G-32

ISSN 1180-5218

Legislative Assembly
of Ontario

First Session, 39th Parliament

Assemblée législative
de l'Ontario

Première session, 39e législature

Official Report of Debates (Hansard)

Thursday 6 August 2009

Journal des débats (Hansard)

Jeudi 6 août 2009

Standing Committee on General Government

Comité permanent des affaires gouvernementales

Mining Amendment Act, 2009

Loi de 2009 modifiant
la Loi sur les mines

Far North Act, 2009

Loi de 2009 sur le Grand Nord

Chair: David Orazietti
Clerk: Trevor Day

Président : David Orazietti
Greffier : Trevor Day

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

http://www.ontla.on.ca/

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario

Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

COMITÉ PERMANENT DES AFFAIRES GOUVERNEMENTALES

Thursday 6 August 2009

Jeudi 6 août 2009

The committee met at 0902 in room 151.

SUBCOMMITTEE REPORTS

The Chair (Mr. David Orazietti): Good morning, everyone. Welcome to the Standing Committee on General Government. We have two subcommittee reports that we need to take care of first. I'm going to ask Ms. Mitchell to start by reading the first one.

Mrs. Carol Mitchell: Your subcommittee met on Monday, June 22, 2009, to consider the method of proceeding on Bill 173, An Act to amend the Mining Act, and Bill 191, An Act with respect to land use planning and protection in the Far North, and recommends the following:

(1) That the committee meet in Toronto on Thursday, August 6, 2009, for the purpose of holding public hearings.

(2) That the committee meet in Sioux Lookout, Thunder Bay, Chapleau and Timmins during the week of August 10, 2009, for the purpose of holding public hearings.

(3) That the committee clerk, with the authorization of the Chair, post information regarding public hearings in a daily or weekly paper in each of the locations for one day during the week of June 29, 2009. This is to include French and First Nations newspapers where possible.

(4) That the committee clerk, with the authorization of the Chair, post information regarding public hearings in the following publications: Northern Miner and—

Mr. Gilles Bisson: Wawatay.

Mrs. Carol Mitchell: Wawatay newspaper. Thank you, Gilles.

(5) That the committee clerk, with the authorization of the Chair, post information regarding public hearings on the Ontario parliamentary channel, the Legislative Assembly website, the Canada NewsWire and Wawatay radio.

(6) That interested parties who wish to be considered to make an oral presentation contact the committee clerk by 12 noon on Thursday, July 23, 2009.

(7) That groups and individuals be offered 15 minutes for their presentation. This will be followed by up to five minutes of questions by committee members.

(8) That, in the event all witnesses cannot be scheduled, the committee clerk provides the members of the subcommittee with a list of requests to appear by 2 p.m. on Thursday, July 23, 2009.

(9) That the members of the subcommittee prioritize and return the list of requests to appear by 12 noon on Tuesday, July 28, 2009.

(10) That late requests to appear will be accepted for any location provided there are spaces available.

(11) That the deadline for written submissions be 12 noon on Friday, September 4, 2009.

(12) That the research officer provide the committee with a summary of presentations.

(13) That the committee clerk, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

That is the first report of the subcommittee.

The Chair (Mr. David Orazietti): Thank you. Any questions?

Mr. Gilles Bisson: Just for the record, I find it sad that we didn't adopt in the subcommittee the decision to travel this committee into the far north communities—north of Highway 11—and this committee should have travelled to those areas because they are being affected.

The Chair (Mr. David Orazietti): Any further comment or debate? Ms. Mitchell?

Mrs. Carol Mitchell: I just wanted to get on the record as well that this is the first hearing, we have the possibility of further consultations after the second, and we will look forward to the hearings unfolding.

Mr. Gilles Bisson: Just for the record, the mining act—second reading is already done. The mining act is now in committee. Once we do the clause-by-clause, it's going to go to third reading. That's why I think the mining act and the far north planning act had to travel to those communities. I'm not going to take up the presenters' time. I just want that on the record.

I would ask for a recorded vote.

Ayes

Brown, Colle, Hillier, Mauro, Mitchell.

Nays

Bisson.

The Chair (Mr. David Orazietti): That's carried. Thank you.

The second subcommittee report, dated July 31, 2009. Ms. Mitchell, can you read that for me, please?

Mrs. Carol Mitchell: Your subcommittee met on Friday, July 31, 2009, to consider the method of proceeding on Bill 173, An Act to amend the Mining Act, and Bill 191, An Act with respect to land use planning and protection in the Far North, and recommends the following:

(1) That the committee not approve the Fort Albany First Nation request for expense reimbursement.

(2) That live audio streaming of the committee's meetings in Sioux Lookout, Thunder Bay, Chapleau and Timmins be made available on the Legislative Assembly's website.

(3) That the clerk, in consultation with the Chair, post information regarding the availability of live audio streaming on the Ontario parliamentary channel, the Legislative Assembly website, and the Canada NewsWire.

(4) That the committee agree to meet from 9 a.m. to 6 p.m. on Thursday, August 6, 2009.

(5) That the committee clerk, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

That's the second report.

The Chair (Mr. David Orazietti): Thank you, Ms. Mitchell. Any questions? Mr. Bisson?

Mr. Gilles Bisson: Again, I don't want to take the presenters' time, because we have limited time for presentations, but just for the record, if this committee was not going to travel to those far north communities, I think it's incumbent upon us to assist those communities that are having difficulty financially to make it to committee hearings wherever they might be.

There was a request from Fort Albany. That community is under administration. They don't have the dollars. It's not unlike other requests that we had at other committees. I know of other bills where the committees have accepted the travel costs for somebody to come to committee. I think it's really sad that we've said no to this community because it is one of the communities affected by this bill. In fact, it's one of the communities that negotiated an IBA with De Beers. We might have been able to learn something from their perspective, because they were one of the final holdout communities on the IBA that was signed there. So at the very least, we should have paid travel.

The second point is, the compromise was to provide live audio streaming. I would welcome that attempt. The only problems are (a) there are not a lot of computers in those communities because most people are impoverished, and (b) there's not any Internet or high-speed to make it work in the majority of those communities.

Again, the bill is going to affect those people—not able to get the committee there, not able to travel them down, and audio streaming, unfortunately, is not going to work in all these communities, so therefore, I'll vote against that particular amendment.

The Chair (Mr. David Orazietti): Mr. Mauro?

Mr. Bill Mauro: Just in regard to the Fort Albany remark, I think it's important for us as well to get on the record that there was a community outreach session held in Fort Albany, I think on July 10. So there was an attempt made to at least engage them further than beyond just this formal process.

Mr. Gilles Bisson: For the record, that was not on the consultations from this committee. That was from the ministry, which is a different thing. The chief and council made a request. They don't make that request because they just feel like going out for a trip one day. They do it because they have something they want to provide or they want to participate in. We should have accepted that request. We've done it in the past. Again, I'd just on the record say it's wrong. If we're not going to travel by committee to the far north communities, the least we can do is provide assistance where requested.

0910

The Chair (Mr. David Orazietti): Mr. Hillier.

Mr. Randy Hillier: We had a fulsome discussion and debate, and we're here for committee now to listen to people. This discussion right now is only a half discussion and a half debate. We've looked at the merits and the value, the subcommittee report is on the table, and I think we should proceed along and listen to the delegations that are here.

The Chair (Mr. David Orazietti): Thank you. Ms. Mitchell?

Mrs. Carol Mitchell: Just a short comment. The day's hearings have been extended to give everyone who wanted to speak today the opportunity. I appreciate that there was consensus reached on that. The audio streaming was another way of communication that we brought forward, and then we put out further advertisements, acknowledging that, in fact, was in place for all communities. Also, the ability to teleconference if people want to make presentations that way is available as well. I just wanted to get that on the record, Chair.

Mr. Gilles Bisson: Not to belabour the point, Chair, just the last comment. I appreciate Mr. Hillier's interjection. In fact, I've made it very clear that I don't want to hold up this committee in the morning because we're here to listen to people. But these bills are going to affect those communities in a very direct way, both the Mining Amendment Act and the Far North Act. I think it was incumbent upon us to, as much as humanly possible, be inclusive in our consultation, and I feel this process is not going to provide that, so therefore I ask for a vote.

The Chair (Mr. David Orazietti): Okay. A recorded vote has been called for for the subcommittee report.

Ayes

Brown, Colle, Hillier, Kular, Mauro, Mitchell.

Nays

Bisson.

The Chair (Mr. David Orazietti): The report is carried.

MINING AMENDMENT ACT, 2009

LOI DE 2009 MODIFIANT LA LOI SUR LES MINES

Consideration of Bill 173, An Act to amend the Mining Act / Projet de loi 173, Loi modifiant la Loi sur les mines.

FAR NORTH ACT, 2009

LOI DE 2009 SUR LE GRAND NORD

Consideration of Bill 191, An Act with respect to land use planning and protection in the Far North / Projet de loi 191, Loi relative à l'aménagement et à la protection du Grand Nord.

ONTARIO REAL ESTATE ASSOCIATION

The Chair (Mr. David Orazietti): Let's move to our presenters here on Bill 173 and Bill 191. First up we have the Ontario Real Estate Association. Good morning and welcome to the Standing Committee on General Government. You have 15 minutes for your presentation and five for questions from all three parties; the time will be divided. Please state your name for the purposes of our recording Hansard and you can begin your presentation when you like.

Ms. Barbara Sukkau: Barb Sukkau.

Mr. Jim Flood: Good morning. I'm Jim Flood.

Mr. Peter Griesbach: Good morning. My name is Peter Griesbach.

Ms. Barbara Sukkau: Good morning again. My name is Barb Sukkau and I'm the chair of the Ontario Real Estate Association's government relations committee. I want to thank you for the opportunity to present on Bill 173, the Mining Amendment Act, 2009. Joining me today are Jim Flood, OREA's director of government relations, and Peter Griesbach, one of our members who has been adversely affected by the current Mining Act.

By way of introduction, the Ontario Real Estate Association is one of the province's largest trade associations, with over 47,000 member real estate salespeople and brokers. OREA was founded in 1922 to organize real estate activities and develop common goals across the province. These goals include promoting higher industry standards and preserving private property rights.

Let me begin by saying that OREA is generally supportive of Bill 173. In our opinion, Bill 173 makes important progress towards stronger, better-defined property rights in our province. In particular, we are encouraged that section 15 of Bill 173 withdraws all mining rights from southern Ontario in areas where mineral rights are owned by the crown but surface rights are held privately.

As many of you know, southern Ontario was the region of greatest contention between prospectors and property owners. Removing mining rights on privately held land will stop the proliferation of confrontations between prospectors and property owners in the region. Additionally, we commend Minister Gravelle for moving quickly after the bill's introduction to issue a mining rights withdrawal order for southern Ontario. This timely withdrawal order avoided what would have been a rush by prospectors to stake out as many claims as possible in southern Ontario as Bill 173 awaited passage.

In the area of prospector certification, OREA is pleased to note that Bill 173 reaffirms mandatory licensing. This section also now requires that licensees take a prospectors' awareness program as a condition of obtaining or renewing a prospecting licence. We believe that an effective licensing and continuing education regime will ensure that prospectors have a minimum level of training and are aware of the mining rights and restrictions that flow from the Mining Act. To complement the mandatory prospector course, OREA recommends that the ministry include a section that reviews the obligations that prospectors have to surface rights holders under the Mining Act and be required to carry appropriate liability insurance.

In northern Ontario, OREA believes that Bill 173 has, for the most part, found the right balance between ensuring a strong and vibrant mining industry and protecting the private property rights of northern Ontario property owners. In particular, OREA supports subsection 46.1(1), which requires prospectors to give notification of a claim to property owners within 60 days of making the application to record the claim. This requirement encourages ongoing dialogue between the prospector and the property owner, which will reduce confrontations and improve collaboration to ensure that damage to the property is limited during the initial exploration.

OREA is also pleased to see the inclusion of map staking in Bill 173, a recommendation that OREA made during the most recent Mining Act review process. As you are no doubt aware, traditional methods of prospecting are often destructive and intrusive to private property. Map staking removes the need to cut down trees or knock down fences when a prospector stakes a claim.

Although OREA commends the government for the aforementioned measures under Bill 173, we do have a few concerns with the legislation and the regulation-drafting process moving forward.

First, OREA notes that the purpose of Bill 173, as set out in section 2, does not mention or affirm the rights of surface rights owners. Therefore, we strongly recommend that section 2 be amended to include wording that recognizes and affirms the rights of surface rights holders, as has been done for aboriginal and treaty rights.

Second, as with most pieces of complex legislation, details on how specific measures contained in Bill 173 will be implemented have not yet been formulated. OREA therefore urges the Ministry of Northern Development and Mines to post all draft regulations on the environmental registry for comment by stakeholders. This will allow stakeholders to review and critique how the government envisions implementing specific amendments to the existing Mining Act. We look forward to reviewing these draft regulations and providing com-

ments as necessary. REALTORS know that if we take the time to get the new Mining Act right, it will save enormous amounts of resources in the future.

OREA is also concerned about section 12 of Bill 173, which amends the "restricted lands" section, or section 29 of the existing Mining Act. OREA does support the current list of restricted lands that are covered under the legislation. However, we suggest that the list be expanded to designate farms as being restricted from mining claims. According to the 2006 census, 2,479 farms encompassing a total area of one million acres of land are located in northern Ontario. OREA believes that the property rights of farm owners deserve the same level of protection that was initially granted under the original Mining Act and that is now afforded to other property owners under section 29.

OREA is also concerned about the arbitrary powers given to the directors of exploration pursuant to section 78 in the proposed legislation. While the concept of exploration permitting is sound, there should be some avenue of appeal available for surface rights owners.

Lastly, OREA is concerned about subsection 29(2) under the "restricted lands" section of Bill 173. In our opinion, subsection 2 creates a loophole for prospectors to stake out a claim and apply for permission to record the claim from the minister afterwards. OREA believes this section may lull or confuse many Ontario property owners into believing that their land is restricted from prospecting. OREA strongly believes that lands listed under section 29 should be completely off limits from staking until permission from the minister is given. REALTORS urge the minister to clarify through regulations under what specific circumstances subsection 2 can be used by a prospector to apply to the minister for approval for a previously staked claim. We look forward to reviewing the regulations for subsection 2 to ensure that there are not loopholes to circumvent the aim of creating a restricted-lands list in the new Mining Act.

Despite these shortcomings, OREA reaffirms its support of Bill 173 and the important steps towards strengthening private property rights it makes. However, the process is not yet complete. As the government drafts regulations to implement Bill 173, OREA urges it to continue to strengthen and define property rights as they relate to surface rights holders.

Bill 173 is an excellent opportunity for all of our elected officials to stand up and commit themselves to supporting Ontarians' right to use, benefit from and transfer their property.

Thank you for the opportunity to present to the committee today, and we'd be happy to take any questions.

0920

The Chair (Mr. David Orazietti): Thank you. Mr. Barrett.

Mr. Toby Barrett: Just a brief question, and I think Mr. Hillier has some questions. I fully support OREA's position on property rights and have done so for many, many years, actually. Do you feel there is—in this legislation, does it reinforce or build on any different definition of property rights? You mentioned property owners in southern Ontario. Is there a different application for treaty holders or aboriginal people? Do they have a different set of property rights in your view? Is this going to be a problem?

Ms. Barbara Sukkau: I think our goal or what we would like to see is the reaffirmation of property rights in general. Everybody should be treated the same, so if there are special concessions in the act for the aboriginal and the treaty rights, these surface holder rights should have the same value as everybody else's.

Mr. Toby Barrett: Okay, thank you.

The Chair (Mr. David Orazietti): Mr. Hillier, go ahead.

Mr. Randy Hillier: Thank you very much for being here. Just a few questions—and, of course, as a proponent of property rights as well, I am a little bit puzzled: You said in your presentation that this offers better protection for property rights and you make mention of the surface rights and mineral rights. This act does not grant property rights; it does not unify those mineral and surface rights; it just deems withdrawal of prospecting from those. Do you think that's an improvement, where you're just deeming withdrawal and not reunifying those surface and mineral rights?

Ms. Barbara Sukkau: Peter, do you want to answer that?

Mr. Peter Griesbach: Thank you, Mr. Hillier. The notion of reuniting property rights has been sort of in the background over the last year or year and a half, and I know that it's one that you've promoted. The reality is that if you were to reunite the property rights, then they could be disunited or sold off again, and then you ask to have them reunited at some point in the future and back and forth. We think the solution that the government's come up with for that issue is adequate by withdrawing mining rights.

Mr. Randy Hillier: And the other notion here of the people in southern Ontario having different rights conferred from people in the north—of course, those mineral rights are not being deemed withdrawn under this act, as they are in the south. Do you not find some conflict or difficulty with that?

Mr. Jim Flood: I think it's probably a reflection of a different economic reality. Mining is a very small, insignificant business in southern Ontario; it is a very large, very important business in northern Ontario. I think the legislation reflects that difference.

The Chair (Mr. David Orazietti): Thank you, that's time. Mr. Bisson, questions?

Mr. Gilles Bisson: Yes, just a very quick one. On section 29 on page 4 of your submission you're saying you're concerned that section 29(2) allows a back door for prospecting. I'd like you to explain that, because what subsection (2) does, as I understand it, is provide the crown the ability to do right-of-ways for hydro. Explain that a bit to me, please. Where do you see the loophole being created?

Mr. Peter Griesbach: The loophole would be that there would be an opportunity to lay a claim down on top

of properties or parts of parcels that should be exempt or not included in the act. At that point, then, it appears to be a ministerial decision as to whether or not those properties would be included or excluded from the claim.

Mr. Gilles Bisson: And on the other issue, where you're talking about mandatory licensing, there's an amendment you're asking for to affirm and recognize the rights of property holders—hang on a sec; I made a note here—but you're making them akin to those of First Nations on treaty. I think that's a pretty big step, wouldn't you say, treaty rights versus a property right?

Mr. Jim Flood: No, I think what we asked for was a recognition of the rights of surface property owners to be put in the purpose section of the legislation.

Mr. Gilles Bisson: You're not asking for something akin to a treaty right.

Mr. Jim Flood: No. We want it in the purpose section.

Mr. Gilles Bisson: Thank you. That's all I've got.

The Chair (Mr. David Orazietti): Thank you. Questions? Mr. Brown.

Mr. Michael A. Brown: Thank you for appearing. Your association has done great work in advocating for the people of Ontario who own real estate and wish to purchase real estate and rent real estate. We appreciate very much you coming and bringing your point of view here.

I have a question regarding your point about farms. I would like a further explanation about the particular issue related to the roughly 2,500 farms we see. Could you help me with that?

Ms. Barbara Sukkau: We're a little confused about that as well because in the original act, apparently the farmlands were included. Now, all of a sudden, in the new legislation, they are not included under the restricted land. We would like some clarification and we would like that to be included in the act as well, as restricted land.

Mr. Michael A. Brown: Insofar as restricted—insofar as staking is concerned? Is that what you're talking about?

Mr. Jim Flood: Yes.

Mr. Michael A. Brown: All right. We will seek to get some clarification about that, but my understanding is that all private property would be treated the same in southern Ontario. A farm is obviously private property. I will seek to find out a little bit more and we'll get back to you on that one. We appreciate your presentation and take your views very seriously.

Ms. Barbara Sukkau: Thank you.

The Chair (Mr. David Orazietti): Thank you. That's time for your presentation. We appreciate you coming in today.

ONTARIO FOREST INDUSTRIES ASSOCIATION

The Chair (Mr. David Orazietti): Our next presentation is the Ontario Forest Industries Association. Good morning. Welcome to the Standing Committee on General Government. As you know, you have 15 minutes for your presentation and five for questions, so you just need to state your name for Hansard and you can get started.

Mr. Scott Jackson: Thank you, Mr. Chair. My name is Scott Jackson. I am the manager of forest policy for the Ontario Forest Industries Association. I have a degree in environmental biology from Queen's University and a master's in forest conservation from the University of Toronto.

Earlier this week the OFIA and the Canadian Lumbermen's Association, a provider of internationally recognized world-class grading and inspection services, joined forces under the umbrella of a single organization. Our association represents over 70 members and includes manufacturing companies ranging from large multinational corporations to small, family-owned businesses that produce a broad range of products, including pulp, paper, paperboard, lumber, panelboard, plywood and veneer. We also represent members of the wholesale and export sector, forest management companies, lumber operators and more.

First off, I would like to express my thanks for the opportunity to present the thoughts and concerns of the Ontario Forest Industries Association today. As you are likely aware, the OFIA was a member of the far north advisory council established by the Minister of Natural Resources and has had some significant reservations with the government's approach to this bill since the outset, many of which were raised during deliberations at council meetings. What you will hear this morning is a reiteration of the OFIA's main positions and concerns, concerns that have not changed since the initiative to permanently protect over 50% of Ontario's northern boreal region was announced by the Premier on July 14, 2008.

What you will not hear from the OFIA is double-talk or backtracking on any of our previous positions or concerns. Unlike many other groups that showed outright support for the government's announcement last July and recently for Bill 191 through media releases, editorials and quotes on the MNR website, the OFIA has remained consistent on its positions and concerns with this initiative. In fact, the OFIA is one of the few organizations that participated on the advisory council that did not provide public support for Bill 191 on the MNR website following first reading. That is because the OFIA has never supported Bill 191. More specifically, the OFIA has never supported the government's societal and political objective to permanently protect over 50% of the northern boreal region.

The reason that we never supported the government's announcement or Bill 191 is based on some fairly straightforward and fundamental premises. On July 14, 2008, the Premier of Ontario announced that he would be protecting a minimum of 225,000 square kilometres, or at least 50% of the northern boreal region, and that this area would be permanently protected, and these areas would

not be open to development outside of tourism or traditional aboriginal uses. There is no misrepresenting these statements: The government vision was, and is, to have at least 50% of the region in permanently protected parks.

The OFIA does not support permanent protection of a minimum of 50% of the region. There is no scientific rationale to support the permanent protection of at least 50% of the northern boreal. The decision to permanently protect at least 50% of the area, or the 225,000 square kilometres, was a unilateral, political decision made by the government of Ontario to satisfy southern special interests.

In fact, the concept of permanent protection does not even line up with some of the government's own stated objectives and is based on incomplete information, notably when it comes to forests and carbon sequestration.

0930

On July 14, 2008, the Premier's media release stated, "Permanently protecting these lands will also help a world wrestling with the effects of climate change, as they are a globally significant carbon sink." The accompanying backgrounder went on to state, "Ontario Fights Climate Change by Protecting Carbon-Absorbing Forests: Ontario's far north boreal forest is one of the last, great, undeveloped spaces on the planet and a vital carbon sink."

What the Premier's statements failed to mention is the following. Firstly, protecting forests, as proposed by the Premier's press release, is not the preferred method of carbon sequestration. Sustainable forest management, including harvest and renewal activities, can contribute to the mitigation of climate change to a greater extent than protecting forests.

Please don't take my word for it. According to the Intergovernmental Panel on Climate Change, the IPCC, considered by many to be the authoritative voice on issues related to climate change, "In the long term, a sustainable forest management strategy aimed at maintaining or increasing forest carbon stocks, while producing an annual sustained yield of timber, fibre or energy from the forest, will generate the largest sustained mitigation benefit." In an article published in the Forestry Chronicle, scientists concluded, "If one is truly concerned about the risks to the environment from climate change, then the case can be made that logging of sustainably managed forests should be encouraged." Even the Ministry of Natural Resources recognizes the value of forestry and forest products, stating, "The carbon stored in Ontario's forest products this century is 4 to 5 times greater than the carbon stored in our forests."

The protectionist approach outlined last July, which is clearly embedded in Bill 191, is not consistent with science or even with the government's own objectives regarding climate change. When it comes to forests and forestry, setting aside 50% in parks is not the best means of combating climate change.

Secondly, the Premier's announcement has a distinct focus on forests and the need for their protection in order to sequester carbon, as opposed to other ecosystems, most notably peat lands. Yet, according to findings of the Ministry of Natural Resources, the carbon stock, or carbon locked up in peat lands in the far north, is nine times greater than the carbon stored in Ontario's far north forests. In addition, the far north peat lands sequester 11 times more carbon on an annual basis than far north forests.

The unscientific, unsubstantiated objective of permanently protecting over 50% of the northern boreal region is a significant concern to the OFIA. Our association is also very concerned that the government's commitment to protect over 50% of the northern boreal region is very consistent with the objectives of numerous Toronto-based environmental campaigners.

The government of Ontario took the advice of certain environmental special-interest campaigners during the development of the Endangered Species Act. Again, don't take my word for it. These environmental campaigners, with support and funding from the Ivey Foundation, have described how they controlled the development of the Endangered Species Act in a document titled The Making of Ontario's New Endangered Species Act: A Campaign Summary Report, which is included in your package. The government of Ontario listened to these groups and passed an act that cannot be implemented. I urge you not to make the same mistake. Do not continue to support the objective of these Toronto-based special interests.

The government needs to reconsider its unscientific, unsubstantiated position to permanently protect a minimum of 50%, or 225,000 square kilometres, of the northern boreal region and replace this with a more pragmatic approach that provides First Nations with an opportunity to lead far north land use planning, free from artificial constraints.

Some of you may see any industry opposition to the minimum 50% protection as a lobby effort to open up the entire northern boreal to development. Some special interests may even try to tell you this directly. This is a false sentiment. In fact, none of our members currently operate in the far north.

What the OFIA does support is an approach to land use planning in the far north that truly recognizes the interests of First Nations, the development of a land use planning process that is First Nations-led and that not only allows First Nations to determine what is to be protected but also allows them to determine what "protection" means. First Nations must play a leading role in setting both economic and conservation objectives. The unilateral imposition of a minimum of 50% permanently protected parks is not consistent with this vision, and again, is not supported by the OFIA. It sets a dangerous precedent that will unnecessarily frustrate any desire for sustainable economic development or the true conservation of the region.

Given our concerns, the OFIA does not support Bill 191. Further, based upon the opposition provided by NAN through their resolution and communications to the

government, the OFIA supports NAN's request for the withdrawal of Bill 191.

I would like to thank the committee for your time and for the opportunity to be here today. I am happy to provide clarification on any of our positions and answer any questions you may have.

The Chair (Mr. David Orazietti): Thank you for your presentation. Mr. Bisson, questions?

Mr. Gilles Bisson: I guess my first part would be a question. For the OFIA to take this position is a bit—how would you say it?—not in the norm. Normally, the OFIA is known as an organization that tries as much as possible to work with the government of the day to make happen what has to happen in the public policy realm in a way that makes some sense. Am I detecting a strong sense of frustration here?

Mr. Scott Jackson: You are indeed, and I do appreciate the comment. We do have a very strong history of being proactive, working with government and other groups where there is informed, engaged, open and transparent dialogue. I think a high degree of the frustration you're hearing today is that there was absolutely no dialogue with one of the fundamental pillars of this legislation, or this proposed bill, which is the unilateral decision to protect 50% in permanently protected parks. There was no discussion. There was no discussion with the far north advisory council around this. It was taken as a given. It was handed down to us as a decision, and we were left to deal with it. So, yes, there is certainly an element of frustration.

Mr. Gilles Bisson: I know from discussions I've had with First Nations organizations such as NAN that they're fairly upset because they see that part of the province as being the territory that they control and the government has unilaterally, as you would say, implemented a process that at the end of the day they're not going to be in control of. It's refreshing to see that you're actually supporting the First Nations in the sense of having good land use planning.

If this doesn't work, what would you see in its place? I think we're all after the same goal: You want to have sustainable development, you want to protect the environment and give First Nations the ability to have economic development. What model would you choose if you had to choose a model?

Mr. Scott Jackson: I think you need to start from a position of withdrawing the decision to permanently protect 50%. I don't think you can tell any organization, association, community or individual that they have full say in land use planning when the starting position is that over half of it will be off limits and they're not allowed to make a decision on it. So certainly you need to withdraw that. There were some recommendations that did come out of the advisory council, such as an independent board with at least half First Nations representation, which would, if you were willing to start with a blank slate, I think, give them an opportunity to have the input that they require, both at a regional and a community level. But I think what we need to do here, in support of NAN's resolution, is withdraw Bill 191 and start with some open, transparent dialogue as to how to approach this—

Mr. Gilles Bisson: And if you had to say how much of the territory that we're talking about is undeveloped now, in percentages—

Mr. Scott Jackson: I don't have those statistics at my fingertips.

Mr. Gilles Bisson: Would 99.9% be close enough?

Mr. Scott Jackson: Yes, I believe so. But again, the forestry sector in Ontario, the OFIA, does not currently operate in the far north.

The Chair (Mr. David Orazietti): Thank you, Mr. Bisson. Questions? Mr. Mauro.

Mr. Bill Mauro: Mr. Jackson, thank you for being here today. We appreciate your comments.

I'm sure the OFIA is aware, and as Mr. Bisson has just referenced in his last comment, that currently in what is described as the far north there is almost no economic activity occurring on almost all of the land. I think it's fair to say that, and I think most people would agree. So what we see happening here through this proposed legislation is an ability to put in place a formal process that's going to allow economic development to occur on a significant portion of land in the far north.

I think one of the things that we all hear on a regular basis, as members in all parties, I'm sure, is that what industry is looking for when they're looking to expend funds—especially when you think about mining in a preliminary way, long before they have an ability to recoup any of their investment, if they ever will recoup any of their investment—is some certainty on a go-forward basis in terms of their ability to establish an ongoing business concern. So what we see as occurring here through the community land use planning process is creating a vehicle through which that certainty will be able to evolve for businesses on a go-forward basis on 50% of the land up there. I'd be interested in your comments on that, given that currently, as it stands, there is basically no activity occurring in the far north.

Mr. Scott Jackson: Thank you for the question. I guess I am a little bit confused. I do not see anywhere in either the Premier's announcement or the legislation where it says 50% of the land will be open to development. That's not what it says. It says a minimum of 50% will be permanently protected. On top of that, what happens when you implement, if you can implement it, your Endangered Species Act? How much land does that take away from the remaining, say, 49%?

I'm also concerned that outside of the 50% minimum permanent protection, there are no economic objectives stated in the legislation. In fact, in the list of objectives, economic development comes last, and there are no numerical targets associated with it. I would think that an approach that is truly directed at economic development would at least have some objectives or targets in terms of what the government wants to achieve in terms of economic development. The legislation does not.

0940

I do agree that certainty is required to a degree, but if that certainty is that there really is no possibility, or limited possibility, for economic development, I would not see that as success.

Mr. Bill Mauro: You spent a fair bit of time in your deputation talking about the percentage of land available. When we think about it in the context of mining, even if tomorrow there were to be 10 mine sites established that could go into production next week, mining on a general basis—and we're all very supportive of it. I can tell you, coming from the community of Thunder Bay, it's a staging point for much mining activity. It's a strong economic contributor to our community. But most people recognize that mining establishes and requires a very small footprint. We can look at the De Beers mine, we can look at several—I apologize; I'm forgetting the name of the one, the Mussel—

Mr. Gilles Bisson: Musselwhite.

Mr. Bill Mauro: The Musselwhite mine, thank you. They require a very small footprint when it comes to what they require in terms of a percentage of a land mass. So when we're thinking about what may come to be probably the three primary economic drivers in the far north—forestry, mining and water power—I'd be interested in your comments on that, recognizing how little land the mining situation would actually require.

Mr. Scott Jackson: I do not represent the mining association or any mining company or organization, so I guess my only comment to that would be that, yes, the end result, the actual mine, may have a very small footprint, but the precursor to mining, which is prospecting, I'm given to understand, actually requires access to quite a lot of land base. If you were to take the Premier's commitment to permanently protect 50% and only allow tourism and traditional aboriginal uses, what does that mean for prospecting? I think you're severely curtailing it.

With respect to forestry, it can cover quite a large land base. I think we've demonstrated in the area of the undertaking that we can implement forestry in a very sustainable manner. We have platinum-standard, world-class standards for forest management, and we do so without the permanent protection of 50-plus per cent of the land base.

The Chair (Mr. David Orazietti): Thank you. That's time for that question. Mr. Barrett.

Mr. Toby Barrett: Thank you to the Ontario Forest Industries Association. I hear what you're saying, that science and economic development seem to have taken a back seat to politics and the advice of some lobbyists.

You indicate something that's very important, as I understand, for this government: the whole issue of carbon dioxide. You're suggesting that the two-by-fours and two-by-sixes in my house sequester four to five times the carbon that's in the living forest. Further to that, there is certainly direction from this government to replace some of the electrical generation from coal with pelletized wood.

This kind of legislation looks like it's setting a pretty serious precedent to restrain access in this part of Ontario. Is this worrisome at all, as far as having you people do what you do, which is plant trees, harvest trees? I know you know how to pelletize. Is there concern there, as far as you know?

Mr. Scott Jackson: I think there is, as I mentioned in my presentation, a concern that this sets a very bad precedent. We are discussing the far north, but I do think it will put significant limitations on opportunities up there.

I certainly was suggesting that science is on the side of sequestering carbon in forest products, but I was certainly more than suggesting; I was citing actual internationally recognized scientific advice. So I appreciate the comment that it was me, but it was also some fairly reputable, recognized organizations that believe the same thing.

It has been a concern of ours since the get-go that whenever carbon is mentioned, the words "protection" and "forest" tend to go hand in hand. That's where we see a disconnect between science and the government's messaging. So, yes, that is definitely a concern as well.

Mr. Toby Barrett: I think Mr. Hillier—

The Chair (Mr. David Orazietti): Thank you. Mr. Hillier, go ahead.

Mr. Randy Hillier: Thank you very much for a clear and concise presentation.

There are a few things that I'd like to mention. First off, I think you've captured it clearly: There are no economic objectives to this bill. There is an idea of protection, but we really don't understand what that protection is, other than it is going to prevent opportunities for somebody.

I want to get your comment on this. We see today that AbitibiBowater has shut down a few more machines up in the north; quite a number of people are out of work. They've cited higher fibre costs. This bill—and I think we need to take a look at the whole context, because you mentioned the endangered species as well. Do you see this sort of bill—these bills that are in front of us now and those that have been passed—increasing the regulatory costs and increasing the fibre costs, putting our forest industry out of work in the north? Is that a significant contributing factor?

Mr. Scott Jackson: Thank you for your question. Given the fact that this proposed bill focuses on the far north, where we do not currently have operations, I do not see it as having any immediate direct impacts on fibre costs in the area of the undertaking.

Mr. Randy Hillier: I should interject for one minute. I know that you're not in there now, but you are also limiting your marketplace and your opportunities—I think you used the words "limiting opportunities"—down the road. So I want to look a little bit beyond just today for the forest industry.

Mr. Scott Jackson: I wouldn't qualify them as "our" opportunities. I would qualify them first and foremost as First Nations opportunities. Based on experience, would the unilateral imposition of this 50% permanent parks—

and I should mention that the announcement was also in interconnected areas. Should it be implemented, it will depend partially on how it is on the ground, but I have very little doubt that it will increase costs for anyone who desires to operate in those areas, beyond what it would otherwise.

As an example, if this is interconnected areas, there is often a lot of resistance to allowing roadways, even limited access, through those areas to connect communities with their markets. If you have to go around these parks, there is a significant additional cost. Road construction is a very high cost to the industry. I do think that from the get-go, out of the gates, this bill is setting up forestry costs to be higher than they need to be, for sure.

Mr. Randy Hillier: Thank you. I just want to add that it's interesting as well that you used words that we don't often see in democracy. Words such as "unilateral," "arbitrary" and "no dialogue" are not words that we generally associate with democracy, and we need to take that into consideration.

Thank you.

The Chair (Mr. David Orazietti): Thank you for your time and for coming out for your presentation.

Mr. Scott Jackson: Thank you very much.

JOHN EDMOND

The Chair (Mr. David Orazietti): Our next presentation: John Edmond. Mr. Edmond, good morning. Welcome to the Standing Committee on General Government. You have 15 minutes—

Mr. John Edmond: I'm sorry. I'm having a little difficulty hearing, Mr. Chairman.

The Chair (Mr. David Orazietti): I said good morning and welcome to the Standing Committee on General Government. You have 15 minutes for your presentation. If you could state your name for the purposes of Hansard, you can begin when you're ready.

Mr. John Edmond: Mr. Chairman, thank you very much for giving me the time this morning. I see that I'm the only unidentified presenter. I didn't mean to be a mystery guest, and so I'd better identify myself immediately. I believe you may have my brief by now, but I am a lawyer with a professional interest in public law, which includes constitutional and aboriginal law. I practise as a sole practitioner in Ottawa.

I want to make some comments—and I'm very honoured, by the way, to be amongst this august company that I see on the agenda today. It's very flattering to be included.

Mr. Gilles Bisson: You may not feel that way after we ask questions.

Mr. John Edmond: We'll see what happens then.

I have filed a brief, and I understand that Mr. Day has kindly distributed that to you all, although of course you won't have had a chance to look at that. So what I'm going to say today will highlight the points in that brief, and I hope you'll have a chance to review the brief at your leisure, not that I expect you'll have much of that over the next week or so.

0950

First of all, I'm speaking only to Bill 173 and I'm speaking only to the aboriginal consultation portion of that bill, which is a very significant part of the bill. My perspective is that of someone, as I say, who has some familiarity with public law and the consultation and accommodation requirements that have been set down by the Supreme Court. I don't claim expertise in the mining industry, and I leave the question of the effects of this bill on the industry to those with that expertise. I'm sure you'll have no shortage of sound advice on that score, both from the industry, from First Nations and Metis groups, and from others.

I also should point out that I'm here on my own; I represent no client in coming here, and no interest. My interest is to offer what I hope is constructive commentary on this bill so as to ensure that the bill—I hope this doesn't sound too pretentious, but I hope to see that our laws are clear, workable and in accordance with constitutional principles. On that score, as regards the consultation aspect of this bill, I think the bill still needs some work.

The starting point of the duty to consult is this: The Supreme Court has told us that there is a duty to consult with aboriginal peoples before any step is taken that might interfere with, for example, a First Nation's treaty right to hunt, trap or fish on their traditional lands. By "traditional lands," I mean the lands encompassed by the treaty to which they are a party. I assume this is the reason that so much of Bill 173 is devoted to the duty to consult; it's a very major portion of the bill.

I think there's room for some improvement or significant clarification in this area. The difficulty is this, and I think it can be stated very briefly: On the one hand, the Supreme Court of Canada has made it clear that the duty is that of the crown and cannot be delegated; that is, it can't be delegated to third parties—to industry proponents, applicants for mining development, exploration and so on. The bill does seem to acknowledge that in certain places, but it goes on, in my respectful view, to do just what the court says that it should not; namely, to require proponents to do the consultation.

The danger in this is that, in my view, it will lead to serious uncertainty as to whether consultation has been done and done properly. In most cases, even when things aren't done in complete conformance to the law, they often go smoothly, but the fact is that when things unravel, that's when the law comes into play and difficulties arise. I think there is an opening for that in this bill with respect to the fact that, in my view, the bill's approach to consultation does not find support in the Supreme Court decisions.

I don't want to read you anything lengthy, but I will read you, if I may, just the critical part of one of the Supreme Court judgments that govern this area of the law. The court here had to address the question, "Is the duty to consult that of the crown or industry?" and they

said it is the crown that owes the duty to aboriginal peoples. "The crown alone remains legally responsible for the consequences of its actions and interactions with third parties that affect aboriginal interests. The crown may delegate procedural aspects of consultation to industry proponents seeking a particular development," and I emphasize "procedural aspects." That's actually a phrase that is picked up in the legislation in section—I believe it's section 82(9) where the authority for the regulations lies. "The crown may delegate procedural aspects of consultation to industry proponents.... However, the ultimate legal responsibility for consultation and accommodation rests with the crown. The honour of the crown cannot be delegated." "Honour of the crown" is a term of art that has been around in aboriginal law decisions for over 100 years, and the honour of the crown cannot be delegated. This is the basis for the duty to consult. They go on to say that third parties "cannot be held liable for failing to discharge the crown's duty to consult and accommodate."

So procedural aspects may be delegated, but when it comes, I suggest, to understanding the concerns of the aboriginal group in question and attempting to find an avenue to reasonable accommodation with those concerns, the crown must be there, it must be present, it must be engaged. This seems to have been recognized in that part of the bill which deals with regulation-making, as I mentioned earlier. It says that regulations may be made—and I'll just excerpt it—"requiring consultation with aboriginal communities in the prescribed circumstances and governing all aspects of aboriginal consultation under this act," and then it goes on, "and providing for the delegation of certain procedural aspects of the consultation."

So far, so good. But when it comes to the operational parts of the bill, I've identified five areas in the various stages of the development of a mine, from an exploration plan to the development to the mine production.

First of all, an exploration plan must include prescribed community consultation. This is in section 40. I have to acknowledge it isn't clear, and the reason it isn't clear is that this statute is drafted in the passive: It never says who is to be responsible for the consultation, but it seems to me that this is not simply a bill drafted to direct government as to what to do. So I take it that when it talks about "prescribed circumstances," it's talking about what a proponent will be required to do. So it appears to me that the proponent may be held responsible for the entire consultation.

A second place is also in section 40. For an exploration permit, the director of exploration—this is a new position—is to consider "whether aboriginal consultation has occurred in accordance with any prescribed requirements." I take it again that he or she is to determine whether the proponent has done the consultation fully and correctly. Again, because of the passive, we don't know that for sure, but I think it's a fair inference.

Similar provisions apply to mine rehabilitation in section 57 and to advanced exploration and commencement of mine production in section 58 of the bill.

If the intent of this bill is to encourage relationship-building by industry, I think that is highly commendable. I actually published an article a couple of years ago about obtaining approvals. It was a presentation to the Corporate Counsel Association of the Canadian Bar Association. I said that it's important for an industry proponent to be there with the First Nations right at the outset; the first thing they should be doing is relationship-building. But that's not to be confused with consultation. The consultation, as I interpret the—well, it's not an interpretation; it's very clear from what the Supreme Court said, which I read you, that the duty for consultation can't be delegated.

It's not a mere academic concern. For example, there's a case now, as I understand it, in Ontario where relationship-building by a proponent was attempted and it didn't succeed in northern Ontario. My understanding is that Ontario is currently the object of a lawsuit with significant damages claimed for lack of consultation by the government. I'm saying nothing about the merits of the case, but this is the kind of problem that can arise.

I give an example in my brief of a situation where only the proponent may have been involved in the consultation, an agreement was reached, everything seemed fine for a while and then it goes sour for some reason—the economics change, perhaps—and the First Nation wants out. I think it would be possible for a court to say, "There has been no consultation and the agreement is void." I don't have a precedent for that, but I think that's certainly a possible outcome. There may be another case where the proponent has done everything to consult and offer accommodation, but the First Nation or Metis group wants no part of it and is objectively being unreasonable. What the court has said in those circumstances is that approval could be granted; there's no veto.

Mr. Chairman, am I running out of time?

1000

The Chair (Mr. David Orazietti): You have a couple of minutes.

Mr. John Edmond: Thank you. There's no aboriginal veto on these, once a reasonable accommodation has been offered. But if the proponent is involved in the consultation, or does the consultation, there is no recourse, in my view, because in fact there has been no crown consultation, and the result could be a veto by default.

There is an argument, of course, that if the proponent is to benefit, the proponent should bear the burden. But the fact is that before approval is given, the crown must discharge its duty to the aboriginal group potentially affected, and this is anchored in the honour-of-the-crown doctrine owed to aboriginal people, the reason being—I mean, it's very basic. It's the crown that signed the treaties and it's the crown that has the duty, then, to ensure that the treaty rights are protected before approving conduct that may affect them.

Now, this workload on the crown, of course, could add significant workload to government, but I suggest that if Bill 173 is an attempt to pass that burden on to third parties, the result will be uncertainty and undue risk for both proponents and First Nations.

In my brief, I indicate that these concerns could be resolved if the bill provided first, by way of clarity, that any aboriginal consultation that may be prescribed for a proponent to conduct shall be limited to procedural aspects, not just in the regulations but in the bill itself; and secondly, that the minister shall be responsible for the conduct of consultation that has not been delegated to a proponent.

That's my main submission, Mr. Chairman. If I have another moment or two, I just have two subsidiary points—

Interjection.

The Chair (Mr. David Orazietti): All right.

Mr. John Edmond: I just have two subsidiary points. One is having to do with the purpose of the bill. The words "including the duty to consult" are found in the purpose of the bill, as if they were part of section 35 of the Constitution Act. They are not. This confuses, I suggest, what is written in the Constitution with what is stated in judicial decisions. I think that needs attention. This, by the way, is to be found also in section 3 of Bill 191; same problem.

My final additional point has to do with the general prohibition against litigation arising from the Mining Act. There is an exception to this with respect to consultation. The Supreme Court has said that third parties can't be held liable for failing to discharge the crown's duty, so this liability would appear, if that Supreme Court statement is to stand, to impose liability only on the crown.

Thank you very much.

The Chair (Mr. David Orazietti): Thank you for your presentation. Government's questions first. Mr. Brown.

Mr. Michael A. Brown: Thank you, Mr. Chair. I appreciate very much you coming and providing us with this legal advice on the bill. I want to assure you that the government is working diligently to take all deputations and considerations into account.

As we move forward, some of the territory that we're treading on is new for governments in Canada, or anywhere else, for that matter. We are cognizant that we need to get this right. So we appreciate all your comments, and we'll clearly give them consideration.

Mr. John Edmond: Thank you very much, sir.

The Chair (Mr. David Orazietti): Okay, thank you. Mr. Barrett.

Mr. Toby Barrett: Thank you, Mr. Edmond. You refer to Treaty 9, which covers much of the far north, and the reference with respect to the traditional lands, or the lands that were ceded or surrendered—they still have the right to pursue hunting, trapping and fishing and, as I understand it, basically have no say with respect to mining or lumbering or anything else unless it were to impact hunting or trapping or fishing.

Has that treaty—and it is, I don't know, 120 years old or 100 years old; I'm not sure. Has that treaty been opened up at all since it was first written? Has it been changed? Or does this legislation affect that treaty somehow?

Mr. John Edmond: No, I don't believe so. The treaty—I can't recall the exact dates. The only change is that there was adhesion to the treaty for the most northerly portion at a later date, I believe around 1930. But apart from that, no, certainly the bill can have no effect. It's not possible for government to change the treaty by legislation. The treaty is in fact protected in the Constitution by section 35.

Mr. Toby Barrett: I guess one thing that would affect this—as you've indicated, section 35 of the Constitution Act, 1982, the charter, as far as duty to consult. On the last page here, you referred to a court of appeal in the Yukon where there's no doubt that the duty to consult is recognized as a constitutional duty. However, it concludes that it is not a constitutional right. I don't understand what that distinction would be. Then again, when we're talking about duty to consult, this is strictly with the crown, eh? This is not, say, with lumbering companies or mining companies?

Mr. John Edmond: That's correct. This was a crown matter, so it isn't directly relevant. It's only relevant on the point that the implication of the duty to consult is to be found in section 35. My only point is that the way that the purpose is written in the bill—section 2 and section 3 of Bill 191 indicate that the duty to consult is to be found in section 35. It suggests that, and I just think that needs clarification or redrafting.

Mr. Toby Barrett: And this duty to consult would be strictly either the federal government or one of the provincial or territorial governments—

Mr. John Edmond: That's correct. It is a crown duty, as the Supreme Court has set it out. It's interesting: Consultation is something that has been around for a long time, and duties to consult, in a broad sense, but it only became focused on resource industries with a decision in British Columbia called Haida and another called Taku River Tlingit, where there were proposals made by proponents—it was a forestry licence—and then this law was carried over to apply to treaties, which is the case in Ontario, with respect to Treaty 8 in northern Alberta in 2005 in the Mikisew Cree case.

Mr. Toby Barrett: Does it specify to consult with whom? Of course we would assume either elected or traditional chiefs, but would it be other organizations or factions—

Mr. John Edmond: I think it's clear that there's no duty to consult with every First Nation in the treaty. I think it would be absurd to suggest that you have to consult with 31 First Nations if you're going to ask for activity near one First Nation. In the Mikisew Cree case, there was a road to be built. It wasn't going to be on the reserve, but it was going to be near the reserve. It was going to affect several traplines, I think, belonging to members of that band. The Supreme Court doesn't make it absolutely clear, but I think it's reasonable to say that the duty to consult requires the crown to consult with the band that is reasonably affected, or it may be two or three bands, if they in fact—I mean, it's a matter of fact: Do they hunt, trap or fish in the area that's in question? If

they're a long way away and they have no connection with that piece of land, the mere fact that they're on the treaty does not suggest that they—

The Chair (Mr. David Orazietti): Mr. Edmond, I'm going to have to stop you there. Mr. Bisson, if you have a quick question.

Mr. Gilles Bisson: I want to thank you for your presentation. I thought your point in regard to clarifying the duty to consult was one of the more concise ones I've heard in a long time.

My quick question is, if you're saying, then, that the crown—and I agree with you—has a duty to consult and can't offload that to somebody else, if we do prescribe procedurally, through regulation, what can be done by industry, is that still subject to litigation, in your view?

Mr. John Edmond: I just think this needs to be in the bill and not just in the regulations. Certainly if—these are all in the passive voice—the regulations then went on to say that the crown or somebody in northern development and mines has to consult, then I suppose that my criticism falls. But I think this should be clarified in the bill.

Mr. Gilles Bisson: Thank you.

The Chair (Mr. David Orazietti): Thank you very much for your presentation and for coming in today.

1010

WORLD WILDLIFE FUND—CANADA

The Chair (Mr. David Orazietti): Our next presentation is the World Wildlife Fund of Canada.

I just want to mention that down the hall to the right, committee room 1 has been set up as an overflow room for this room. The proceedings in here are televised, so if anybody wanted to be in that room, they could watch. Feel free to use that room if you'd like. That's committee room 1, out these doors, to the end of the hall on the right.

Welcome to the Standing Committee on General Government. You have 15 minutes for your presentation, five for questions. You can start by just stating your name for the purposes of Hansard. Begin when you like.

Mr. Monte Hummel: Thank you, Mr. Chairman. My name is Monte Hummel. I'm president emeritus of World Wildlife Fund–Canada, better known as WWF, which is not the World Wrestling Federation. My presentation is regarding Bill 191.

By way of introduction, I thought I would make some brief comments about who WWF is and who I am.

WWF is the largest conservation organization in the world, with five million supporters worldwide and a global network active in over 100 countries, including Canada. Our ultimate goal is to build a future in which humans live in harmony with nature by, first of all, conserving biological diversity; second of all, ensuring the sustainable use of natural resources; and thirdly, reducing pollution and the wasteful use of energy.

WWF–Canada has 150,000 active supporters right across Canada and offices in St. John's, Halifax, Ottawa, Toronto, Edmonton, Vancouver and Prince Rupert. We have worked for over 40 years in the Arctic and in the northern regions of the provinces. We are not opposed to hunting or trapping or to industrial development such as mining, forestry and water power. We have worked with First Nations, Metis and Inuit to support initiatives, especially conservation measures, that are championed and led by them.

I personally was raised in the bush in northwestern Ontario, in a hydro camp north of Kenora, at Whitedog Falls. I worked my way through school as a canoe and fishing guide on Ontario's so-called far north Arctic watershed rivers flowing into Hudson Bay and James Bay. I'm a forester by training. For 30 years, 26 of those as CEO, I have been WWF's most senior contact for First Nations, Metis and Inuit communities and I represented WWF on the minister's far north advisory council.

WWF's overall position on Bill 191 is as follows: We strongly support Ontario's far north initiative as originally envisaged by Premier McGuinty and announced by him in July 2008. However, we believe that Bill 191 needs to be seriously amended to deliver on the Premier's vision and promise, especially his promise regarding a new relationship with First Nations. In our view, if amendments are not made to the bill, the very people who are needed to lead this exercise will not have the authority to do so, and it will fail.

WWF supports Bill 191 provisions to protect at least 225,000 square kilometres of the far north, provided First Nations lead in the identification of these areas and share responsibility for their management, which is not currently assured in the bill.

WWF supports Bill 191 provisions that both economic development and conservation measures be pursued through community-initiated land use plans consistent with a regional land use strategy, again, provided First Nations lead in developing these plans and the strategy and provided they are properly resourced to do so, neither of which is assured in the current bill.

In order to accomplish the above, WWF strongly supports the far north advisory council's recommendation for the establishment and functions of a planning board, with equal representation from the government of Ontario and First Nations, which is also not assured in the current bill. I've attached to our submission a copy of the far north advisory council's report. I urge committee members to read that report because it represents a rather remarkable consensus of normally very diverse players. Chris Hodgson, the president of the Ontario Mining Association, and I have co-authored editorial comments in support of the advisory council's report.

Some details: Virtually all of the concerns outlined above were also outlined in a July 16 letter to Premier McGuinty from the Nishnawbe Aski First Nation over the signature of Grand Chief Stan Beardy. I've attached that letter as well. It's on the public record now. The Grand Chief specifically highlighted (1) First Nations leadership in planning, (2) First Nations leadership in protection, (3) an independent board, and (4) funding, or what I refer to as being "properly resourced." WWF

supports each of these four points in principle, although we hope that Bill 191 will be amended and changed to accommodate these concerns rather than be withdrawn immediately as requested by NAN.

Grand Chief Beardy cross-referenced these four points—the four points in his letter to the Premier—with the prior consensus report of the far north advisory council, so there is a great deal of overlap between NAN's concerns and the recommendations of that council, which also recommended that each of them be addressed in Bill 191. It is therefore important to note that these four concerns are not just those of NAN and conservation groups, but also those of a body representing the mining industry, prospectors, tourism and water power. I've excluded forestry because OFIA made it clear earlier that they have never supported this initiative overall.

At this hearing, WWF wants to simply and clearly signal our concerns with Bill 191 to the standing committee. If it would be helpful to you, we would be pleased to subsequently work with our colleagues to suggest specific clause-by-clause amendments to the bill in order to address these concerns. These are not cosmetic changes; they are necessary changes, as we believe the success of the bill and the Premier's initiative hang in the balance.

Finally, WWF regrets that the standing committee hearing schedule did not include any far north community locations and that the dates conflict with NAN's general election. This sends the exact wrong message to those communities most affected regarding how seriously their input is regarded. If the dates of these meetings cannot be changed, we strongly urge that additional, more appropriate dates and locations be added to at least make it possible for Nishnawbe Aski First Nation communities to participate if they so wish.

Thank you.

The Chair (Mr. David Orazietti): Thank you very much for your presentation. Mr. Barrett, go ahead.

Mr. Toby Barrett: Thank you for the presentation, the World Wildlife Fund. I concur with what you're saying with respect to the far north. As I understand—I won't be travelling with this committee, but I don't think they are going to the far north.

Mr. Monte Hummel: No far north communities as such; what I would call the near north.

Mr. Toby Barrett: Yes. The document here—consensus, advice to MNR. This consensus—and I know you mentioned some of the people who were involved in this process. Again, I guess the same kind of question: How many people were involved? I think back to an Ontario government initiative going back probably 13 or 14 years ago—Lands for Life, the Living Legacy process, which I was involved in somewhat. It seemed to involve thousands of people, perhaps tens of thousands of people. It was more near north—a higher population base to draw on.

As far as this consultation, or any work done by MNR with respect to the far north, how many meetings were held? Were there public meetings held? Was there a road show? Was there citizen participation? Was there community involvement or was it the people listed on this page?

1020

Mr. Monte Hummel: Are you talking about the advisory council or the whole overall far north—

Mr. Toby Barrett: I would say the whole overall consultation process. How broad was it? What areas were visited?

Mr. Monte Hummel: That's a question best put to MNR. I know that this idea percolated around for a couple of years. I'm not privy to everybody whose advice was sought or who was consulted. When the initiative was announced, there was support, some of it lukewarm, some of it strong, from various sectors. On the advisory council itself, I think there was a feeling that MNR needed to recruit a representative body of stakeholders, and so you can see those who were represented there. I think it's pretty representative. There were 14 people or so on the advisory council, but of course not First Nations, who wanted to have a separate table, a government-to-government relationship. So they had a separate table; however, we had a common Chair for both groups. NAN representatives were invited to sit in on all of our sessions, and for most of them they did, and we had a couple of joint meetings as well. Although there were two separate streams, we tried to keep the two streams aware of what was going on. That's after the Premier's announcement in July 2008. That's the part of the consultation, or the public involvement, that I was most involved in, so that's really all I can speak to.

The Chair (Mr. David Orazietti): Mr. Hillier, go ahead.

Mr. Randy Hillier: Just a quick question, here: We've heard that this advisory council came after the Premier's announcement, or these consultations came after the announcement and after the introduction of the bill—

Mr. Monte Hummel: No, excuse me, it was after the Premier's announcement but leading up to the introduction of enabling legislation.

Mr. Randy Hillier: So my question is, I've heard from others, and we heard today as well, that a number of groups were not included in the discussions in the run-up to that announcement. So I'm just going to ask you, was WWF consulted in the preparation of this bill?

Mr. Monte Hummel: The original announcement by the Premier?

Mr. Randy Hillier: Yes.

Mr. Monte Hummel: Yes, we were.

Mr. Randy Hillier: You were. So clearly, then, some groups have been and some have not.

Mr. Monte Hummel: Yes.

Mr. Randy Hillier: Thank you very much.

The Chair (Mr. David Orazietti): Mr. Prue.

Mr. Michael Prue: Gilles Bisson had to go outside for a moment, so bear with me. I'm not a member of the committee, but I am the NDP finance critic. I'm going to ask some questions. Stan Beardy's letter talks about

funding and the necessity of some $100 million over five years in order to adequately allow First Nations to participate. In your view, is that sufficient monies?

Mr. Monte Hummel: No.

Mr. Michael Prue: Is there sufficient monies in the bill?

Mr. Monte Hummel: No, there's been no commitment of funding within the bill or outside the bill for this exercise.

Mr. Michael Prue: Has your group advocated funding of First Nations?

Mr. Monte Hummel: Yes, we have, but I want to make clear it's not just us. The advisory council very strongly said that if there isn't funding for this, it isn't going to happen. One of my big messages today is there are some very common themes here and a remarkable consensus across different groups about what needs to be done here, and funding is certainly one of them. I don't think you'll find anybody involved in an advisory group who wouldn't agree that without funding, this isn't going to happen.

Mr. Michael Prue: Is that $100-million figure adequate, in your view?

Mr. Monte Hummel: That would certainly get the exercise going for the first two to three years in terms of funds to develop land use plans. What's envisaged is a mosaic of land use plans. They won't all be done simultaneously; some are under way already, so they're all on a different track, and what the Premier indicated was an outcome that he wanted to see on a regional basis for the whole of the far north. But that outcome was to be determined by and defined through the community land use planning process by the people who live there. It was not imposed or dictated. They weren't told where that area had to be.

Mr. Michael Prue: That seems to be part of the difficulty, if I'm reading what you had to say and what Grand Chief Beardy had to say: The 225,000 square kilometres, there's no real knowledge in the NAN group as to where that might be or how that might impact the traditional lands.

Mr. Monte Hummel: That's because it's not known where that area is. That's up to them to determine. They do not feel that they have—well, I can't speak for them, but we don't feel they have the authority or the role they need to have to do that in this exercise.

Mr. Michael Prue: Apart from committing funding, what other changes absolutely need to made in the act? I would think one of them would be the independent board—

Mr. Monte Hummel: Yes. The planning board, I think, is the single most important change. It really is an umbrella concern that I think would help address a number of NAN's concerns—virtually all of them except the money. It's not stipulated in the act. I think it needs to be, as we've indicated, 50-50 representation. It needs to have the lead responsibility for developing the regional strategy. It probably should be the distributor of funds. It should be determining whether these various community land use plans are consistent with the principles of the regional strategy and give First Nations true leadership in both the economic development and protection side of the far north initiative.

Mr. Michael Prue:. Thank you very much.

The Chair (Mr. David Orazietti): Okay, that's time. Mr. Mauro, go ahead.

Mr. Bill Mauro: Mr. Hummel, thank you for your presentation this morning. I missed the name of the community north of Kenora. What was that?

Mr. Monte Hummel: Whitedog Falls. It's a hydro camp. My dad used to work for hydro.

Mr. Bill Mauro: Good to talk to another northerner. People probably don't realize that if you jumped in a car, it would take you 15 hours to drive from Toronto to Thunder Bay, and then from Thunder Bay to Kenora is another good six hours, and then to Whitedog Falls is how far? Is there even a road?

Mr. Monte Hummel: Yes, and you're still in the banana belt as far as the people of Attawapiskat are concerned.

Mr. Bill Mauro: Exactly. It's a big place that we're talking about.

Mr. Monte Hummel: Yes, it is.

Mr. Bill Mauro: I do have a few comments before a question or two. You spent a bit of time talking about resourcing, and in the 2008 budget—I think it was the 2008 budget—we did commit, as you're probably aware, $30 million for this process.

Mr. Monte Hummel: Yes.

Mr. Bill Mauro: I do think the legislation or somewhere speaks to our willingness to continue to work with First Nations communities to build capacity around the land use planning process on a go-forward basis. I don't think you're ever going to see specifically stated in legislation an amount of resource tied to an initiative like this, so this is not at all unusual. I don't think any government at any time has ever done that in their legislation. The $30 million was committed in the 2008 budget, and we're looking to build capacity with First Nations on a go-forward basis to enhance that.

It's important as well to mention, on the consultation piece, that this is first reading. This is very unusual, what we've done as a government, in terms of bringing this bill forward and referring it to committee for first reading. So we feel like this is sort of an extra add-on process or piece to the process that's going to allow for a broader opportunity for people to have their input.

I'm going to read to you as well section 16. There was a bit of chat about the planning board. Section 16 of the bill states, "The minister shall establish one or more bodies to advise the minister on the development, implementation and co-ordination of land use planning in the far north in accordance with this act." The subsection after states, "When establishing a body ... the minister shall consider what role First Nations should play in the establishment of the body." It has always been our intention to have consensus in future decision-making, understanding that this is enabling legislation.

I would like to ask you, however: Within the legislation, do you think that we should perhaps be amending this with a clause to allow for further interim development to occur as community land use plans are being drafted? I'm just curious as to your position, from the WWF, in terms of what we might be doing or considering interim as this process unfolds.

Mr. Monte Hummel: Yes, I do think you should. I think it should be clear that that's permitted. Certainly, the advisory council recommended that that be permitted. I think the issue is what the terms and conditions are under which interim development would take place, but I think First Nations feel extremely hemmed in right now. There are water-power projects, road proposals, things that conceivably could grind to a halt which are going to be consistent with their community land use plans, so I think a reasonable accommodation—speaking for WWF now. Nobody speaks for the council anymore because it's been disbanded, but there is a section of the council report that refers to this as well. I think that would be a reasonable accommodation, and I know it's a concern for NAN.

Mr. Bill Mauro: So a lot of the economic development work that would be necessary for some industrial development to occur is still allowed currently through this legislation; for example, feasibility studies, wind testing for any green energy project that might occur. That kind of work is still allowed. It's important to note that most of the industrial development that could potentially occur in the far north is going to require some transmission capability which does not currently exist. It would be difficult for anything to really happen tomorrow, so I think there's some context there that we all need to keep in mind when we're considering what can happen in the interim, in the very short term, quite frankly that being probably very little. There's still an allowance for that currently.

1030

Anyway, I just wanted to thank you. I appreciate your comments, and we appreciate your work on the far north advisory council as well.

The Chair (Mr. David Orazietti): Thank you, Mr. Mauro. Thank you; that's time for your presentation.

Mr. Monte Hummel: Thank you very much.

BEDFORD MINING ALERT

The Chair (Mr. David Orazietti): Our next presentation is Bedford Mining Alert. Welcome to the Standing Committee on General Government. You have 15 minutes for your presentation and five for questions. You can start by stating your name, then you can begin your presentation. Before you do that, I'm going to just mention again that for those interested, there is an additional room where you can watch the hearings today, out these doors and down the hall to the end on the right, committee room 1. That has been set up if anybody needs a little extra room. Go ahead, you're welcome to start.

Ms. Marilyn Crawford: Marilyn Crawford.

Mr. Alexander Cameron: Alexander Cameron, the chair of Bedford Mining Alert.

Ms. Marilyn Crawford: Good morning, Mr. Chairman and members of the committee. Bedford Mining Alert is pleased to have this opportunity to comment on Bill 173, the Mining Amendment Act.

Bedford Mining Alert is a group of concerned citizens in Bedford district of South Frontenac township who have been working for 10 years to bring about constructive changes to the Ontario Mining Act. Many of our members are surface-rights-only landowners. However, our reach goes far beyond our individual membership and Bedford district and includes South Frontenac township, local lake and river associations, Land O' Lakes Tourist Association and Rideau Valley Conservation Authority. They have confirmed their support for our goals and objectives in reforming the Mining Act.

We are supportive of Bill 173 as an important first step in modernizing the act. I will describe recommendations that, in our view, should be included in Bill 173, the associated regulations and related legislation.

BMA believes that mining is not necessarily the best use of land and the purpose of the act should reflect this belief. An express statement in the purpose of the act should ensure that prospecting, staking and exploration for the development of mineral resources are undertaken in adherence to three fundamental principles: first, in a manner that is sustainable socially, environmentally and economically; second, only where mining is determined to be consistent with and complements economic development plans of a community; and third, in a manner that is consistent with the legal obligation of the crown to aboriginal peoples.

We agree with the withdrawal of mining rights from prospecting, staking, sale and lease in southern Ontario where there is a surface rights owner and where the mining rights are held by the crown. There needs to be certainty within the act that this withdrawal order will not be revoked. The essential next step, in our view, must be to pass legislation rejoining mining and surface rights that are privately owned.

We also submit that Bill 173 should be amended to withdraw any lands, mining rights or surface rights that are the property of the crown from prospecting, sale or lease, unless they are identified as having provincially significant mineral potential.

Bill 173 should also be amended to withdraw lands where site alteration is not permitted in an official municipal plan. These withdrawals will provide certainty for other economic activities such as recreation, ecotourism and resort development that would otherwise be adversely affected. To protect local heritage, economies and sensitive lands in Ontario, we recommend withdrawing from prospecting, staking and exploration UNESCO heritage sites and biosphere reserves; for example, the world heritage site of the Rideau Canal, one of 20 sites in Ontario, and the Frontenac Arch Biosphere Reserve, one of 15 biosphere reserves in Canada; also, areas identified by official municipal plans as environmentally sensitive, significant and a natural heritage.

Where there are pre-existing rights and tenure in southern Ontario, the mining rights should be withdrawn from prospecting, staking, sale or lease when a claim, lease or licence of occupation reverts to the crown.

The act should be amended to define the terms of notification and/or consent for exploration plans, restoration plans, environmental impact studies and compensation to the landowner. It must be clear in the act that our recommendations addressing proposal to explore, exploration plans and permits should apply to pre-existing rights and tenure, as outlined later in this presentation.

Legislation should limit the duration that existing claims can be held to five years in southern Ontario. Landowners should be advised of the status of the claim by the claim holder, and be given one year to dispute the existing claim. A claim holder should deliver a notice of transfer to the surface-rights-only landowner within 30 days of a claim being transferred.

Bill 173 proposes that a surface-rights-only landowner may apply to have the mining rights for the lands reopened for prospecting, sale or lease. In the event of an application, the minister should have prescribed conditions to make a decision. These include consideration for the mineral potential of the land, that the area of land is sufficient and complies with the current staking regulations, and any other criteria that may be prescribed, including criteria contained in municipal official plans.

Bill 173 proposes areas for restricted lands. The bill should be amended to increase size and distances that are not open on restricted lands without consent of the minister. Restrictions should apply to land used for agriculture and managed forests. The minister should not be able to give consent after staking has taken place on restricted lands.

Current legislation requiring a notice of intent to perform ground exploration work has been revoked. A proposal to explore should replace the notice of intent. The proposal-to-explore document should be delivered to the landowner's address not less than 90 days in advance of the plan's commencement of the proposed exploration work. People who have little knowledge of the act will require sufficient time to research the subject matter and obtain legal advice on any actions they might consider. Relevant information should be provided to the landowner.

Any "arrangement," as mentioned in Bill 173, should include a written agreement between the surface-rights-only landowner and the claim holder prior to entry and exploration. Standard terms and conditions should be required in an exploration plan or permit.

Whether the exploration is to take place on surface-rights-only land, private land or crown land, exploration plans should be broadened to include environmental impact studies and plans for restoration of exploration sites. The plan should be agreed to by the surface-rights-only landowner or, in the case of private or crown land, the local community authority. The Ministry of Northern Development, Mines and Forestry should inform the landowner and the local community of their rights and responsibilities under the act. Plans should be reviewed by and meet the requirements of conservation authorities and municipalities, and be approved by the Ministry of the Environment. The final plan should be approved by MNDMF and certified as having satisfied the review and the approval process.

Before implementation of the plan, the exploration company should be required to provide MNDMF with a deposit sufficient to cover the full cost of restoration. MNDMF should be obligated to ensure the remediation and restoration work is done in a timely manner in accordance with the plan and applicable law.

1040

Any material changes to the plan during implementation must be approved by the landowner and MNDMF and be reviewed by the municipality and, if relating to matters of concern to them, the Ministry of the Environment and conservation authorities.

In addition to training, prospectors should be required to meet standards and maintain a minimum of $2 million of public liability insurance and meet bonding requirements.

A dispute resolution process similar to the proposed process related to aboriginal consultation should be developed for surface-rights-only landowners. The dispute and appeals process should include an independent arbitrator and be an arm's-length process that does not involve MNDMF or MNR. Appeals should be heard by a neutral body. Any costs associated with the appeal should be borne by the licensee or claim holder, unless the appeal is determined to be frivolous and vexatious.

Bill 173 affords the minister, the director of exploration and provincial recorder a significant amount of discretion. Prescribed terms and conditions should apply to discretionary decisions such as issuing a permit or an order and in determining that it is not feasible to give notice of claim-staking. There needs to be a process to appeal the decision made by the director of exploration.

The amendments to the bill should develop regulatory options for placing more stringent conditions on how uranium exploration is conducted because uranium poses unique documented risks. We recommend that no person should prospect or explore for uranium in eastern Ontario.

Alternatively, to protect drinking water in a precautionary fashion, no person should prospect or explore for uranium in areas identified as a source of drinking water through the Clean Water Act or the source water protection act.

Alternatively, or until a process is established to assess the risk, no person shall prospect or explore for uranium until environmental assessment requirements are in place.

This concludes my presentation. Thank you for your interest and attention, and once again, thank you for giving Bedford Mining Alert this opportunity to address the committee.

The Chair (Mr. David Orazietti): Thank you very much for your presentation today.

Before we get into the questions, I'm going to make mention again of committee room 1, out the doors, down

the hall to the right. It's an overflow room where you can watch the proceedings as well if you're looking for a place to sit down.

We'll start with you, Mr. Bisson. Go ahead.

Mr. Gilles Bisson: Thank you for your presentation. I have a couple of questions. In the exploration business of finding a mine, as you well know, you've got to look at a lot of ground before you ever get to the point of actually bringing a mine into production. So the point that you make in regard to the process of notification to private property owners and, I would argue, First Nations: How do you maintain a system that allows a system of staking that doesn't put the exploration company or the prospector in a position of telling everybody out there what's available so that at the end of the day they're not the ones who are actually going to have the land to prospect? Do you have a suggestion of how that could be done?

Ms. Marilyn Crawford: I think what you're talking about is security of mineral tenure and that historically we have looked at the free entry system, where staking gives first priority to exploration. There could be possibilities for removing the free entry system of tenure with staking. That would look something like a permitting system, where there could be first priority for someone applying for a permit to explore. If such a process were in place, I think that would also assist the crown in their legal obligation to consult and accommodate. I think it would allow for the crown to step in and say, "We've got an application here. We need to go into a community and we need to consult and we need to ensure that this is acceptable to a community."

Mr. Gilles Bisson: So to put it shortly, it's sort of a two-step process: one that somehow maintains an open-staking system without disturbing the land and then the second step being what you're arguing, a requirement that then there be some permission obtained by the mining exploration company for exploration on that private land or First Nations territory.

Ms. Marilyn Crawford: I would see that the process would not involve the staking; it would involve permitting. A proponent would have a notice proposing to explore, and the Ministry of Northern Development, Mines and Forestry would receive that proposal. Then the permitting system would—I won't spend a lot of time on what the different aspects and criteria.

Mr. Gilles Bisson: I just wanted to make sure that we're separating the two.

The Chair (Mr. David Orazietti): Thank you, Mr. Bisson. That's time. Mr. Brown, go ahead.

Mr. Michael A. Brown: Welcome to the committee, Ms. Crawford and Mr. Cameron. I first want to commend you on the good work that I know your organization has done for many years in bringing these issues to the fore.

Earlier this morning—I don't know if you had the opportunity to be here, but the Ontario Real Estate Association was here.

Ms. Marilyn Crawford: Yes, I was here.

Mr. Michael A. Brown: When asked whether the province should withdraw staking rights from southern Ontario, they said yes. That's what they thought should happen rather than what your position seems to be, which is that we unite mineral rights and surface rights into one. Their concern was that if we did, as a government, unite the mineral rights and the surface rights together, that it would be possible for a landowner then to sell the mineral rights to the property after the fact. Could you share with me your views on their submission?

Ms. Marilyn Crawford: Certainly. I think that aside from property rights—and I understand that one of their main guiding principles is protecting property rights—a vision where there is an assumption that mining is not necessarily the best use of land has to take into account local communities and municipalities and environmental protection. There has to be all three of those. If lands were reunited, it would treat a percentage of landowners in Ontario the same as someone else. I feel that the important step, though, is that there has to be acceptance from communities and municipalities before exploration comes into place. That's one of the reasons why we have said that surface-rights-only landowners should not be able to apply to have the withdrawal order revoked on their property, that that should be a decision that their municipality should make rather than an individual landowner, because it's important that the municipalities and communities affected have the right to consider whether or not they want mining to take place on their land, whether they want exploration to take place and if it is compatible with what existing development is occurring and economic drivers.

The Chair (Mr. David Orazietti): Thank you. That's time for questions. Mr. Hillier.

Mr. Randy Hillier: Thank you very much, Marilyn and Sandy, for making your way down here today.

Listen, I'm getting a little bit confused about some of the responses. Just for clarification, I know that Bedford Mining has been active for many years. I think it's appropriate where you mentioned in your brief that some first steps have been taken with regard to mineral and surface rights unification. Under this proposal, we are not unifying surface and mineral rights in southern Ontario. The act allows for the minister to withdraw and deem those mineral rights to be withdrawn from staking. What is the position of the Bedford Mining Alert as far as having the minister deem that to be withdrawn? Are you concerned that at some point down the road, those staking claims may be again reinstituted or re-allowed? Or are you looking more for the surface and mineral rights to be unified?

I'll just add one other point. At the present time, anybody who has ownership of private land can sell or lease the mineral rights out of that land. That's always been the way, so—

1050

Mr. Alexander Cameron: And we support the withdrawal, the lands. We believe that there is the potential to have that revoked, and the lands that were withdrawn would not be withdrawn anymore, and therefore we do

propose or believe that the surface rights and the mining rights should be reunited.

Mr. Randy Hillier: So you're supporting the withdrawal, but as a—

Mr. Alexander Cameron: It's a first step.

Mr. Randy Hillier: —as a first step. I'll leave it at that. Thank you.

Ms. Marilyn Crawford: And I think also that in our submission and in our presentation, we made it clear that we need a certainty that this order cannot be revoked at any time. From what I understand right now, there had been an order signed on April 30. It's a ministerial order. But the way I read it in Bill 173, this is a little different than a ministerial withdrawal order—this can be revoked any time. It's embedded in the Mining Act so it has more strength to it, but what we have asked for is that there needs to be clarity and certainty that it can't be revoked without an awful lot of red tape to go through.

The Chair (Mr. David Orazietti): Thank you very much for being here today. That concludes your presentation.

NISHNAWBE ASKI NATION

The Chair (Mr. David Orazietti): The next presentation, Nishnawbe Aski Nation. Good morning and welcome to the Standing Committee on General Government. Go ahead and have a seat. You have 15 minutes for your presentation and five minutes for questions among committee members. If you would like to state your name for the purposes of the recording Hansard, you can begin your presentation when you like.

Grand Chief Stan Beardy: I can start now?

The Chair (Mr. David Orazietti): Yes.

Grand Chief Stan Beardy: Okay.

Remarks in Oji-Cree.

My name is Stan Beardy, Grand Chief of Nishnawbe Aski Nation. I have here with me two elders, Elder Gregory Koostachin from Attawapiskat, Elder Louis Waswa from Port Hope, and I have a group of young people here as well, and they will be making a brief presentation after my opening comments.

Greetings, Mr. Chairman and members of the standing committee. Nishnawbe Aski chiefs-in-assembly have condemned Bill 191 and instructed me and my staff to take all steps necessary to stop the bill from becoming law. Nishnawbe Aski chiefs demand a fresh, meaningful government-to-government dialogue based on our treaty-making relationship. Bill 191 tries to govern land use planning in what you call the far north. Virtually every single community there is a Nishnawbe Aski First Nation.

Nishnawbe Aski First Nations hold inherent First Nations aboriginal and treaty rights. Our First Nations are truly democratic in that authority rests directly at the First Nations level. Our people have the autonomy to decide on their course of action, and their members are the rights holders.

It is not an exaggeration to say we are the north. The pathways of that place are filled with our stories and our history and are governed by our laws and customs. To this day, only First Nations people live there.

With the greatest respect to the honourable members, you don't live in this land you are trying to govern. Neither do the civil servants of the Ontario government. Yet for some reason, they feel compelled to govern us from afar. We cannot accept that. The north is our homeland and we govern and protect it through our inherent right, given to us by the Creator. Since time immemorial, our people have exercised our inherent right and protected the lands. That is why they are still in pristine condition. And we will continue to protect our lands for future generations.

We did not surrender our land by treaty or any other way. We will exercise our aboriginal and treaty rights throughout our homelands. But we are willing to have shared arrangements with the government of Ontario. We want a meaningful partnership which is based on our treaties. Bill 191 isn't a partnership. It is an entrenchment of the powers of MNR, and it is a violation of our treaty understanding that we would coexist and share as equal partners.

I well know from your questions just how much you understand about a treaty. Bill 173 isn't a partnership either. NAN First Nations have great concerns because it does not go far enough to seek proper prior informed consent. It too is a violation of our treaty relationship based on peaceful co-operative partnership agreed to more than 100 years ago. That is why we object to them, and that is the message I'm delivering to you today.

A few words about consultation: I hear a lot about consultation these days, and about Ontario's legal duties to consult. I want to be clear about this: Just because I have appeared here today does not mean you have consulted with the First Nations in Nishnawbe Aski Nation. NAN, the organization I represent, a political organization, does not have any aboriginal and treaty rights. This hearing is not consultation.

I mean no disrespect to the individual members present. However, the chiefs of Nishnawbe Aski do not view this committee process as legitimate, as they are not talking to the rights holders. As I have said to the Premier, this process has been rushed, insensitive to the First Nations, and a violation of your legal duties to consult with First Nations. I cannot see any other way the Ontario government can rightfully move forward with both bills without first meeting this duty. This means that each First Nations should be consulted without artificial timelines, as I stated already. First Nations and their members hold aboriginal and treaty rights. They must be consulted directly.

The bills should be considered separately, not bundled together.

The committee hearings should be in the geographic space you claim to govern. They should be in our communities, in what you call the far north, but instead, for your convenience, they are taking place in your towns

and cities, far from our homelands, yet First Nations are expected to come to you. Travel is expensive where we are from, even by your standards, and by the standards of our communities—communities that face poverty on a daily basis—the travel cost is prohibitive.

The hearing day you have set in Chapleau, during our summer caucus, is on the very day that Nishnawbe Aski Nation will elect a new Grand Chief and his Deputy Grand Chiefs. I do not think the honourable members here intend to insult us, but you knew our elections were that day and still you have scheduled the hearing around this week. Imagine if a crucial hearing for Ontario were scheduled on the day of Ontario's provincial election. You would be furious, and justifiably so. It is a profoundly shocking and insensitive move and a poor reflection on your government.

1100

Over the last years we have made our views on both pieces of legislation known to the government of Ontario in great detail, and they have not listened. I will not legitimize this committee process any further by going over the ground already provided here again today; however, I want to point out that First Nations were engaged in honest, community-driven land use planning discussions with your government for at least one year prior to the Premier's announcement of the protected lands act. The whole idea of why we were engaged in land use planning at the time was to ensure economic opportunities were there for our people to address the living conditions of our people. As you know, they are poor.

The government of Ontario knows our stance on these bills. We have been clear on them from day one. So I'll be leaving these doors today to share this message with the people of Ontario. I and many supporters of NAN will be outside today, as you sit in the committee, in a rally in support of Dunakiiwin, which in quick translation means "homelands." Our supporters come from all walks of life, including from the environmental movement, from industry and from the churches. We'll be sending out our prayers for you as a committee today in hopes that you will listen to my comments with an open heart.

Also, I am joined here by the next generation of First Nations leaders, who have travelled over 23 hours by train from the north to be here today. They are here because they too are concerned about their land and how they will be able to benefit by it as well as take care of it for future generations. They have a statement that they would like to make and something they would like to present, so I will turn it over to them. They have petitions they have collected, so would they present them to the Chair?

The Chair (Mr. David Orazietti): I'll ask the clerk to pick them up, and we can table them. Thank you very much for those.

I'll just ask whoever is speaking to state their name before they go ahead. You can start when you'd like.

Grand Chief Stan Beardy: Sorry?

The Chair (Mr. David Orazietti): They just have to state their name and then they can go ahead and make the presentation.

Mr. Stephen Kudaka: My name is Stephen Kudaka. My band is Bearskin Lake First Nation.

The Chair (Mr. David Orazietti): Welcome, Stephen.

Mr. Stephen Kudaka: Thank you. I'm one of the youth who travelled on the train. The other ones are behind me there. Our trip was actually a rather symbolic journey: I understand the treaties were signed because the government was interested in westward expansion and the railway was important for that, so that's why we took the train.

We're here because we are concerned about our future. This bill, the way it's laid out, is not conducive to having a good future for this and future generations, and as a youth member of Nishnawbe Aski Nation I'm here to oppose it and ask that it be withdrawn.

Thank you.

Grand Chief Stan Beardy: In closing, I thank you for your attention. My comments today have been offered in a spirit of respect and a real desire to speak from my heart as I deliver the message of my people. It is their hope that you, the honourable members of this committee, will hear out and respond to their message. We remain hopeful and we are asking the Premier and his cabinet to work with our First Nations on common objectives. These include conserving our lands while stimulating the economy and improving the living conditions of all of our peoples.

The expectation of Nishnawbe Aski Nation, as per our treaty-making, is that you, our treaty partner, respect the spirit and intent that our people agreed to 100 years ago when that document was signed. We reiterate that you withdraw this legislation and begin a respectful dialogue with our First Nations, without artificial timelines, on a process that is agreeable to both groups. That is the message I was sent to deliver today. Thank you very much.

The Chair (Mr. David Orazietti): Thank you very much for being here today and for your presentation.

We're in rotation of questions. Mr. Mauro—the government—go ahead.

Mr. Bill Mauro: Thank you, Mr. Chairman. How much time do I have?

The Chair (Mr. David Orazietti): You have about three minutes or so.

Mr. Bill Mauro: Thank you very much.

Grand Chief Beardy, thank you very much for being here today, and especially for taking the time to travel from Thunder Bay. It's always nice to see a familiar face. Welcome to the elders and to the youth who have taken the time to travel here as well today.

We have received a number of deputations this morning, and I would suggest that there are probably three themes that are starting to evolve through the deputations that we've heard today. I'm going to comment on those briefly before I have a question or two for you, time permitting.

Certainly one of the themes has been consultation. I think it's important for us to get on the record as often as

possible and it's important for everyone to know and remember that this is first reading only. I know that my friend Mr. Bisson has been around this place for a long time and had the opportunity to serve in government. I don't know how frequently bills have travelled previously after first reading. Understand that this is not the only consultation that is being undertaken, but certainly the committee process is part of that. Given that we're doing it after first reading, I think it's important to remind people that you can view it almost as a pre-consultation. It's the beginning of a long process. I also believe that you are in receipt of a letter from the minister advising that we will be asking our House leader for the bill to be referred to committee for an additional round of committee hearings in northern Ontario after second reading debate. This is the first step in a process. It's not the norm, and we will be asking our House leader to try to get an agreement to do this after second reading again.

You referenced the date that has been set aside for Chapleau. It's important for us to remind people that the decision on which communities the committee visits is not the decision of the government, but is in fact a decision made by the subcommittee of this committee that has representation of all three political parties on it.

I would like to address the funding issue as well. That's coming out as a common theme. In our budget in 2008, we committed $30 million to build capacity on the land use planning piece. I think there was a further announcement out of the $25-million relationship fund, and I think $9.5 million of that has flowed to allow for capacity building in First Nations communities as well. I think the bill also references our willingness to move forward and to try to enhance further capacity for more consultation on a go-forward basis. But it's not unusual at all—in fact, it's the norm—for the legislation not to specifically identify a dollar amount for something like that. So I thought it important that I get that out there.

Grand Chief, I would be interested, however, in your thoughts. One of the concerns I think that most people have, and I think fairly so, and I'm sure that others—when we get to second reading discussion in the Legislature, this is likely to receive a fair bit of time: What's going to occur now, as we go through this process, in terms of interim development, while the bill is before us? I'm interested in your concerns in terms of what may or may not be occurring while we're in the process that we find ourselves in now.

Grand Chief Stan Beardy: Thank you for your question.

First of all, the Nishnawbe Aski chiefs will be meeting next week. All the 49 First Nations will assemble in Chapleau Cree. We will give them an update from today's event, and also your question will be presented to them: What is it that needs to happen during the hearings?

Definitely, from the outset, we have raised our issues that in terms of protected areas, we want that to be defined in partnership with Ontario—what that means in terms of protected areas, in terms of areas for potential development. We want to make sure, if the protected area act comes into play, that it does not shut down our economic opportunities for future generations. We want to be in a position to stimulate and create real wealth in our territory.

As I mentioned in my presentation, we are the poorest of the poor in Ontario, yet everybody else has been getting rich from our natural resources for the last 100 years. We want the opportunity to address it.

1110

As I mentioned, we are for land use planning. We are in the process already, at a bilateral level in Ontario, talking about the need to have community-driven land use plans in place, in partnership with Ontario, to make sure that land uses are adequate and they're appropriate in terms of what areas need to be protected and what areas can be identified for potential future development. I think that's the wish of my people: to be in a position to make sure that we can develop natural resources when and if appropriate.

The Chair (Mr. David Orazietti): Okay, thank you. That's the time, Mr. Mauro. Mr. Hillier, go ahead.

Mr. Randy Hillier: Thank you very much for being here today. It's absolutely appreciated that you've made the journey down here and shared your comments and your thoughts.

There are a couple of things I'd like to mention and also get your response back on. The first is, there has been that theme of no consultation or poor consultation, poor communication. You're certainly not the first person to mention it today—and from what we understand, we'll be hearing that from quite a few others—and that is inconsistent with respect, it's inconsistent with democracy, it's inconsistent with our thoughts, ideas and views.

You've mentioned protected areas—and I really trust that this communication will be improved upon. This is the first I've heard about another round of travel for this committee. I think it's also important, which you made mention of, that we must separate these two pieces of legislation so that we have a clear understanding during these committees of just what it is and who it is that we're dealing with. Clearly Bill 191 and Bill 173 appeal and have different interests across the province.

Your idea about protected areas—and you've mentioned that you want that defined. I think that's very important because everybody here and everybody in this audience, I'm sure, has a different view of just what is protection of an area. I share your concerns as well that it appears that this "protected area" could provide more economic harm to the people of the north and be a de-economic plan for the north more than an economic development plan. Your ideas on protection: You may want to expand on that a little bit. And your views, your consultations with others: What are their views of protection? Are they in harmony with your view?

Grand Chief Stan Beardy: Thank you very much for your question. In terms of consultation, in my opening comments I made it clear that Nishnawbe Aski does not

have any rights. The organization I work with does not have any aboriginal and treaty rights. So by virtue of my talking to you, that does not construe it as being consulted. It's the rights-holders, the people on the land, the First Nations level, the leadership at the community level who hold those aboriginal and treaty rights, and they are the ones who need to be consulted. NAN's role, basically, is to facilitate that process to ensure that they are being heard, that the people who need to talk to them do consult with them.

I think it's really important, when we talk about consultation, to understand that when we talk about NAN territory, we're talking about 55 million hectares, 210,000 square miles, for the First Nations, and there are three distinct groups within that territory. In the far north, we have the Crees; in the middle, we have Oji-Crees; down south, around the 50th parallel, we have Ojibwas. If there's a legal requirement of the crown's responsibility to consult with them, we would expect that an attempt be made to talk to those people in their own language so that they understand what is being proposed to them.

In my presentation, I mentioned that when we talk about the far north, it's only First Nations people who live there. We have lived there for close to 10,000 years and we have preserved the natural environment up until now. We will continue to protect the natural environment, but at the same time, we haven't been in a position to create an economic base for ourselves so that we're in a position to begin to address the living conditions of our people.

When we look at the economy today, the collapse of the global economy, the stock market, gold has retained its price, $1,000 an ounce, while everything is falling. The same thing with platinum at $2,000 an ounce, and the diamonds, and that's what we're interested in, to work in partnership with Ontario and the industry and the private sector to create a viable economic base for our people, for our future generations.

When we talk about protected areas, there are two perceptions to that. Our definition of protected areas means saving something for future uses. Under the provincial legislation, when we talk about protection, we're talking about preventing any activity from that protected area forever and ever and ever. For us—

The Chair (Mr. David Orazietti): Mr. Beardy, Chief, I'm going to have to stop you there.

Grand Chief Stan Beardy: —that distinction has to be made, that when we talk about protected areas, it has to be that we're in a position when the time comes to develop those opportunities. We should be able to do so, because we're talking about for all Ontarians.

The Chair (Mr. David Orazietti): Chief, I'm going to have to stop you there for a moment. We have to move to Mr. Bisson, as time is pressing here. I'm sorry, Mr. Hillier.

Mr. Randy Hillier: Thank you very much. I would enjoy chatting and discussing that more.

The Chair (Mr. David Orazietti): Thank you, Mr. Hillier. Mr. Bisson, go ahead.

Mr. Gilles Bisson: I would say to Mr. Hillier that if he had allowed this committee to go to the far north, as I suggested, he could have had lots of chats with lots of people. So that's a little bit thin on my nerves here.

The Chair (Mr. David Orazietti): Okay, we're not going to get into this.

Mr. Gilles Bisson: Just for the record, before I ask you a question, let's be clear there are two bills here. There's Bill 191 and Bill 173. It's always been understood that the far north planning act was at first reading, and after second reading it is the tradition in this Legislature that they go out to committee. So that's nothing new, that's nothing exciting; that's something we already knew.

For those who are interested, the other part of the act, which is the Mining Act, is at second reading and this is your only kick at the can as First Nations, or anybody else who's interested, to be able to have an effect on what this final bill will look like. They will not have an opportunity to send this back to committee again. So therefore I believe the Mining Act is just as important to the far north as the far north planning act is to your people and we should have been travelling that bill to your communities as well.

Your point was well made—I was going to ask you the question but I appreciate you've already said it—and that is, your people have been stewards of the land for 10,000 years. Is it fairly well protected, Chief?

Grand Chief Stan Beardy: Yes.

Mr. Gilles Bisson: And so therefore, shouldn't you be in the driver's seat when it comes to continuation of the protection and the planning of your land?

Grand Chief Stan Beardy: Yes. All we're saying is that in terms of land use planning, we want the process to be community-driven at the district level and the regional level. We ought to make sure that we utilize the traditional knowledge of our elders to make sure that we are protecting something for future generations and at the same time entertain sustainable development.

Mr. Gilles Bisson: Thank you very much. If you have any last comment on my time, use my time, if you have a closing comment.

The Chair (Mr. David Orazietti): Thank you very much. That concludes the time for the presentations. I appreciate you coming in today. Thank you all for being here. We know you've travelled a long way.

ONTARIO BAR ASSOCIATION

The Chair (Mr. David Orazietti): Our next presentation is the Ontario Bar Association. Good morning. Welcome to the Standing Committee on General Government.

Mr. Mike Colle: There's no quorum. They've all walked out.

The Chair (Mr. David Orazietti): We have the majority of committee members; we're fine.

You have 15 minutes for your presentation, five for questions from committee members. Just state your name

for the purposes of our recording Hansard and you can begin when you're ready.

Mr. Jim Blake: Are we ready?

The Chair (Mr. David Orazietti): Go ahead.

1120

Mr. Jim Blake: Okay. My name is Jim Blake. I'm chair of the working committee that the Ontario Bar Association has put together to address issues, as they see it, relating to Bill 173. You'll note that our submission deals strictly with Bill 173, although there are connectors, of course, to the far north legislation.

I thought I'd emphasize at the beginning that this submission reflects the experience of lawyers practising in diverse areas, such as natural resources, aboriginal law, environmental law, and alternative dispute resolution. A particular effort was made, in putting this submission together, to ensure that a balanced, harmonized submission was presented to you that is supported by all of the practice sections of the Ontario Bar Association. As you can imagine from the diverse areas I mentioned, that did involve a fair amount of discussion and preparation work.

The submission, you'll notice, is divided into nine topics. My colleague Kenning Marchant, who is an executive member of the aboriginal law section of the Ontario Bar Association, will lead off this presentation, and I will then deal with the remaining topics.

Kenning?

Mr. Kenning Marchant: Thank you, Jim. Mr. Chair and members of the committee, I'm Kenning Marchant.

The courts have said that the crown has a duty to consult and, where appropriate, accommodate aboriginal and treaty rights. The courts have also said that aboriginal representatives have a duty to respond in good faith. And the courts have said that only procedural aspects of consultation can be delegated to project proponents.

The Ontario Bar Association recommends first that section 2 of the bill be amended to clearly state "...the duty to consult and, where appropriate, accommodate, consistent with the honour of the crown." The act should say, as the Supreme Court of Canada has, that consultation is a substantive obligation of the crown that cannot be delegated to project proponents except as to defined procedural aspects.

"Consultation" can be a vague term. Aboriginal communities and industry both need predictability. The Ontario Bar Association recommends that consultation standards should be attached as a schedule to the new Mining Act.

Aboriginal and treaty rights are not uniform across the province. Impacts on aboriginal and treaty rights are not uniform across all projects. Consultation is the means to identify rights and impacts and to chart the ways to address them.

Consultation requires, first, identifying aboriginal stakeholders. Government databases and aboriginal organizations can be rich sources of such information.

Standards are required on timing, on information exchange, on the rights recognition process and on impacts analysis. Guidelines are needed on what aspects can be procedurally delegated to project proponents. The Ministry of Aboriginal Affairs already has published guidelines. These could be revised in light of similar standards from federal, aboriginal and industry sources. Setting out standards in the bill may take additional time. However, that will help develop a more stable and productive consultation environment.

The OBA is also concerned that the dispute resolution arrangements with respect to aboriginal consultation in the bill are vague and potentially controversial. Section 170.1 and related provisions would allow the minister to decide the who, what and why of dispute resolution. Now, the government is always a party to a constitutional issue. Alternative dispute resolution norms require some form of consent of all parties. The OBA recommends that section 170.1 provide a two-stage process: first of all, conventional mediation; then, if required, adjudication by an independent tribunal. That could be the courts, or the Legislature could authorize a special-purpose body.

These points are all described in more detail in the written brief you have before you.

In conclusion on my part, the new Mining Act is an opportunity to advance Ontario as a leading mining jurisdiction. It's important, we suggest, that it also be a leader in the important dimension of aboriginal consultation and accommodation. That can be best accomplished by setting out clear standards in the primary legislation, Ontario's new Mining Act.

Jim.

Mr. Jim Blake: Thank you, Kenning. I'm going to turn us now to topic two in our submission, which is the licensing of prospectors. Our comment 2.1 is a relatively minor thing but it was suggested and is suggested as a matter of clarity for measuring purposes. I think it's truly non-controversial, but we recommended adding the words which are underlined in the submission, "for the prospector's licence." It just helps identify when the 60 days start running. So that's a drafting bit of clarity, but it truly did come up and was raised by a few folks.

In section 2.2 of our submission, we recommend—and you'll hear me use the term "primary legislation" a few times. Primary legislation means the act or the bill, and secondary legislation is the regs. You've heard Kenning mention the suggestion of using a system such as appending a schedule of procedures, which has been used in other important legislation like the federal protection of information legislation. Similarly, we would recommend that for the awareness program, consideration be given to some of the best practices codes that are out there, and there are ones. There's a current one; PDAC's e3 Plus framework for responsible exploration could be considered, and that's just a sample. There are various codes that are out there that can be adopted and used for the awareness program for the training of prospectors.

Our third topic was the notice of staking. There's a new requirement that notice be given in the prescribed manner, and it's notice to surface rights owners. Our recommendation is to state clearly in the primary legis-

lation that it's notice to the surface rights owners as recorded in the land registration system, because there has to be some way of finding out who these folks are that you're notifying. Also, for search purposes, as you often do when licences are dealt with, you should be able to search the public office and the claims abstract to see if proof of the proper notice of staking has been done. It should be a simple piece of paper that could be registered once the registrar's happy with it. So this puts the work, if you will, back on the field and on the protagonists who are interested in this. They can do their own searches, do their own notices and make sure that they're on and get their proof registered in time. These are mechanical, but I think they are helpful; I hope they're helpful suggestions.

Then topics four and five deal with southern Ontario, northern Ontario and the far north. Where lands are withdrawn from staking—I'll just use staking; they're withdrawn from prospecting staking and so on—only surface rights owners have been provided with a mechanism to apply to the minister for reopening the mining rights of the lands or any part of them. There's no provision similar to section 35 that would allow the minister to reopen lands on the application of either a prospective holder of mineral rights or, indeed, a former holder of mineral rights who may have stubbed his toe and missed a time period and would like to revive them. It's called relief from forfeiture. But there's no mechanism to provide anyone other than the surface rights owner to make this sort of application, and we're just noting that it should also be available to either prospective or former holders of mineral rights.

In the far north, as we know, subsection 204(2) of this bill, the Mining Act, prohibits new mine openings if a community-based land use plan has been designated for a use that's inconsistent with the opening of a new mine. We recommend that where advanced exploration has already occurred, before this legislation comes into force, those projects should be grandfathered to allow a new mine opening rather than have to go through the very subjective discretion of the Lieutenant Governor in Council, the way it's currently anticipated.

1130

Topic 5.2: If no community land use plan is presently in place, the opening of a new mine is prohibited. However, staking, early exploration and advanced exploration are permitted. Our concern, which sounds exactly similar to Grand Chief Beardy's concern, is that because of the uncertainties of whether you could ever bring a discovery—why would you keep on doing those activities if you've got no assurance of being able to bring a discovery of a good property to production? This could result in what the Grand Chief had mentioned as a type of freeze or economic downturn for their area. Similarly, the industry is concerned that monies would simply go to a jurisdiction where there's greater surety of how things work, where the rules are clear.

In 5.3, we clearly recommend that the costs of aboriginal consultation be expressly recognized as qualifying for assessment work. A stakeholder has to do assessment work, and the cost of the consultation process should count towards that credit. In our paper that we recommended on October 23, before the legislation was drafted—we were one of a number of voices that recommended that there be funding to aboriginal communities and organizations to ensure that they were in a position to consult in a meaningful way. This is a sort of corollary. The cost of the consultation should count as a cost for assessment work.

The proposed legislation does not address whether holders of mineral claims, leases or licences of occupation will have any status whatsoever to participate in the community-based land use plan process. In other words, you can't tell who has status to—the plans will take a lot of time to put together, but it's not clear who would be entitled to participate, and I think that should be focused on or addressed in the legislation.

The sixth topic was exploration plans and permits. There have been suggestions that the prescribed activities requiring permitting might cover pre-staking exploration activities. We recommend that the primary legislation clarify that it does not apply to pre-staking activities, which, by their nature, must be kept confidential. In fact, many aspects of the new legislation make it clear that once you've staked, the confidentiality period is now over, but you then have to notify and go forward through the exploration permit process, which—two submissions ago, you heard people, in fact, making recommendations about exploration needing to file plans. That's indeed reflected in here. There was just a concern that amongst some of the administrators of the legislation, the definition of "prescribed activities" in section 78.1 might just creep out and cover pre-staking exploration work. That would totally be in conflict with the way staking is done.

The Chair (Mr. David Orazietti): Just so you're aware, you have a little less than a minute to wrap up.

Mr. Jim Blake: Okay. I will go forward to the restricted lands. There's a listing of restricted lands. If I can direct you to 7.2, we've highlighted certain words with underlining. Where there's an existing list that says, "within 45 metres of a church, cemetery or burial ground," we propose that that list be expanded to cover "or site of spiritual, historical or ceremonial significance for aboriginal communities." Those are items that should be identified. One of our questions is, how will a prospector know where these lands are unless there's a database or some way of—you can find out after the fact, but to the extent databases can be developed, they should be, and that's a strong recommendation.

Kenning has mentioned the dispute resolution claims involving aboriginal interests. Section 8 also talks about the dispute resolution aspects of this legislation for matters other than consultation. The registrar has had a very successful informal mediation service that has been available. The commissioner's report of 2008 indicated there was an 85% success rate. I think you heard Kenning mention a two-step process of using the informal mediation and then going to the more formal process if it can't be resolved. But the ministry does have an 85% success rate—

The Chair (Mr. David Orazietti): I'm going to have to stop you there.

We'll move to the Conservative caucus. Mr. Hillier, go ahead.

Mr. Randy Hillier: Thank you very much for being here—a lot of good, sensible, practical housekeeping and other issues that you've raised.

Mr. Jim Blake: We're trying to be supportive of getting this legislation—

Mr. Randy Hillier: Well, there are some areas that may merit support, for sure.

I'll take you back to two things that you mentioned. One is who to consult—big gap. We will be in a system of perpetual idleness if we don't know who to consult and if others don't know—

Mr. Jim Blake: On that point, you heard Grand Chief Beardy mention it's not NAN; it's the various underlying communities and who in the underlying communities.

Mr. Randy Hillier: Absolutely. Anyway, a point well made.

One thing I will draw your attention back to is item 4.1, where the government has moved to remedy, to some degree, the conflicting interests of mineral and surface rights when they're held by different people. Your observation and your suggestion would of course remove that remedy, even though it's a half remedy.

Mr. Jim Blake: Yes, and I realize that.

Mr. Randy Hillier: So the idea of the legislation is to reduce conflicts, not to expand upon them.

Mr. Jim Blake: I made the one point that there's a grandfathering for existing historical mineral claims and there's assessment work that has to be done. Right now, there's a freeze. On April 29 or 30 of this year, the freeze went in for southern Ontario. What if somebody blows it, makes a mistake, misses their dates? Under the regular provisions there's relief from forfeiture, but there's no mechanism here for relief from forfeiture, and if you blow it by a day, you're gone.

Mr. Randy Hillier: I have one more quick question. Sometimes you miss the sale at Tim Hortons on the roll-up-to-win as well—it ends. However—

The Chair (Mr. David Orazietti): Mr. Hillier, we've got to move on. Thank you very much for your co-operation. Mr. Bisson.

Mr. Gilles Bisson: I will just say that there's a lot of interesting stuff in here. I've got your names and numbers; I'll be calling you back because there's far too much to cover in three minutes. Thank you.

The Chair (Mr. David Orazietti): Mr. Brown.

Mr. Michael A. Brown: Thank you for appearing. There is a lot of stuff here. I appreciate your coming because the points you make will be valuable to us as we go through the clause-by-clause on this bill and try to identify potential pitfalls, at least in the drafting, as we go forward. That's why this kind of a presentation is very helpful to the committee.

I am interested, as you are, in the dispute resolution parts of the bill, recognizing that this is clearly a work in progress, as governments all over the world and particularly in Canada are trying to understand what First Nations' rights are here and what the crown's rights are here etc. Coming up with a dispute resolution system is, I think, one of the keys to doing this right, so we would appreciate even more advice on that particular issue. You don't have to do it right now—

Mr. Jim Blake: No, no, I was just thinking there is also an underlying concern that may or may not come through here about the importance of—there's a concern that industry doesn't want to have all of the consultation requirements delegated down to it, because first of all the courts have said only procedural matters can be, but it looks like there's a thrust in here to delegate as much as possible to the proponents. Proponents have had a good batting record, in some jurisdictions in particular, of hammering out private deals that everybody is happy with. So it can happen.

1140

Mr. Michael A. Brown: We recognize that, yes.

The Chair (Mr. David Orazietti): Okay. Thank you very much. That's the time for your presentation. We appreciate you coming in today.

Mr. Jim Blake: And thank you.

ONTARIO WATERPOWER ASSOCIATION

The Chair (Mr. David Orazietti): The next presentation is the Ontario Waterpower Association. Good morning, Mr. Norris, and welcome to the Standing Committee on General Government. You have 15 minutes for your presentation and five for questions. I'm just going to remind members of the committee that we're a bit pressed for time to keep to the agenda, so we'll try to keep the question period collectively to five minutes as best we can.

Go ahead, Mr. Norris, when you're ready.

Mr. Paul Norris: I'll do my level best to contribute to that objective.

The Chair (Mr. David Orazietti): Thanks.

Mr. Paul Norris: Good morning. Thank you, Mr. Chair and committee members. I trust by now you have our handout. My name is Paul Norris and I'm president of the Ontario Waterpower Association. I knew the maps would get somebody looking.

The OWA is a non-government organization representing the production and development of the province's primary source of renewable energy: water power. Today there are over 200 operating water power facilities in Ontario that collectively amount to over 8,000 megawatts of installed capacity, or about one quarter of the province's energy supply. Unfortunately, Ontario's complex and often conflicting regulatory and policy frameworks have significantly hindered the expansion of water power production, despite its acknowledged energy, environmental and economic advantages. Key amongst these frameworks is access, or lack thereof, to the resource through provincial crown land.

I'm pleased, therefore, to have the privilege today to provide input to your deliberations on Bill 191, the far

north planning act. Of specific relevance to this bill, the OWA has invested and continues to invest in engaging, enabling and empowering aboriginal communities interested in pursuing water power development opportunities. I will provide an overview of these efforts shortly.

I was also fortunate to serve on Minister Cansfield's far north advisory council and would like to acknowledge the contribution and commitment of my fellow council members and ministry staff in producing the March 2009 consensus report, the details of which I expect committee members have already reviewed and considered. I will be referring to specific elements of that report in this deposition.

Finally, and most importantly, I would like to acknowledge the leadership of the Nishnawbe Aski Nation and the aboriginal communities and peoples who call the far north home. Throughout the preparation of the advisory council's report, we had the opportunity to listen to and learn from a number of individuals whose lives will be directly affected by this legislation. I strongly encourage the committee to do the same.

Before addressing the details of the bill, I'd like to provide committee members with a sense of the challenges faced by our sector, particularly given that the primary legislative frameworks affecting water power fall within the purview of the Ministry of Natural Resources.

As you may be aware, to achieve the provincial objective of more than doubling electricity production from renewable energy sources, the Ontario Power Authority identified in excess of 5,000 megawatts of water power potential that was practical to develop, 3,000 of which was included in the first integrated power system plan. Despite this, results to date in bringing new water power online have been dismal. While applications for more than 100 projects have been filed since crown land was again made available in 2004, only three have been commissioned, for a total installed capacity of 60 megawatts. At the same time, more than 700 megawatts of wind has come online. Looking forward, the OPA identifies almost 900 megawatts of wind under development and only 80 megawatts of water. The key difference? Water power development takes place on crown land. I hope, then, that you will appreciate our concern with yet another piece of legislation that, in my view, does little to inspire investment in Ontario.

Turning to the matter at hand, over the last five years our association, in partnership with government and aboriginal interests, has made significant progress in enhancing the capacity of First Nations communities to participate in water power opportunities. Beginning in 2005, the OWA, through a collaborative and collective effort, designed, developed and delivered a series of Building Capacity Together workshops focused on introducing aboriginal communities to the business of water power. More than 70 community representatives have participated in these sessions to date, many of whom come from the far north.

To expand and continue the learning, the workshops were filmed and translated into Ojibwa and Oji-Cree, and DVD copies of the workshops have been distributed to all aboriginal communities across Ontario. I've brought a copy of the DVD product for each party, should you be interested.

In addition, as you may be aware, the OWA led the development of a class environmental assessment for water power projects, recently approved by Minister Gerretsen. Unique to our sector, the class EA provides specific requirements for aboriginal engagement and the consideration of aboriginal traditional knowledge, developed with advice and insight provided by the Chiefs of Ontario.

Finally, we have just undertaken an initiative to assess the interest and capacity of communities with respect to water power development opportunities. The results of this analysis indicate that almost 90% of those communities surveyed have an interest in learning more about and pursuing partnerships in water power projects. In short, our industry is of the view that new renewable energy and aboriginal socio-economic prosperity are inherently interdependent. Moreover, I would suggest that this view is consistent with that articulated by the province in the Green Energy and Green Economy Act.

A key consideration with respect to the implications of the proposed legislation for the water power sector is the unique policy construct already in place in the far north. Two elements warrant specific consideration in this regard. First, unlike other crown land or resource-based economic opportunities in this geography, the core question of allocation has, for the most part, already been determined. Dating back to 1993 and confirmed by every successive provincial government, water power development in the far north is premised on the direct participation of and/or proponency by First Nations. In addition, the province's current electricity policy and related climate change objectives, as articulated in the filed integrated power system plan, identify approximately 2,000 megawatts of water power in the far north. You will find information with respect to the IPSP-related water power in an appendix to this deposition.

Moreover, in response to the encouragement of new renewable energy, approximately a dozen applications for water power projects led by First Nations communities have been filed with the Ministry of Natural Resources in the past year. These projects in particular, and the achievement of the government's broader energy and environmental goals in general, may, in my view, be compromised by the limitations in the proposed legislation requiring that land use planning be completed as a precondition of economic development. It would be far more reasonable, as was suggested by the advisory council, to provide a means for communities to pursue economic prosperity while land use planning is being undertaken. I would like to refer you to the advisory council's report in this regard under section 8, "Transition Strategy," which states that elements of a transition strategy could include "providing for community decisions to preserve certain lands, or to allow economic activity, in the absence of a completed and approved land

use plan in certain circumstances. Such decisions are expected to be based on community approval, consistent with the anticipated and expected outcomes of a community land use plan, and consistent with the outcomes of the overall far north initiative."

Turning now to the bill itself, the OWA offers the following five suggested improvements.

First, a general comment with respect to the absence of economic activity and First Nations prosperity as a core tenet: As currently written, the bill primarily adopts a "by exception" approach to economic activity, particularly during the planning process. Notably, the bill's title fails to incorporate as fundamental principles both the economic aspirations of First Nations and the cultural values upon which land use planning will undoubtedly be premised. I would submit that the act should be retitled "An Act with respect to land use planning, socio-economic prosperity and cultural and ecological sustainability in the far north."

Secondly, the far north planning statements—and I'm referencing subsection 7(6); in my copy of the bill, it's on page 4: This section provides the context for provincial policy statements that can guide land use planning, yet it fails to include renewable energy. To address this omission, "electricity generation" should be added to subsection 7(6) to read as follows: "Electricity generation, transmission, roads and other infrastructure."

Third, development prior to the completion and approval of a land use plan—my reference here is to section 11; in my copy of the bill, it's on page 10: As I outlined earlier, this section should be revised to incorporate the real possibility that decisions will be made by communities with respect to development and protection while land use planning is under way. Subsection 11(1) should be modified to read as follows: "If there is no community-based land use planning process under way"—all I'm doing is adding the words "under way"—"for an area in the far north...."

1150

This provision should also be premised on the requirement articulated in subsection 11(2)(a) that is currently restricted to transmission projects, namely, that "the development has the support of the First Nations that are affected."

So two fairly simple amendments: that the planning process is under way as opposed to completed, and that the project has First Nations support.

Fourth, there is currently a restriction on economic activity that's premised on "community use." The reference here is to subsection 11(3)(a), and this is on page 11 of my copy of the bill. While it's perhaps unique to electricity, I would argue that the limitation of "community use" unfairly restricts the potential of aboriginal communities to pursue renewable energy opportunities. Water power and wind power are where it is. A minor modification of this section to include projects that provide "community benefit," as opposed to "community use," and as defined by the community, would rectify this issue. The same amendment should be made to subsection 11(4)(c)(ii).

Finally, a comment on the concept of resource benefits sharing: The Premier's announcement included specific reference to resource benefits sharing, yet no mechanism in this regard is apparent in the bill. A key recommendation advanced by the advisory council was the requirement for adequate funding to support and implement First Nations-led land use planning. It's my contention, in fact, that in the absence of such investment by the province, the legislation will fail to achieve its stated intent. In this regard, it should be noted that the successful development of the identified water power potential in the far north would contribute, under current regulation, approximately $50 million to the consolidated revenue fund on an annual basis. These resource royalties, or economic rents, could significantly advance and improve the capacity of far north First Nations to control and own their own destiny. At the very least, the minister should be provided with the regulatory authority to establish a special-purpose account linked to renewable energy development, the objective of which would be to dedicate revenue towards regional and/or community investment consistent with the purposes of this act.

In conclusion, committee members, I would ask that you reflect upon the significance of this proposed legislation; on the importance of Ontario's far north to the province's economic, environmental and renewable energy aspirations; and, most specifically, on the desires of the peoples for whom this special geography is a homeland.

Thank you. I'd be pleased to consider questions.

The Chair (Mr. David Orazietti): Thank you very much, Mr. Norris, for your presentation. Mr. Bisson, you're up first.

Mr. Gilles Bisson: Yes, I was—oh, boy—I got sidetracked there with a conversation with the clerk.

I'm trying to clarify a point here that you made. Can you go around the horn and come back to me?

The Chair (Mr. David Orazietti): Okay. Government caucus, questions? Mr. Mauro.

Mr. Bill Mauro: Thank you, Mr. Chair. Yes, I'm happy to do that. Mr. Norris, thank you for being here this morning. Nice to see you again.

Near the end of your presentation, you talked about funding. I'm going to repeat what I've said earlier today—and I'm not sure if you were in the room—that in the 2008 budget, we committed $30 million to this process and indicated that there is still a willingness on our part to enhance that capacity on a go-forward basis in partnership with First Nations. It's important to know that. As well, there was a $9.5-million contribution to First Nations through a $25-million relationship fund for building capacity for exactly these kinds of things. I just think it's important that you are aware of that, given your comment.

Mr. Paul Norris: Understood.

Mr. Bill Mauro: I want to thank you as well for your work as a member of the far north advisory council. I'm wondering if you could talk to me a little bit about that briefly, because I do have one other question, probably

my key question, in terms of the consultation piece, what you felt about it and how it went.

Mr. Paul Norris: My experience on the far north advisory council was a very unique opportunity to have direct and open conversation with interests that may have been perceived from the outside as not having shared objectives. I found, to my delight, that in fact, once we got in a room and had face-to-face conversations and built the relationships, we were able to generate a consensus report. I think that, in and of itself, is a remarkable accomplishment. I think, as well, the opportunities that we had to listen to and learn from members of the Nishnawbe Aski Nation throughout the process were very, very valuable. Certainly I would, as I did in my comments, commend both ministry staff and the other committee members.

Mr. Bill Mauro: Thank you for that comment. I'm good.

The Chair (Mr. David Orazietti): I think Mr. Colle had a question for you.

Mr. Mike Colle: Well, thank you. I just wanted to thank Mr. Norris for the very thorough documentation he's provided with the maps. I know sometimes deputants bring in material and it's not appreciated. I just wanted to let you know that we do appreciate the effort that you went to to bring this forward. I think it's going to be very helpful.

I was struck by your opening comment that said that despite everything, while applications for more than 100 projects have been filed since crown land was made available in 2004, only three have been commissioned, for a total installed capacity of only 60 megawatts.

Mr. Paul Norris: That's correct.

Mr. Mike Colle: What's the problem?

Mr. Paul Norris: The key challenge is that the expectations for this industry, particularly with respect to crown land processes and the multiplicity and complexity of processes that involve the federal and provincial governments, are unique. It takes us longer. We generally start the conversations with a business-to-business relationship model focused on aboriginal communities. That's a matter of public policy and it's something that we take seriously, but it takes longer. In a world where we are looking to compete against who gets commissioned first, we find it very challenging to compete.

I think also that the renewable energy and climate change objectives of the government need to resonate across government. Hopefully, through the Green Energy and Green Economy Act, that matter of provincial interest, which again I don't see expressed in this bill explicitly, will start to be part of the foundation for everything that the government takes forward, be it social policy, economic policy or environmental policy. I think it's telling that we don't see renewable energy as a matter of provincial interest articulated in this bill.

The Chair (Mr. David Orazietti): Thank you. Mr. Hillier?

Mr. Randy Hillier: Thank you very much. Interesting comments and worthwhile, and I'm glad you're here to share them with us.

I want to ask you this: You've mentioned it's very challenging to compete. You've also said the approach to development is by exception, development by restriction. Those, of course, dovetail with one another, the "challenging to compete" and also development by exception or by restriction. Do you see this bill, really, in its present form, even with some of the comments that you made earlier—is this going to improve the competitiveness or make it more difficult to be competitive?

Mr. Paul Norris: As currently constructed, it will undoubtedly compromise not only the ability for investment to happen in this sector, particularly in the far north, but also, I would argue, the achievement of the province's renewable energy objectives.

Mr. Randy Hillier: Absolutely. Of course, my concern is that this is not just impacting renewable energy and water, but we're hearing from a host of different people just how significant the obstacles will be, and the restrictions on challenges and competitiveness.

Mr. Paul Norris: Investment goes where investment is welcome.

Mr. Randy Hillier: Right. Thank you very much.

The Chair (Mr. David Orazietti): Mr. Bisson, do you have a question?

Mr. Gilles Bisson: I do have a question. I wanted to pull out the legislation, the actual section 3. Are you saying—the long and the short of the point you make in 4—that the way the bill is currently written, the only way that that section would work is if it was for community use itself only, so therefore you should be looking at it as a net economic benefit, and that's why you need the expansion?

Mr. Paul Norris: I think it's particularly important in the context of electricity, so I'll only speak about electricity. We know that there are a number of diesel-dependent communities in the far north, and particularly northwestern Ontario. If you design a structure that says that community use is the test, generally you end up in a conversation of looking at individual renewable energy projects to provide electricity to a community. We all know that it doesn't work that way. It works in terms of an integrated system, in terms of—

Mr. Gilles Bisson: If there's a grid.

Mr. Paul Norris: —a grid. You could have like they have in Attawapiskat. You could have other mechanisms. But to go community by community by community from an electricity perspective doesn't make a lot of sense.

Moreover, though, and perhaps more importantly, communities aren't looking necessarily at that limitation in terms of what we've seen come forward and interest in the renewable energy sector. Benefit is a far more constructive approach to looking for community-led economic activity, in my view.

Mr. Gilles Bisson: Okay.

The Chair (Mr. David Orazietti): Thank you very much for being here today. We appreciate your presentation.

Mr. Paul Norris: Thank you for your time.

1200

WINDIGO FIRST NATIONS COUNCIL

The Chair (Mr. David Orazietti): The next presentation is the Windigo First Nations Council. I guess it's about good afternoon now, so welcome to the committee. You have 15 minutes for your presentation. Just state your name for the purposes of our recording Hansard and you can begin when you're ready.

Mr. Frank McKay: Okay. Thank you very much, Mr. Chair and members of the committee. My name is Frank McKay. I'm from Sachigo Lake First Nation and I work for Windigo First Nations Council. So I just proceed; right?

The Chair (Mr. David Orazietti): Go ahead.

Mr. Frank McKay: Thank you. Nice to be here today. It's a nice day.

Windigo First Nations Council provides program, technical and advisory services to seven First Nations situated in northwestern Ontario. These include Bearskin Lake First Nation, Cat Lake First Nation, Koocheching First Nation, North Caribou Lake First Nation, Sachigo Lake First Nation, Slate Falls First Nation and Whitewater First Nation. Of these communities, Sachigo Lake, Bearskin Lake, Cat Lake, Koocheching, North Caribou and Slate Falls are a part or all of the traditional communities situated in the far north planning area.

Windigo First Nations Council, on behalf of their member First Nations, has had a long history of involvement in various planning efforts in provincial land and resource planning. These include the Royal Commission on the Northern Environment in 1986; Cedar Channels in 1986-87, which was a rebuilding of dams for an electrification project in our area; the Dona Lake, Golden Patricia and Musselwhite agreements, which is 1986 to the present day. We did a traditional uses study in 1992 for Cat Lake, Slate Falls and Mishkeegogamang First Nations. We conducted the Windigo Shibogama Ontario planning agreement in 1993 through 1998. We were at the timber management class environmental assessment hearings in 1987 through 1995. We had the Tay Bwaay Win: Truth, Justice and First Nations in 1990, and Lands for Life in 1996 through 1998, which was an MNR active forest management unit planning.

Windigo First Nations Council has been consistent in our persistence that First Nations should be involved in decision-making and planning of our lands and resources. We've attached an appendix giving you the brief history of these efforts. Recently, Windigo First Nations Council is developing two important initiatives with the province. One is the Windigo First Nations Council–Ministry of Natural Resources district engagement protocol to develop and implement a consultation process where any resource development or any activity is proposed on its member First Nations' traditional lands. The other thing that we have initiated is a four First Nations initiative agreement intended for co-operative planning for infrastructure such as all-weather roads, grid lines, hydro electrification and winter roads for Bearskin Lake, North Caribou, Sachigo Lake and Muskrat Dam First Nations. All of these communities are within the far north planning area.

Cat Lake and North Caribou Lake First Nations have been and continue to be parties to the various Musselwhite agreements that address environmental, social and economic matters arising from the Goldcorp's Musselwhite Mine. These communities and Windigo First Nations Council entered into an agreement with Ontario in 1994 to create the Windigo Interim Planning Board, which produced Pemachihon, Sustained by the Land, a land use plan for the traditional lands of North Caribou Lake and Cat Lake First Nations. We have included that in our kit there—it's in green—and that's what we produced at that time.

The planning board was comprised of a number of representatives of various stakeholders and the First Nations. The board worked diligently and produced a draft plan. That draft plan was submitted to the province in 1998. In our opinion, that plan is representative of the kinds of plans this legislation will produce, if enacted.

The Windigo chiefs' position: The First Nations are signatories to the treaty. The First Nations of Windigo First Nations Council are members of Nishnawbe Aski Nation. The Windigo council chiefs' position has been consistently clear on land and resource issues, and that position is based on our treaty being a resource-sharing pact and not a land surrender.

Windigo First Nations Council will continue with their land use planning as the tool to rebuild our First Nations economies to sustain our First Nations as vibrant, healthy, independent communities. Windigo council chiefs will not accept the status quo of absolute provincial discretion in land and resource decision-making. Confrontation over land use conflicts must be replaced with a co-operative joint decision-making process that observes the autonomy of the First Nations to make their own decisions.

The Windigo council chiefs support the condemnation of the arbitrary imposition of a 225,000-square-kilometre protected area. However, the Windigo council chiefs will continue to work with the province in the recognition of land use planning through this legislation or an improved legislative process that is based upon the duty to consult and the recognition of treaty and aboriginal rights.

The Windigo council chiefs' position is that any further discussions or negotiations on the far north legislation be conducted directly with First Nations and tribal councils as it relates to their traditional lands and treaty territories, on a government-to-government basis.

Windigo council chiefs consider the proposed legislation an acceptable and necessary way to secure the plans that Windigo First Nations Council has commenced in order to build the necessary foundation for economic, social, cultural and environmental development. The legislation binds both the province and the First Nations to the approved community plans.

Windigo council chiefs oppose the recommendation to have appointed stakeholder boards that would prepare

community plans. Windigo First Nations Council opposes that recommendation because our communities live in the far north and are not stakeholders. Windigo First Nations Council only accepts First Nations-to-Ontario-government negotiations. First Nations involvement and consent is crucial to the successful administration of planning in the far north that secures our economic, social, cultural and environmental concerns.

A number of highlights we want to stress and amendments we want to point out:

Number one, Windigo First Nations Council has been involved in sustainable economic development; for example, the Musselwhite mine. The legislative process provides communities with the opportunity to define the categories of use and planning policies consistent with First Nations economic, social, cultural and environmental concerns within community plans.

Number two, First Nations can choose not to be involved in preparing community plans.

Number three, the legislation provides for some certainty because both the First Nations community and the minister sign off on the preparation of and final approved community plans. As a result of that, the development can proceed in an orderly fashion. That stability is essential to secure private sector funding for and involvement in the infrastructure projects Windigo First Nations Council is planning for their communities.

Number four, in our opinion, where there are no community plans, there will be no economic development.

We have specific recommendations for Bill 191. With respect to First Nations consultation, the provisions of section 3 addressing the Constitution Act, 1982, and specific provisions applying to the far north land use strategy—section 7.1—and far north policy statements—7.6—apply. Additional detail as to what that consultation involves with respect to the land use strategy—the First Nations need to be involved in that process, in the development of the strategy and policy statements. Also, Windigo First Nations Council recommends that provisions be made for adequate funding of community land use planning.

With respect to Bill 173, amendments to the Mining Act, Windigo First Nations Council has one recommendation: Provision needs to be made to ensure that commitments made to First Nations during the exploration phase be binding on subsequent owners of the claim. Our experience has been that commitments made during exploration may not be honoured when the claims are sold to other companies.

That concludes my presentation.

1210

The Chair (Mr. David Orazietti): Thank you very much for your presentation. We'll start with the government. Mr. Mauro.

Mr. Bill Mauro: Mr. McKay, thank you to you and your colleague for being here today. We appreciate your taking the time to attend.

Just near the end of your presentation—again, as has been commonly the case today, people are referencing the funding associated with Bill 191. I'll mention again as well that in our 2008 budget we did commit $30 million to building capacity around the land use planning process, and we have indicated pretty clearly that we're willing to work with First Nations communities to try to enhance their capacity to broaden even that capacity-building process on a go-forward basis associated with the land use planning process.

I wanted to ask you, though, given your history and association with Windigo First Nations Council and the work with individual First Nation communities, if you could give me a sense of how you feel historically, going back, the process has worked in terms of bringing development on stream. As I see it here, what we're trying to accomplish is likely to enhance the ability and provide some certainty for industry and First Nation communities to arrive quicker than has previously been the case at a point where we can get some industrial development occurring on these lands, relative to what's happened previously. So I'm interested in a bit of a juxtaposition here: the historical context as well as where you see we might land as a result of this legislation.

Mr. Frank McKay: Historically, when we first started off, let's say, for example, in mining, we had to really go after the province and the federal government to assist us to get that industry to address our First Nations concerns. It was tough to get them to the table to come up with an agreement, the first agreement we had on Dona Lake. The only thing we could use was the Environmental Assessment Act, the federal—is it the federal one?

Interjection.

Mr. Frank McKay: The provincial Environmental Assessment Act. We asked for the full hearing to be conducted as a result of that mine. Otherwise, we—

Mr. Bill Mauro: So I guess my question is, and perhaps I need to phrase it better, would it have helped you historically had you had in place already a community-based land use plan?

Mr. Frank McKay: We have a community land use plan, but that was not recognized by the province.

Mr. Bill Mauro: Okay.

Mr. Frank McKay: And in this plan we have various areas that we set aside, including protected areas. One of the things that we couldn't grasp when the province announced 225,000 kilometres of protected area—what does that mean? They said no new forestry, no new mining.

Mr. Bill Mauro: There's no forestry now, though.

Mr. Frank McKay: We didn't support that statement, because some of our First Nations have agreements with exploration companies that want to go into those activities in the future. So we need this recognized by the province, that this is how we're going to proceed. Planning is a very key component to our First Nation in relation to economic development in this day and age.

The Chair (Mr. David Orazietti): Okay. Thank you very much for your comments. It's time for questions. Mr. Barrett.

Mr. Toby Barrett: Thank you for the presentation on behalf of Windigo council, and thank you for coming

down to Toronto. You've done some really good work here in the way this is described. A lot of this really makes some good sense, the way you work with various levels of government and with the Ontario government.

Just a quick question: For this committee to get a better grasp of the way to go with both pieces of legislation that are before the Ontario Legislature, do you think it would have been worthwhile for members of this committee to go up to Cat Lake or Bearskin Lake or Slate Falls Nation or North Caribou Lake? You've got an airline that heads up through there.

Mr. Frank McKay: Of course.

Mr. Toby Barrett: What would we see up there? I know we're going to Sioux Lookout, but for some of those other communities, would it have been worthwhile to spend some time up there?

Mr. Frank McKay: I think it would be most worthwhile for this committee to be able to go to a remote community where we come from, to observe what we have to go through in relation to our daily living lifestyles, just so you can get a grasp of where we come from. When we come down to Toronto, here it's truly different from where we're at. I think you would have a better understanding of the remoteness factors that we have to endure for transporting our goods and services and so forth, and the way of conducting business in the north. There are a lot of challenges that we face in the north that you don't face in the south. We continually raise those concerns to the government, of those challenges.

Mr. Toby Barrett: Okay. I hear what you're saying. Thank you.

The Chair (Mr. David Orazietti): Thank you very much for your presentation and for coming in today.

Mr. Frank McKay: Thank you very much.

The Chair (Mr. David Orazietti): The committee is in recess until 1 o'clock. I ask all members to come back promptly. Folks, we'll be locking the doors here, so you have a couple of minutes to leave the room.

The committee recessed from 1216 to 1314.

CANADIAN BOREAL INITIATIVE

The Acting Chair (Mr. Mike Colle): Good afternoon, ladies and gentlemen. We'll start the post-recess deputations with the Canadian Boreal Initiative. Larry Innes is the executive director. Mr. Innes, you have 15 minutes, and then there's five minutes for questions.

Mr. Larry Innes: Thank you very much, Mr. Chair. It's a pleasure to be here addressing you today on two very important pieces of legislation that are before this House.

I'd like to begin by giving you a brief introduction to the Canadian Boreal Initiative and our work and then begin to frame out the response and the advice that we would like to offer this committee with respect to both the mining act and the far north planning act, Bills 173 and 191.

To begin, the Canadian Boreal Initiative is an organization that works in the corners between industry, environmental groups and First Nations on the very pressing question of sustainability in our northern regions. We do this based on a framework, a vision, which has been agreed to and is supported by representatives from all of these sectors, ranging from leading forestry companies like Tembec, Domtar, Alberta-Pacific and others to organizations like the World Wildlife Fund, Ducks Unlimited and the Canadian Parks and Wilderness Society that work in the conservation sphere, but also with First Nations. From the Yukon to Labrador, we have deep and deepening partnerships with First Nations who understand that cultural sustainability, ecological integrity and a prosperous economy are, in fact, the cornerstones of a sustainable future for the boreal region.

This is not just a northern concern; this is something that affects us all. The boreal contains the largest storehouse of terrestrial carbon on the planet. It regulates the climate. It contributes tremendously to biodiversity, to migratory birds and to fresh water. There are countless other values within this region. Canada is one of the few places where this large, indeed, one of the largest intact ecosystems on the planet, still remains. We collectively, as Canadians, have the opportunity as a well-developed, law-abiding, prosperous nation to get the mix right.

We were very heartened by the Premier's announcement in July 2008, when he committed to a process premised on a real partnership. One of the things that is key to the framework, and I should outline its fundamental provisions, is that it calls for the protection of at least half of Canada's boreal region and world-class development where development occurs. We believe this is advanced through a process of land use planning and by working in partnerships with communities that are directly affected, including aboriginal communities, in a way that respects and reconciles their aboriginal and treaty rights. These, if you will, are the fundamentals of our approach, and we saw many of these approaches reflected in the Premier's July 2008 announcement.

I should note that this is a vision that has a strong scientific foundation. It is supported by over 1,500 scientists worldwide, by numerous organizations, by the communities and by the companies that we work with. It's also being incorporated into investment decisions being taken by ethical investors and indeed by the mainstream banks, which are now looking at boreal sustainability as one of their screens in making investment decisions on projects large and small throughout this region.

I should note, it's also been the experience of many of the communities across the boreal region that when they sit down to plan, when they identify those areas that are most important to them to protect for ecological and for cultural values, they're coming up with plans that indeed seek the protection of sometimes much more than 50%.

The Premier's vision very much accords with our own; however, it's important to look at the context of how this announcement was made and what was going on, both nationally and in the province in July 2008. You'll recall, of course, the very taxing summer for the mining industry and indeed for the community of KI.

Their leadership had spent the spring in jail because they had opposed exploration permitted by government within their traditional territory in areas where they did not want it to proceed. The only way that that could be reconciled under existing legislation was through conflict and, ultimately, through a jail term served by the leadership of that community—a truly regrettable result. It was also, I should note, something in the international forum. The United Nations at about the same time ratified the international Declaration on the Rights of Indigenous People, which enshrines the principle of free, prior and informed consent. That's the context in which this July 2008 announcement was made.

It's important to note that the Premier, in making this announcement, had many of the right ingredients. He focused on partnership, he focused on planning, and he focused on prosperity. He proposed to do so in a way that would create new mechanisms for giving voice to First Nations communities to determine their future and on new opportunities for those First Nations to realize the tremendous prosperity that is possible in this region. He also contextualized this by announcing a huge and, indeed, a globally significant conservation commitment.

1320

However, having laid out this menu, we have to consider whether or not, with the right ingredients, we actually got the recipe right. In both of these bills, the goal as we understand it is that development would occur in an orderly way in Ontario's northern boreal regions; that it would occur with the full participation and the consent of those First Nations most directly affected; and that it would therefore create the conditions for prosperity, led by community members in accordance with their own needs, in a way that would contribute to the economic health of the province as a whole and indeed sustain the ecological and cultural integrity of the region, which, as Grand Chief Beardy noted this morning, the members of the Nishnawbe Aski Nation have protected very well themselves for over 8,000 years. They've protected much more than 50%.

So what should this legislation do? I first want to turn to the Mining Act, to look at how these ingredients came out in the mix.

From our perspective, the most important elements of Bill 173, the proposals to reform the Mining Act, are those elements which enshrine a new permitting system in which exploration companies and mining developers will now have to work through a system of making application for permits, submitting work plans and then having these work plans and permits reviewed, obviously, by the ministry—but also the ministry undertakes a role now to consult directly with First Nations.

This is an important and significant innovation in Ontario's mining regime and it's one that we wholly support. The missing element, from our perspective, is to provide a strong role for First Nations so that they can exercise the right—and again, I'll quote the International Declaration on the Rights of Indigenous Peoples—of "free, prior and informed consent" before significant developments proceed within their territories.

There is an opportunity, I would submit, to improve the provisions of the bill which would give First Nations a direct role in permitting decisions under the legislation. I note that this is not unprecedented. There are, in the context of recent, modern land claim settlements, including the Labrador Inuit agreement in 2002, provisions whereby aboriginal governments participate directly as decision-makers in decisions on whether or not a work plan or a permit application is adequate, and they have the opportunity, in the event that they disagree in their decision with government, to have that arbitrated through a dispute resolution mechanism which, I would note, is provided for in the legislation but is not yet fleshed out.

As we look to the opportunities, it is not sufficient, in our view, for the requirements of sections 40 and 58 to simply refer generally to consideration of the issues raised by First Nations. We should actually be providing specifically for the consideration of whether or not those First Nations have consented to those activities, and if they have not, the onus is on government, through your treaty relationship with First Nations, to determine how to best accommodate those issues before you exercise your authority to grant those permits. This, in our view, would be a significant improvement and contribute directly to the goals of a prosperous economy, a well-planned industry, and a successful relationship between First Nations and developers within their traditional territories.

There's also a significant gap, in that the bill provides regulatory measures for considering what should occur—but one of the important elements of the Premier's July 2008 announcement was a provision for revenue-sharing. I know the government members will raise the fact that several commitments have been stated by government to share revenue directly with First Nations. There is an opportunity to enshrine this in this bill through the provision of mandatory impact benefit agreements at the stage where development becomes significant within traditional territories. Again, I note, this is not unprecedented. There are several jurisdictions, indeed, across the territorial north where impact benefit agreements are required before mining permits can be issued.

Having the parties most directly engaged in the activity—the developer and the community—working out their differences and coming up with their common positions together and submitting then a statement to government that, "Yes, we have reached an agreement," would give government the confidence that the community has indeed consented to the development and has created a relationship with the developer which is going to secure that opportunity in both the short and the long term.

So those are our comments on the Mining Act.

I'd now like to turn to the second course, if you will, in the menu that the Premier laid out, and to look at the land use planning legislation.

Bill 191, section 6, states that the purposes of the act, the goals of the act, are to provide for a significant role for First Nations in planning, to provide for the protection of areas, including the establishment of a network

of interconnected protected areas to maintain biological diversity and ecological processes, and also to enable the sustainable economic development of the region in a manner that benefits First Nations. These are, of course, laudable goals and incredibly important goals not just to state but to achieve.

However, Bill 191 does not do this. It does not, in our analysis, give First Nations the leadership role that is required in determining what areas are to be developed and what areas are to be protected. At the end of the day, the bill contains "minister may" and "minister can" and very little "community will" or "community shall." The consequence of this is that First Nations are ultimately in the position of being supplicants within their own territory. Having embarked on a land use planning process, they must then go to the minister for an approval. This is not—

The Chair (Mr. David Orazietti): Sorry to interrupt. You have about a minute left in your presentation.

Mr. Larry Innes: I'm wrapping up. Thank you.

This is not the way that land use planning partnerships have unfolded elsewhere in the country. I speak from knowledge on this, having worked right across Canada's north in many land use planning processes under many different governments. The mechanism for doing land use planning is the establishment of a board that has equal representation of First Nations and government members working together to facilitate a consensus outcome that respects, obviously, the paramount interests of a community in ensuring the integrity of a territory and the opportunities that it has before it and, indeed, the interests of all Ontarians, or all residents of that jurisdiction. That is, unfortunately, absent from this bill, and it would be a substantial improvement to include it.

There are several precedents that I can cite for you: the Deh Cho process in the Northwest Territories; the mechanisms under the Sahtu Dene and Metis land claims. The Yukon planning model, given the diversity of the regions that you're working in, may be something well worth looking at. It provides for a broad area planning council and the establishment of specific planning commissions in which communities and government members work together to define the terms and conditions for land use planning. Of course—

The Chair (Mr. David Orazietti): Thank you. That's time for your presentation. We appreciate that.

Mr. Larry Innes: Not a problem.

The Chair (Mr. David Orazietti): We'll go to the Conservative caucus first.

Mr. Randy Hillier: We'll pass.

The Chair (Mr. David Orazietti): No questions. Government caucus? Mr. Brown.

Mr. Michael A. Brown: Thank you, Mr. Innes, for coming. I truly appreciate your insight on some of these issues and your experience in other jurisdictions.

It's contemplated within this act that there be community-based development plans before anything happens at all. We just had a number of First Nations this morning, and I've heard from others, that want to be clear that they want these decisions made by the First Nation, not by another body. What you're suggesting, and I'm just trying to clarify, is that the planning authority be First Nation representatives with representatives from the province. Is that how you see that unfolding as a First Nation-to-government relationship on these boards? It's individual to each planning area?

1330

Mr. Larry Innes: That's a great question. In fact, the way this is normally done is that you have a jointly constituted board, often led by an independent chair in which both parties have confidence. That board then works under a mandate set out broadly in legislation but is often specifically developed to deal with the context in which planning occurs. In the Yukon, for example, you have 16 First Nations, each of whom is able to establish a planning commission in partnership with the other levels of government, which then work to complete a plan that is then under the broad supervision of a body actually established in the land claim that works as sort of a connecting council across those 16 regions.

Mr. Michael A. Brown: So there are two tiers? This is what you're saying, there's an overriding body of—

Mr. Larry Innes: A regional body.

Mr. Michael A. Brown: A regional body, and then underneath that—

Mr. Larry Innes: A local body.

Mr. Michael A. Brown: —a secondary, local body.

Mr. Larry Innes: Absolutely.

Mr. Michael A. Brown: We've heard from at least one First Nation saying, "We're not seeing any of this. Is anybody? It's us and the government."

Mr. Larry Innes: It's important to understand that the role these boards play in other jurisdictions is really a facilitative one. Decisions are ultimately left in the hands of the communities directly affected and in the hands of the government on those matters that fall solely within government's jurisdiction. It's the context in which that partnership for making those decisions, both local and regional, occurs that is so important to get right in this process.

Mr. Michael A. Brown: But it's still the local one, the First Nation.

Mr. Larry Innes: Correct.

Mr. Michael A. Brown: Thank you.

The Chair (Mr. David Orazietti): Thank you very much for your presentation. We appreciate you coming in today.

COALITION FOR BALANCED MINING ACT REFORM

The Chair (Mr. David Orazietti: Our next presentation, the Coalition for Balanced Mining Act Reform. Good afternoon and welcome to the Standing Committee on General Government. You have 15 minutes for your presentation and five for questions. If you could state your name for the purposes of our recording Hansard, you can begin when you're ready.

Mr. Charles Ficner: Thank you very much. I wonder if you can bring up the—

Mr. David Gill: We have a presentation on PowerPoint, here. I'd like to see if we can get it up on the screen.

Interruption.

Mr. Charles Ficner: I apologize for this.

Mr. David Gill: Mr. Chairman and members of the committee, I'd like to introduce myself: David Gill. I'm an economist. I work for the Treasury Board for the federal government of Canada. I currently manage a group of about 20 people who are business analysts and business intelligence analysts. I, through various reasons, have gotten involved in analyzing what's going on in mining. We are a coalition that has been developed and we have quite a broad support from various associations—cottagers' associations, lake associations—throughout eastern Ontario. We have definitely very good support from municipalities, including Ottawa, Kingston and Peterborough, who have supported our three modest proposals that we've put forward and have in fact petitioned the government of Ontario to please endorse and include those three modest proposals.

Our presentation today is going to be given by Mr. Charles Ficner, and I'll allow Charles to introduce himself and prepare the presentation.

Mr. Charles Ficner: I am also one of the founding members of the Coalition for Balanced Mining Act Reform. My background is as a policy director and strategic planner in the federal government. I've been responsible for developing many policies and programs, making submissions to cabinet, to the Treasury Board, and some of those have resulted in programs that have cost taxpayers of Canada some $2 billion. So I'm very familiar with the process of policy development.

I'm very familiar, as well, with the role that you have and with the difficult task you have in trying to make sure that as we move ahead, the laws that you approve are actually the laws that you intend to approve.

One of the points that I would make is that as a bureaucrat you become very much aware of the relevance of the comments of Sir Carleton Kemp Allen in Law in the Making. Bureaucrats, in drafting legislation, can, like the Delphic oracle, make it impossible for you to understand what's going on. They can overwhelm you with detail and bury what they want to do. That is what it appears has happened here.

If we look further at what happens through the regulatory process, and this bill is replete with proposals to do things through regulation, one finds that the belief that there is proper, even cabinet scrutiny of regulatory procedures is very much mistaken. Ministers are asked to sign and they presume that someone else has done the work. Bureaucrats can do very much what they like to do.

I think it's important when looking at this bill to get some context that deals with mining, and there's been a lot said about mining and the importance of mining. It's vital to realize where mining actually fits within the balance of Ontario's economy. Less than one job in 500, less than 2% of GDP; that's less than half of agriculture, fisheries and—

Mr. David Gill: Forestry.

Mr. Charles Ficner: And forestry. So it's not the only thing that applies broadly on lands. Mining is a very small contributor to provincial revenues, 0.4% of provincial tax revenues. Mining companies pay taxes at the lowest tax rate of any corporate group and while there is a special mining tax, when you analyze the details, what you find out is that for every dollar paid in mining tax, mining companies can deduct $1.40 from their income tax. Apart from diamonds and the royalty on diamonds that was introduced in 2007, there are no royalties whatsoever on minerals extracted in this province. Danny Williams in Newfoundland introduced a royalty on oil: minimum 30% of sale price, increasing to 50%, and that's off the top. It's not a percentage of profits, it's of sales. Newfoundland then became a part of the process of ownership and it takes profits there too. In this bill, one sees evidence that the presumption continues that was criticized by the Environment Commissioner: that mining trumps everything, so much so that it makes it very difficult for other departments with other policy positions to implement their policies, and that is very clear. None of that has changed as the underlying premise of this bill.

This bill, in fact, has provisions that treats citizens differently, affords them different protections of the law depending on where they live. If you live in the southern part of the province and the crown claims to own the minerals under your land—a small percentage of land, 1.4%; almost everyone owns the minerals—the bill says that your land will no longer be subject to claim-staking and exploration. If you live in the north, you don't get that protection. If you live in the very far north, you do get the protection of having a requirement to have community-based land use plans in order to determine where mining is appropriate and in balance. In the south or in the near north, even though you have a requirement under the Planning Act to prepare such plans, those plans are routinely overridden, and mining trumps those plans.

1340

The bill is also replete with examples of turning the power over to officials—arbitrariness throughout. What we have on this slide are just a few examples of some of that arbitrariness: Decisions of the minister are "final"; the minister may, "at his ... discretion"; the minister's order is "not appealable." The minister's order is not appealable even if it is in violation of the provisions set out under the acts of this Parliament that deal with regulations.

David, could you go back for just one second? Decisions, it states explicitly in the act, are not open to attack in any court by reason of the omission of any act or thing. In other words, if things were supposed to be done and were not done, you still, if you are the victim of this arbitrariness, cannot appeal anywhere.

It goes through the bureaucratic process as well, and you see these terms such as "such terms and conditions" as the commissioner orders, as the "recorder [considers]

appropriate." It appears everywhere. You find, even with respect to the provisions in the act and the regulations, that substantial compliance is all that's required. There's no need to fully conform.

Our coalition has put forward three modest proposals, proposals for very modest change to begin to bring mining into balance. One relates to treating all property owners equally. You've heard a lot about the small percentage of land where the property owners do not own the minerals under their land. In the province as a whole, of the private property owners, that amounts to about 1% of property owners; 99% of property owners own the minerals. It's 98.6% in the south and 99.6% in the north.

What did Parliament say before? Parliament made its will absolutely clear. If you go back to the General Mining Act of 1869, it says the owner shall own the minerals; any gold and silver reserved is hereby transferred to the owners as though it was granted at the time of original sale.

The Public Lands Act of 1913 confirmed this for everything. It said, in its provisions, that for every piece of land previously sold without the minerals, we add the minerals; every piece of property we sell from here on will include the minerals. It avoids the conflict between a landowner and a mineral rights owner. We will have only one owner for land and minerals.

That's not how bureaucrats see it. Bureaucrats have made it absolutely clear. They levy a tax on some such properties. The tax is intended to return the land to the crown—absolutely confirmed written statements by very senior officials. No compensation is paid to the owner. The crown doesn't benefit. Taxpayers don't benefit. Instead, we give the confiscated properties to mining companies for their private benefit. Is that what you as legislators want, that the government of Ontario should be given the right to tax property from citizens and take it away so that it can be given to mining companies?

That's what bureaucrats state, and that's in complete contradiction with the provisions clearly demonstrated by Parliament, including a provision in 1997, Bill 68, by which the crown said that all of those minerals that we repossess from Canada Co. lands are to be given to the owners of the properties who own those lands. Parliament has been clear on this: one owner.

David, you're way ahead of me here. Okay, sorry. Move ahead.

As I said, there is a requirement in this bill that says that in lands in the far north, you must have a community-based land use plan. There is now a requirement under the Planning Act, another act of this Parliament, that says communities in the south—municipalities—must have a land use plan. There's a very complex process for developing it. Routinely, what happens is that those plans are overridden by officials at MNDM. When their plans are sent to municipal affairs and housing, they are distributed around the ministries, and then they come back and the municipalities find—having said that the most appropriate use is agriculture, recreation or whatever—that the most appropriate use is designated as mining. So the community-based land use plan is thrown out.

The initiative in the north in excellent, but why treat people differently? When we have a charter that says everyone is entitled to equal protection and benefit of the law without discrimination, why do we treat people differently? Why do we have an act that overrides another act and says that it applies here but not there?

The act and the bill are replete with arbitrariness. Section 175 of the act is, one would have to say, an abhorrent provision, but it's only illustrative. What it says is, if a mining company decides it would be convenient to have access to other lands, it can go to the commissioner and ask for approval to have them and the commissioner can give that approval.

The Chair (Mr. David Orazietti): Just to remind you, you have about a minute left.

Mr. Charles Ficner: These are the kinds of things that can be done: discharge water upon any land, use any land, lower the water in any lake or river, do anything that's convenient. And it ends up with a provision to deposit their tailings or slimes or other waste products upon any land or to discharge the same into any water. This was not ignored in the preparation of Bill 173 because this provision was added to. There's an extra clause, and a number of these clauses were strengthened. Is that what this Legislature wants: for us to live under laws where that arbitrariness is permitted? We would hope not.

We would suggest that section 175 be replaced with provisions that require an open, public review of all mining development activities, proposals and exploration activities before the mining exploration or development can take place—

The Chair (Mr. David Orazietti): Thank you. I'm going to have to stop you there. That's time for your presentation.

Mr. Bisson, you're up first, if you'd like to go ahead.

Mr. Gilles Bisson: Where to start? You've said quite a bit there. The last slide you just had, if you can back up—the last point: require an open, public review before mineral exploration. I understand the next part—advance exploration and mining—but when it comes to staking, are you asking that open, public review be affected on staking as well?

Mr. Charles Ficner: We're not saying on staking; on the exploration activities.

Mr. David Gill: If I could just answer quickly, in our view, public lands would be staked, but no development of any kind could go forward without an impact analysis, which isn't just environmental; it's legal, it's economic, it's cultural. There are a lot of other areas that need to have analysis done.

Mr. Gilles Bisson: And to those people involved in the mining industry who would say that's an onerous provision to put on them when it comes to development, what's the argument there?

Mr. Charles Ficner: We understand that. We actually participated in the consultations in Timmins, and some of

the prospectors said, "We have an absolute right to go on to any land and say, 'This belongs to us,'" and our response to that comment was, "Well, it seems like it's an extraordinary privilege to be able to go on public land and say, 'All of the minerals here belong to me.'"

Mr. Gilles Bisson: No, I'm talking about the—

The Chair (Mr. David Orazietti): Folks, that's time for your questions.

Government caucus, Mr. Brown?

Mr. Michael A. Brown: Thank you for your presentation—interesting.

What would you say to the people of Timmins or Sudbury or of other large mining communities about the revenue that they receive through the taxes that their workers pay, the contribution that all of the people who work at the mines provide to the local economy? It would be far greater than the 0.2% that I think you're quoting here. You're probably talking directly about what the mining company itself pays rather than what the workers and others in the community contribute.

Mr. Charles Ficner: We clearly say there are three requirements to be met. One is, treat all property owners equally; give back the minerals that the crown confiscated from the 1.4% in the south and the 0.4% in the north; make mining conditional on community-based land use plans. So if Timmins or other areas wish to have mining take place and it's an appropriate activity, absolutely. Mining is not something that should be stopped—we need minerals development—but it needs community land use planning input. And in terms of the impact assessment on health, water and other people's livelihood, we believe that is an absolute requirement. You just don't say to someone, "You can go dig and drill and remove the overburden," without considering the impacts. Those things need to be considered.

1350

We are seeking simply to put mining into a real balance, and we would hope that the members of this Legislature would want that too. We are not seeking to stop mining or to stop communities from doing it. But we don't want to see damage done to other communities or other persons by the arbitrary decisions that override these local plans.

The Chair (Mr. David Orazietti): Okay, thank you. That's time for questions. Mr. Hillier?

Mr. Randy Hillier: Thank you very much for a wonderful presentation, with such clarity about not treating people differently and not allowing government to usurp our own sense of freedoms and justice in allowing some groups benefits or privileges at the expense of others. I think that's really the crux.

You've got three modest proposals. If I can just reiterate them, if I'm clear—or maybe I'll allow you to just reiterate what those three proposals are. I think there were two that you just mentioned.

Mr. David Gill: I think, perhaps, the thing to understand is that all of crown land, public land, is open. All of private land essentially is open, if a private person wants to develop minerals on their land. So, modest proposal 1 is simply just single ownership of all land.

Modest proposal 2 builds on that and says that private land, or crown land—if mineral exploration and development is going to occur, then it has to be right for the land use plan of the community around.

Mr. Randy Hillier: Much like zoning for any other—

Mr. David Gill: Something like that. Then the third one would be that if you have a rogue community that doesn't care about what it's doing to the river, and downstream the communities are going to suffer, therefore there needs to be impact analysis: environmental, legal and so on and so forth; particularly economic because we know that tourism, cottaging and so on have a huge input to the economy and can be dramatically impacted by mining.

The Chair (Mr. David Orazietti): Very briefly, Mr. Hillier.

Mr. Randy Hillier: Just briefly, you also mentioned that you were involved in the consultation process, that you were in Timmins when these proposals—

Mr. David Gill: We were at two of the consultations.

Mr. Randy Hillier: —were brought forward to the government, through that process.

Mr. Charles Ficner: These proposals have been endorsed by a large number of cottage groups, environmental groups and citizens' groups, and by a large number of municipalities, who formally petitioned the province to include these in Bill 173. Those cities include Kingston, Ottawa and Peterborough, and a large number of other municipalities. None of these provisions have been incorporated.

Mr. Randy Hillier: Thank you very much.

The Chair (Mr. David Orazietti): Thank you. That's time for your presentation. We appreciate your coming in today.

ONTARIO PROSPECTORS ASSOCIATION

The Chair (Mr. David Orazietti): The next presentation is the Ontario Prospectors Association.

Folks, we've got a very lengthy afternoon agenda so I'm just going to remind people to try to keep their questions as concise as possible.

Mr. Gilles Bisson: You're doing your chair job.

Laughter.

Mr. Gilles Bisson: Or you're doing your job, Chair.

Interjections.

The Chair (Mr. David Orazietti): Good afternoon, and welcome to the Standing Committee on General Government. You have 15 minutes for your presentation. State your name for the purposes of Hansard and you can begin your presentation right away.

Mr. Garry Clark: My name is Garry Clark. I'm the executive director of the Ontario Prospectors Association.

The Ontario Prospectors Association is a provincial organization representing seven regional associations. The regional associations are located anywhere from

southern Ontario, Sudbury, North Bay, Timmins, Sault Ste. Marie, Sioux Lookout and Thunder Bay.

We'd like to thank the Chair and the members for allowing us to respond to Bills 173 and 191.

Just a background on myself: I'm the executive director; I'm also a professional geologist in the province. I was a member of the industry input group in 1990 when the Mining Act was last majorly amended. I've been a member of the minister's Mining Act advisory committee since 1990 and I'm presently chair. I was also a member of the minister's far north advisory council and I was chief negotiator for the exploration industry to disentangle claims that were caught up in the Ontario Living Legacy sites. I'm also an active exploration consultant based in Thunder Bay and a prospector who has optioned numerous properties to junior companies and senior companies within Ontario.

We understand that Bills 173 and 191 are enabling legislation. Some of our fears are that there's too much reliance on regulation development. We think there needs to be more confirmation of direction of where the bills are going. We recognize Bill 173 is funded to the point of $40 million to amend the Mining Act but we're not sure this is enough, and Bill 191 has no funding put with it, though estimates are $300 million just to do the land use planning development itself. There is no funding presently in place to fund the required geoscience and other science components that need to be done to do wise land use planning. We believe that Bill 191 missed the mark when it was written and it should be squashed.

Just briefly, some insight that we see from Bill 173: Map staking is endorsed within Bill 173. There's the possibility of the loss of prospectors' sweat equity when they're staking if we go to a map-staking basis. There's loss of entry positions. That's the position that you start at making some money when you're staking. There's fear of deep pockets taking all the lands, depending on how a map-staking system is set up. The First Nations economic impact and economic stimulation in the far north comes from when the stakers show up in the community and need to buy various goods and services. Prospectors are using staking as income in the winter when they can't prospect for minerals. There's a possibility that there's a socio-economic impact study needed. The other consideration, if we go in the map-staking direction, is that we do not have consistent high-speed Internet access across the north. That's something that is very important to have. It's great to say you can stake a claim from China in Ontario when some people in Ontario can't get on to stake a claim because they don't have high-speed.

One worry is certainty and security of investment. The proposed amendments are very vague on detail and rely greatly, as I've mentioned, on regulation. We're seeing right now that our explorers see similarities to what happened in BC, and some of them are shying away from Ontario, worrying about what is going to be the outcome of Bill 173.

We do see work plans as described in Bill 173 and work permits as a viable method of informing First Nations communities that exploration is about to occur within their traditional lands. Potential delays at the First Nation level, though, may set exploration back, and exploration permits going into the community will always be behind social issues for evaluation purposes.

An arbitrator is mentioned within Bill 173. It is welcome, but the strength of the legislation and the definition of this arbitrator are not presented, and we think that the procedures and definition need to be strengthened within the bill. Explorers need flexibility when they're working within their projects to react. As you find something, you may change the direction. If you have to go back to the work plan to amend it, you may lose part of a season.

There's a director of exploration mentioned. These roles and responsibilities are not well defined in the proposed legislation and the potential, the way it's defined, is another level of bureaucracy to slow down exploration and slow down accessing the land. There's also an inspector of exploration that's mentioned and described. This is actually welcomed by a lot of our members. The only problem is that there are some very unchecked powers that are defined in the legislation as it sits now, and that position needs to be refined or redefined.

The other worry we have with work plans and work permits is that in 1996 we got rid of work permits, and at that point it was up to our own recognizance to be able to operate under other laws within Ontario. We do not see the reason to send these documents as work permits out to MNR, MOE or MOL. If that happened, I think what would occur is we'd be under a microscope all the time. Right now, we work under our own recognizance and we follow the legislation, and there have been very few problems with that.

1400

On withdrawal of mining rights: We're worried about the exploration economics being compromised. If there is a piece of land that's withdrawn and you're working on land that's staked beside it, if you start moving toward finding an ore body and moving toward that land, there's no method of reopening the withdrawn lands mentioned within the proposed bill and there's no method for assessing the land in northern Ontario that possibly could be withdrawn. We think there's potential for socio-economic implications to Ontario with lands being withdrawn.

The prospectors' awareness course, we believe, is a very good idea to educate prospectors on ethics, other stakeholders' rights and best practices. The only problem with that is that 90% of the people doing the exploration on the land are not licensed prospectors and these are the ones who need some awareness also. There is a thing called a 25-year or permanent license, and some of these licence holders should be exempt from having to take this awareness course.

Certainty, security of investment under Bill 191: It presently states that there are no new mines until land use plans are completed, and therefore no new economic stimulation. If a claim is there now and it's found to be

protected lands, what occurs? We all remember what happened with Ontario Living Legacy. It took me three or four years to disentangle some of these lands even though we were guaranteed that everything was fine. The length of time to do a land use plan means that those explorers probably will sit on the sidelines and wait until the land use plans are completed in some cases. There is no trigger within Bill 191 to say when there would be a land use plan started, and explorers would get to a certain point without a land use plan, would then stop their projects and sit on their hands.

Who's driving the plans: Communities need to drive the plans with some form of panel/board approving and overseeing the process. This panel/board would look at the total landscape of the north and make sure everything is balanced so that there is a flow of land use plans across the various areas.

Protection versus conservation: The land is already protected by its geography in the far north. Explorers need large volumes of land to explore. The area of protected areas and connectivity scares explorers. They're worried that there will be connections of all the protected areas, which will create isolation and prevent access/service corridors to the communities and the economic sites.

Adequate funding: We don't know the geology very well in the far north. The government needs to assess the mineral potential in the far north. Protection of high mineral potential is as valid as protecting flora and fauna for our grandchildren.

The Chair (Mr. David Orazietti): Thank you very much for your presentation. We'll go to the government caucus first. Mr. Mauro has questions for you.

Mr. Bill Mauro: Mr. Clark, thank you for being here and for your presentation.

Mr. Brown and I are going to share this, so I'll get this out as quick as I can.

You talked about the planning board or some planning process going forward under Bill 191. Section 16 states—I'm not sure if you're aware—"The minister shall establish one or more bodies to advise the minister on the development, implementation and coordination of land use planning in the far north in accordance with this act." The subsection goes on to state: "When establishing a body ... the minister shall consider what role First Nations should play in the establishment of the body...." So it is contemplated and it is going to occur.

The second part I wanted to ask you about, however, was you made a comment about security of investment or return on investment—I'm not sure what it was. My question is, how does that exist today? What's the current climate, compared to where we think we're going to land? Should this pass and this legislation go forward, how are the two going to compare? It would seem to me today, given the uncertainties that exist—and we hear that all the time as industry moves into these areas to try to do their work—there is so much uncertainty in the process now, so I'm wondering how you contemplate this can't be better or how it could make it worse.

Mr. Garry Clark: I think it can be better. The worry is how long it will take to get to the point of a plan. The other point is that you can go into an area and work and there won't be a plan and you don't know when the plan will be developed, so you have no certainty that you will mine because it says no new mines will go forward without a plan. I know there is the provision that says that the crown can overrule that and make things go forward, but frankly, the industry—and it's not just Ontario-based, but worldwide—doesn't trust that type of clause.

Mr. Bill Mauro: But there is an accommodation for some interim work to go forward. For example, on mining work, feasibility studies could still go forward and economic—a lot of things could still occur in regard to that. If a mine was—

Mr. Garry Clark: But still, without the point of knowing when the plan is going to be complete, you could have a full pre-feasibility or a feasibility study saying it's economic and you could be hung up waiting for that plan.

The Chair (Mr. David Orazietti): Mr. Brown, if you have something briefly, you can add.

Mr. Michael A. Brown: Thank you, Mr. Chair. Good to see you, Mr. Clark.

I was surprised by the number, that 90% of the prospecting is done by non-licensed prospectors. Could you explain that to me? It's a new number for me.

Mr. Garry Clark: In the exploration business, the very bottom end of exploration is usually the prospecting end. Under the act, prospecting is actually anything that's done as exploration, but the prospector himself is only required to have a prospector's licence if he's going to stake claims. He doesn't have to have a prospector's licence to do the assessment work to keep the claims in good standing. So when you go on a project, you'll see that there is no one there who actually needs to have a prospector's licence to complete the work to keep the claims in good standing.

The Chair (Mr. David Orazietti): Mr. Hillier.

Mr. Randy Hillier: I have a couple of questions, but a couple of statements first. I found it quite interesting that you share a lot of the same concerns with the previous presenter with regard to the regulatory burdens and how much reliance there is in the act on the regulations, and also the concept of community-based land use plans.

I'll ask two questions. First off, were you also involved in the consultation before the Premier made that announcement on 50% protection in the north?

Mr. Garry Clark: No.

Mr. Randy Hillier: You weren't.

My question is just on the withdrawal of mining rights. This has come up a few times today. Under the present proposal, once those lands are deemed to be withdrawn, there is no avenue for them to come back in in southern Ontario. However, if those properties and those rights were unified—the mineral and the surface rights—then of course the prospector could continue to enter into negotiations with the private owner.

Mr. Garry Clark: It would be similar to what we do now, yes.

Mr. Randy Hillier: Right. A little bit more streamlined—and have potential access.

Mr. Garry Clark: It would be nice to be able to stake them and not have to—

Mr. Randy Hillier: Anyway, thank you very much for your presentation.

The Chair (Mr. David Orazietti): Mr. Bisson.

Mr. Gilles Bisson: The act, in short, says that in the end we're going to protect a minimum of 50% of what is in the far north. You made the point that we know little of the geology of the far north, which I well understand. The only two producing mines up north are Musselwhite and De Beers. My question is simply this: Twenty-five years ago, let's say, would they have declared that as an area that's interesting when it comes to minerals? Would there have been any way?

Mr. Garry Clark: The discovery was made by De Beers in 1983. But yes, previous to, say, 25 or 30 years ago, you'd be hard-pressed on the De Beers deposit, in my opinion. Actually, the Musselwhite brothers started exploration on the Musselwhite deposit in the 1950s, looking for gold at that point.

Mr. Gilles Bisson: My point is, the difficulty we have with this is that we don't know a lot about the geology of the far north, and what is not geologically interesting today for mining may very well be, given new technologies as they move forward and the more work we do in aerial surveys, sediment work etc. I think we all agree with the premise that we need to preserve as much as we can in the far north and not expose it to development that will be harmful to the environment. How do you get there without doing what they're doing?

Mr. Garry Clark: Without parking it or protecting it that way?

Mr. Gilles Bisson: Yes. How do you get there?

Mr. Garry Clark: I think you actually leave on a status quo situation. At the present time, the geography protects it. The First Nations do a good job, and I know they would say the same thing, that they protect 100% of it. We impact on a very small piece of it as we go through. I think the science can be done, but it's very expensive.

The Chair (Mr. David Orazietti): Thank you very much for your presentation and for coming in today.

1410

PROSPECTORS AND DEVELOPERS ASSOCIATION OF CANADA

The Chair (Mr. David Orazietti): Our next presentation is the Prospectors and Developers Association of Canada. Welcome to the Standing Committee on General Government. You have 15 minutes for your presentation and five for questions. Whoever will be speaking, please state your name before you speak. You can begin your presentation right away.

Mr. Jon Baird: Hello. I'm Jon Baird and I'm the president of the Prospectors—

Mr. Gilles Bisson: I know John Baird.

Mr. Jon Baird: I have to tell you, there is no "H" in my name. J-O-N. That's the distinguishing point, if you will.

Mr. Bill Mauro: It's not the only distinguishing feature.

Mr. Jon Baird: When I was interviewed by CBC, the interviewer said, "Mais celui-ci est très gentil." "This one is the nice one."

I'm here to represent the PDAC, and I'm here with my colleagues Philip Bousquet, the PDAC's senior program director; Jason Wilson, PDAC program director for aboriginal affairs and resource development; and Michael Hardin, an external legal consultant who has worked with us in preparing PDAC's submissions that respond to the Ontario government's Mining Act and Far North Act proposals. We thank you for inviting us and providing us with an opportunity to meet with you today.

For those who don't know, the PDAC is a national association formed here in Ontario in 1932 whose members are involved in the mineral exploration and development industry, both in Canada and around the world. Our membership includes over 1,000 corporate and 6,000 individual members, comprising mining companies, junior companies, service and consulting firms, geoscientists, prospectors, students and the financial and investment sectors. PDAC organizes an annual convention here in Toronto which is the world's premier mineral industry trade show. In 2009, our convention attracted over 18,000 delegates from 120 countries.

This committee has been asked to review two significant legislative proposals that would fundamentally change the way that mineral exploration and mining are carried on in Ontario. Following a careful review of these proposals, the PDAC has concluded that neither bill should be enacted in its present form. It is our recommendation that Bill 173, regarding the Ontario Mining Act, be amended in a number of areas prior to further consideration by the Legislature, and that Bill 191, the Far North Act, be withdrawn.

Our rationale is detailed in our submissions that have been posted on Ontario's environmental registry. Copies have been distributed to the committee. I will briefly outline our key points, but prior to doing so, however, I would like to provide the committee members with some background on the context within which this legislation is being considered.

We're now at a time when the prices for the commodities produced by the mining industry are at historic low levels, operations are being closed, miners are being laid off, their suppliers' revenues are shrinking, and investment in mineral exploration and mine development is drying up.

In recent years, Ontario has attracted about 5% of the world's expenditure for mineral exploration. This is as much as $500 million a year, which has provided valuable employment for people in urban, rural and remote areas of the province. Because of the current downturn, however, this year's exploration spending is expected to be only about 50% of last year's total. On top of this, we

now have the uncertainty of new legislation, which will have unknown effects on future investment, discovery, mine development and job creation in the province. Prior to advancing such legislation, you need to know that you have it right. Your work on these bills will affect communities throughout Ontario in the short term and for many years to come. If the government of Ontario, after consultation with environmentalists, industry, aboriginals and other citizens, does not achieve wise, fair, clear and balanced approaches through these new laws, a great deal of wealth creation, benefiting all the citizens of the province, will be wiped out.

How important is a mine? In a recent study by the Ontario Mining Association, a model mine in northern Ontario with a modest annual revenue of $270 million created 480 jobs in production, 1,103 jobs in the upstream supply chain, plus another 697 positions in the economic activity generated when the employees and suppliers spent what remained of their wages after taxes and savings. Thus, the mine employs 2,280 people. Of course, the mine and everyone connected with it pay taxes, further benefiting all of the citizens of the province.

The millions that the industry and investors direct to northern Ontario for mineral exploration and mining are the single best generator of economic activity that can be envisioned, particularly for those living north of the 51st parallel. Industry therefore has an important place in the discussion surrounding the mineral exploration and land use planning regimes that the government has proposed.

The exploration, mining and financial industries, as well as the private citizens who are investors, have a lot at stake here. To some degree, these elements of society are represented by associations like the PDAC, Ontario Prospectors Association, Ontario Mining Association and others from whom you will be receiving advice. But make no mistake about it: The industry that really counts will make its own analysis, and it will vote with its feet. Ontario risks losing investment and wealth creation very rapidly if the new legislation is not wise, fair, clear and balanced.

I will now turn to the legislation and offer a few comments, beginning with Bill 191, the Far North Act.

As committee members are aware, Nishnawbe Aski Nation, or NAN, have expressed grave concerns regarding Bill 191, and NAN has formally resolved to prevent its passage. I will not detail their reasons for opposition, as First Nations communities, organizations and individuals are raising these with you directly. However, as a representative of the PDAC, I can express my agreement with NAN's concerns and state the following reasons for the PDAC's recommendation that Bill 191 be withdrawn.

The PDAC contends that Bill 191 in its present form would deprive all of the citizens of Ontario, particularly First Nations communities that make up most of the population of the far north, of the economic benefits that responsible mineral resource development can provide.

Bill 191 fails to provide First Nations with an appropriate and clearly defined role in the land use planning process.

Bill 191 seriously compromises the ability of the minerals sector to operate in the far north by reducing the land base available for exploration by 50% or more, relegating the minerals sector to a peripheral role in land use planning, and damaging investor confidence in mineral exploration activities in the region.

1420

Finally, Bill 191 fails to achieve an appropriate balance between responsible economic development and protection of the unique cultural, social and environmental values that the far north embodies. Land use planning is a complex process. The end result, though, needs to encourage investment that best uses the land in the interests of the people. Land use planning takes time, partly because modern science needs to be applied. In Ontario's far north, there is a need for much more geological knowledge before optimum land use can be determined. Over this large tract of land, we have the opportunity of exercising modern land use planning based on scientific principles and traditional aboriginal knowledge.

We should not start with prescribed limits that are not based on science and not based on the needs of the people. Indeed, land use planning in the far north should begin with widespread geological mapping and mineral exploration.

Bill 191 would ensure that there will be no exploration or mine development in the far north for the foreseeable future since it will take a great deal of time to develop land use plans. The development of these plans will be greatly hindered by lack of funding, lack of capacity and lack of geoscientific knowledge across this huge territory.

We believe that the Far North Act is unbalanced and does not properly consider the need for economic development that is so important to the people who live in the region and in the rest of the province. Taking more than 50% of the land out of the mineral inventory forever, particularly by choosing that land before serious geological mapping or mineral prospecting has taken place, would dramatically reduce opportunities for locating economic deposits that lead to benefits in terms of jobs and community sustainability.

I would now like to offer a few points about the nature of prospecting and mining.

The Chair (Mr. David Orazietti): Just before you get going, you've got about a minute left on your time. There will be time for questions.

Mr. Jon Baird: Mineral prospecting, if done properly, has little lasting effect on the land. But mining needs large tracts of land because we are looking for needles in haystacks. The far north is a very large haystack. No one knows what is underneath their feet. Those sitting in this room don't know what's below us. We have a great deal to discover, a great deal of wealth, a great number of jobs to create in the north, but we must not take away 50% of that potential by simply preserving, not protecting.

We're for protecting. If 20 mines were found in the far north, that would take one half of 1% of the land mass.

The mining industry is prepared to leave 99% of the land untouched because mineral prospecting, done properly, does not harm the land.

Thank you very much.

The Chair (Mr. David Orazietti): Thank you for your presentation. We'll start with the Conservative caucus. Mr. Hillier, go ahead.

Mr. Randy Hillier: Thank you very much. I'll be sharing my time with Mr. Barrett here.

Thank you for the presentation. There's a picture that I've been getting today from all the people making delegations here, and that is the fear that investment in industry and employment will vacate at even faster levels from the north than what is happening right now under these two proposed pieces of legislation. The people who it's designed to benefit are opposed to it. The industry is opposed to it. Really, the only people we've heard that there was prior consultation with on Bill 191 was one environmental group so far. Were the prospectors and developers made aware of Bill 191 prior to its announcement?

Mr. Jon Baird: No. For me, it was like knowing when Neil Armstrong landed on the moon. I was in Quebec City at the annual meeting of the Assembly of First Nations. The announcement was made on July 14. The next day Minister Bryant came to town and I had the privilege of having a meeting with him. It was a total surprise at that time, I can tell you.

Mr. Randy Hillier: That's the picture that we begin to—I'll have one other question before I turn it over.

We've also heard of this idea that's been coming through that different people will be treated in law differently, especially under the Mining Act. Is it your view that the mining industry is dependent on inequality of the law to be successful, or would you prefer equality of the law in the mining industry?

Mr. Jon Baird: I think any proper citizen prefers equality of the law. Personally, I do not see any inequalities. Anyone can stake a claim; you just need a miner's licence, and that's pretty easy to get.

Mr. Randy Hillier: No, there are some more nuances within the bill, but I'll pass it over to Mr. Barrett.

The Chair (Mr. David Orazietti): We need to move on; we don't have time for two members in each caucus to be asking questions in five-minute rotation for all parties, so we'll have to go to the NDP. Mr. Bisson, do you have a question?

Mr. Gilles Bisson: Yes. Under your comments on Bill 173, you are saying, " ... we believe that the approach taken in this legislation is inconsistent with the guidance that the courts, notably the Supreme Court of Canada, have provided." I wonder if you could expand on that a bit, because I know what you're getting at, but for the committee, explain how it doesn't.

Mr. Jon Baird: Mr. Hardin?

Mr. Michael Hardin: I'll answer that question. You've already heard in some detail today from two commentators on the nuances of the Supreme Court's decision in the three leading cases: Haida, Taku Tlingit and Mikisew Cree. We adopt those, generally speaking, by reference. The difficulty is that the law, as presently written, does not clearly follow what the Supreme Court has told us: number one, that the duty to consult and to accommodate is the duty of the crown. As Mr. Edmond's presentation pointed out, the act is written in the passive voice, which leaves it open to interpretation. If you have the opportunity to review the October 10, 2008, submission that the PDAC submitted in response to the Mining Act discussion paper, we treated this question in some detail and we implored the government to bring clarity and certainty to the division of labour in the consultation process between that of government, on the one hand, and that of proponents on the other, something which we don't feel any government in Canada has adequately done to the present time.

The Chair (Mr. David Orazietti): Thank you.

Mr. Gilles Bisson: So this could—

The Chair (Mr. David Orazietti): Quickly, Mr. Bisson.

Mr. Gilles Bisson: This could be open to litigation if it's passed, then.

Mr. Michael Hardin: There are a number of provisions of the act that are of deep concern to us. One that hasn't been mentioned but that I would like to point to is what would become 86.1 of the Mining Act, from Bill 173, whereby the duty to observe aboriginal rights affirmed by the Constitution is not only imposed upon the crown, but in this case becomes a part of all existing mineral leases as well as all mineral leases issued from this point forward.

The Chair (Mr. David Orazietti): Thank you. That's time. Mr. Mauro.

Mr. Bill Mauro: Thank you, Mr. Baird and your colleagues, for your presentation. I have a quick question before Mr. Brown as well.

You state in here, "Bill 191 fails to provide First Nations with an appropriate and clearly defined role in the land use planning process." Now, section 16 of the bill states, "The minister shall establish one or more bodies to advise the minister on the development, implementation and co-ordination of land use planning in the far north in accordance with this act." The subsection states that, "When establishing a body ... the minister shall consider what role First Nations should play" in the establishment of that body. You've got some very clear, strong language here. I'd be interested in what you would envision if it were you drafting the bill, what you would have said or how you would prefer to see this, going forward.

Mr. Jon Baird: From the beginning, with Mr. McGuinty's announcement that land use planning was going to be done in a community-based way, I have said to myself, as a non-legal person, "What is a community?" Can you tell me what a community is in this case?

Mr. Bill Mauro: So it's your perception, then, that this language is precluding community land use planning?

Mr. Jon Baird: NAN is saying here, "Yes, we've had some meetings with the government, but don't consult with us, because we have no power. You've got to go and talk to the community." So I'm asking you, what is the community? Who—

The Chair (Mr. David Orazietti): Thank you. That's time for questions. Thank you very much for your presentation today.

CITIZENS' MINING ADVISORY GROUP

The Chair (Mr. David Orazietti): Our next presentation is the Citizens' Mining Advisory Group. Good afternoon and welcome to the Standing Committee on General Government. You have 15 minutes for your presentation, five for questions among members of the committee. If you could start by stating your name for the purposes of Hansard, and then you can begin your presentation right away.

1430

Ms. Kay Rogers: Thank you, Mr. Chairman and members of the committee. I'm Kay Rogers. I'm here on behalf of the Citizens' Mining Advisory Group, often known as CMAG, which represents over 500 citizens in Tay Valley township, in eastern Ontario. In addition, I speak for the Lake Networking Group, which connects over 10,000 property owners on 25 lakes stretching from Kingston to Carleton Place. While each organization has its own raison d'être, both organizations share the same views regarding the Mining Act.

I'd like to start by saying that Bill 173 includes some notable improvements. The government's intent to modernize the Mining Act is welcome.

I would also like to underscore that we are not opposed to mining. There's no doubt that mining is important to our economy and that we all benefit from the manufactured products created from mineral resources.

I will be brief. My presentation will focus on three issues and provide recommendations to address these issues. I have provided copies of our written submission, which provides more details.

Having just come back from northern Ontario—I don't know what it was like down here, but certainly up there it was raining a great deal. So here we are, on a summer afternoon—I notice the curtains are closed. I think we'd all try to escape if they were open, to see the sunshine. Just take a moment now and picture yourself where I suspect most of us would rather be: sitting by the water's edge. You can hear the loons calling. Then you hear another sound. It's the sound of chainsaws down the lake. No, it's not a new cottage under construction. It's a prospector clear-cutting 2.3 acres of land to explore for minerals. You feel the land is being violated. Your soul resides at the lake. You ask yourself, "How could this happen? Where is the Environmental Assessment Act? What about the township's official plan?" Then you recall the lake association meeting where people talked about tripping over stakes while walking on their own land. Others talked about finding stakes on crown land, on the north shore of the lake. Then you get involved.

The first issue I'd like to discuss is single ownership of private property. I know that a number of others have raised this as well. The focus here will be on the land south of Lake Nipissing, as this is where we happen to be sitting, the folks whom I'm representing.

As we all know, the crown holds the mineral rights to 1.4% of the land south of Lake Nipissing and the French and Mattawa rivers. This is land that's privately owned by thousands of individuals who pay municipal taxes on their land. We're all therefore pleased that the surface-rights-only land that is not currently staked was withdrawn from mining in southern Ontario and that surface-rights-only land with existing mining claims will be withdrawn from staking when the individual claims lapse. However, based on our reading—and I may be wrong here, so I seek assurances—it appears that the minister retains the authority to reopen surface-rights-only land for staking. Further, Bill 173 does nothing to protect surface-rights-only landowners from existing mining claims. The claims on these properties can easily be extended. As a result, these private property owners could be in limbo for an indefinite period of time.

To give you a sense of scale, there are more than 50 active claims on or near lakefront properties in South Frontenac and Tay Valley townships alone. In essence, mining still trumps the property rights of private landowners.

Recommendations: first, to revise Bill 173 to actually reunite mining rights with surface-rights-only land not presently staked in southern Ontario, and reunite the mineral rights with all surface-rights-only land in southern Ontario that has been claimed, when the claims lapse. Alternatively, pass Bill 173 with the withdrawal of surface-rights-only lands in southern Ontario firmly embedded in the bill, and add a section stipulating that the withdrawal of the surface-rights-only land cannot be revoked without meeting predetermined conditions, including written consent of the landowner, environmental assessment, consent of the municipality, and public consultation.

We also recommend that you add a section to Bill 173 to limit the number of years existing claims can be held on surface-rights-only land in southern Ontario that were staked prior to April 30, 2009, prohibit the extension of time to complete or submit work and require the written consent of the landowner prior to exploration. These steps would, in our view, ensure that surface-rights-only landowners have the same rights as other property owners, provide a process for closure for those surface-rights-only landowners whose land has been staked, respect the investment made by landowners and respect Canadian law, which has traditionally recognized the rights of individuals to the peaceful enjoyment of their property.

Second issue: Environmental impact assessment. The purpose of the Mining Act references minimal environmental impact throughout the mining cycle, but

Bill 173 is silent on how this purpose would be fulfilled. In fact, mining is blatantly exempted from the Environmental Assessment Act. This is an astounding right in the 21st century.

To illustrate, a not-for-profit organization wishing to develop a children's camp on a parcel of land is required to have an environmental assessment undertaken before any site alteration can be permitted. In contrast, a prospector wishing to explore for mineral potential is not required to have an environmental assessment before undertaking preliminary exploration work. Indeed, counter to many of our images of a prospector with a little bag and a chisel, preliminary exploration work can include clear-cutting up to 2.3 acres of land, excavation of up to 1,000 metric tonnes of material, surface stripping, drilling, trenching and blasting. Again, mining trumps the Environmental Assessment Act.

The group recommends that Bill 173 be revised to stipulate that the mining sector is subject to the Environmental Assessment Act and require the review of environmental assessments by an independent body as part of the application for a prospecting or exploration permit. These steps would resolve the existing contradiction whereby the Environmental Assessment Act applies to everyone except the mining sector and ensure that mineral exploration and mining would not result in adverse health or environmental impacts.

The third issue: Strengthen local planning. Bill 173 requires that all new staking and mining recognize aboriginal community land use planning processes in the far north. This is a positive step. However, Bill 173 ignores the Planning Act. This is the overarching statutory tool for land use planning in Ontario. The Planning Act requires each municipality to prepare an official plan outlining how lands within its jurisdiction will be used. The plan is developed in consultation with citizens and it is sent to Queen's Park for review. The Ministry of Northern Development and Mines has the authority to require that certain lands be protected for mining. This makes a mockery of land use planning. Mining is not always the best use of the land. In many rural communities south of Lake Nipissing, some combination of agriculture, tourism and forestry are the mainstays of the economy. These sectors play a significant role in the economy of Ontario and the sustainability of rural communities. Again, mining trumps the Planning Act.

Recommendations: Add a section to Bill 173 to remove the authority of the ministry to require that certain lands be protected for mining purposes in southern Ontario and revise Bill 173 to provide for the creation of a criteria-based process whereby lands currently protected for mining purposes could be withdrawn where the economic, environmental, social and heritage interests of a municipality or county would be compromised by mining. These steps would provide for true land use planning; balance the importance of mining, agriculture, forestry and tourism to the economy of Ontario; and ensure more open and transparent governance that respects the different realities in different regions of the province.

1440

In closing, these recommendations are intended to manage the resource wealth of Ontario in a way that balances the rights and interests of all, to protect the ecological systems upon which we all depend and to contribute to the sustainability of rural municipalities throughout the province. In our view, these recommendations would build on the positive changes in Bill 173 and fulfill the objective of truly modernizing the Mining Act.

The Chair (Mr. David Orazietti): Thank you for your presentation. Mr. Bisson.

Mr. Gilles Bisson: Two quick questions: On the land use planning, you're suggesting that you tie the mining sector to the municipal Planning Act. But in places like the far north, where there are no municipalities, is that doable, in your estimation, or do you really need a separate regime?

Ms. Kay Rogers: I won't speak for areas, Mr. Bisson, that fall under the unorganized communities act. I think that would be inappropriate.

Mr. Gilles Bisson: You're just talking about the geographic in the municipalities.

Ms. Kay Rogers: Yes, where there are municipalities that fall under the Planning Act.

Mr. Gilles Bisson: I get that and I see where you're going. The other thing is—when you write so many notes, it's to get back to the right one. Limit the number of years claims can be held: What would you suggest is the number?

Ms. Kay Rogers: Say, five years.

Mr. Gilles Bisson: Five years? Okay.

Ms. Kay Rogers: I mean, three to seven, but you get the idea. It can't go on and on and on.

Mr. Gilles Bisson: Yes, provided there's exploration, you can hang on to it, but if not, you lose it.

Ms. Kay Rogers: Yes.

The Chair (Mr. David Orazietti): Thank you, Mr. Bisson. Mr. Brown.

Mr. Michael A. Brown: Welcome. It's good to see you and thank you for your presentation. As you know, all staking, all mineral rights in southern Ontario will be brought back to the crown. I'm having some difficulty with your position. We listened this morning to the Ontario Real Estate Association, who told us they did not think that was the right way to go and that taking the mineral rights back to the crown was the correct way. Their argument, if I could paraphrase it, was simply that if you did that, it would permit private landowners, then, to resell those rights to whomever they chose and we would be right back where we started. Could you help me with that one?

Ms. Kay Rogers: I think it's a double-edged sword, Mr. Brown. On one hand—for example, on my property, I happen to own the mineral rights, so I could talk to our friends, the prospectors, and say, "Hi. I think there's gold in my hills. Come on over and let's take a look and we'll make a deal." There's a downside to that. If it's simply withdrawn, it is to ensure that there's certainty. I think that's the element of concern here.

But I think the other part that's important is that in our view, these three recommendations are almost like three legs on a milking stool. Whether the land that is going to be explored is my personal land or your personal land or whether it's crown land, which, indeed, belongs to all of us—

Mr. Michael A. Brown: The Queen. The Queen owns it.

Ms. Kay Rogers: —to the Queen, on behalf of all of us, if there are appropriate planning processes in place and an appropriate environmental assessment in place, then regardless of whether they're withdrawn or re-unified, we still have these other two legs to ensure that mining is done in an appropriate fashion. Again, we're not opposed to mining; it's rather that it be done properly. I hope that answers your question.

Mr. Michael A. Brown: Thank you.

The Chair (Mr. David Orazietti): Thanks, that's time for questions. Mr. Hillier.

Mr. Randy Hillier: Thank you very much. It's good for the committee to understand that there is, indeed, mining that happens south, in southern Ontario, as well, and it has different effects and consequences in the southern area than in the north, often.

Just to follow up on a question earlier, just to keep this in mind, where we have conflicts between mineral rights and surface rights in southern Ontario is on those lands where they are subdivided, where they are owned by different entities. Now, 98.6% of the land in southern Ontario is indeed unified, the same owner of mineral and surface rights, and there is not a problem with 98.6% of the people and the land in southern Ontario; the problem is on that 1.4% where the crown owns the mineral rights and somebody else owns the surface rights.

We've seen this suggestion of withdrawing staking from SRO lands is not satisfying the prospectors, it's not satisfying community groups, and it's not satisfying the private landowners. It appears that it is a compromise, a half step, that is not going to fix any problems and actually may create additional problems. In your view, would it be more appropriate to reunify those properties or just to withdraw staking from them? In addition, I understand the other two legs of the stool, and that will bring mining in southern Ontario in line with other uses.

Ms. Kay Rogers: My preference, Mr. Hillier, I think, and that of our group would be to see reunification. That would give equal rights to all of the property owners in southern Ontario. They'd have equal property rights. I find right now the crown is in a conflict-of-interest position: It partly owns the land and partly doesn't. Having two owners to one parcel of land—

Mr. Randy Hillier: Always causes problems.

Ms. Kay Rogers: Yes.

The Chair (Mr. David Orazietti): Thank you for your time and for your presentation.

ROBERT LAWRENCE

The Chair (Mr. David Orazietti): Our next presentation is from Mr. Robert Lawrence, an independent prospector. Good afternoon. Welcome to the Standing Committee on General Government. You have 15 minutes for your presentation and five for questions. If you could just start by stating your name for Hansard, and you can begin your presentation.

Mr. Robert Lawrence: Mr. Chairman, committee members, thank you for allowing me to be here. My name is Robert Lawrence. Prospecting is a second career for me. I've been doing this for three years now and have claims in the Larder Lake mining district and in the southern Ontario mining district. I have yet to make any money, but I'm working for myself. My aim is to follow the entire process to the point of having a producing mine. In each of the areas where I have claims, I am at the point of making diamond drilling my next step.

Concerning Bill 173, the Mining Amendment Act, these are my views and I am not trying to represent those who have spent a lifetime prospecting or those who work full-time prospecting. I have three areas of concern: aboriginal consultation and exploration permits, map staking and concurrent map and ground staking, and the prescribed prospector's awareness course.

First is the aboriginal consultation and exploration permit; that's subsection 78.2(1). I think all residents of a mining area should benefit from a mining venture through employment, a prosperous community, or perhaps royalties, and no residents should be harmed by it; for example, from pollution or restricted land use. But should I or an exploration company deal directly with First Nations bands when I am already working with MNDM approval? I think not.

In May of this year, I recorded a claim north of Larder Lake. The reply from MNDM included a letter from the Ontario geological survey. This letter advised me that I should start consultation at this point. They gave me some guidelines which aren't government guidelines and gave me a list of possible contacts. The gist of the letter was that after staking, before I do anything else, I should contact the Ottawa Metis, 800 kilometres east of my claims; a band in Amos, Quebec, 200 kilometres east; a band in Kirkland Lake, which is reasonable; and one in Matheson. This is before Bill 173 has become law.

Moving ahead to Bill 173, according to it, to get an exploration permit I will have to consult with First Nations. Who should I contact? Should I contact each of those four people they suggested that I contact in their letter? What will MNDM agree to? How long should these consultations take? If I have investors with $1 million ready for a drilling program, how long will they wait if this consultation drags on? What happens when, after consultations and agreements with appropriate bands have been made, some members of the band disagree? We've seen how that can lead to a lot of trouble.

I believe that in the actual regulations there must be a specific contact for me, the prospector, or other agency to deal with, and that contact must be in the Ministry of Northern Development and Mines, who in turn will deal with First Nations and keep the approval process in one place.

Another question is about the level of exploration that will make the requirement for an exploration permit. Right now, it's not stated. For example, will I need an exploration permit if I'm going to use a packsack drill on an ATV just to do some shallow drilling down to about 10 metres? I suggest that the final exploration permit should not be required until they're at the point of moving earth, doing roadwork and things like that. Otherwise, in my case, it would probably tie me up completely with consultations.

1450

The next item is the map staking and the concurrent map and ground staking. When the map staking is implemented, at what location will this start? If we start it too close to where the existing claims are, I don't believe they'll mesh, because I've seen out in the field that not everything shows up on a map the way it actually is on the ground. The other problem is, on each of the topographic maps, there's an error of plus or minus 50 metres built in. So how will this work out when you've staked it on a map, but that map position may not in fact be the real position on the ground?

Right now, when we do ground staking, I can stake the claim but I must have it recorded within 30 days. But there's evidence on the ground that this claim has been staked. They don't show how much time will be required to record your map staking. Seeing as how it's essentially done by computer, it should be a matter of hours at the most, but it still leaves an area there where there are going to be problems for establishing who owns a claim, at least for a very short period of time. Under map staking, small companies and individual prospectors will be at a disadvantage. Companies with money will be able to map-stake any amount of land as long as they pay the minimal recording fee of $40.80 for each 96-hectare claim. In seconds, without getting within 18,000 kilometres of Ontario, a company in Australia working online could claim 96,000 hectares for $40,800, and they could keep that 96,000 hectares tied up for two years without spending another cent, if they wished. Meanwhile, I could be out in the bush, surrounded by blackflies, trying to ground-stake some land that has already been claimed.

What we have now—the ground staking works. It provides work in areas that need work, and the claim boundaries are obvious. With map staking, they may not be.

The next point is the prescribed prospector's awareness course, which keeps cropping up when you read the regulations. No matter what, no one is going to avoid having that course. If you don't have a prospector's licence, you'll have to take that course before you get it; if you have one, you'll have to take that course. I hope it's going to be a serious course. I hope it's not just a little square we have to tick off and say, "Okay, that's done." I suggest that perhaps some of the topics should be how to do map staking, because I believe that will actually happen; perhaps something on the hierarchy of a First Nations band and what bands exist in mining divisions; what outstanding land claims could crop up; sensitive areas—are there cemeteries or burial grounds the average prospector wouldn't know about? Without government help, we just have no way of knowing that. The course shouldn't be more than a week and shouldn't be a financial burden for the prospector, and it should be in locations such as the offices of each of the mining divisions, like Tweed or Kirkland Lake.

As far as Bill 191, the Far North Act, I believe that development and mining should be encouraged in areas that need development. That's all I have about that.

I thank you for this opportunity to express my views. I'm thankful for the opportunity to be a prospector in Ontario. I explore, at the government's pleasure, for resources that belong to the province. When prospectors are successful, the benefits are distributed widely.

If there are any questions, I'm happy—

The Chair (Mr. David Orazietti): Thank you for your presentation.

Government caucus is first up. Mr. Brown?

Mr. Michael A. Brown: Thank you for coming, Mr. Lawrence. A second career—wow, what a choice.

Mr. Robert Lawrence: It'll be a short career.

Mr. Michael A. Brown: That's exciting.

You're the first one—well, the first one I've had the opportunity, anyway, of asking about map staking. You should know that map staking already happens in British Columbia and Quebec and Newfoundland and—

Mr. Robert Lawrence: Nova Scotia.

Mr. Michael A. Brown: Yes. So you know. We share some of your concerns here in Ontario, so it won't happen in one grand swoop. We have to learn as we go from this, because we have some of the same concerns you do, that some large corporation or group would make huge amounts of claims, and you take the playing field beyond any kind of reasonable fashion. So we understand that. But one of the advantages of map staking, as you probably know, is that you don't have to intrude on anyone. Particularly in the far north area, where there have been conflicts between prospectors going in to stake, this is a way to do that: secure the land and then go talk to the First Nation or community, whatever it happens to be, that you've secured a way to do that. So I guess that's the reason. Do you have some further comments on that from a private, independent prospector?

Mr. Robert Lawrence: Well, I think the disadvantage of map staking is that it may be a long time before anyone is actually on the ground and takes a look at anything. They can have the claim; it's sitting there on a map, but essentially it's just going to be vacant land that's tied up for anybody who might—

Mr. Michael A. Brown: The regime, though, causes me to do a certain amount of work every year to maintain—

Mr. Robert Lawrence: Yeah, but you could wait two years before you—at least that's the way it is now: Wait two years, then chances are a company, just for $40,000 or so, could go ahead. It's cheaper than doing the work to reclaim it, unless some other company decides that they

have got the touch to get their computers online and get the coordinates staked at the right time.

The Chair (Mr. David Orazietti): Thank you very much for your questions. Mr. Bisson.

Mr. Gilles Bisson: Sorry; I had to step out, but I got the gist of it from my friend here.

How do you reconcile the issue of open staking—and I understand the issue; I don't need you to explain it—and the want on the part of First Nations to be consulted before somebody comes on their traditional territory for staking?

Mr. Robert Lawrence: I say the consultation should be done through the Ministry of Northern Development and Mines.

Mr. Gilles Bisson: But what's to prevent—okay, so I'm the prospector. I think there is mineral potential in a particular area that's affected by a First Nation; it's on their territory. I go to the Ministry of Mines. I say, "I'm interested." They go and talk to the First Nations. Then the problem I have is that somebody else is going to find out I'm looking at staking the ground and its potential there. I may very well lose it. Therefore, how do you maintain the need to basically secure the land for the prospector but at the same time be able to give the First Nations comfort in knowing that there's not going to be something that's going to happen without their knowledge and that they have some consent?

Mr. Robert Lawrence: Sorry. Are we talking about an actual First Nations reservation?

Mr. Gilles Bisson: I'm talking about traditional territory.

Mr. Robert Lawrence: Traditional territory.

Mr. Gilles Bisson: That's all of the NAN territory.

Mr. Robert Lawrence: Well, a lot of them will tell you it's all of southern Ontario too. Yes, if you're going to have to declare your hand to them, I guess that's it; there's no way around it.

The Chair (Mr. David Orazietti): Thank you very much for coming in today, and thank you for your presentation.

COMMUNITY COALITION AGAINST MINING URANIUM

The Chair (Mr. David Orazietti): The next presentation is the Community Coalition Against Mining Uranium. Good afternoon. Welcome to the Standing Committee on General Government. You have 15 minutes for your presentation and five for questions. If you could state your name, and you can begin your presentation.

Mr. Wolfe Erlichman: My name is Wolfe Erlichman. The Community Coalition Against Mining Uranium, or CCAMU, welcomes the opportunity to make a presentation to the committee on the Mining Amendment Act and to assist in bringing the Mining Act into the 21st century. We will be making a more detailed written submission to the committee as well.

CCAMU is a grassroots organization based in the Sharbot Lake area. Our community, together with First Nations, municipalities and other groups, calls for a moratorium on uranium exploration and mining in eastern Ontario. We join thousands of individuals who have signed petitions, written letters and communicated with MNDM and elected officials to express our concerns about exploration for uranium and the need for a moratorium. It is the position of CCAMU that the best solution is to establish a moratorium or ban that would prohibit exploration and mining activities for uranium in Ontario in order to protect public health, safety and the environment from the impact of uranium.

1500

Protests against uranium exploration have been vigorous near Sharbot Lake, west of Ottawa. As an example, a grandmother from the Sharbot Lake area went on a hunger strike for 68 days in 2008, requesting that the Ontario government put in place a moratorium on uranium exploration and mining in eastern Ontario. In the summer of 2007, the First Nations and non-native communities of eastern Ontario came together to create a powerful force that has gained much attention worldwide.

In our opinion, the Mining Amendment Act, Bill 173, is lacking in three major areas: It does not address the special concerns, risks and issues around exploration for uranium; it is silent on consultation with non-aboriginal communities; and there are no provisions for environmental assessment.

If exploring and mining for uranium is not banned, then we think that uranium exploration and mining should have special recognition in the Mining Amendment Act and in the regulations. Unlike other minerals, uranium is dangerous due to its radioactive nature and is recognized as such by Ontario and Canada. It is unique in that it is the only mineral that is regulated federally at the mining stage. The earliest of the mining stages can be carried out without regulation, even though they may have significant health impacts, and local communities and municipalities have no input.

Because the impact of uranium mining is more severe than mining for other minerals, there should be some broader consultation and agreement from the affected community if these activities are to take place.

One of the reasons that uranium exploration is being opposed is the belief that it can negatively impact water, air and the environment generally, putting both people and the environment at risk. According to the Ministry of the Environment, "Certain exploration activities carry with them a certain level of risk for environmental impairment if undertaken without appropriate precautions. The drilling of exploratory boreholes may lead to risk to the environment if such boreholes are not properly maintained while in use or properly abandoned when no longer required ... there are no regulations specifically governing the mineral exploration industry."

It is CCAMU's position that local concerns about uranium exploration are justified, given that the current regulatory regime for managing uranium exploration

activities in Ontario is deficient. It provides few tools for monitoring and mitigating impacts of uranium exploration on water resources and the environment. There are no special instructions when drilling for uranium ore, as to what are the most appropriate practices to limit the exposure of water to uranium, particularly when an aquifer is encountered during drilling. There are no instructions for appropriately dealing with uranium waste rock during exploration. There are no requirements to monitor uranium concentrations in drinking water supplies that may be affected by the exploration activities. The instructions for abandoning unwanted material from drilling by piling waste to a height of 1.5 metres and at a distance of 61.5 metres from permanent water bodies are insufficient to limit uranium contamination. The regulations do allow the resident geologist to add conditions on the handling of drilling wastes. Presumably, this provision could be used to address uranium waste. However, the discretionary nature of this provision does not provide any certainty that uranium waste rock will consistently be disposed of in an adequate manner.

Regardless of the percentage of uranium that may be encountered during exploration, Ontario has no standards or guidelines setting restrictions on exploration. Saskatchewan does have such requirements, which include the following:

—A minimum 100 metres must be maintained between the drill site clearing and any water body or watercourse.

—Drilling effluent shall be contained.

—Where possible, all efforts shall be used to prevent drill mud, return water, and cuttings from running uncontrolled from the site or to within 100 metres of a water body or watercourse. Appropriate erosion control measures may need to be implemented.

—Drill mud solids or cuttings with a uranium concentration greater than 0.05% are to be collected and then disposed of down the drill hole and sealed.

—Any drill hole that encounters mineralization with a uranium content greater than 1% over a length longer than one metre, and with a metre-percent concentration larger than five, will be sealed by grouting over the entire length of the mineralization zone and not less than 10 metres above or below each mineralization zone.

CCAMU recommends:

—that there be standards for uranium exploration and restoration of sites;

—that legislation should be passed that relates specifically to uranium exploration which would include environmental impact assessments and restrictions in populated areas and watersheds; permitting, including the initial exploration and drilling phases, backed by clear regulations designed to protect the environment and public health and approved by related ministries; fines and penalties as described in Bill 173 should remain;

—that there be strict environmental rehabilitation requirements related to exploration activities;

—regulations should require that all bore drilling holes be abandoned according to strict standards, as found in Saskatchewan.

In order to take into account the risks associated with uranium, uranium exploration should be treated differently than other minerals. It follows that there needs to be permitting for all mineral exploration on the ground. If uranium is not treated as a special case, all activities that involve ground exploration should require a permit with strict, prescribed conditions and restrictions to cover the risks associated with uranium. The cumulative impact of drilling for uranium and abandoning of drill holes without proper restoration should be addressed by having the proper restoration of historic drill holes be a condition of permitting.

The Mining Amendment Act needs to consider the impacts of uranium exploration on water resources. Like New Brunswick, Ontario should have enhanced regulations to address potential impacts of exploration for uranium on surface water supply watersheds to address public concerns and to help protect drinking water. New Brunswick's regulations limit uranium exploration and staking of claims. Exploration is now banned on municipal land, in towns and cities, in designated watersheds, in fields with private wells and in proximity to dwellings. The new regulations are retroactive and exploration on previous claims in areas that are now banned will not be able to continue. Other initiatives focus on appropriate buffering, compliance and enforcement.

New Brunswick also upgraded drilling requirements and adopted guidelines used by Saskatchewan for uranium exploration to include more specific rules designed to protect the environment and the health of New Brunswickers. Claimholders must comply with regulations that include restrictions outlined in the Clean Water Act and Clean Environment Act before they can start exploratory work. The acts identify and map surface water supply watersheds and outline prohibitions, specifically naming uranium, in order to protect drinking water. The revised conditions include restrictions on mineral exploration in designated watersheds. The New Brunswick Clean Water Act has been amended to protect public water supply systems with sections that prohibit exploration for uranium in designated watersheds.

The New Brunswick legislation provides a model that should be considered from a number of different vantage points, including:

—identifying and protecting watersheds;

—provisions that establish the priority of the Clean Water Act;

—addressing the concerns of the public at the exploration stage;

—adopting Saskatchewan guidelines;

—protecting the existing and future well-being of the residents and communities; and

—restricting exploration for uranium in designated areas.

CCAMU recommends that the precautionary principle be followed, and no person should prospect or explore for uranium in areas identified as a source of drinking water through acts such as the Clean Water Act and the Drinking Source Water Protection Act in areas with

private wells, in municipalities, or within one kilometre of residential or institutional buildings.

In relation to public participation, the existing legal framework falls short in relation to public participation because it provides no avenues for addressing community concerns about uranium exploration activities. Currently, public concerns about the environmental impact of preliminary exploration cannot be heard. Widespread opposition often occurs when there is no provision for public input and participation in the decision-making processes. The bill needs to address this.

CCAMU recommends that the Mining Amendment Act reflect the principle that public participation, including but not limited to aboriginal consultation, is an important element of an open and balanced decision-making process. There should be an obligation to create opportunities for the active and informed participation of the public at every possible stage of the exploration process. At all times, there should be a process to protect and promote the existing and future well-being of all residents, including residents of Ontario outside the exploration area.

Finally, the environmental assessment: There are no provisions within the Mining Amendment Act requiring environmental assessment or environmental impact studies for preliminary exploration activities. If there were such provisions, proposed exploration projects that raise special concerns, which is often the case with uranium exploration, could be addressed in a process that integrates permitting of exploration with environmental assessment.

Within the permitting process, environmental assessments would allow for a determination of whether a project should proceed—and if so, to determine terms and conditions—and recognize the crucial role that such an assessment can play to ensure that all the significant impacts of proposed exploration projects are taken under consideration. Also, it would allow permitting that has minimum environmental impact on water and other environmental resources. A process for permitting should allow transparent terms and conditions for how exploration should take place. CCAMU recommends that until a process is established to assess risk, no person shall prospect or explore for uranium until environmental assessment requirements are in place.

1510

Other considerations: One is that the values of today's world no longer assume that mining and exploration activities are the best use of land and that these activities are compatible with existing land use. There should be consideration for municipal policies as found in local official plans and local zoning bylaws.

The final recommendation is that the next step should include not just the Mining Act legislation but also the provincial policy statement; the relationship with other legislation and policies, including those related to environmental protection; the relationship of mining activities to municipal powers, including municipal official plans; the Environmental Assessment Act; and methods of environmental protection.

Thank you.

The Acting Chair (Mr. Mike Colle): Thank you, Mr. Erlichman. Questions? The PC caucus.

Mr. Toby Barrett: Thank you for that presentation on behalf of the Community Coalition Against Mining Uranium. You indicated that uranium is unique: It's the only mineral that's regulated federally at the mining stage. In your presentation, you talked about there being no community participation other than aboriginal people, apparently.

Mr. Wolfe Erlichman: Well, no. That was a reference to the amendments to the Mining Act where you're going to have community plans up north. There's a lot of talk about involving aboriginal communities in the planning process; whereas in my case, if I'm living beside crown land in southern Ontario, I'm not involved at all if anybody wants to stake that crown land and go ahead. There's no public participation at all.

Mr. Toby Barrett: So the area up in Sharbot and north of 7—I was up there last summer—have there been meetings hosted by either level of government, national or provincial, about the exploration issues?

Mr. Wolfe Erlichman: There was a meeting in Kingston and in Ottawa in relation to amending the Mining Act, but—

Mr. Toby Barrett: Yes, and I attended one in Toronto as well. I just wondered, specifically, about that issue up around Sharbot Lake.

Mr. Wolfe Erlichman: No. There's been none.

Mr. Toby Barrett: I see. And as far as your call for environmental impact assessments, environmental restrictions, environmental rehabilitation, is that not in place now at the federal level just because they regulate uranium mining?

Mr. Wolfe Erlichman: They regulate mining, but I'm talking about the exploration stage. In other words, the point was made by a previous speaker that if a non-profit group wanted to do something in terms of a camp, you'd have to have an environmental assessment, but if somebody came and started exploring and drilling for uranium at the exploration stage, there is no environmental assessment. We're saying there should be one.

Mr. Toby Barrett: That would be neither national or provincial?

Mr. Wolfe Erlichman: The federal government doesn't get involved until there is an actual mine; the exploration stage is totally provincial.

The Acting Chair (Mr. Mike Colle): Thank you. Mr. Bisson.

Mr. Gilles Bisson: Just a couple of questions in regard to the planning act: Is it your sense that if uranium mining was under the authority of the municipal official plan, your rights would be protected?

Mr. Wolfe Erlichman: CCAMU's initial position is that there should be a ban on uranium mining; we don't think uranium should be mined. But if that's not the case, then we're suggesting that, like any other kind of mining, it be under local municipal—it would be just like any

other activity done at the local level. It shouldn't supersede the official plan.

Mr. Gilles Bisson: Okay. Your first position is no uranium exploration, banning that, then making it consistent with and having to follow the municipal official plan?

Mr. Wolfe Erlichman: Yes.

Mr. Gilles Bisson: But most municipalities would not be well prepared or have the capacity to deal with the issues around uranium mining, so where does that leave you? That's what I'm trying to figure out here.

Mr. Wolfe Erlichman: Well—

Mr. Gilles Bisson: Some communities, like maybe Elliot Lake, would, because they know something about uranium, but a whole bunch of other communities would have little in the way of capacity. Wouldn't you be better off under some provincial guideline or some provincial regulation or law?

Mr. Wolfe Erlichman: That's what we asked for in terms of amending the Mining Act. We've asked that uranium be treated as a special mineral but the ministry maintains that they're all the same. We said, "Well, if that's how you want to deal with it, then"—and we make the point here. It's lost in here, but the point we make is that there should be special standards for uranium mining, and if you don't want to designate it as a special thing, then apply those across the board for everything.

Mr. Gilles Bisson: I understand your argument in regard to—

The Acting Chair (Mr. Mike Colle): Okay, thank you.

Mr. Gilles Bisson: No, thank you very much, Chair. That was very good. Thank you very much. Next question, please.

The Acting Chair (Mr. Mike Colle): Next question.

Mr. Michael A. Brown: Thank you, Mr. Chair.

Thank you for coming; I appreciate your comments. My question is kind of a practical one, I think, about staking and then exploration following it. If I am a prospector and wish to stake a claim, I don't say I'm going out to stake a claim for gold or bauxite or uranium or whatever you want. I stake a claim, and when I go to prove out that claim, according to the Mining Act as it goes forward, I have to do a certain amount of work on that claim every year. I don't have to tell you or the government or anyone else whether it's uranium or gold or gypsum that I'm looking for; all you have to do is do the work. Are you suggesting, therefore, that there be some kind of requirement that someone exploring on a claim would have to say up front, "I'm doing uranium; that's what it is that I'm exploring for"?

Mr. Wolfe Erlichman: I think that you have situations like in Nova Scotia and New Brunswick where, if you are doing exploration work and you run across—I don't know the exact number—a significant percentage of uranium, then at that point you have to notify the province and certain things come into play.

The other thing that happens is that oftentimes people say, "We are going to explore for uranium." Companies say that exactly because they evidently know, or maybe there are maps at Queen's Park that say that. There are certain situations where, when you are doing exploratory work, you come across a certain percentage of uranium, and it's at that point, I think, that you have to—

Mr. Michael A. Brown: So there's a trigger. That's how you would see this working?

Mr. Wolfe Erlichman: I think that's how it works in some of the provinces, like New Brunswick and Nova Scotia.

Mr. Michael A. Brown: Because I know for a fact—I represent Elliot Lake and some areas which have high uranium potential, but I also represent the Hemlo goldfields, or I'm right next door to them, and I know that we drove over those fields for a long time before anybody even suspected that right under the Trans-Canada Highway we had a gold mine. It could have just as easily been a uranium mine.

Mr. Wolfe Erlichman: That's right.

The Acting Chair (Mr. Mike Colle): Okay, thank you. Thank you, Mr. Erlichman. We appreciate it.

SAGAMOK ANISHNAWBEK

The Acting Chair (Mr. Mike Colle): Next is Sagamok mining, Chief Paul Eshkakogan and Dean Assinewe, minerals development coordinator. You have 15 minutes for a presentation and then five minutes for questions. So if you could identify yourself when you start speaking and we'll begin. Welcome.

Chief Paul Eshkakogan: *Remarks in Ojibwa.*

My name is Paul Eshkakogan. I'm the elected chief of the Sagamok Anishnawbek and not Sagamok mining. Thank you for a fairly close pronunciation of my last name there, Mr. Chair.

The Acting Chair (Mr. Mike Colle): My first language is Italian, so you'll have to give me some—

Chief Paul Eshkakogan: No problem. I want to begin by thanking the standing committee for the opportunity to speak here today with respect to the Mining Act. I also want to acknowledge the efforts of Minister Gravelle and Minister Duguid for involving the First Nations in these discussions which have been going on for well over a year. I make that statement only from our community's point of view because we've had opportunities to speak to government with respect to the discussions around the Mining Act.

1520

Sagamok was also involved and participated with the Union of Ontario Indians in gathering input and concerns right across the Union of Ontario Indians' territory. I also want to acknowledge our political and territorial organization for the fine work that they've done, along with working with the provincial government.

I'm not sure if our slide show is—

Interjection.

Chief Paul Eshkakogan: We had a slideshow planned, but I think you have it in front of you.

Our community is made up of Ojibwa, Odawa and Pottawatomi nations. We have a population of about 2,400 on and off reserve. On reserve we have about 1,450, so that's kind of rare in Ontario in terms of First Nations communities. We have more than 50% of our population residing in our community.

We have about 120 families on government assistance, social assistance, a caseload of 220; 60% of our adult workforce is unemployed. This is why we need to have meaningful participation in resource development, to address poverty in our community.

Our community, our First Nation government, has ISO 9001 certification, and we've had that for about three years. We're accountable and transparent. We have a way of explaining the ISO: Say what you do, do what you say. You check it and prove that you've done the work and you improve on that. We do that through our own work plans and policies.

We're also signatories to the Robinson-Huron Treaty of 1850. We consider minerals an important part of our way of life and culture. We exercise our treaty rights in our treaty lands and within our traditional territories. One of the things that we've done last year was we had a fall gathering on our traditional territory north of Webbwood. Some of you might be familiar with the West Branch Road. We had a fall gathering there where our community members gathered to hunt, fish and gather.

The Sagamok capacity that we have: We developed a mineral strategy in 2007, and that really allowed our community members to learn about mining and the mining cycle. We've also increased capacity of our council and community, again in the mining cycle. We've undertaken community consultations and discussions in our community. We have a position that's dedicated to this area of resource development and mining, and that gentleman is sitting to my right, Dean Assinewe.

We've also developed Sagamok consultation guildelines. These really spell out how government and industry will consult with our community on a wide range of issues. Mostly it has been about resource development. So we have a process and we apply that process and it works.

I guess overall we've been on this learning curve, and we've done it in the current environment and we've had success.

I also want to talk about some of the engagement that we have with development companies.

Right now, we're in negotiations with Vale Inco with respect to the Totten mine project just west of Sudbury, near Worthington. We're hoping to conclude an impact benefit agreement by this spring.

We've concluded our impact benefit agreement with Ursa Major Minerals. They're a small to medium junior mining company. They have an operation in Shakespeare township in the Agnew Lake area, Espanola area. We'll be signing that IBA, actually, on August 12, so we're very pleased with that.

We're in discussions with Western Areas. That's a miner from Australia. They're exploring in the East Bull Lake area. We've started some very good relationships with them and we hope they continue. They're in the middle of explorations there right now. We've had our people working there.

We've created partnerships around all of this activity; for example, with Logan Drilling, a fairly large driller from the east coast. We've started a partnership with Becker Engineering from Windsor, Ontario. We also have partnerships with Cementation; T Bell; mySmart-Simulations, a computer trainer design company. We're looking at some hydro and wind power developments.

Our goals: Obviously, we always need to protect our aboriginal and treaty rights. We're also talking about treaty implementation, ensuring environmental stewardship roles and responsibilities. I always describe this one, when we sit down with a mining company, by saying we want something more than just going around and collecting water samples; we want real capacity to train our people, to be involved in the interpretation of data, and to involve our elders in the areas of traditional ecological knowledge. We want to secure employment and training benefits, contracting and supply benefits. We're also seeking some type of financial support from mining companies to enhance our programs and to start to address the poverty situation in our community.

The Sagamok position on mineral resource development: Again, we strive for meaningful consultation and accommodation; prior, free and informed consent; and compensation and forms of accommodation determined jointly by Sagamok and the crown. I think those things are being attained now, again, in this current environment, and we hope to see more positive developments coming from this mining act.

I'm going to turn it over to Dean now to quickly go through some of our comments on the bill itself.

1530

Mr. Dean Assinewe: Thank you, Paul. Again, my name is Dean Assinewe. I'm a professional forester and Sagamok's minerals development coordinator. In my section, I'll talk specifically about Bill 173.

Out of the act, there are about 200 sections, and references to First Nations or the far north—it's a rough estimate—happen about 10 or 15 times. But right at the beginning it specifies that the Mining Act—or our recommendation is that the Mining Act and rights and interests granted pursuant to it must not supersede or adversely impact aboriginal rights. We observe that it is weak in its recognition despite appearances, such as in section 2 and section 46, where it relates to leases subject to aboriginal and treaty rights. The purpose clause of section 2 references the duty to consult but does not mention anything about accommodation, which, again, is recognized in the Supreme Court of Canada court law.

Both provisions will require First Nations to prove assertions of aboriginal and treaty rights, which are only now being defined in law, so there are a lot of areas where First Nations need to establish these things as well. The province is likely to require evidence of aboriginal and treaty rights, imposing the burden of proof on First Nations.

While I go through all this, I want to just raise the awareness or concern of First Nations people that there are capacity issues at the First Nations level—at both human and financial resources, to do this kind of work.

Where it relates to granting of mineral tenures, First Nations should be consulted prior to staking and recording of mineral claims within our traditional territories. Some of the ideas behind that are, what is the mineral potential that is there already and what are the potential impacts of companies coming in? So it is fundamentally flawed to the extent it maintains the free entry system. It does not support the free and informed consent of First Nations to mineral development projects that may detrimentally impact our aboriginal and treaty rights.

Again, it points to the importance of First Nations land use planning, not only in the far north but in the areas of the undertaking where both population and pressure on the resources is quite high. Right now there's a strong belief in those communities at the moment that if the boots hit the ground in the forest or on the land, our aboriginal and treaty rights have the potential to be adversely impacted.

Just to continue, Bill 173 does not provide for consultation or notification by the crown—and we wanted to emphasize that—to First Nations in relation to:

—prospecting activity in First Nation traditional territory;

—staking and recording of mining claims;

—issuance of tenures: licences of occupation, leases or patents;

—approval of exploration plans and permits—well, there is mention of that; and

—annual assessment work requirements and financial payments.

Further to that, it does not provide for consultation or notifications by the crown—again—to First Nations in relation to:

—minister's permission to mine more than the prescribed volumes—

The Acting Chair (Mr. Mike Colle): Excuse me, you have one minute left.

Mr. Dean Assinewe: Okay. I guess to sum it all up, then, we need to provide a lot of emphasis on the need for land use planning in First Nation territories and address the capacity issues at those levels to meaningfully provide input into the decision-making of the crown where it relates to all activities of the mining cycle.

Paul, any last words that you want to add?

Chief Paul Eshkakogan: No, not offhand, I guess. We're really glad to be here.

Mr. Dean Assinewe: You have my presentation in front of you there. I just was hoping more time—

Chief Paul Eshkakogan: And we did submit a position paper back in the winter that speaks to our issues.

The Acting Chair (Mr. Mike Colle): Okay. Thank you very much. A question from the NDP.

Mr. Gilles Bisson: Not so much a question. I'm just going to make a comment; you can chime in after. I guess part of the problem I'm having with this is that I think most people are onside with the objective. I think we all want to get to the same place. We want to make sure that if there is going to be mining activity, or whatever activities on traditional lands that have happened, and it's in a sustainable way, that First Nations are part of the process, that you have a real say and that there's real revenue-sharing at the end.

I'm listening to this presentation and you can't even get through it in the 15 minutes that you've got. So what do we need to do in regard to making sure that we get this right? Because it's my sense that after five days of hearings, we'll be just as confused as we were at the beginning, and if that's the case, where the heck do we go with this at the end?

Chief Paul Eshkakogan: You can all come to Sagamok if you want, and we can talk to you there.

Mr. Gilles Bisson: I gave you that softball.

Chief Paul Eshkakogan: We've been on a tremendous learning curve, our community. If it wasn't for the leadership, the council, the elders—really, what it has come down to is the community wants to enjoy those employment benefits, too. But at the same time, we have to protect the environment. We think that with our involvement, that can be attained.

The Chair (Mr. David Orazietti): Thank you. Mr. Miller.

Mr. Paul Miller: I just have a quick question, Paul. I guess what you're saying in your presentation is that the language within the bill is not strong enough to spell out the position of the First Nations. That's the main thing that you're complaining about, right?

The second fact, and I have a quick question on this: There was a small prospector in here. You talked about how you're dealing with the larger prospectors; how do you feel that the smaller prospector should have to go? Should he have the government represent him or should he be dealing directly with First Nations? Because he didn't seem to think that that was a good way to go; he'd rather the government did it. How do you feel?

Chief Paul Eshkakogan: We think that there should be involvement by the government, but other communities don't want the government involved because this is a business deal in some of these cases. I think that we've been fortunate to move as far as we can without too much involvement from the government.

I do want to acknowledge that we were funded by the provincial and federal governments, and Vale Inco also funded us to get on that capacity curve. Just to make my answer short, I guess.

Mr. Paul Miller: Just that question on the small prospector, how does he deal? Do you feel that he should deal directly with First Nations or through the government?

Chief Paul Eshkakogan: Definitely. I think they've all got to come in and talk to us and at least let us know where they are so that we can put that on our GIS system and so we know where to get a hold of them and they can let us know what stage they're at. Again, our discussion

with him was, "What are you doing? Is there an opportunity for us to get involved? Do you need any assistance?" We're open to those things.

Mr. Paul Miller: Thank you.

The Chair (Mr. David Orazietti): Thank you for your question. Mr. Brown.

Mr. Michael A. Brown: Thank you, Chief. Dean, it's good to see you. Thanks for making the trek today from Sagamok down here. I'm glad you raised the issue of providing some funds for capacity building on First Nations, not just yours, but others. I suspect we will need to provide more as we go through this process.

I want you to tell me a little bit more about your announcement for next Wednesday. You have a partnership or an agreement with Vale Inco about—is it Vale Inco?—with the Ursa Major Minerals company that you're going to announce on Wednesday. Could you give us a little idea of what benefit that would be to the First Nation?

Chief Paul Eshkakogan: The company is listed on the TSX; it's a small to medium junior mining company. They have an open-pit operation in the Shakespeare township just north of Agnew Lake, within our traditional territory. We're having a signing ceremony on August 12. It's very important for our community. It concludes approximately three-plus years of negotiations.

We're going to play a meaningful role in the environmental management regime that they have. We're going to have contract and supply services opportunities in the area of hauling the ore—into Sudbury is what the plan is right now. That's one of the opportunities. We're going to have a percentage of employment on-site and also some financial support for our community as the mine progresses. We're hoping that the mine goes back into production. They did take out about 100,000 tonnes of what they call a bulk sample. We've supported their closure plan. We're ready to go. Nickel was at $9 a pound yesterday. That's a good spike. I hope it stays sort of in that neighbourhood, and things will be good, I think.

1540

The Chair (Mr. David Orazietti): Thank you for your question.

Mr. Michael A. Brown: I just want to thank the First Nation for the work you do, and also the positive impact well beyond your borders on the general economy of the north shore.

Chief Paul Eshkakogan: It's going to be huge for the north shore economy, especially with forestry. You heard Dean saying he was a forestry tech—sorry, registered professional forester moved over to mining.

The Chair (Mr. David Orazietti): Thank you. Mr. Hillier, questions.

Mr. Randy Hillier: Thank you very much for being here today. You mentioned in your comments and also in the presentation that under the current environment you've been very successful, and you've mentioned a few of these impact benefits with Vale and memorandums of understanding—very positive, good to see. Do you see Bill 173 as a piece of legislation that is going to improve and streamline that relationship for success or do you see that there are opportunities for greater bureaucratic obstacles or red tape, in your view? What do we need for First Nations to be economically successful and to prosper?

Chief Paul Eshkakogan: Well, we certainly don't want to take a step backwards or two steps backwards. We have yet to really take a very close look at the legislation itself, but our thinking is that we'll find ways to work with industry to get to the same points we want to be at. We're certainly hoping that the right messages are sent to industry also, that there are communities there that are willing to sit down and talk about resource development. To be frank and honest with you, we are having difficulty in the area of financial benefits. That was a tough area. I want to also acknowledge the Kitchenuhmaykoosib Inninuwug people and their chief and council for taking the steps they did because that was a catalyst, I think, for good discussions to happen.

The Chair (Mr. David Orazietti): Thank you. That's time for your presentation. We appreciate your coming in today.

Chief Paul Eshkakogan: Meegwetch.

MININGWATCH CANADA

The Chair (Mr. David Orazietti): The next presentation: Mining Watch Canada. Good afternoon. Welcome to the Standing Committee on General Government. You have 15 minutes for your presentation and five minutes for questions among the members of the committee. You can just state your name and begin when you like.

Mr. Ramsey Hart: Thank you very much. My name is Ramsey Hart and I work for MiningWatch Canada. It's a long day, isn't it? I'm going to try to keep my comments fairly brief and not go over things that people have already said, because I know we're all getting a little saturated.

Mr. Gilles Bisson: Not at all.

Mr. Ramsey Hart: Not at all. You want more, right?

Mining Watch Canada, very briefly, is a national non-profit organization. We work on mining issues within Canada and internationally. Our aim is to protect communities, wildlife and the environment from irresponsible mining practices. Our members include labour organizations, social justice groups, environmental and faith-based organizations.

We've had reform of the Ontario Mining Act as one of our core projects for a number of years. In the current process, we participated in the consultations here in Toronto—we've submitted a number of briefs—and I anticipate submitting perhaps one more brief to the committee that outlines some very specific recommendations that I didn't want to bog you down with in my presentation today.

I was struggling with how to get across my 20 pages of comments on Bill 173 to you in 15 minutes of an oral presentation. A friend of mine said, "Well, what are your

three take-homes?" I struggled with that for awhile and then I realized that I could summarize most of our recommendations with three—dare I call them—motherhood-kind of statements. These are things we've all heard lots of times in other contexts, and they are: First and foremost, "An ounce of prevention is worth a pound of cure"; second, "Please clean up after yourself"; and third, "If it's hot, don't touch it."

Before I go into the details of what I mean by those three statements, I very briefly just want to give you MiningWatch's take on the mining industry.

We certainly recognize the important role it plays in the economy of Ontario, but we do feel that perhaps the weight of the economic input is somewhat overstated at times and that it is perhaps out of balance with the privileges that it gains. We recognize that it employs people with high-wage jobs, but that is often unstable employment.

Our current mining projects are not the Sudburys, the Timminses, the Kirkland Lakes of today. Future mines are typically having lives of 15 to 30 years, which brings challenges for community sustainability and lasting benefits. We're talking about 22,000-odd jobs in Ontario. These are Ontario Mining Association figures. Compare that with the non-profit sector, where there are 373,000 people employed by the non-profit sector in Ontario. And 1.8% of GDP—I'm going to skip over that.

The benefits that the mining industry obtains include a litany of tax advantages like flow-through shares, a 10-year tax holiday for remote mines, Canadian exploration tax credits etc. We're still going to be waiting another three years until we have an environmental assessment framework for mining. It's recognized as the highest-priority land use in Ontario. And the industry has enjoyed relatively easy access to land, including crown land and traditional territories, for a non-renewable resource.

Our basic conclusion, after summing all that up, is that the framework in which the industry operates is currently out of balance. We share that conclusion with the government, and the need for balance is clearly articulated in the documents leading up to where we are today.

How do we achieve balance? We think that by following those three nice motherhood recommendations, we could go a long way.

In terms of prevention, our belief is that preventing problematic mining projects from going down the line in the mining sequence, identifying them upfront and either mitigating the issues or simply saying, "This is not an appropriate project," as early as possible is to the benefit of everyone. It has the potential to reduce conflict and it has the potential to actually increase the predictability that the mining sector so often asks for.

How do we do that? Land use planning—we've heard a lot about that already today; consultation, including the free, prior and informed consent of aboriginal communities; as we've heard a lot of today as well, agreement with municipalities in southern areas, where municipalities are decision-makers, and perhaps also conservation authorities that have a stake in water management. We need to respect other land users and land uses and include provisions for environmental impact assessment.

Cleaning up after oneself: It's our belief that industry should cover the full costs and liabilities for fully rehabilitating their projects, including exploration work. This can be done by requiring cleanup of exploration sites, which is not currently done unless you're going to advanced exploration, and removing the option of self-assurance. Self-assurance is currently the most common way that companies are held accountable, which basically means that if they have a good enough credit rating, they don't have to provide hard currency in terms of security. As well, the Environmental Commissioner of Ontario is on record as saying that's a very problematic option.

We'd like to see greater transparency and independent review. That could be by the MNDM. It used to do fairly rigorous reviews of financial issues around closure, and no longer has the resources to do it.

We also think the industry should pay for the monitoring and enforcement of its activities, and that adequate fees and taxes need to be levied in order to ensure that.

Just a few pictures of some preliminary exploration work, in case you've never seen it on the land. These are mostly from southern Ontario and one from the north.

Mr. Gilles Bisson: The one with snow, is that from the north?

Mr. Ramsey Hart: No, this is southern Ontario. This is Tay Valley. It snows down south too.

This is the one up north of the Superior shore. Again, these are all preliminary exploration activities.

This is a uranium exploration site near Bancroft, as is this.

Interjection.

1550

Mr. Ramsey Hart: Haliburton.

Our last statement: Don't touch it if it's hot. MiningWatch has been on record since 2007 requesting a moratorium on additional uranium mines in Canada. We also see that, if uranium exploration is to continue, there should be special considerations. I feel that has been fairly well addressed by other speakers, so I'm not going to belabour the point. But if you'd like to ask me questions about it, I'd be happy to address them.

So how to does Bill 173 stack up here? At a sort of over-macro view, we're pleased to see the recognition of aboriginal rights and land use planning in the far north, though there are concerns about the details of that which we and others have expressed. We are very pleased to see exploration permits introduced. The fees and taxes and increases in penalties are all very important steps, and we're pleased to see some of the opportunities for land withdrawals, including the withdrawal of surface-rights-only land in the south.

From this sort of large overview perspective, we also have some concerns—the degree of ministerial discretion that is within the act. Areas that have been withdrawn by the minister—if they happen to be staked by a pros-

pector, the prospector can go back to the minister and say, "Well, jeez, I staked lands that are open. Is that okay? Can I still do that?" According to the act, the minister can say, "Sure, yes. That's fine." That seems a little disingenuous, I suppose, so we'd like to see things tightened up in that regard.

I share the prospector association's concerns about the lack of detail in the amount of items that are being left to full development in regulations. And completely lacking from the act is anything to address uranium, environmental assessment or improvements to mine-closure practices.

So is there an ounce of prevention in Bill 173? We're quite concerned that free, prior and informed consent has not been recognized within the act; that we only have land use planning for the far north; and that municipalities and other watershed planning and conservation organizations are not to be consulted in the south.

One little interesting tidbit that I noticed was that dead people seem to have more protection than many living people. Cemeteries will be accorded a 45-metre buffer zone around them, but if you have a private property, protection only goes to your property line.

How about cleaning up after themselves? Bill 173 does make an important provision for the possibility of exploration sites to be cleaned up, but it's left to the very end, and it's up to ministerial discretion to create regulations to do that. We think that's a crucial improvement that needs to be right in the act, as part of the act, and not left to the potential development of regulations.

Nothing has changed about self-assurance. In this day and age, do we still really believe that the large mining companies are too big to fail? Our grave concern, and we think we share this concern with both industry and those of you in the room today, is that we will never again have another Kam Kotia. Kam Kotia is a mine near Timmins which was abandoned. To date, we, the taxpayers, have spent $52 million and counting to rehabilitate it.

Mr. Gilles Bisson: They've done a pretty good job, actually.

Mr. Ramsey Hart: It's getting there. This is a recent photo, so it's not yet completed.

I'd like to thank you for this opportunity. We plan very much to continue to be engaged in this process as it goes through, including the development of regulations. We'd be more than happy to be involved in the conversation and look forward to your questions.

The Chair (Mr. David Orazietti): Thank you very much for your presentation. The government caucus is first. Mr. Colle, any questions for the presenters?

Mr. Mike Colle: Yes. My first comment is, your approach was very refreshing and clear and concise and very understandable in a very complex area, so I do appreciate that a great deal.

In terms of the ounce of prevention, what strong measures are lacking in the bill that would reinforce this need for prevention? What do you think should be in the bill to inoculate it against the type of thing that might happen?

Mr. Ramsey Hart: If we look at one of the very controversial cases in southern Ontario that I believe has helped push this forward, which is the uranium exploration in Sharbot Lake area, it was one individual prospector with a private mining company going after a low-grade uranium deposit that caused a large number of people a tremendous amount of grief and, I don't think it's exaggerating to say, trauma. The ability of one individual with somebody else's money to wreak that kind of havoc needs to end, and we end it by ensuring that local municipalities are engaged in this. Municipalities in that area, over 20 of them have signed statements saying they're not interested in uranium mining. Give some authority to local municipalities to be engaged in the discussion and have a meaningful consultation with aboriginals as well as other communities interested in the area.

The Chair (Mr. David Orazietti): Thank you for your question. Mr. Hillier.

Mr. Randy Hillier: You mentioned Sharbot Lake. It's a good example, of course, and it's one that I'm familiar with, but there's not much in this bill that will prevent another Sharbot Lake from happening in southern Ontario, is there?

Mr. Ramsey Hart: No.

Mr. Randy Hillier: No. Of course, there were a lot of assurances that that's what this Mining Act, not exclusively by any means—but amending the Mining Act was to start preventing conflicts. That was a key objective and goal. But we can see that with all this effort, with all these pages and sections and subsections, we're not going to prevent conflicts, again, especially in southern Ontario, with this present bill. Thank you.

The Chair (Mr. David Orazietti): Thank you, Mr. Hillier. Questions? Mr. Miller.

Mr. Paul Miller: You mentioned the involvement of municipalities in some of these decisions. It's my experience in the past that—taking landfills for example, we had one in our particular area that was governed by the ministry. The municipality had part of the EA process; they were involved and they set up a liaison committee in the community to deal with the problems that were associated with the landfill. Unfortunately, over the years, a lot of times the ministry didn't enforce their own rules. The companies, in a lot of cases, got away with things; for example, eliminating the citizens' liaison committee and forming their own puppet committee that they put into place. A lot of this happened. Do you feel that they should strengthen the bill to improve the EA process, if you're going to involve municipalities, so that there's more teeth in it? They don't really back it up in a lot of cases. The lack of inspectors and, in a lot of cases, the lack of involvement of the ministry in the actual process has happened in more than one location in this province, and that's a concern for me.

Mr. Ramsey Hart: Likewise, it's a huge concern for us. We see involving municipalities as one piece of the puzzle. The other pieces of the puzzle are: a very clear and rigorous environmental assessment framework that's

matched to the degree of potential impact—we're not talking about having full EAs for the prospector earlier mentioned, going out on his ATV with a backpack drill—appropriate degrees of environmental assessment, as well as rigorous monitoring and enforcement, which is very much lacking especially at the exploration stage. That's not something that really enters into the bill; that's more about budgetary and policy issues. If we can get some more teeth into the bill in terms of monitoring and enforcement, that would be great. I'd be happy to back that up.

Mr. Paul Miller: It's crucial, from community's perspective, to any type of involvement with the ministry that the ministry actually enforces the rules that they've created.

Mr. Ramsey Hart: Absolutely.

Mr. Paul Miller: I'm afraid it's been lacking tremendously in this province.

The Chair (Mr. David Orazietti): Thanks very much for your presentation today. Thank you for coming in.

ONTARIO NATURE

The Chair (Mr. David Orazietti): Our next presentation is Ontario Nature. Good afternoon, and welcome to the Standing Committee on General Government. You have 15 minutes for your presentation and five for questions. If you could state your name for the purposes of Hansard, and you can begin when you're ready.

Ms. Caroline Schultz: Thank you very much. My name is Caroline Schultz; I'm the executive director of Ontario Nature. I'm very happy to have this opportunity to present to the committee today.

I'm presenting on Bill 191, the Far North Act. By way of introduction, I'd like to tell you a little bit about our organization. Ontario Nature was founded in 1931. We represent and work with 140 member groups from across the province and 30,000 individual Ontarians. Our mission is to protect Ontario's wild species and wild spaces through conservation, education and public engagement.

1600

Ontario Nature's vision for the province's boreal region is the conservation of the full range of natural and cultural features and values through a system of large, interconnected conservation lands that are free from industrial development. These lands need to be co-managed by First Nations and allow for traditional aboriginal uses and provide non-industrial economic opportunities for First Nations communities. For many years, we've worked with partners in conservation, industry, government and First Nations communities to make progress in realizing this vision and to conserve Ontario's biodiversity through the establishment of protected areas; the promotion of sustainable forestry; the protection of endangered species; and research, education and outreach. In 2003, we established our boreal conservation office in Thunder Bay, which is now a northern hub for networking and conservation planning. Our staff in Thunder Bay are currently working on a number of specific issues and projects, including research on the potential for regeneration of caribou habitat and land use planning.

I'd like to now give you some specifics on our position on Bill 191, the Far North Act. First of all, some key messages: Ontario Nature strongly supports the far north initiative, as originally announced by Premier McGuinty on July 14, 2008. We also fully subscribe to the recommendations set out in the far north advisory council's submission to the Minister of Natural Resources. I was a member of that council, and we were very pleased with the advice we collectively gave to Minister Cansfield. We also firmly believe that legislation is required to effectively achieve the vision and goals announced by the Premier. The right legislation should provide the clarity and certainty that First Nations, the conservation community and industry all seek. The changes we seek will ensure that the ecological integrity of the region is maintained and that First Nations are rightfully leading in the development of land use plans and the design and management of conservation lands in their traditional territories.

To this end, we believe that Bill 191 requires some major amendments to ensure the following:

First, Bill 191 needs to mandate the creation of an independent regional planning body that has decision-making authority, to be responsible for the far north planning process and to ensure that land use planning is consistent with the objectives and strategy outlined in the act. This planning body should advise the minister on the implementation of the act and must have equal representation from provincial government and First Nations governments to enable, coordinate, finalize and recommend approval of community-level land use plans to cabinet. In particular, the regional body should be responsible for the region-wide land use planning strategy and be enabled to allocate funding for land use planning activities, provide advice to First Nations communities and approve terms of reference drafted by communities. The body should also provide the mechanism for dispute resolution.

The second major amendment is that there needs to be funding committed to ensure that this significant work goes ahead. To ensure the success of the initiative, funding is absolutely paramount. It must be made available to support the First Nations communities that are ready to start their land use plans. There are First Nations communities that want to start their planning process immediately, but the act doesn't allow for any new funds for them to move forward with consultation, conservation or economic planning. The initiative won't move forward unless specific funds are allocated.

The next key issue is the establishment of a science advisory body. Ontario's northern boreal region is large, unique and complex. We strongly recommend that the minister establish a science advisory body to provide advice on the far north land use strategy and to help

communities and regional land use bodies in their work. The science advisory body could provide advice in numerous areas, including where there are gaps in research and knowledge that need to be filled and reviewing the draft far north land use strategy.

The next point, and our last major point, is that land use planning should result in a permanent system of conservation lands. Ontario Nature supports Bill 191's provisions to protect at least 225,000 square kilometres of the far north, but First Nations must lead in the identification of these areas and share in the management of these areas. To sustain Ontario's intact, naturally functioning far north ecosystems, a new approach to planning and development is needed. This approach needs to follow conservation planning principles and identify all values on the landscape—ecological, social and economic—and then determine which high biodiversity areas need to be permanently set aside from industrial development and which areas can sustain industrial development over the long term. Industrial activities need to follow the best practices and work to continuously improve resource sustainability.

We should use leading-edge conservation science and traditional aboriginal knowledge to do better than the usual piecemeal development that has fragmented much of the southern boreal forest. By ensuring that key habitat areas remain connected, we can avoid the isolation and vulnerability that species in small and isolated protected areas often face, helping to sustain healthy populations of all wildlife, including species at risk. Done properly, we will be able to protect the region's vast carbon storehouses while providing important refuges for wildlife whose habitat is being altered due to climate change.

These conservation lands will be important for conserving and restoring species and ecosystems across our northern landscape. Consideration of hydro and wind power development in conservation lands should only occur where those projects are designed to meet First Nations community power needs. These areas should also provide economic opportunities for ecologically sustainable non-industrial economic development for First Nations.

Bill 191 includes a provision that cabinet can override prohibitions on industrial development. This provision must be removed, as it opens the door to abuse whenever mineral, oil or gas potential or any other natural resource potential is discovered in the far north.

Finally, I'd like to conclude by saying that we do wish to express our deep regret that the dates for the standing committee hearings conflict with the NAN general election and that none of the hearings are scheduled to take place in communities whose futures hinge on the success or failure of this initiative. Many of Ontario Nature's main concerns are reflected in the letter from Grand Chief Stan Beardy of the Nishnawbe Aski Nation that was sent to the Premier on July 16. The four main concerns were around First Nations leadership on planning, First Nations leadership on protection, an independent board, and funding. We want to highlight that the consensus report of the far north advisory council, which was made up of members from all the major industry associations with interests in the far north and environmental organizations, recommended that each of these points be addressed. Ontario Nature wants to send a strong message that Bill 191 must be amended to address these concerns.

Thank you very much and I look forward to your questions.

The Chair (Mr. David Orazietti): Thank you very much for your presentation. Questions, Mr. Hillier.

Mr. Randy Hillier: Thank you very much. I'm looking at this, and I see some contradictions in your presentation. You state here that Ontario Nature is working in partnership with First Nations and industry groups and a host of others and that you fully support Bill 191. We have seen every industry group here today and I believe just about every First Nations group strongly opposing Bill 191. Where the contradiction comes in, it looks like, is in your second paragraph. You believe that it's important to allow our First Nations communities to have non-industrial economic opportunities. That's really tying their hands. When you say they should be allowed non-industrial economic opportunities, if you're saying that resource-based economic opportunities such as mining, forestry, pulp and paper—should that be banned and not allowed in the north?

Ms. Caroline Schultz: No, that's not what my submission, written or verbal, said. First of all, as far as Bill 191 stands, just to correct that, we are not strongly supporting the bill. We think the bill has some very serious flaws and needs some major amendments, which I outlined.

As far as the non-industrial uses, we're talking about the conservation lands that are identified. We want to ensure that First Nations are leading in the co-management of those lands and that there are full opportunities for First Nations—

Mr. Randy Hillier: For industrial—

Ms. Caroline Schultz: For non-industrial, ecologically sustainable activities. Otherwise, they're not conservation lands if those other activities are permitted.

Mr. Randy Hillier: That's been some of the discussion today, how people were informed of that 50% protected area without any discussion ahead of time. I find it very difficult to understand. We see the First Nations communities suffering significant hardship, poverty, and then bringing out a bill called economic development, where the proponents of it are looking to tie their hands behind their back and prevent them from having economic development.

1610

Ms. Caroline Schultz: I don't think that that's what we're advocating in terms of what needs to be in the bill. I think First Nations have a number of objectives, based on our conversations, some of which relate to conservation and some of which relate to economic development primarily associated with natural resources. So our message is that First Nations need to be leading in this

whole process to identify what lands should be set aside as conservation lands and which lands are suitable for industrial development.

The Chair (Mr. David Orazietti): Thank you very much for your question. Mr. Brown?

Mr. Michael A. Brown: Thank you for coming today. The first thing I'd just like to clarify is that the government did not choose the hearing dates; they were chosen by a subcommittee and by the House leaders. Unfortunately, there is a conflict, and we understand that, but the choice was one made by all three parties.

Ms. Caroline Schultz: It's still disappointing.

Mr. Michael A. Brown: I understand that. We will be in Chapleau actually on the very day of the election. I proudly represent Chapleau.

The other thing is, this is a very unusual process. The government has chosen in this particular instance to take this bill out after first reading. It is normal practice, then, after second reading, to have further consultations, and in all likelihood that will happen. The government will be recommending to the committee that we do that. So this is a work in progress. The government understands that this is a complex issue and that we have a number of objectives we have to reach, including accommodation with First Nations folks to see that their interests are protected and enhanced in this consultation. I don't want to leave the impression that somehow the government is trying to push this through and not go to the northern communities, because that's not the way it's going to be.

We appreciate your group and your own participation in the process and we look forward to improving the bill as we go forward. Thank you. If you have any questions for us, we'll be around.

Ms. Caroline Schultz: Okay. Thank you.

The Chair (Mr. David Orazietti): Thank you very much for coming in today. We appreciate your presentation.

FIGHT UNWANTED MINING AND EXPLORATION

The Chair (Mr. David Orazietti): The next presentation: Fight Uranium Mining and Exploration. Good afternoon, gentlemen. Welcome to the Standing Committee on General Government. You have 15 minutes for your presentation. Please state your name for the purposes of our recording Hansard. You can begin when you're ready.

Mr. Robin Simpson: Thank you for allowing us to speak today. My name is Robin Simpson. I'm co-founder of FUME, which was Fight Uranium Mining and Exploration. We recently changed the name to Fight Unwanted Mining and Exploration.

We represent many thousands of constituents who live and cottage in Haliburton. We have the support of every township in Haliburton as well as county support. We represent all of the townships. We have the support of our new MPP, Rick Johnson. We've also submitted a seven-page brief to the committee here. I really do hope that you can find time to read our submission. It really outlines our position on mining not only in Haliburton, but also in southern Ontario in general.

Gentlemen and ladies, the ministry of mines called their revision document Modernizing Ontario's Mining Act—Finding a Balance. If this was the ministry's goal, they have surely failed. The revised act is neither balanced nor modernized, and I think you've seen that all day long today. The groups that are represented here pretty much across the board are not happy with the revisions that have been made. The Mining Act really needs to be dismantled and rewritten from scratch, in my opinion and in many other people's opinions. There's a real need—a real need—for an oversight committee made up of people who do not serve the ministry of mines and do not serve the mining industry.

I ask you: With water being the most valuable substance on earth at this point in time, how could anyone support this section of the Mining Act? This was covered earlier today; however, I think it's important to again bring it up.

I direct you to section 175, starting with subsection (1): "Where required for or in connection with the proper working of a mine, mill for treating ore or quarry, the owner ... may ... obtain and have vested in him, her or it by order of the commissioner...." the right to drain lakes, divert rivers, dump sludge on other people's property, and in the case of our area, dump potentially radioactive tailings into rivers and lakes.

It is absolutely outrageous that one industry—people like ourselves have to go through hoops and backflips to get a permit for a septic system, and these mining people can come in and potentially contaminate our waterways. In the case of Haliburton, the area that is being explored currently, or up until recently, is on the banks of the Irondale River. The Irondale River is the headwaters of the Trent waterway system. Again, try to build a septic system within a mile of the Trent waterway system and you run into nothing but red tape from the government, yet mining can basically pollute the river, which will flow into the Trent waterway system.

This is not balanced; this is excess beyond belief. In fact, it is the tip of the iceberg when it comes to excess in the Mining Act. I ask you to read every line of the Mining Act, and after reading it you can come to no other conclusion than this is not balanced. In fact, it's tipped in favour of the Mining Act and mining in general. It tramples on citizens' rights and it tramples on our rights to peaceful enjoyment of our land, the right to clean water and the right to protect ourselves against proven negative health issues that can result from mining.

My land, along with six of our neighbours, is staked for uranium exploration, along with about 7,000 acres of crown land surrounding us. We did a water study prior to Bancroft Uranium drilling on the site directly adjacent to our properties. We tested all the wells nearest to the mine and then we tested them after they drilled. The mining company told us that they would drill 15 holes 150 feet deep, which is well into our aquifer. They drilled, in fact,

50 holes through a total of 20,000 feet. That was an average of 400 feet per hole.

After they finished that, we did another water test. My well went from seven micrograms per litre to 18 micrograms per litre, and 20 is the danger point that was—

Mr. Michael A. Brown: Of what?

Mr. Robin Simpson: Of uranium. We took our MPP, Rick Johnson, onto the exploration site this past spring and, quite frankly, he was astounded at the devastation of what was a beautiful piece of our homeland. What he saw were trees bulldozed into rotting piles, deep trenching where samples were cut from bedrock, drill holes everywhere, residue from the drilling, which is illegal to leave.

This particular piece of property is a known area for our three species at risk, as well as a golden eagle family. The Ministry of Natural Resources, when we discussed that with them, said, "Yes, we'll point them out to the mining company and we'll make sure they stay out of their way."

This particular exploration company is now defunct. It has a new company name, and they have left us with an awful mess that they didn't bother cleaning up. The site was not inspected. It was drilled over a year ago. It was inspected last week finally because of our pressure on the ministry to do so.

We were involved in the meetings during the Mining Act revisions. Our members sat at virtually every table in Kingston and Toronto, and a couple of guys went up to Timmins as well. What we heard at that table from every single mining executive that we sat with—the big guys, not the little guys—was, "We are not interested in mining in southern Ontario." There is no security of investment because the area is too populated. Groups like ours form and we cause them all kinds of problems, and quite frankly, we intend to cause them as many problems as we can, as we go along.

1620

I'm going to stop now and let my partner, Roger Young, carry on.

Mr. Roger Young: I'm Roger Young. I'm a full-time resident of Haliburton. Thank you for giving us the time of day. I know it has been a long day for you. I have some familiarity with the process. Thirty-five years ago, I was elected as a federal MP. I've sat through many committee hearings, and I know that it's tough slogging and you've got to balance a whole lot of interests. Five years before that, I spent two years as an executive assistant to the federal Minister of Energy, Mines and Resources, so I have a little familiarity with mining issues as well. I'm familiar with the nuclear industry. I worked with Eldorado Nuclear, Atomic Energy of Canada, and I've been in the mines: gold mines, uranium mines.

I'm here as the president of a small lake association in Haliburton. We have 100 members on our lake. The lake next door, Big Glamour, has 250 members, and Stormy, to our west, has another 150. There are 500 cottage owners, waterfront property owners, that I know I can speak for immediately.

I also sit on an advisory board of a coalition of lake associations in Haliburton county. There are about 66 different lake associations in that coalition. On the advisory board, I speak from month to month with representatives of those lakes. That coalition represents 40,000 waterfront property owners. If you take that 40,000—let's just talk some numbers for a minute, in terms of economics—at an average resale value of $350,000 per cottage, that's $14 billion of investment in waterfront property in Haliburton county alone. Multiply that by the investment in waterfront property in Muskoka, Bruce, Frontenac, Lanark, Grenville, and if you take the whole stretch of cottage country from Lake Huron to the Ottawa River, you have billions and billions of dollars of investment.

I don't think there are more than a couple of cents' worth of the mining industry in that area. But there was great conflict in my area two years ago, when some gentlemen appeared suddenly, out of the blue, and said, "Hey, folks, we're miners. We're great guys. We're going to give you a 3,500-acre open-pit mine sitting right next to your cottages, and we're going to give you 40 jobs, and we're going to make a donation to your library fund." Well, they screwed up our forest. You saw a couple of pictures of it about 20 minutes ago in Ramsey's presentation. That was destruction to a crown forest in Haliburton. Robin has just spoken about it.

These are the human problems that are involved when it comes to dealing with the Mining Act and when it comes to doing revisions to the Mining Act. You are here, as representatives of the people, to deal with this legislation and try to make it better. The government proposes; the Legislature disposes. That's the secret to our political system.

I want to speak particularly to the 97 members who represent southern Ontario. I don't pretend to tell people in the north what they should do. I'm not an expert on that. But I can tell you some of the problems that we have in the south.

Our great economic engine is the recreational, tourist community: the cottage community. Those people who own those waterfront properties contribute 80% of the municipal tax revenues in my municipality of Highlands East. If you move an open-pit mine into that area, you scare the hell out of the cottagers. Land values go down. If the land values go down, the assessments are going to go down. If the assessments go down, the municipal budgets have to go down, and you leave the local councillors with one of two choices: They either curtail the services, or they raise the mill rates.

I'm not being a NIMBY here, because the people who get hurt the most are not the waterfront property owners; it's the locals who don't even own a piece of waterfront property; it's the locals in the villages and the backlots. If you increase the mill rate, it's their taxes that go up. The waterfront property owners are only going to come back to where they used to be before their values decreased.

If you curtail services, you don't hurt the cottagers. We only get about 15% of the services to begin with. Cottage kids go to school down here. That's 50% of your tax budget. We don't get garbage pickup. Toronto doesn't get it either, sometimes. We don't get roads, because we live on private roads. We don't get plowing. We don't get a whole lot of the services.

Those are just some of the issues. When you start moving mines in, it impacts upon the tourist recreational cottage industry that provides all that money. Those people spend millions and millions of dollars in our stores and restaurants, lumberyards, grocery stores. They contribute to the tax coffers.

The Chair (Mr. David Orazietti): Just to let you know, you've got about a minute.

Mr. Roger Young: I'm going to sum up very quickly.

The Chair (Mr. David Orazietti): No problem.

Mr. Roger Young: How do we deal with this? As you've heard others say today, we need better local municipal control over where mines can be permitted to go. We're not against all mining, but there's a time and a place for it. We need better local municipal control, and who better to say than the citizens who live in the area and their municipal councillors? We have support for our brief. We have support from Environment Haliburton. We have support from our municipalities. I spoke last week to our warden of Haliburton county about what I was going to say today. We've had support from our municipalities.

We also need, as you've heard today, better environmental control at the early stages of exploration so that we don't get the pillaging of the land by people who come in, do their exploration, blast a bit of ground and walk off. The confrontation comes between people who have moved into this area and developed a recreational business, developed a cottage industry. Mining used to take place in Haliburton 50 years ago, 70 years, 100 years ago, but in the last 50 years it's been cottage development. Now, when you come and tell somebody that they're going to have a 3,500-acre open pit that's 400 metres deep and a mile long, that's the complication.

The Chair (Mr. David Orazietti): Thank you for your presentation today, gentlemen. Mr. Bisson, questions.

Mr. Gilles Bisson: Let me make this comment, and after that you can comment and see if you want to ask me a question. That is, I hear what you're saying because the issue that you raise, cottagers in southern Ontario, is no different than the issue that's raised by First Nations in northern Ontario. That's a basic question: Who should have the right to decide if a mine is going to be developed in your backyard? That's a pretty simple thing. First Nations argue, "We should have that right," and I suppose that's what you're arguing as well.

It brings me to what the question's going to be. How you're trying to get at this, as I see it, is you're trying to say, "Give municipalities a greater say when it comes to the official plan." The problem I have in looking at that is that a municipality, by and large, is ill equipped to deal with that question. I come from the city of Timmins, where there's a lot of expertise in mining; I think even our municipality would have a bit of difficulty dealing with some of the permitting issues, some of the environmental issues and others. If your stated goal at the end is to say, "We want to be able to determine what is the best end use for the territory that we have," shouldn't we rather just answer the question, yea or nay on development, rather than try to do the back door through the municipal assessment act and give municipalities the right to determine if a mining project goes forward and how it does? I fear many municipalities don't have the capacity, number one, and municipalities are much more subject to being lobbied to allow a project to go forward than the provincial government will ever be. Your comments and questions back to me.

Mr. Roger Young: We're all subject to being lobbied; that's part of life. Can the municipality deal with it? I think so. Right now you give them powers to draft zoning bylaws. They say agriculture is permitted here, industry is permitted here—

Mr. Gilles Bisson: That's right, but they decide if there's going to be that development in the first place. My point is if we're trying to regulate mining through the municipalities, I think it becomes difficult.

Mr. Roger Young: Let me give you an example: We have two pieces of land—

The Chair (Mr. David Orazietti): Gentlemen, you know what? That's time for questions. We're going to have to move to—

Interjections.

The Chair (Mr. David Orazietti): Sorry, you've used all the time introducing your question.

1630

Interjections.

The Chair (Mr. David Orazietti): Mr. Colle, go ahead.

Mr. Mike Colle: I'll give you 30 seconds.

Mr. Roger Young: Two pieces of land: One's private, one's crown. They're smack beside one another. This guy puts up his development—his cottage, his tourist business, whatever. He's subject to all the zoning bylaws. This crown land falls within the municipality but it's not subject to the bylaw; it's not subject to the official plan. A bureaucrat in Toronto says, "Yeah, you can put a mine in there." You can spend $4 million building a tourist development, developing this land, creating jobs, and wake up the next morning and find you've got a big open pit next to you and you've got nobody coming.

Mr. Gilles Bisson: Then you would give municipalities the right to say yes or no?

Mr. Roger Young: Yes, just the right to say yes or no.

The Chair (Mr. David Orazietti): Sure. Very briefly, Mr. Colle.

Mr. Mike Colle: I totally agree with my colleague Mr. Bisson. If you give municipalities the right to veto or to approve mines in their jurisdiction—I don't know if you know the history of the Oak Ridges moraine, where I

spent five years of my life trying to get a regional plan of protection there. Well, the developers would play one municipality off of another because the municipalities were so starved for assessment that you would get municipalities against each other trying to attract these mines. You're going to do the exact opposite of what you're trying to do by giving local municipalities authority to permit or disallow mines to go into their regional district. I think you're going down a path that's been proven to be wrong in the past.

Mr. Roger Young: That may be so, but that's the democratic process, isn't it? You're allowing the people of the area, who are most affected, to speak.

Mr. Mike Colle: But then you're going to have someone in the municipality next door who's going to allow mining to take place and the trailing is going to go downstream and pollute you anyway because the municipality upstream is doing it. That's what's happening with sprawl and all this development for the last 40 years in Ontario, so that's why you need some regional provincial oversight, or else you're going to get this piecemeal, ad hoc approach which is really detrimental to what you're trying to do.

The Chair (Mr. David Orazietti): Thanks, Mr. Colle. It's time—

Mr. Robin Simpson: May I answer very quickly?

The Chair (Mr. David Orazietti): No, not right now. Mr. Hillier has the floor.

Mr. Randy Hillier: It's interesting to hear the Liberals argue black is white and then white is black. Here we are hearing the arguments all day that we need to give the communities in the north the ability to make decisions for themselves on their economic development and their planning and their mining, and then at the same time that people in Haliburton are too stupid to make those decisions as well, that they are not competent and they cannot get the expertise to make those logical decisions and they will be lobbied by somebody who will make them make poor decisions.

We can see that this Mining Act, if it was to solve the problems, should just adhere to democratic principles of a greater say for municipalities in the land use in their areas and also a share in the revenues in the southern communities, as we're proposing in the north as well. What's good for the goose is good for the gander and they fly in the same direction, whether north or south.

Mr. Roger Young: Mr. Hillier, my colleague just granted you an automatic lifetime membership in our association.

Mr. Robin Simpson: The other thing that they could do with one stroke of the pen is take crown land off the map for staking in southern Ontario. There will never be a mine in southern Ontario ever again anyway, but it puts us through years and years—

The Chair (Mr. David Orazietti): Thank you, gentlemen, for your presentation.

Mrs. Carol Mitchell: I have the largest salt mine in the world in my riding.

Mr. Robin Simpson: And I'm sure it'll last for another—

The Chair (Mr. David Orazietti): Thanks for your presentation.

Mr. Roger Young: Thank you, Mr. Chair. You're very generous.

COTTAGERS AGAINST URANIUM MINING AND EXPLORATION

The Chair (Mr. David Orazietti): Our next presentation: Cottagers against Uranium Mining and Exploration.

Ms. Susanne Lauten: Hello.

The Chair (Mr. David Orazietti): Welcome to the Standing Committee on General Government. You have 15 minutes for your presentation and five for questions, so just state your name and you can go ahead.

Ms. Susanne Lauten: Thank you, honoured members. My name is Susanne Lauten and I'm the founder of Cottagers against Uranium Mining and Exploration. I realize it's been a long day and all this talk about cottaging makes us think it's one place we'd like to be, but I'm here to represent the thousands of cottagers from Elliot Lake all the way down to Haliburton and the Kawarthas and over east to Frontenac, thousands of cottagers and waterfront property owners who are extremely concerned about the uranium exploration that's going on in their area and, in some cases, on their private land. I'm here to ask you today to include a ban on uranium exploration and mining in the Ontario Mining Amendment Act, Bill 173, granting Ontarians the same protection that residents of British Columbia already enjoy. But if you're not able to do this, we ask that you design strict environmental and health regulations for every stage of uranium mining in Ontario, including basic exploration.

I'd like to take a look at uranium mining in the past, present and future. Looking to the past, I'd like to quote from the Ontario Royal Commission on Electric Power Planning, the Porter report, which stated, "The mining and milling of uranium ore produced very large volumes of long-lived, low-level radioactive tailings which have leached into waterways in the vicinity of Elliot Lake, Ontario, thereby posing serious health and environmental problems." Many residents of Elliot Lake have come to me—some of the miners as well—and said to me, "Please don't let what happened at Elliot Lake ever happen again."

Now I point out the second paragraph, which is about Saskatchewan. It states, "Within three months (at the Key Lake, Saskatchewan mine) there had already been eight spills totalling 1.5 million litres of radioactive liquid waste." This is from Canada's Deadly Secret, a book by Jim Harding, the retired professor of environmental and justice studies at the University of Regina.

This brings us to the present, where cottage country in Ontario is under siege. In the past three years, uranium prospectors and mining companies have staked about

40,000 acres in rural cottage country, some on privately owned land. They are actively exploring for uranium and planning open-pit mining operations.

In Haliburton, for example, an Arizona-based company staked a 1,000-hectare claim, then they bulldozed 20 hectares of mature forest, of which you've seen a brief photo, that they scraped right to bedrock, followed by between 40 and 50 test drills, each 400 feet deep. Local residents soon reported that this drilling had contaminated their well water with uranium. This exploration was completed without environmental assessment and it took place, as mentioned before, just metres from the Irondale River, headwaters to the Trent-Severn Waterway and drinking water for thousands of people.

These dangers are real because the BC Medical Association states, "Radon contamination of groundwater may be a health risk in pincushion drilling typical of [this] advanced exploration."

And uranium mining's future? There's lots of evidence saying there is no economic future for uranium mining in Ontario.

I quote to you again from the BC Medical Association: "Uranium tailings will remain radioactive for hundreds of thousands of years, and will require such expensive long-term surveillance and maintenance by government and local citizenry, as to make statements about uranium mining providing revenue very misleading."

Professor Harding provides a second quote. He says, "From 1975-1985, Saskatchewan's uranium sales totalled $2 billion. But only $130 million came back to the province as revenues. Far less than the province spent to expand the uranium industry." As well, there will be very little employment gain. Professor Harding says, "As in all resource industries, capital and technology are replacing jobs in uranium mining. The industry produced only half the direct jobs that were promised at the Cluff Lake (Saskatchewan) Board of Inquiry. Northern unemployment did not lessen as the uranium industry expanded, and the long-term environmental and social costs are being left for the people of the province and the north to bear."

1640

By contrast, I present to you cottaging and tourism. I am a cottager and I've been a waterfront property owner for 14 years. Along with the other property owners in Haliburton, we contribute 80% of all the local municipal tax revenues. Hundreds of thousands of cottagers and tourists inject millions of dollars into local businesses: building contractors, lumberyards, hardware and grocery stores, marinas, theatres and restaurants. And an increasing number of cottagers are retiring full time to cottage country, further supplementing the region's income. By contrast, the much-vaunted uranium mining industry is a short-term industry that will deplete the long-term health and wealth of Ontario's cottage country.

In conclusion, it is cottaging and tourism and recreation that is the long-term sustainable wealth of the region.

The Chair (Mr. David Orazietti): Thank you very much for your presentation today. Government caucus, Mr. Brown, questions?

Mr. Michael A. Brown: Yes. I would love to invite you to come to one of the most beautiful cottaging places in the world, which would be Elliot Lake. Elliot Lake, as you know, has become a vibrant retirement community, with thousands upon thousands of Ontarians choosing to live in one of the finest full-service communities in the province. In the last five to 10 years, it has opened a cottaging industry on the very lakes that you're talking about, which supply some of the greatest fishing and outdoor opportunities in the province. I encourage you and any others to come visit Algoma East and the fine services that we provide to cottagers because we enjoy having people from all over the province and, indeed, the world join us in beautiful Elliot Lake. Thank you.

Ms. Susanne Lauten: Yes, and I would be very happy to go there and I'm very happy with what you're doing at Elliot Lake. That is indeed the future. You are actually doing what I am suggesting. The future is recreation, cottaging and retirement homes. The many cottagers who approached me at the Cottage Life Show, who were very happy to buy land and build cottages at Elliot Lake, were the cottagers who said to me, "Please, for heaven's sake, don't ever let them mine at Elliot Lake again," and that's exactly the same point, I believe, that you're making. The future is cottaging, recreation and retirement, and I really think the people who are investing in rejuvenating Elliot Lake would be devastated if uranium mining were to open in that area again.

The Chair (Mr. David Orazietti): Thank you for your comment. Mr. Hillier?

Mr. Randy Hillier: I'll pass.

The Chair (Mr. David Orazietti): Mr. Bisson.

Mr. Gilles Bisson: No, you were pretty darn clear, I thought.

The Chair (Mr. David Orazietti): Thank you very much for coming in today. We appreciate your presentation.

Mr. Gilles Bisson: That good plug for Elliot Lake was one of the best I've heard in a long time.

The Chair (Mr. David Orazietti): Fantastic commercial, Mr. Brown.

Interjection.

Ms. Susanne Lauten: No, I don't want to slam Elliot Lake; I want to protect Elliot Lake. That is why I want—

Interjection.

Ms. Susanne Lauten: Yes. Protect Elliot Lake.

The Chair (Mr. David Orazietti): All right, folks. Thank you. Thank you for your presentation.

STEWART JACKSON

The Chair (Mr. David Orazietti): The last presentation of the day: Stewart Jackson. Good afternoon, sir. Welcome to the Standing Committee on General Government. You have the privilege of presenting last today. You have 15 minutes for your presentation and

five minutes for questions from committee members. Please state your name for the purposes of Hansard and you can begin when you're ready.

Mr. Stewart Jackson: I am Stewart Jackson, Canadian citizen. I reside in the US but I originated 100 miles north of Toronto, had my education at the University of Western Ontario, the University of Toronto and my PhD from the University of Alberta. Thank you for the opportunity to address the committee this afternoon.

I've spent my entire working career in the mining industry, starting in 1959. At this point, I have 50 years under my belt. I think I have some relevant experience for the question under consideration today.

I won't belabour some of the points that have been severely beaten up by a number of individuals already in both verbal and written submissions. I simply want to address three significant points.

I started off in 1959 in the boreal forest of northern Quebec up on the Harricana River, very close to James Bay. I learned very quickly that the boreal forest is not a forest; it is a large peat bog and swamp. I subsequently learned that this covers most of Quebec and three quarters of Ontario.

The great north does not have a timber industry. There are no trees up there—a very, very large percentage of it. The southern fringe has trees. I was raised on the long end of a crosscut saw and a three-pound axe; I know what timbering is. My grandfather had a sawmill; I know what lumber is. I also know that trees in the great boreal forest of the north take 150 years to grow back. Nobody's going to cut them in the first place. They aren't big enough and they take too long to grow back.

Ontario is fundamentally a mining-based province. All of those peat bogs and swamps of the far north are underlain by wonderful, prolific rocks. The peat bogs themselves don't need to be locked up for preservation. You simply can't get in there, so they have this inaccessible aspect themselves. They basically will never be violated to any great extent. You simply can't get into a swamp. The bogs of southern England are still there. The Okefenokee swamp is still there. These things don't change with time. They're very difficult to access.

Tourism is not very wonderful in the peat bogs of the far north. It does work down south. I have great respect for the tourism industry, but tourists are not going to flock to this so-called Grand Nord. It simply is inhospitable, inaccessible, it doesn't have very many attractions when you get there, and there are a few bugs.

Our mineral industry is based largely on that wonderful part of the world. It disturbs very little of it but returns great economic benefit. I think the Grand Nord has to be kept accessible for the future of Ontario and for the future of Canada.

My second point is that instant evaluation perceived under some of this planning mechanism simply cannot happen and will not happen, and is not possible. We have been prospecting and mining in Ontario and the rest of Canada for a hundred years. One of the greatest booms in gold exploration right now is in Timmins, Ontario, right in the heart of downtown, after 100 years of prospecting and exploration. Brand new discoveries are being made every month. You cannot evaluate land in 15 years of planning by some instant process by some people who imagine themselves to be very brilliant and know whether land is good or bad for mineral potential. It's a long process, it takes tens of years, and after a hundred years we're just scratching the surface.

Most of the mineral potential in Ontario is still untouched and exists in the Grand Nord. The very basic maps show these prolific mineral belts covering all of this proposed withdrawal in the north. If we withdraw that, we're basically cutting off our nose in hopes of achieving something and supposedly protecting it—from whom? Protecting it from ourselves? I don't think we're that bad. We've been around for a hundred years. We haven't disturbed things that much, but we have certainly provided an economic base for the province of Ontario. It's a very small trade-off.

Rather than labouring more on that, I want to illustrate to you, in part from my own experience, some of the major discoveries that are current—they're not very old—that have been made in what would be classified as completely unfavourable terrains and inhospitable land that probably should just be put into a park if somebody is sitting around pontificating and pretending that they know what they're doing about selecting or not selecting land for preservation. My whole objective is to maintain things open. We're not going to destroy the park potential or the recreational aspect of any part of northern Ontario. No matter how much mining we're doing, no matter how much mining might take place over the next 200 or 300 years, it will only still destroy a very small amount.

In Timmins, the Kidd Creek mine was discovered in 1964, the year I graduated as an undergraduate from college. That mine is still going. It sat right off the end of the Timmins airport. It was undiscovered even though Timmins had been there since the turn of the century. Simply because of new concepts and new geophysical techniques, they went in and drilled the thing, and it's been mining ever since, supporting all of northern Ontario and a good part of southern Ontario—one mine, completely unknown. Somebody could just say, "Oh, that would make a nice park. There are nice trees out there." There have been parks put up there in similar areas since, simply because there were lots of aspen trees on them. That was the justification for some of the park withdrawals in northern Ontario: lots of aspen trees. Well, there are lots of aspen trees in most parts of the world. It's not something to create a park over, simply because there are aspen trees.

1650

The Athabasca basin for uranium: We had the discussion on uranium. In the bogs of northern Saskatchewan, some people persisted in doing exploration on what would be classified as wonderful land to just leave for a park. It's a great big bog, lots of lakes etc., etc. They discovered some extremely rich uranium deposits

in the 1960s and 1970s. Those produce most of Canada's uranium and a very good percentage of the world's uranium today.

And they're making discoveries. There was an announcement of a new discovery today in the news. There will be more discoveries made in an area like that—a very, very small disturbance, but producing, say, 20% of the world's total uranium production, which will fuel and provide electrical power for the rest of the world for a long time.

The Victor diamond mine up in northern Ontario: De Beers started, in the 1940s, to prospect here. They intensified their program in the 1960s and 1970s. Some of my associates took over with British Petroleum, doing similar work in the 1960s and 1970s—I was involved in part of that. But the Victor diamond mine is very, very rich. It's $450 a carat versus the average of $100 a carat. Otherwise it wouldn't be in production today as a fly-in operation. It's very remote, very expensive, but it's also very rich and attractive, even in today's cost structure up there.

As a spinoff from that, the geophysical work that was done on a regional basis—I actually participated in a company that owned it at one time and sold that geophysical data off. Guys went in. They started drilling a bunch of other anomalies. They found a bunch of copper-lead-zinc targets. In the last two years, they've stepped out from those. They found a huge nickel deposit, which made a major announcement on the news today. The stock has performed wildly over the last—

Interjection.

Mr. Stewart Jackson: So, the big Noront nickel discovery and subsequent discoveries of chrome—now, nobody ever looked for chrome in Canada before. It was simply thought to not exist in Canada and particularly up in the bogs of northern Ontario. Well, there's probably two billion tonnes of chrome there right now, and I'm just using an arm wave on that. It's the largest chrome reserve and probably the richest chrome reserve in the entire world, and probably represents a 200-year supply of chrome for the entire world—completely, absolutely unknown three years ago—in the bogs of the far north.

This is an example of what I say can be replicated perhaps 10,000 times over history in the far north. We simply cannot say that because something isn't known, doesn't stick out on the surface and we don't think it's there, it is not there. These things pop up. Prospectors find them. That's my business, to find them.

The Red Dog lead-zinc mine sits in some nasty old shaley rocks out in far-western Alaska, next to the Bering Sea. It's the far end of the Brooks Range. Nobody looked there because those rocks were no good for finding any metals. Well, somebody didn't believe that, so, as an evaluation on some general terrain for possible inclusion within a park, there was some work done out there. I went out and staked some claims in 1975. The Red Dog mine was sitting there, unknown, unexplored, a mile and a half long, half a mile wide—obviously 500 million tonnes, just from walking over it for half an hour. It now produces 14% of the world's zinc, it probably has 20% of the world's zinc reserves—all of this in an area that, if it had happened to have a peat bog over it, nobody would have given a second glance or paid any attention to it.

This is the type of thing that you find all the time in our business. You cannot say that just because somebody doesn't think it's there, it may not be there. Different people have different views; different people have different concepts.

Teck Cominco, which is a Canadian company, mines that today. Seventy per cent of the employees are the NANA native corporation, and the NANA native corporation owns 50% of that mine. They started out because of a political illegal withdrawal by the administration in the Department of the Interior and an illegal withdrawal by the Secretary of the Interior and the President. NANA corporation ended up with 25%. They now own 50%, but it produces today 14% of the total world's zinc reserves—completely unknown in 1974.

Olympic Dam in Australia, sitting out in the outback in an absolutely barren desert—no reflection of anything on the surface. Some guys went out there and started prospecting geophysically and conceptually. They eventually drilled down and found one of the largest copper-gold-uranium deposits in the entire world—completely unknown in the 1960s and now one of the biggest producers in the world—blind. "It would make a wonderful desert park. There's nothing out there. Who's to say we shouldn't just put that in a park? There's no obvious mine sticking out; there are no mines there." Well, I'm sorry; it is there.

The Viken uranium deposit in Sweden: I've been involved in this for the last several years. There are a billion pounds of uranium sitting there on the surface today because we drilled it out over the last three years. There are probably 10 billion or 15 billion pounds, probably the largest energy reserve in all of Europe. It was geological, mineralogical curiosity until a couple of years ago when the price of uranium changed. It's now an economic target and has infinite capability of producing energy for wherever it's needed. It also contains 15% carbon and a barrel and a half of oil per tonne. It's kind of a weirdo.

I've spoken at length, I guess, on the Attawapiskat Ring of Fire—completely unknown. The Victor mine for diamonds spawned the drilling for copper, lead and zinc and spawned the drilling for chromite. It's now a huge resource. It needs a road to it, and it happens to sit up in the Grand Nord. How many more are up there? Probably hundreds and hundreds and hundreds if it's left open for development of the basic economic need for an industry in Ontario.

I was raised a farmer up in the sticks here to the north. Farming isn't all that wonderful in Ontario. The timber industry's pretty dead. Tourism's okay, but tourism is just small potatoes compared with the fundamental wealth produced by mining.

I encourage the committee to shelve these two bills until something reasonable and rational can be put on the

table; I don't think either one of these bills is at the present time. Not to be insulting to the people who tried to put them together, but I would be embarrassed to have tabled a piece of legislation like either one of these pieces of legislation. They're convoluted, contradictory, there are new loops in the whole thing. Please, just keep the north open. Let us do our work; we'll keep the industry supplied with new finds.

Thank you for the opportunity to present this.

The Chair (Mr. David Orazietti): Thank you, Mr. Jackson, for your presentation. We'll start with the Conservative caucus. Mr. Hillier, do you have any questions?

Mr. Randy Hillier: It's hard to begin. Where to start? Thank you very much for being here. It's been a pleasure to listen to you. I trust everybody will take your wise words under consideration with these two bills.

I just noticed recently that the Fraser Institute had a study out about mining in different jurisdictions in North America and around the world. In that, Ontario has been dropping in places to invest in for mining. I think both these bills will result in a tremendous evacuation of interest in our wealth up in the north.

Mr. Stewart Jackson: Yes. We were number two; I think we're 17 and sliding like a brick off a roof.

Mr. Randy Hillier: Yes. I do believe that we have conflicts in mining. These are not going to address them other than to diminish the role of mining altogether and diminish our wealth and prosperity in this province.

The Chair (Mr. David Orazietti): Thank you, Mr. Hillier. Mr. Bisson, questions or comments?

Mr. Gilles Bisson: I just want to protect the tourism aspect of the far north. There are some opportunities there. The thing is we are not doing a very good job at either level of government to try to identify that and work with local communities to make that happen. However, I believe that the two can coexist; I think there's a way of being able to get to our stated aim.

But your points are well made, and I have more of a comment. People sometimes do things with the right intentions. We want to protect land for the future etc. The reality is 99.9% of the territory in the far north is protected already by virtue of its inaccessibility. If you do find a mine, like we did with the Victor diamond project, we need to have rules that say how you're going to develop it so that there's a buy-in from First Nations, so that there's some benefit for the First Nations of the province and so that we have some protection when it comes to the environment. There are ways of doing this sustainably. I guess that's what the real test is. I thank you for your presentation and understand your fervour.

The Chair (Mr. David Orazietti): Thank you, Mr. Bisson. Questions or comments, Mr. Brown?

Mr. Michael A. Brown: I just want to thank you for coming. I think some of the insight you brought about the importance of the mineral industry and mining not just to Canada and not just to Ontario but to the world brings a perspective that is fresh today. I don't think we've quite heard it before, and we greatly appreciate that.

The Chair (Mr. David Orazietti): Thank you very much for your presentation. That's our time today.

Mr. Stewart Jackson: Thank you very much.

The Chair (Mr. David Orazietti): Committee members, the committee will adjourn to Monday, August 10 at 9 a.m. in Sioux Lookout. Thank you, the committee's adjourned.

The committee adjourned at 1700.

STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair / Président
Mr. David Orazietti (Sault Ste. Marie L)

Vice-Chair / Vice-Président
Mr. Jim Brownell (Stormont–Dundas–South Glengarry L)

Mr. Robert Bailey (Sarnia–Lambton PC)
Mr. Jim Brownell (Stormont–Dundas–South Glengarry L)
Mrs. Linda Jeffrey (Brampton–Springdale L)
Mr. Kuldip Kular (Bramalea–Gore–Malton L)
Mr. Rosario Marchese (Trinity–Spadina ND)
Mr. Bill Mauro (Thunder Bay–Atikokan L)
Mrs. Carol Mitchell (Huron–Bruce L)
Mr. David Orazietti (Sault Ste. Marie L)
Mrs. Joyce Savoline (Burlington PC)

Substitutions / Membres remplaçants
Mr. Toby Barrett (Haldimand–Norfolk PC)
Mr. Gilles Bisson (Timmins–James Bay / Timmins–Baie James ND)
Mr. Michael A. Brown (Algoma–Manitoulin L)
Mr. Mike Colle (Eglinton–Lawrence L)
Mr. Randy Hillier (Lanark–Frontenac–Lennox and Addington PC)

Also taking part / Autres participants et participantes
Mr. Paul Miller (Hamilton East–Stoney Creek / Hamilton-Est–Stoney Creek ND)
Mr. Michael Prue (Beaches–East York ND)

Clerk / Greffier
Mr. Trevor Day

Staff / Personnel
Mr. James Charlton, research officer
Legislative Research Service

CONTENTS

Thursday 6 August 2009