understand the ruling. I understand that the chair ruled, but can the chair explain to me, as someone who drinks water in a first nations community, boils water and cooks things in water in a first nations community, what the difference is?

**The Chair:** I'll turn it over to the legislative clerk on this one to explain that in further detail, just for members' clarification.

**Ms. Michelle Legault (Legislative Clerk):** Thank you, Mr. Chair.

The rule here is not necessarily about the concept. It's that the rule states that, in order to amend a definition in the interpretation clause of the bill, there first has to be an amendment adopted in the body of the bill that can justify it. That's what was missing here. It's that there was no amendment to the body of the bill that justified the addition of the word “cooking”. That's what was missing, in our advice.

**Mr. Jaime Battiste:** In the the legislation that we amended, we used different practical purposes of water and we also used “cultural and spiritual”. Culturally and spiritually, we would have cooked.

**The Chair:** This will come to a vote. You can vote to overturn the decision of the chair. I won't take it personally—I promise.

(Ruling of the chair overturned: nays 11; yeas 0)

**The Chair:** All right. No hard feelings here.

NDP-4 has been moved. I will open it up to debate.

Not seeing any interventions, shall NDP-4 carry?

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

• (1805)

**The Chair:** Next, we're going to NDP-5, and I'll give the floor to Ms. Idlout.

**Ms. Lori Idlout:** *Qujannamiik* to the committee for supporting cooking as a cultural activity; that was wonderful.

NDP-5 is an amendment submitted to us by File Hills Qu'Appelle Tribal Council, and it seeks, in clause 2, to add “(c) the protection of groundwater and aquifers” under the definition of “water services”.

*Qujannamiik.*

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

NDP-5 has been moved, so I'll open it up to debate. At this point, I see Mr. Melillo has his hand up, so we'll start there.

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

Quickly, I wonder if this would already be covered in paragraph (a), if not explicitly. Would it fall into any of those categories—“public or private collection, storage, treatment and distribution of water intended for drinking or for sanitation or hygiene purposes”—in paragraph (a)?

That's just a clarifying question for me, if the officials have thoughts.

**Ms. Rebecca Blake:** Yes, in terms of drinking water systems and in terms of private systems, for example, aquifers and groundwater are components of those systems; that would be included.

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

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

Is there any other debate on NDP-5?

(Amendment agreed to on division)

(Clause 2 as amended agreed to on division)

**The Chair:** That takes us to new clause 14.1, which was stood, and NDP-24.

I will turn the floor over to Ms. Idlout to resume debate on new clause 14.1, which was stood some time ago.

**Ms. Lori Idlout:** I need a couple minutes to find it.

I did ask for a list of the items that were stood. Can I have a couple of minutes just to find it?

**The Chair:** Yes, absolutely.

**Ms. Lori Idlout:** Was it number 24?

**The Chair:** This is NDP-24, which is new clause 14.1. It's on page 34 of the package.

Mr. Battiste, go ahead.

**Mr. Jaime Battiste:** I'm wondering if the clerks could circulate a list of the things that we parked, because, generally, if we parked something that was contentious maybe a few days ago, we don't know if it's contentious for the duration. It would be great if we had a short pause so that could be compiled and sent to us so we would know what's remaining when we get back. I think that would help everyone in the room.

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

Why don't we suspend briefly? We can circulate those clauses that were stood, and we can reconvene in a few minutes.

• (1805)

(Pause)

• (1830)

**The Chair:** You would have received in your email a list of the clauses that were stood, which we are now returning to.

Clause 14.1 is the one we're at right now. The amendment is NDP-24, which was moved. We had started debate on it, but then we stood it. We are going to return to that.

Ms. Idlout had the floor, and I'll turn it over to Mr. Battiste after that.

• (1835)

**Ms. Lori Idlout:** *Qujannamiik, Iksivautaq.*

I am glad that we're back to NDP-24. I'll reread the proposed amendment. It is that Bill C-61 be amended by adding after line 27 on page 10 the following new clause:

14.1 The quality of water and source water available on the First Nation lands of a First Nation and in a protection zone under the jurisdiction of that First Nation must at least meet the First Nation's needs for the purpose of exercising its Aboriginal and treaty rights, among other purposes.

*Qujannamiik.*

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

That will open it up to debate, starting with Mr. Battiste.

**Mr. Jaime Battiste:** I think that there needs to be a good discussion on what we are doing with protection zones. There have been a number of amendments and subamendments. If we talk about this now, I think we're putting the cart before the horse.

I'd like to get consensus around the protection zones and then come back to this, because the wording of the NDP's motion speaks to the protection zone without our having a clear definition of what that is.

I think that we're close to a definition that most parties and stakeholders can live with. Can we put this on hold until we get to the protection zone? I feel that the discussion around the protection zone is going to be the one that is crucial to whether this clause can work.

**The Chair:** It looks like there's unanimous consent around the table to do that. It just happens to be the next clause we'll be dealing with, so why don't we stand this until we get to complete clause 21 and CPC-5? Then we can return to this one afterwards.

(On clause 21)

**The Chair:** With that, we will resume debate on CPC-5, as amended by Mr. Shields.

I will open up the floor to Mr. Melillo.

[*Translation*]

**Mr. Sébastien Lemire:** What's the reference number?

[*English*]

**The Chair:** The reference number is 13427322.

[*Translation*]

**Mr. Sébastien Lemire:** I have Mr. Melillo's version, not Mr. Shields' version. It's the same reference number.

[*English*]

**The Chair:** This is new CPC-5.

[*Translation*]

**Mr. Sébastien Lemire:** Yes.

[*English*]

**The Chair:** It was also amended by Mr. Shields.

[*Translation*]

**Mr. Sébastien Lemire:** Okay, great.

[*English*]

**The Chair:** Just as a reminder, the subamendment that was made was to change "consent" in the fourth line of that amendment to "agreement".

Mr. Melillo, you have the floor.

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

I will briefly speak about this. There has been quite a lot of discussion about it, both at the table and on the side. I look forward to hearing what my colleagues have to say about it.

To reiterate, what this will do is create a subclause 21(3).

It reads:

A regulation made under subsection (1) must not come into force unless the Minister has obtained the free, prior and informed consent of First Nation governing bodies and the agreement of the governments of the provinces and territories.

This is aiming to ensure that the consent of first nations is being respected, as well as to understand the important role the province will play in this, especially if parts of protection zones will include any land that is currently provincially or territorially governed.

I just want to reiterate that this is where we are. That is the goal of this amendment. I believe this is strong language, notwithstanding any of the conversations we have all had around this.

I will leave it at that.

• (1840)

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

With that, I'll open this up to further debate, starting with Mr. Battiste.

**Mr. Jaime Battiste:** Thank you, Mr. Chair.

There's been a lot of conversation back and forth among stakeholders and parties on this.

There are three challenges with protection zones, as I hear it.

The first is wanting to ensure we respect provincial jurisdiction and what the Supreme Court has said about co-operative federalism.

Second, there is a need to ensure we respect the articles of UNDRIP. I'm looking at the United Nations Declaration on the Rights of Indigenous Peoples. It's not just talking about free, prior and informed consent. There is article 3 on self-determination, paragraph 8(2)(b) on dispossessing them of resources, article 25 on the spiritual relationship to water, and article 29 on environmental protection. In all of UNDRIP, there are a lot of different articles that talk about protecting water sources and connection to that water.

Third, we heard from first nations that there is a challenge putting provincial agreements in place. The provincial governments can drag their feet or stonewall first nations, so there's never an actual time frame for getting this started.

Based on those conversations, we had some discussions back and forth. We want to respect provincial jurisdiction and first nations' commitments to UNDRIP by putting in a time frame. That's in the following subamendment I put forward. It was circulated at 4:33 p.m.

It says:

In relation to a regulation made under subsection (1), the Minister must make best efforts to begin consultation and cooperation to enter into agreements with First Nation governing bodies, and the governments of provinces and territories in defining "protection zone" no later than the last day of the sixth month after the month in which this section comes into force in a manner that is guided by the principles of the United Nations Declaration on the Rights of Indigenous Peoples and respecting provincial and territorial jurisdiction.

That's the subamendment we have. I invite discussion. I also invite my colleagues to check with our stakeholders at AFN to find out whether they are okay with this as well.

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

The subamendment, as mentioned, has been moved. We'll open it up to debate, starting with Mr. Melillo.

I'll turn the floor over to you.

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

I appreciate Mr. Battiste's trying to find a consensus. Truly, I do. As indicated, I feel that the original CPC-5 was stronger. However, I appreciate the efforts of Mr. Battiste to try to find agreement on this.

I hope everyone else at the table has time to review it thoroughly. In the interim, I would ask the officials what they view as the tangible differences between CPC-5, as written, and the subamendment.

What would it change?

**Mr. Nelson Barbosa:** Well, one difference is the inclusion of a time period. That is certainly omitted in one of the amendments. The recently introduced subamendment speaks about provisions included in other parts of the legislation, including reference to UNDRIP and respect for provincial jurisdiction.

I think there's some nuanced difference to language previously seen, as well as the inclusion of a time frame.

• (1845)

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

I think Ms. Idlout has her hand up, so I'll stop there.

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

As you mentioned, we'll go next to Ms. Idlout.

**Ms. Lori Idlout:** Thank you.

I have just a quick question. Can I be reminded—I don't know by whom—whether we ended up having an amendment that incorporated FPIC into the bill? I seem to recall that we did.

**The Chair:** We'll have to pause briefly to double-check on that.

**Mr. Jaime Battiste:** Can I speak to that?

**The Chair:** We'll go to Mr. Battiste as we look through the text.

**Mr. Jaime Battiste:** While article 19 on free, prior and informed consent is an important one, I believe that article 3 on self-determi-

nation, article 25 on the spiritual relationship to water and article 29 on environmental protections are all important things that have to be considered in an agreement with the provinces. I wouldn't want to limit the discussion around UNDRIP to just one article, when there are at least four others that directly impact the discussions and agreements that will need to take place between the provinces and first nations governing bodies.

If the NDP sought advice from the stakeholders on this, I think they would see this is something that's fuller than inserting FPIC; it's about inserting the articles and principles that are currently within UNDRIP that talk about water, and there are a number.

**The Chair:** Thank you for that, Mr. Battiste.

Just from looking at the amendments that were passed, there are two amendments that were subamended to include free, prior and informed consent. The first one was CPC-7. The other one was G-2. CPC-7 was in relation to clause 22, so that was in relation to regulations and enforcement, and G-2 was in relation to clause 5, which has to do with principles and reliable access to water services.

I hope that answers your question, Ms. Idlout, but I'll turn the floor back to you.

**Ms. Lori Idlout:** Yes, it does. Thank you so much.

I appreciate the effort. I would suggest a minor amendment in the subamendment that was just submitted. In the second-to-last line, where it starts off with "manner that is guided by the principles of the United Nations Declaration", I think we can strengthen that to say "into force in a manner that is consistent with the articles of the United Nations Declaration on the Rights of Indigenous Peoples".

**The Chair:** Ms. Idlout, we need to first dispose of this subamendment before subamending it. We need to first vote on this one, and then we can determine whether we want to subamend it on top of that.

What would be helpful, Ms. Idlout, is if you could send that in writing beforehand. We can then make sure it's translated and ready for when we have that debate as well.

Before we do that, I'll pass the floor over to Mr. Melillo.

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

A couple more questions came to mind. I'm looking for further clarification from our officials. I know they were involved in some level in helping to word this. We appreciate that.

This specifically mentions the timeline, which is "the sixth month after the month in which this section comes into force". I just want to get the read on that. Does the timeline in that refer to the agreements being reached or to the beginning of the consultation and co-operation?

• (1850)

**Ms. Rebecca Blake:** As it is currently worded, it would refer to the beginning of the consultation and co-operation.

**Mr. Eric Melillo:** Okay, and there wouldn't be any timeline set, I guess, on when those agreements would be reached. Is that correct?

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

**Mr. Eric Melillo:** Okay. The only other point I would make is the.... Well, there are a couple. Obviously, this subamendment still includes the United Nations Declaration on the Rights of Indigenous Peoples. It removes the specific reference to “free, prior and informed consent” as well. Then, further to that, it brings back the phrasing of “best efforts”. It says, “the Minister must make best efforts”.

I know there's been some discussion about what that means. Could you just provide an understanding of “best efforts”? The phrase “the Minister must” sounds very definitive, but then, I think, “best efforts” become a little less definitive. Could you just clarify that again for us?

**Mr. Nelson Barbosa:** I'm happy to. Thanks for the question.

I think we've talked about that a couple of times, including today, when we talked about the cascade, with “must” as the most binding, “best efforts” meaning all avenues must be pursued in order to achieve an aim, and then less ambitious language around “should” and “could”. This sets a high bar and is consistent with previous conversations.

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

Next we go to Mr. Vidal.

**Mr. Gary Vidal (Desnethé—Missinippi—Churchill River, CPC):** I have a quick question for the officials as well. In the subamendment, it has “best efforts to begin consultation and cooperation to enter into agreements”, but there's really no requirement there to actually enter into an agreement, is there?

**Mr. Nelson Barbosa:** The entire premise of protection zones requires willing partnership. Again, as this amendment speaks to and is spoken to several times in this legislation, it requires the willing partnership of the parties. It doesn't compel those parties to come together. It creates the space to align laws.

**Mr. Gary Vidal:** Does the original amendment, as proposed by Mr. Melillo, have the same level of requirement to reach agreement with the parties as the subamendment would, then?

**Mr. Nelson Barbosa:** The original amendment says, “must not come into force unless all First Nation governing bodies and all the governments of the provinces and territories consent to it”, so it's still the same principle of parties needing to come together.

**Mr. Gary Vidal:** Except the word “consent” has been subamended to “agreement”—

**Mr. Nelson Barbosa:** It's “agreements”.

**Mr. Gary Vidal:** —which, from my understanding—I wasn't here for that debate—is a bit softer.

**Mr. Nelson Barbosa:** It's consistent with other.... The entire premise is to create agreements, an agreement for parties to come together, not to impose an agreement. If the analogy is whether either of these amendments compel action, I would say they do not.

They both create a space for collaboration or for agreement-making.

**The Chair:** Thank you. Mr. Vidal.

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

Oh, but before that, we go to Mr. Lemire.

[*Translation*]

**Mr. Sébastien Lemire:** Mr. Chair, are we waiting for another subamendment from the NDP?

**The Chair:** That's not possible right now. We have to vote on Mr. Battiste's subamendment first. Then another subamendment may be moved.

**Mr. Sébastien Lemire:** Great.

I just want to mention that we will be supporting the subamendment, particularly because it refers to respecting provincial and territorial jurisdictions, and I thank the government for its openness.

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

We will now proceed to the vote.

[*English*]

(Subamendment agreed to)

**The Chair:** I turn the floor back over, this time to Ms. Idlout, who, I understand, wants to move a subamendment to that. I think we are going to be.... I don't know whether it's been circulated yet.

We can start a debate on that right now. The interpretation of that subamendment is just in process right now. There's a different amendment that's been circulated. It's not the one we just dealt with. We can start a debate on this right now if there's anybody who wants to weigh in on that, but the text of it is still going through translation. As soon as that's done, we can go to a vote on it.

Go ahead, Mr. Battiste.

• (1855)

**Mr. Jaime Battiste:** I think we did a marvellous job over the past four or five days of trying to find consensus on a really difficult thing for a lot of folks. I think we have not only all parties giving thumbs-up on that but also stakeholders involved in the discussion. Any further amendment seeks to jeopardize some of the consensus that we've just arrived at. I'm hoping that whatever amendments might be circulated take into consideration what we just resolved with this motion that seeks to give us a pathway to get to unanimous consent in the House of Commons on this.

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

Seeing no further debate, maybe we'll briefly suspend until the subamendment can be circulated.

**Mr. Jaime Battiste:** Can we park it and go to the next one? We're so close. There are three clauses left.

**The Chair:** If we have unanimous consent to do that, we can return to clause 14.1, which is NDP-24.

**Mr. Jaime Battiste:** We're on clause 27, are we not?

**The Chair:** We could go to clause 27. We also skipped past clause 14.1 and NDP-24, but I think we wanted to resolve this question about protection zones before getting to that one. It may be better to go to, as you mentioned, clause 27 and NDP-60, and then return to this afterwards.

Ms. Atwin.

**Mrs. Jenica Atwin:** I think that it's probably shortly forthcoming, and I'd rather just continue to deal with the issue at hand.

**The Chair:** If we don't have unanimous consent, then we'll stay where we are. That will probably be a bit more straightforward. Let's suspend briefly.

• (1855) \_\_\_\_\_ (Pause) \_\_\_\_\_

• (1930)

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

With that, I will turn the floor over to Ms. Idlout, who moved this subamendment, to speak to it, and then I'll pass it over to Mr. Battiste.

**Ms. Lori Idlout:** *Qujannamiik, Iksivautaq.*

I thank everyone for their patience in discussing this subamendment.

What I've proposed—and it's been emailed to all of you—is to remove “make best efforts to” from the first part of the sentence, as well as to replace the words, towards the end of the sentence, “guided by the principles”, to strengthen it so that it's more in line with implementing the United Nations Declaration on the Rights of Indigenous Peoples to read as “consistent with articles of”.

*Qujannamiik.*

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

First, I see that Mr. Battiste has his hand up.

**Mr. Jaime Battiste:** I concur. We think the amendments make it stronger, and we're supporting it.

**The Chair:** I'm not seeing any further interventions, so I think we're ready for a vote. Shall the subamendment to CPC-5 carry?

(Subamendment agreed to)

**The Chair:** Now we need to vote on CPC-5 as thrice subamended. Is there any debate on that before we get to a vote? Shall CPC-5 as subamended carry?

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

**The Chair:** Colleagues, we discussed going back to NDP-24, but there has been a further subamendment submitted that I understand is going through translation. In order to be more efficient with time, I would suggest....

I'm sorry; before that, first we need to vote on clause 21 as amended.

Shall clause 21 as amended carry?

(Clause 21 as amended agreed to on division [*See Minutes of Proceedings*])

(On clause 27)

**The Chair:** As I was saying before, given that there is another subamendment to NDP-24 that's being translated right now, I would suggest that we come back to that later. In order to be efficient with time, let's move on to clause 27 and NDP-60. I just want to make sure that there isn't any disagreement on that.

I'm not seeing any, so let's move to clause 27. We stood this clause while we were debating NDP-60. I'll give members a few seconds to prepare themselves for that. Once we're ready, I'll turn the floor over to Ms. Idlout to speak to NDP-60.

• (1935)

**Ms. Lori Idlout:** *Qujannamiik, Iksivautaq.*

NDP-60 was an amendment that was provided to us by the British Columbia Assembly of First Nations. They saw fit to improve Bill C-61 under clause 27 by replacing lines 22 to 25 on page 15 with the following:

(3) The Minister's funding allocation decisions under subsection (1) must be consistent with the principle that the funding for First Nations water services is to

*Qujannamiik.*

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

We're moving into debate. I see that Ms. Atwin has her hand up.

I'll turn the floor over to you.

**Mrs. Jenica Atwin:** I'd like to move a subamendment, which has been submitted in both official languages. It puts back the consultation and co-operation piece. It will just read as follows:

The Minister's consultations and cooperation with respect to the making of funding allocation decisions under subsection (1) must be consistent with the principle that the funding for First Nations water services is to

It's just marrying the two.

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

The subamendment has been moved. Is there any debate on the subamendment? I'm not seeing any debate.

(Subamendment agreed to on division)

(Amendment agreed to on division)

**The Chair:** That takes us to new NDP-62. I just want to clarify the reference number. The reference number for new NDP-62 is 13372538.

With that, I'll turn the floor over to Ms. Idlout.

I'll let you take it from here.

**Ms. Lori Idlout:** NDP-62 was provided to us as an amendment by File Hills Qu'Appelle Tribunal Council.

The amendment would be that Bill C-61, in clause 27, be amended by replacing line 33 on page 15 with the following:

(e) align with the use of up-to-date clean and sustainable tech-

*Qujannamiik.*



• (1940)

**The Chair:** Thanks for that, Ms. Idlout.

Sorry, there's a bit of confusion here. The reference number for this is, in fact, 13377852.

**Ms. Lori Idlout:** The wording is still the same?

**The Chair:** Your wording is accurate. My conveying of the reference number was inaccurate.

**Ms. Lori Idlout:** Okay.

**The Chair:** With that, I'll open it up to debate on new NDP-62.

Mr. Battiste.

**Mr. Jaime Battiste:** I'm reading the original document, and it says, "align technologies to reduce the carbon footprint of water services". I don't see a difference.

**Ms. Lori Idlout:** It adds "up-to-date".

**The Chair:** The English versions are identical, but there is a slight error in the French translation, so that's why there's a new NDP-62.

Ms. Atwin.

**Mrs. Jenica Atwin:** The only thing I would say is that the idea of "up-to-date" may not.... In many cases, new and innovative technology is more efficient and preferable, but in other cases other methods may be preferable, depending on remote areas, the quality and integrity of newer products, trust and familiarity with systems.

It's prescriptive, the only piece, but ultimately it's splitting hairs at this point.

Those are my comments.

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

Is there any other debate on new NDP-62?

(Amendment agreed to on division)

**The Chair:** This takes us to G-7.

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

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

G-7 is as follows. I move that Bill C-61, in clause 27, be amended by replacing lines 7 to 10 on page 16 with the following:

(5) The Minister must complete the framework referred to in subsection (1) no later than the first anniversary of the day on which this section comes into force or the last day of any longer period requested by the Minister or First Nations governing bodies.

This offers the option of extending conversations between first nations and the Government of Canada if the prescribed timelines do not allow for the true co-development of the funding framework. This language still acknowledges the importance of setting that timeline to co-develop the funding framework but creates more flexibility for partners, which is something we heard directly from committee witnesses.

It's important to have this option available. The Government of Canada delayed introducing this bill because of the deadline set as part of the 2022 settlement agreement. There were still pieces that needed to be worked through with first nations partners.

On the day of introduction, former regional chief Glen Hare had this to say about the importance of having this flexibility:

I guess a number of us were ready to move forward on this. I hear your question but we also weren't ready a couple of times either and we asked for an extension from the government and we got it. I've got to rely on our legal people too. I'm not up on our rightsholders too. They wanted some things in this document. I was disappointed a few months ago when it got delayed a second time but now we're here today and I want to believe we can do something positive now. It's with the support of the people, not Glen, not the Minister. But they asked for a delay and we got it and we did a lot of good work since then.

Really, it's just building in that flexibility, if they requested that time frame, so that we would be able to grant that.

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

G-7 has been moved. I will just note that if G-7 is adopted, CPC-11 cannot be moved due to a line conflict.

Not seeing any debate, let's go to a vote.

(Amendment agreed to on division)

**The Chair:** As mentioned, CPC-11 cannot be moved, so that will take us to NDP-64.

I'll turn the floor over to Ms. Idlout.

• (1945)

**Ms. Lori Idlout:** *Qujannamiik, Iksivautaq.*

NDP-64 is an amendment that was submitted by the British Columbia Assembly of First Nations.

It reads that Bill C-61, in clause 27, be amended by adding after line 10 on page 16 the following:

(6) Within six months after the day on which any regulations made under subsection 19(1) come into force, the Minister must, in cooperation with First Nation governing bodies, update the framework for assessing needs referred to in subsection (1) to account for such regulations, as required.

*Qujannamiik.*

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

NDP-64 has been moved.

I'll open it up to debate, starting with Mr. Melillo.

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

I have a question for the officials.

Can you quickly clarify whether putting this six-month time frame on it would in any way limit the consultation process for first nations?

**Mr. Nelson Barbosa:** I think the time limitation may limit the space for collaboration for first nations coming forward.

**Mr. Eric Melillo:** Okay.

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

Is there further debate?

**Ms. Lori Idlout:** I'd like a recorded vote.

(Amendment negatived: nays 10; yeas 1)

**The Chair:** Shall clause 27 as amended carry?

(Clause 27 as amended agreed to on division [*See Minutes of Proceedings*])

**The Chair:** Instead of going to the short title and preamble, I think we should first go to NDP-24 and new clause 14.1. I understand the translation is now done. The translation should be in your inboxes momentarily.

When we left off, Ms. Idlout had the floor. I'm going to turn the floor over to Ms. Idlout. I assume we'll go to Mr. Battiste after that.

**Ms. Lori Idlout:** As I mentioned earlier, NDP-24 looks to make an improvement by adding new clause 14.1, which reads as follows:

The quality of water and source water available on the First Nation lands of a First Nation and in a protection zone under the jurisdiction of that First Nation must at least meet the First Nation's needs for the purpose of exercising its Aboriginal and treaty rights, among other purposes.

*Qujannamiik.*

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

Moving to debate, I'm going to give the floor to Mr. Battiste.

**Mr. Jaime Battiste:** I think the subamendment I've offered is acceptable to the government, now that we have an understanding of what a protection zone is.

It says, after "under the jurisdiction of that First Nation must":

be consistent with the rights recognized and affirmed by section 35 of the Constitution Act, 1982

Then it's back to "among other purposes."

• (1950)

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

A subamendment to NDP-24 has been moved.

I want to turn it to our legislative clerk for one second here, before going further.

**Ms. Michelle Legault:** I want to convey to the committee a note that the legislative translators sent along with the translation. They suggest removing "among other purposes" at the end of the subamendment.

[*Translation*]

It would be to remove the words "*entre autres choses*" from the French version. This is a suggestion from legislative translators, who see rights as neither things nor goals.

[*English*]

**The Chair:** That subamendment has been moved. Is there any debate on the subamendment?

I want to clarify—the subamendment that's been moved has now taken off the very last three words, "among other purposes".

[*Translation*]

In the French text, it is "*entre autres choses*".

[*English*]

Let's go to a vote if there's no more debate.

(Subamendment agreed to on division)

(Amendment as amended agreed to on division)

**The Chair:** That takes us to the short title.

Go ahead, Ms. Idlout.

**Ms. Lori Idlout:** Before we get to the short title, I seem to recall that I was going to ask a question based on the response that we got from the Liberals and the case law that they cited. We haven't had that discussion yet. I do feel, quite strongly, that we need to have that discussion, because that information was given to us quite late. I have questions, based on the information that was given to us earlier today, that I feel need to be answered. I'm trying to recall which provision number it was when I asked about that contract law case that was shared with us.

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

I'll turn it over to Mr. Battiste.

**Mr. Jaime Battiste:** I just texted you the case. The case is Atmospheric Diving Systems Inc. v. International Hard Suits Inc. and Can-Dive Services Ltd., British Columbia Supreme Court, J. Dorgan, heard on November 16-20, 1992. It's just been texted to you for your CanLII references. I think that's what you referred to, and you now have that information.

I received that information from the INAN email. I know that we get a lot of them, so we probably didn't click on every single one, but it was definitely sent to us. I texted that to you. I believe that's the case that is referred to.

If I'm wrong, officials, please let me know.

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

Go ahead, Ms. Idlout.

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

I did receive that information, and it raised more questions for me, knowing, for example, that Canada has a fiduciary duty to first nations. Because of that fiduciary duty, they have a legal obligation, for example, to act in the best interest of first nations. The Crown should act in the best interest of indigenous people. The Crown must act with honour, integrity, good faith and fairness. It acknowledges that there's a special relationship, and that fiduciary duty should have the foundation of ensuring that there is work towards reconciliation. Knowing that Canada has this fiduciary duty, my question to the witnesses is, does "best efforts" not lower the standards of its fiduciary duty to first nations?

• (1955)

**Mr. Douglas Fairbairn:** I would say it does not lower the duty or the standards, and the fiduciary duty varies on the subject in question as well, so there's not an overarching fiduciary duty to first nations. However, certainly in this context, "best efforts" is intended to convey the fact that the government will take every step possible to achieve a result and to achieve an objective. To your question, this is a very high standard and signifies the government's commitment to ensuring safe drinking water.

**Ms. Lori Idlout:** Are there other examples of contract law cases being used to set out a minister's obligations to first nations?

**Mr. Douglas Fairbairn:** There are a number of federal statutes that use the term "best efforts", and we can provide those to you, but "best efforts" is not defined in federal law, so it's necessary to go to case law to get an idea about what "best efforts" means. The case that was provided was one example of the definition, and it's a fairly good example. It's a fairly standard example of what "best efforts" means.

**Ms. Lori Idlout:** Are those other pieces of federal legislation ones that are impacting first nations?

**Mr. Douglas Fairbairn:** No, they are not.

**Ms. Lori Idlout:** At this point, I'm still not convinced that "best efforts" is the best language that we need to pass in Bill C-61, not when best efforts can still result in first nations children living in conditions with boil water advisories or sores on their skins. If "best efforts" is introduced this way, the way I interpret the honour of the Crown or try to think about how it's supposed to be implemented.... Fiduciary duty should not ever be diminished based on interpretation of contract law, and fiduciary duty should have been used in ensuring that Bill C-61 in the first place should not have fallen below UNDRIP standards, which we have been discussing all this time.

I thank the committee and the MPs for helping ensure that UNDRIP standards are much better reflected in Bill C-61, but I do caution the parties with a red flag about "best efforts" in this legislation and how it's allowing the government to pretend that it doesn't have the resources...that it has obligations to meet because of its fiduciary duty, and downgrading that to "best efforts".

First nations, as I have repeatedly said, had authority over water. It was stolen from them, and for this Liberal government to respond with "best efforts" because of what contract law states is still a huge disrespect to first nations who will be impacted by this.

*Qujannamiik.*

• (2000)

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

At this point, we're at the short title.

Shall the short title carry?

**Some hon. members:** Agreed.

**Mr. Jaime Battiste:** On division.

**The Chair:** That is carried on division, which takes us to the preamble. The first one that we get to is PV-10, but before we get to

that, Mr. Morrice had withdrawn this one, so we need to make sure there's no.... We need unanimous consent for it to be withdrawn.

**Some hon. members:** Agreed.

(Amendment withdrawn)

[*Translation*]

**The Chair:** That brings us to BQ-35.

[*English*]

Right now we're at BQ-35, which is in the preamble.

[*Translation*]

Mr. Lemire, you have the floor to present amendment BQ-35.

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

I have a lot to say. Just kidding.

The purpose of amendment BQ-35 is essentially to say that water is not like any other commodity.

Specifically, the amendment proposes that Bill C-61, in the preamble, be amended by adding after line 12 on page 1 the following:

Whereas water is not like any other commodity but a part of our heritage that must be protected, defended and treated as such, particularly in response to pressures from sectors such as agriculture, industry, tourism, transportation and energy;

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

Amendment BQ-35 has been moved.

[*English*]

Is there any debate on BQ-35?

(Amendment negated: nays 9; yeas 2)

**The Chair:** BQ-35 is defeated, and that takes us to BQ-36.

[*Translation*]

I will again give the floor to Mr. Lemire to that he can present amendment BQ-36.

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

In that spirit, the amendment specifies the following:

Whereas Parliament recognizes that broad, concurrent action by all levels of government to protect First Nation waters from pollution, including that caused by certain persistent, toxic and bioaccumulative substances, is urgently required;

The proposed amendment is based on a lot of the testimony we heard.

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

Amendment BQ-36 has been moved.

[English]

I'll open it to debate. Is there any debate on BQ-36?

Not seeing any debate, shall BQ-36 carry?

(Amendment agreed to on division)

**The Chair:** That takes us to NDP-80, and with that I'll turn the floor over to Ms. Idlout.

**Ms. Lori Idlout:** *Qujannamiik*.

NDP-80 is an amendment that was submitted by quite a few first nations. It seeks to add UNDRIP articles to include articles 3, 4, 18, 19, 22, 28 and 29, paragraph 2 of article 32 and paragraph 1 of article 37.

*Qujannamiik*.

• (2005)

**Mr. Jaime Battiste:** Agreed.

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

NDP-80 is moved.

Is there any debate on NDP-80?

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

**The Chair:** Shall the preamble as amended carry?

**Some hon. members:** Agreed.

**An hon. member:** On division.

**The Chair:** Shall the title carry?

**Some hon. members:** Agreed.

**An hon. member:** On division.

**The Chair:** Shall the bill as amended carry?

**Ms. Lori Idlout:** Can I ask for a recorded vote, please?

(Bill C-61 as amended agreed to: yeas 7; nays 0)

**The Chair:** Shall the chair report the bill as amended to the House?

**Some hon. members:** Agreed.

**An hon. member:** On division.

**The Chair:** Shall the committee order a reprint of the bill as amended for the use of the House at report stage?

**Some hon. members:** Agreed.

**The Chair:** All right. That's it.

Thank you so much to all members for sticking through this, and a special thank you to our witnesses, our legislative clerk and our many clerks and analysts for sticking it out through this.

I know that it's been a very long road, and I just want to give a special thanks for the important work you've done.

Is it the will of the committee to adjourn?

**Some hon. members:** Agreed.

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







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