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Tuesday 11 August 2009

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Mardi 11 août 2009

Standing Committee on General Government

Mining Amendment Act, 2009

Far North Act, 2009

Comité permanent des affaires gouvernementales

Loi de 2009 modifiant la Loi sur les mines

Loi de 2009 sur le Grand Nord

Chair: David Orazietti
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Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Tuesday 11 August 2009

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES AFFAIRES GOUVERNEMENTALES

Mardi 11 août 2009

The committee met at 0900 in the Valhalla Inn in Thunder Bay.

The Acting Chair (Mrs. Linda Jeffrey): Good morning. The Standing Committee on General Government is starting.

We're here to discuss 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.

Mr. Gilles Bisson: Point of order.

The Acting Chair (Mrs. Linda Jeffrey): Yes, Mr. Bisson?

Mr. Gilles Bisson: I note, Madam Chair, that we don't have a Vice-Chair, and I'd like to nominate Mr. Lou Rinaldi as our Vice-Chair.

Mr. Jerry J. Ouellette: We'll second the nomination.

The Acting Chair (Mrs. Linda Jeffrey): Any discussion? All those in favour?

Mr. Bill Mauro: I have some concerns I'd like to register.

Laughter.

Mr. Lou Rinaldi: Thank you very much for the opportunity.

Mr. Gilles Bisson: I told you we were going to help you this morning.

Interjections.

The Acting Chair (Mrs. Linda Jeffrey): That's great. I was going to ask you if you wanted it, but I figured I'd better not ask.

MINING AMENDMENT ACT, 2009

LOI DE 2009 MODIFIANT LA LOI SUR LES MINES

FAR NORTH ACT, 2009

LOI DE 2009 SUR LE GRAND NORD

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

The Acting Chair (Mrs. Linda Jeffrey): Our first delegation this morning is the Grand Council of Treaty 3. Is Grand Chief Diane Kelly here this morning? No. Okay. I'll move on to our next delegation.

Maybe we'll wait a minute or two. We might have some of our delegation here.

Mr. Gilles Bisson: We could always come back to them.

The Acting Chair (Mrs. Linda Jeffrey): We can.

PORCUPINE PROSPECTORS AND DEVELOPERS ASSOCIATION

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is the Porcupine Prospectors and Developers Association. Is someone here from that organization? I'm guessing this isn't Kristan Straub. Is this Mr. Don MacRae? Is that right?

Mr. Bill MacRae: Bill.

The Acting Chair (Mrs. Linda Jeffrey): Bill MacRae. Good morning, Mr. MacRae. I know you know the drill but I'm going to go through it because we have other presenters sitting in the audience.

You have 15 minutes when you begin, and if you could identify yourself and the organization you speak for. At the end, I'll give you a warning if you get close to the one-minute mark. After that, we'll be asking questions. When you're ready to go, you have 15 minutes. Welcome.

Mr. Bill MacRae: Good morning again, Madam Chairman and committee members. I'm Bill MacRae, vice-president and past president of the Porcupine Prospectors and Developers Association. Thank you for providing the opportunity for me to present to you today. Some of this will be familiar from yesterday but I do have some new stuff.

The PPDA is a regional association of prospectors, explorationists and mining industry members that can trace our beginnings back to 1939. Our main function is to advise and consult with Ontario ministries and departments on any issue that affects the progression from prospecting to mine development and closure.

We generally maintain a membership of 120 individual and 15 corporate members. We have been by far the most active regional association in Ontario and are responsible for the establishment and structure of what is now the Ontario Prospectors Association.

There have been many statements of the age of the Mining Act in Ontario. The act was first put in place in 1873 and then revised or rewritten on a regular basis, with the last in 1990, when the act was modernized to

reflect values of the time, with changes to protect surface rights holders and switch to a monetary system for maintaining title to crown land mining rights.

The present mining industry is governed by the Mining Act and is now heavily impacted by the Endangered Species Act, the boreal initiative and now the far north planning act and the Mining Act modernization. We operate under permits and guidance from the Ministry of Labour, Ministry of the Environment, Public Lands Act, the Forest Fires Prevention Act, the Endangered Species Act and the parks act, among many others.

Our position on Bill 173 and Bill 191: Both acts have been written and put in place far too quickly, with many contentious issues not adequately dealt with. To this point, Bill 191 is so poorly written that it has to be withdrawn and rewritten to be clearer, and appropriate funding put in place to move forward on a reasonable timeline.

The minister's statements on Bill 173 emphasize that the new act is a balanced approach. Does this mean that the present act is unbalanced?

Public opinion is that the Mining Act is being rewritten to placate special interest groups such as cottagers and surface rights holders in southern Ontario.

Also, in recent legal rulings, the Ontario government has been charged with the responsibility of being the lead in negotiations with First Nations. This act is pushing that obligation down to individuals and the mining companies.

Specific issues that have been identified by our membership with Bill 173 are: free-entry restrictions and security of title; indiscriminate withdrawal of mining rights; far too much being shoved into regulations; exploration permits; the power of search and seizure exceeding necessity; downloading of the responsibility of consultation with First Nation communities; payment in lieu of assessment to maintain mining rights; and prospector awareness programs.

I will now discuss a couple of selected issues in more detail.

Exploration permits: Exploration permits have been in use since at least the late 1970s. The old permits were not very specific, in that the concerns were more tailored to generally where you were on the property, the type of work anticipated and the type of equipment to be used. Stream crossings were an issue but dealt with locally. These permits had a 30-day turnaround time, but before they were eliminated, the response time became longer and longer, probably due to a lack of commitment to continuing with them.

The new exploration permit proposal will be handled by MNDMF, and if insufficient funds are allocated to staff the permitting process, then long delays will ensue. This is the present situation with mining lands and the assessment approval process not responding in a timely manner.

An exploration permit has to be sufficiently vague so that as an exploration project progresses, a shift in priorities by the discovery of new information does not need to be re-evaluated by MNDMF but can react. The ability for programs to shift focus "on the fly" is often the merits of good management that investors look for and invest in.

Bill 173 requires the explorer to not deviate from the planned activities, or they may be liable for a minimum fine of $25,000 a day: a bit onerous, and an assumption that the explorer is at fault. What checks and balances are in place to assure the public that the crown is acting in the best interests of the people of Ontario? The inspectors and agents for Bill 173 have more authority and power than the police, but without any accountability.

The next issue is the withdrawal of mining rights. The withdrawal of mining rights with overlying surface rights in southern Ontario should not have been all-inclusive, but should have followed the suggestions for withdrawal in northern Ontario. Do we want to further create two classes of Ontarians? There are individuals in southern Ontario who would welcome mining development and the opportunity to realize a monetary gain from the development associated with mining. A system as proposed for northern Ontario would require a property owner to apply to have the mining rights withdrawn and the permission granted if the mineral potential is low. This process for withdrawal would not differentiate between northern and southern Ontario.

A point of note is that the withdrawal order for all mining land under patented surface rights was issued almost one hour prior to the bill being presented in the House—a bit premature, considering Bill 173 has not yet been passed.

Bills 173 and 191 have been put in place long before they are ready. It is clearly done for political posturing and has nothing to do with full consultation with all parties impacted by such legislation. These bills could be in place for 20 years or more. Is the government willing to be seen as one that would rather do something quickly, or to be recognized as doing the best effort possible?

In conclusion, the parks act is in place for the benefit of parks, the environment act is to protect the environment, and the Endangered Species Act protects endangered species. Why does Bill 173 penalize the mining industry and place roadblocks in the way of the search for and development of new mines, a wealth generator for the province of Ontario? The future of Ontario if this legislation is enacted is that the rocks do not stop at the provincial boundaries, and if this bill is not changed, the grass will be greener across the border, and exploration funds will flow to other jurisdictions.

Thank you. I would be pleased to answer any questions at this time.

The Acting Chair (Mrs. Linda Jeffrey): Thank you very much. Mr. Ouellette.

0910

Mr. Jerry J. Ouellette: Thanks very much for your presentation again today. I have some questions on the map-staking aspect, if you don't mind going into that.

I currently hold and have held, since the 1980s, a prospecting licence. One of the concerns when I was in the field was that map staking may make it easier to tie

up lands so that juniors will not be able to develop those lands. What the majors do is they send out staking individuals—in groups of four, usually—and they'll go stake large tracts of land that will tie up the land to disallow it to be developed. Do you think this will make it easier with map staking to proceed in that fashion or not?

Mr. Bill MacRae: No, I believe the large companies will still have the advantage—

Mr. Jerry J. Ouellette: Yes.

Mr. Bill MacRae: —and that they have the technology and the people who can quickly react to this.

Mr. Jerry J. Ouellette: But they would continue on to be able to tie up lands so it can't be developed?

Mr. Bill MacRae: Yes.

Mr. Jerry J. Ouellette: But my belief was that the map staking would actually make it easier for a large corporation to tie up those lands so they couldn't be developed.

Mr. Bill MacRae: Well, our opposition to map staking is not the large company tying up the lands, because they can do that whether it's hiring 50 people to go out and stake an area—it's the competitive advantage, that an individual has the same right and abilities to stake a claim as a company. When you come down to people on the ground, it's individual competing against individual. It's not how fast you can access the system.

Mr. Jerry J. Ouellette: Yesterday, you mentioned that there was some concern, with the ability to gain access to some of the First Nations-land planned areas, that there would be selective individuals allowed to do this. Afterwards, we spoke with individuals and didn't get that sense that that was what was happening. Do you have examples of parts of the province where you may be hearing that sort of aspect now?

Mr. Bill MacRae: Yes, I heard that directly from the chief of the Constance Lake reserve. Also, the Wabun Tribal Council made that statement. These are all northeastern Ontario situations, but that's what I deal with. So, yes, I have.

Mr. Jerry J. Ouellette: Thank you. Those are all of my questions for now.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Bisson?

Mr. Gilles Bisson: Just back to map staking again. Quebec has gone to that model for—I don't know, I guess it has been five or 10 years that they've had the map staking. In your estimation, what has that done to the Quebec industry and what has that meant to the industry overall? What has been the experience?

Mr. Bill MacRae: The experience has been that, when Quebec went to map staking, they looked at the revenue that the stakers were generating. A couple of years later, they found that there was no difference in their revenue, but there are several reasons for that. One is that most stakers don't declare their revenue; they're paid cash and don't declare it. The second is that 90% of the stakers in northwestern Quebec simply moved and staked in Ontario, where it was still a viable industry. I don't think they moved into secondary support industries; I think they just shifted their focus.

Mr. Gilles Bisson: So did it add or lessen the capacity to find new mines?

Mr. Bill MacRae: It didn't—probably lessen, but I don't think it added.

Mr. Gilles Bisson: The issue, as I see it, is that we're trying to find a mechanism in this legislation so that we don't have the KIs again, where a company or prospector just can show up on the land and all of a sudden start doing not only staking, but exploration work. You need to have some mechanism to make sure that the First Nation has a say.

The compromise in this bill, as I see it, is, if you go to map staking, there's no disturbance of the ground, but then there's a requirement to notify the First Nation. Is there another way to get at this without eliminating map staking, in your view, where—

Mr. Bill MacRae: Without eliminating map staking? I think ground staking could still occur; I mean, ground staking is not intrusive or damaging to the land. There is already a process of consultation—before you start any exploration, you require consultation—but at what levels? I've seen different communities, First Nations communities, aboriginal communities, say, "Well, if you're just going in to prospect, no problem. Just let us know that you're doing it. We're not going to interfere. But if you're going in to do other things, we want to know about it."

So I don't think anybody in the industry does not understand consultation. It's just the capacity of the First Nations to handle consultation, at what level consultation has to begin, and whether firm rules and guidelines are put in place so that we understand what is required.

The Acting Chair (Mrs. Linda Jeffrey): To the government side. Mr. Brown.

Mr. Michael A. Brown: Thank you for taking the time to come and see us again here in Thunder Bay.

I want to pursue the map-staking issues, because I think they're important. The government's commitment to map staking is obviously for a number of reasons. First, in our view, it equalizes the opportunity for an individual prospector and a multinational to access claims. All you really need is access to a computer, which I'm sure most people in the business would have. Could you speak to that issue? One of the things we want to do is to encourage mineral development, and the experience, it seems, in other jurisdictions has had that effect. So could you help us with the view of your association?

Mr. Bill MacRae: Okay. You have to understand who prospectors are. Prospectors may not speak English, may not be literate, yet they may be excellent prospectors. It has nothing to do with your education; it's perseverance and the ability to go into the bush and do the work. So saying that all prospectors have access is not true, and larger companies will have better access. Prospectors don't always live in areas where high-speed Internet is available. You're dealing with lower speeds and troubled access onto the system. So I think there is still an ad-

vantage to larger companies or more aggressive companies to take advantage of that.

Mr. Michael A. Brown: Along that same line, I have a lot of friends who are prospectors, so I understand that. What's your view on the prospector's licence that is proposed?

Mr. Bill MacRae: The sensitivity training that—

Mr. Michael A. Brown: Yes.

Mr. Bill MacRae: Well, it depends how it is structured. If it is structured that you have to sit through a physical presentation and then walk away, it's probably all right. But again, you're dealing with people who may not be literate, so you can't have those expectations on everybody. And what about the 25-year licences, where the crown has granted a lifetime licence to a prospector? If he then can't pass this course, will he not be allowed to prospect when you've allowed him a lifetime licence? There are a lot of issues that have to be discussed about that.

Mr. Michael A. Brown: Those discussions are to be ongoing. I was in this very room and spoke to the Northwestern Ontario Prospecting Association some months ago, and I know there was an undertaking by the government to work with the associations to develop a means of making sure that we met the needs of the industry and the people in it.

Mr. Bill MacRae: Well, if we are allowed to be actively involved in the writing of the regulations, as we should be, then I think we can come to a reasonable conclusion to a lot of the details.

The Acting Chair (Mrs. Linda Jeffrey): Thank you very much for coming today. We appreciate your being here.

GRAND COUNCIL OF TREATY 3

The Acting Chair (Mrs. Linda Jeffrey): We're going to return to our agenda. Would Grand Chief Diane Kelly be here from Grand Council of Treaty 3?

Welcome. Good morning. Thank you for being here.

I'm just going to go through a preamble. You're going to get 15 minutes to chat with us. I'll give you a one-minute warning when you get to the end. When you begin, if you could state your name and the organization you speak for. You'll have 15 minutes. If you get close to the end, I'll give you a little warning, and at the end there will be time for us to ask questions. When you're ready, begin.

0920

Grand Chief Diane Kelly: Okay. Good morning, committee members. My name is Ogichidaakwe, is how it's pronounced: It's Grand Chief Diane Kelly of the Grand Council of Treaty 3.

Again, good morning, committee members. Thank you for the time permitted today for us to speak to this Legislature about this act and its impact on the spirit and intent of our treaty, which is Treaty 3, northwestern Ontario.

Our main message is in the first slide of the deck, which I believe you have before you. The procedural defects weaken the act—the lack of oversight by an agent of the crown who will truly uphold the honour of the crown. The regulatory regime must reflect a jointly defined process that truly accommodates First Nations rights. Dispute resolution orientation, mining interests versus First Nations: The only certainty is that there will be disputes. Arbitrary deadlines for consultation processes will create only shallow and narrow approaches by industry.

Our key submissions are: The act has an ill-defined framework for upholding the honour of the crown and the duty to consult. Our Great Earth Law, Manito Aki Inakonigaawin, best reflects the proper approach to consultation and defining accommodations within our territory, which is, again, northwestern Ontario.

We have major procedural concerns regarding the present government's ability to properly consult First Nations.

Our major concerns are: In section 2: "The purpose of this act is to encourage prospecting, staking and exploration for the development of mineral resources, in a manner consistent with the recognition and affirmation of existing aboriginal and treaty rights in section 35 of the Constitution Act, 1982, including the duty to consult, and to minimize the impact of these activities on public health and safety and the environment." An impact-based approach defining consultation requirements through a sliding scale of impacts will be both illegal and illegitimate in the eyes of the Anishinabe Nation in Treaty 3. Our way of life is strong, probably the strongest of any other grouping of communities in Ontario. We live by our traditional institutions to this day. Our older adults speak the language fluently, but this could easily change. Privatization of natural resources is not our way.

The chiefs stated in the 1873 treaty negotiations that led to the signing of Treaty 3 that they felt the rustling of gold beneath their feet. They knew where substantial gold deposits were in the territory and the value of these minerals and wanted to create a treaty that would lead to our community's wealth and well-being in a sustainable manner from that time forward.

Mineral rights in our territory: Millions of dollars have left our territory in gold and copper mining, with many environmental impacts as the only lasting result. Goldcorp, as an example, operates a gold mine near Red Lake, Ontario. We see this as unjust enrichment. Junior companies largely respect Manito Aki Inakonigaawin. They see the value in the certainty and the good relationships being defined through our law.

Bill 173 has particular importance to our area with the amount of activity in our southern region along the Rainy Lake, Lake of the Woods and English River watershed systems. We wonder why the act is not modernized to require a company like Goldcorp, which has located itself within our territory in the Red Lake vicinity, to accommodate Treaty 3's rights, or at least broach discussions with the Grand Council of Treaty 3, as that company has

been unjustly enriching itself in light of specific promises being made about minerals in the traditional territory of the Anishinaabe Nation in Treaty 3.

Policy-based consultations: As a first principle, accommodate our socio-economic interests in our territory. Jointly discuss government-to-government approaches that will allow us to prosper, as Canadians have prospered since the 1873 treaty was signed. As a second principle, consult us at a strategic planning level—a government-to-government approach to developments and policies vis-à-vis our joint interest in sustainable developments.

The honour of the crown cannot be delegated to industry. The duty to consult held by the crown is to give the opportunity for accommodation in a real way, accommodating our socio-economic interests rather than standing on the sidelines as the minister, expecting industry to accommodate our rights through impact-benefit agreements.

Treaty rights and accommodations: Our treaty is for "as long as the water flows and the sun shines—that is to say, forever." This is the phrase that ends the Paypom document, which are the notes written by the Anishinaabe-hired notetakers to keep a record of our Treaty 3.

We have a phrase that embodies this idea of sustainability, and that's Kaagige'Aki, which is the eternal land. Despite a treaty being signed, our territory would continue to sustain the Anishinaabe and our way of life forever.

These types of phrases resonate extremely with First Nations people, in particular Anishinaabe people, because we have lived in harmony with the land since time immemorial.

Principled submissions: Grand Council of Treaty 3 suggested that the new act should ensure or regulate the following important measures:

(1) accommodation of inherent and treaty rights of First Nations;

(2) respect for indigenous laws and jurisdictions and accommodation of the treaty framework through administrative harmonization of laws;

(3) dispute resolution outside of the bureaucracy at arm's length in a treaty commission of Ontario;

(4) consultation at a strategic planning level on a government-to-government basis; and

(5) industry-based discussions that will eventually lead to free, prior and informed consent by Grand Council of Treaty 3.

Protecting our rights: An arm's-length commissioner in the treaty commission of Ontario should be settling the disputes—uninterested and unbiased opinions.

Local administrators are hard-pressed to advance our concerns in a regulatory regime aimed at promoting the minerals industry.

The withdrawal process needs to be on a government-to-government basis, not solely at the discretion of the minister or his or her agent.

Legislative accommodations: Section 29 should restrict any activity within a set parameter around our reserve communities in light of our claims, rights and Treaty 3.

Full consent should be required within our territory, designated through a government-to-government negotiation between Grand Council of Treaty 3 and crown representatives. An MOU with MNDMF and Grand Council of Treaty 3 is already in progress.

Participation of First Nations should be a requirement or goal of the modern regulatory regime.

Within Treaty 3, we wish to remind the members of this committee, is a framework of relations between the Queen's governments and the government of the Anishinaabe Nation. We are concerned that the principle of nation-to-nation relations has largely been usurped by administrative bureaucracy.

What we call the treaty framework was the principles of treaty making that led to good relations. Within this treaty framework are the Anishinaabe principles of legality and legitimacy, in addition to the British legal tradition. These Anishinaabe principles were shared and adopted as a prerequisite and an ongoing concern about being a good neighbour with the Anishinaabe.

Good neighbours respect that we both have joint interests related to the sustainability and health of our environment.

Good neighbours have a relationship of reciprocity. If you are in a situation where you impact us, you will compensate us. But prior to even encountering that situation, you will talk to us, hear our concerns and accommodate our rights to the best of your ability.

Good neighbours do not unjustly enrich themselves by monopolizing access and resources that must be shared.

Good neighbours do not unjustly enrich themselves by creating self-serving rules and regulations that limit access to First Nations and encourage practices that are unsustainable for future generations.

How to balance our rights: Honourably balance the constitutional rights of treaty First Nations against those of mining companies.

Substantiate equality principles: We need special policies and regulatory measures in order to assist our communities to meet the twin goals of self-sustainable economies and environments.

The 15-year life cycle of most mines means that the time is now to define a proactive legislative framework.

We have invested monies in defining our laws in order to bring certainty to investors and industry.

In subsection 4(5), the minister has the power to delegate any of his or her powers under the Mining Act "to the deputy minister or to any officer or employee of the ministry, subject to such limitations, conditions and requirements as the minister sets out in the delegation."

You do not have jurisdiction to create this act without accommodating First Nations' rights and interests. Case law is clear that it may in fact go in that trajectory. Your ministry does not have jurisdiction until it can show it has upheld the honour of the crown prior to making a decision within this act.

The most important issue that this new act must deal with is how to accommodate our rights and properly balance the competing interests, which are not constitutional. The section 35 rights are part of the permanent constitutional order; do not make these rights illusory.

Accommodation will require some way to measure the benefits and impacts that accrue to the First Nations in Ontario in a real way. Some parties have suggested a commissioner, similar to the Environmental Commissioner of Ontario, to report back to the Legislature on efforts related to the duty to consult. So you need an arm's-length commissioner to have an office that will uphold the honour of the crown. Nothing less will uphold this important duty.

The eternal land—Treaty 3: Our elders remind us constantly that if you take something from the land, you must give something back.

Legislatures must ensure that if land is used to support your economy, you must invest in its future sustainability and regulate it in partnership with the Grand Council of Treaty 3. Declaration orders to exempt mining activity from environmental assessments are short-sighted and bad public policy. Fix the environmental assessment regime if it is incompatible with mining or stop mining practices that are incompatible with environmental sustainability.

0930

Do not forget that the chiefs and I walked out of the October 2, 2008, regional workshop set by the Minister of Northern Development and Mines because it did not accommodate our rights regarding mutually defining the consultation process. We walked out because the minister's representative stated that the workshop, which was a presentation with pre-set questions, would be the only consultation afforded to us at that time.

Our 26 communities supported our efforts to work on a government-to-government basis on the Mining Act modernization. A new process was defined. We were told that we could have the time to engage our communities. The Minister of Aboriginal Affairs had specifically intervened. Our process was not accommodated, the way we define our positions and our ability to review the discussion paper and our own real, on-the-ground concerns regarding the prospecting, staking and active work being done in our territory. Our law, Manito Aki Inakonigaawin, where we authorize developments and activities in our territory, has been disrespected.

We stepped away from the process chaired by the Chiefs of Ontario and the assistant deputy minister of Northern Development and Mines. It did not accommodate our First Nations. It expected us to make serious concessions without any consultation with our constituencies. Yet our Grand Council took it upon ourselves to present the information to our communities largely at our own expense. We did not participate in the secret process because that is not our way of making important decisions dealing with the land or our treaty rights.

Protecting constitutional rights: prospecting awareness—a slight improvement over the status quo, but what happens to prospectors with map staking? Map staking is incompatible with consultation requirements and is indicative of an impact-based approach to consultation; low impact equals notification only. The duty to consult is a measure of honourable dealing meant to protect, not interfere with, rights before they are proven, like land claim interests, as an example. Treaty rights are previously reconciled interests negotiated between the Queen and the First Nations. The Supreme Court of Canada has said this, and to get on with performance.

Grading Bill 173: It fails to uphold the honour of the crown in ensuring our rights are duly considered and in some instances hold special consideration—claim areas and withdrawals. It fails to meet the universal indigenous right of full, prior and informed consent. It creates an unsatisfactory dispute resolution power that is likely to mean that First Nations must continue to invest their precious and few resources in new arenas in order to fight in an adversarial setting once more. And there's a continuing need to use the common law, fostering the uncertain investment climate.

Under section 112, you clearly decided that an individual to be involved in settling our disputes cannot be the commissioner in the act under the appeals process. Again, an arm's-length, non-interested office is required.

What we ask is that this Legislature tell the executive that this act does not uphold the honour of the crown. It is subject to judicial scrutiny for that fact, and that will not bring the certainty to industry that such real, on-the-ground measures like Manito Aki Inakonigaawin, our Great Earth Law, does. There are several less-major concerns regarding the exercise of discretion throughout the act, where a localized officer will be required to balance our rights against their own self-interest or the self-interest of their community. This is not meeting the high bar of legal principles related to section 35 and specifically accommodating our socio-economic interests as promised in Treaty 3.

Meegwetch.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Grand Chief Kelly. Everybody has about two minutes to ask questions, beginning with Mr. Bisson.

Mr. Gilles Bisson: You made a comment in your presentation that consent would mean that you would require negotiations through Treaty 3. I take it that that includes the local First Nation as well.

Grand Chief Diane Kelly: Absolutely. Grand Council of Treaty 3 is the traditional government of the Anishinaabe Nation of Treaty 3. It's the representation of the communities.

Mr. Gilles Bisson: Now, Grand Chief Stan Beardy had mentioned last week—if I misunderstood, I stand to be corrected, but his view was that the NAN was not the one to negotiate; it was the local reserves themselves.

Grand Chief Diane Kelly: There is a distinction between Grand Council of Treaty 3 and NAN. NAN is an organization representative of two treaties; I believe it's Treaty 5 and Treaty 9, but that's some information that maybe the committee could research further. Grand

Council of Treaty 3 is the traditional government of the Anishinaabe Nation within Treaty 3, and that's the distinction. We are the traditional government. We've been there prior to the treaty and we're still there today.

Mr. Gilles Bisson: That's why. Okay. I needed that clarified. Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Mauro.

Mr. Bill Mauro: Grand Chief Kelly, thank you very much for being here this morning. I'd like to make just a couple of comments before I ask you my question—and then I'm going to share my time, if there is still any remaining, with Mr. Brown—on the Mining Act. My comments will be in the context of Bill 191.

You talked a bit about duty to consult. Section 3 of Bill 191 states, "This act shall be interpreted in a manner that is consistent with the recognition and affirmation of existing aboriginal and treaty rights in section 35 of the Constitution Act, 1982, including the duty to consult."

The other comment I wanted to make was in the context of consultation. I'm speaking on Bill 191 now. This is first reading only. This is quite significant, what we've done here in terms of bringing this legislation out to consult. We'll visit five communities on this, and we have written a letter expressing a desire on behalf of our government to hopefully go forward with the co-operation of the other two parties in terms of having further consultations after second reading on Bill 191.

My question for you is on the certainty. In your presentation, you talked a bit about certainty. I guess there's some belief, on our side at least, and I think even on the other, that the land use planning process in Bill 191 will in fact lead to certainty for all stakeholders involved in the issues associated with the bill. I'm wondering if I could have your comments on that, the land use planning process, given what's already occurred in Pikangikum, the positive steps that have been occurring already in Cat Lake and Slate Falls etc.

Grand Chief Diane Kelly: Certainly. Thank you for your question. I guess my comments around certainty have to do with our resource law, and that's Manito Aki Inakonigaawin. We don't see ourselves as a stakeholder; we see ourselves as a rights holder, and I think that's a very clear distinction. So with regard to certainty, when I mentioned that in my presentation and the submissions that we've made prior to this on the Mining Act, through our resource law, a company can gain an authorization. Once a company has that authorization, there won't be the opportunity for a potential claim such as KI to occur. That's how we view it. When we talk about certainty, that's what we mean. Once you have the authorization of the nation to go ahead with that activity, that is about as certain as you can get. There is nothing beyond that.

Mr. Bill Mauro: Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Hillier.

Mr. Randy Hillier: Just for my own clarification, you mentioned on one of the slides about Goldcorp and unjust enrichment. Can you expand on that a little bit for me and clarify why you view Goldcorp or others as having unjust enrichment in their activities?

Grand Chief Diane Kelly: Sure. I just used the example of Goldcorp because it's one of the largest mining companies in the world, as we all know. The other point is that they do have a mine that's presently in operation just outside of Red Lake, Ontario, which is within the Treaty 3 territory. Goldcorp has never consulted with us, with the Grand Council, they have never talked to our communities, and so we don't know how they could be given the permit to go in and have their company there. We understand that they are extracting millions of dollars' worth of gold. It's some of the purest gold in the world that comes out of the mine there. So I guess that's where that comment is coming from.

Mr. Randy Hillier: Okay. We'll go back, then, to the crown's honour and its duty to consult. Did the crown not consult, and is there no consultation with the crown and Treaty 3 with regard to Goldcorp?

Grand Chief Diane Kelly: Absolutely not.

Mr. Randy Hillier: Absolutely not.

You mentioned that you walked out of the workshops on Bill 173 earlier, and we've also heard from many prospectors and other interested groups that there was actually no consultation. You mentioned that there were pre-set questions at that workshop, and that there was no other open discussion or debate allowed from your part?

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Grand Chief Diane Kelly: That was how that workshop that we had—I believe it was in Kenora—how it unfolded. We had asked the person who was delivering that workshop directly if this was the only consultation, and they had agreed that it was.

Mr. Randy Hillier: And it was pre-set questions.

Grand Chief Diane Kelly: It was pre-set questions, yes.

The Acting Chair (Mrs. Linda Jeffrey): I'm sorry, but your time has expired, Mr. Hillier.

I'll let you finish if you have anything else to add.

Grand Chief Diane Kelly: Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Thank you for being here.

MUNICIPALITY OF SHUNIAH, DISTRICT OF THUNDER BAY

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is the municipality of Shuniah, District of Thunder Bay, Reeve Maria Harding.

Good morning, and welcome. As you settle yourself: You'll have 15 minutes to speak to us. When you begin, if you could state your name and the organization you speak for, you'll have 15 minutes. I'll give you a warning if you get close to the 15-minute mark. At the end we will ask questions. When you're ready to begin, you can start.

Ms. Maria Harding: Thank you, Madam Chair, members of the standing committee. My name is Maria Harding. I am the reeve of the municipality of Shuniah, which lies on the easterly boundaries of the city of Thunder Bay. Shuniah is comprised of two geographic townships, MacGregor and McTavish. The municipality

of Shuniah incorporates a large expanse of land consisting of 55,374 hectares commencing at the east boundary of the city of Thunder Bay, spreading approximately 60 kilometres easterly, meeting the boundary of the township of Dorion, and northerly from the shores of Lake Superior approximately 14 kilometres.

Shuniah has a considerable cottage population, the number of households being 2,887, with its full-time population estimated at 2,348 people. However, during the summer months those numbers almost double and can be estimated as as high as 5,000.

With exception of the shoreline properties, the majority of the municipality is rural, and this is where the private landowners have felt the impact of the Mining Act over the past 136 years. Twenty-five per cent of the lands in Shuniah are legally described as mining locations rather than concessions and lots.

As reeve of the municipality, I feel bound to bring this deputation forward to you this day to represent the private landowners within the municipality of Shuniah. The problem we are faced with is the free entry to private land without contact or consultation, which allows prospectors to stake claims on minerals without notifying or consulting landowners.

It appears that in 1906 the Mining Act established what is called "free access to land by mining companies." This free-entry system mandated by the Mining Act gave the mining industry and others free access to land in their search for minerals, regardless of who owns the surface rights. The municipality of Shuniah is no stranger to this free-entry system. It has led to conflict with private landowners, businesses and local government by exhibiting a lack of regard for the environment and private landownership.

It is hoped that the reform of the Mining Act will reduce land use conflicts and reflect modem-day values as to how private landowners are treated.

The government claims that Bill 173 addresses the concerns of all stakeholders. It claims it will forge new approaches to mineral exploration that will be more respectful of private landowners. To really protect the environment and private landowners' rights, the act has to be able to address the following issues.

Firstly, it needs to ensure that comprehensive land use planning occurs before mining activities are allowed to proceed, so that the benefits of mining versus other land use can be taken into consideration and then informed decisions can happen.

Secondly, it must require environmental assessment to cover each stage of the mining process from the time prospecting starts, to exploration, to operation and to reclamation of the land.

Thirdly, it must provide increased rights for landowners to address issues with the free-entry system, and it must require full funding for cleanup and reclamation costs.

Fourthly, the legislation shall ensure that within an organized municipality the land use planning process precedes any mining activity and that a statutory prohibition on prospecting, exploration or mining in areas that are covered by an official plan, which lies within the Planning Act, is subject to a public consultation process with municipal councils and affected landowners.

This amendment to the Mining Act also proposes a dual system where northern Ontario surface rights are treated differently than those of southern Ontario. In southern Ontario, the mining rights held by the crown will be deemed to be withdrawn from prospecting and staking, whereas in northern Ontario the mining rights held by the crown include a stipulation whereby the minister may issue an order withdrawing the mining rights from prospecting and staking upon the surface rights when an owner applies for the order.

In northern Ontario, the proposed amendments to the Ontario Mining Act will still allow exploration activities, including aerial surveying, felling of trees, blasting and drilling trenches, along with the construction of temporary roads and shelters, without any public consultation and environmental assessment to the uninformed landowner.

Private landowners in northern Ontario should have the same rights as those in other parts of the province. The legislation gives the First Nations the right to say no to prospecting on traditional lands, a right they should have. Why can't these same rights be given to private landowners who do not own mineral rights on their respective lands?

In summary, Madam Chair and members of the standing committee, I strongly request, on behalf of the private landowners in the municipality of Shuniah and in support of other property owners within the province, that you give these points I brought forward today very serious consideration to ensure that the rights of the private landowner are protected before finalizing any amendments to the Mining Act. Thank you very much.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Beginning with the government side, there are about four minutes for questions.

Mr. Michael A. Brown: Welcome, Reeve Harding. I have a couple of questions. The first one is in regard to something I did not know, and I'm glad you brought this to my attention. You say in the brief that 25% of the lands in the township "are legally described as mining locations rather than concessions and lots." I don't quite understand how that works. Does it mean that there is private land there, that the owner has a deed to the private land?

Ms. Maria Harding: That is correct. In the municipality of Shuniah, people who own larger tracts of land like 100, 200, 300 acres only own the surface rights to most of that land; they do not own the mineral rights. Therefore these people have no control over who goes onto their lands and what is happening. That is what this is about.

Mr. Michael A. Brown: Just so I understand, it's a situation where private landowners own the land, but—

Ms. Maria Harding: But not the mineral rights.

Mr. Michael A. Brown: —in 25% of the township the crown has the mineral rights.

Ms. Maria Harding: Yes.

Mr. Michael A. Brown: Okay. That helps me. I wasn't quite understanding what that means.

So there is within this legislation the right of the landowner to ask that the ministry withdraw their land from staking, and you're saying that's insufficient? Any landowner could ask that mineral rights revert to the crown, as they will in southern Ontario?

Ms. Maria Harding: If we can be guaranteed that that will happen and that we are allowed to do that, I'm quite sure there wouldn't be an issue.

Mr. Michael A. Brown: That's within the act, that the landowner can ask that the mining rights be withdrawn.

Ms. Maria Harding: And what are the probabilities that that will happen?

Mr. Michael A. Brown: The act describes it as having regard to what mineral potential might be on the property. I'm not exactly sure how that is to be assessed, but my guess is that it would accommodate most landowners.

As you know, in many places in northern Ontario, mining is something—for example in Sudbury, in parts of my friend Mr. Bisson's riding in Timmins etc. there would be a different view from that of southern Ontario as to how staking might occur. That is why the government has differentiated between southern and northern Ontario, because of the experience we have in some of our mining centres.

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So we appreciate your concerns, and I think maybe we've accommodated them as we go forward here. It's just that the landowner in the case of northern Ontario has to request of the ministry that the rights to stake be withdrawn.

I don't really have any more.

The Acting Chair (Mrs. Linda Jeffrey): Okay. Mr. Ouellette?

Mr. Jerry J. Ouellette: Thank you for your presentation, Reeve Harding. It's nice to see you again.

One of the questions I have, though, is with regard to section 29, which deals with restricted lands: "on any land that is a residential or cottage lot smaller than one hectare in area." Are you familiar with that section of the bill that talks about restricted lands?

Ms. Maria Harding: The way I read it is that if you are in a plan of subdivision, you cannot be staked.

Mr. Jerry J. Ouellette: It specifically states a "cottage lot." As a reeve, can you give an official designation of a cottage lot?

Ms. Maria Harding: A cottage lot, in the definition of Shuniah, is a property that abuts the lake.

Mr. Jerry J. Ouellette: Some of the difficulty, as I recall, is that there is no official designation, because if somebody doesn't buy the 66 feet of frontage on the water, then it's not water frontage, so it's not an official designation as a water lot. The Ministry of Natural Resources, several years ago, sold off a considerable number of lots that they had staked off in the 1970s. They are all double lots; they are two lots in size. So the difficulty there is, is that a single lot? Is that a double lot? I think that's very confusing in the way the legislation is drafted out. It doesn't specifically state if it's a single owner or occupant or whether one individual can buy a multiple number of lots in order to get over the size restrictions or under the size restrictions. I'm just wondering if you've had any discussions about that, and I think not, from what I'm seeing here.

Ms. Maria Harding: Well, we're in the process, in Shuniah, of addressing our official plan in reference to cottage conversion. As you know if you know Shuniah, I'm quite sure, we have properties that are very much undersized for year-round residency, and we're in the process of changing our system. We are going from a described size to an environmental study kind of process. So we have people who have 50-foot-wide lots; we have people who have an acre, an acre and a half. It depends on how the subdivisions were developed in the 1930s, when this happened. People who did not have the appropriate size very often purchased their shoreline allowance to fall within the regulations we had at the time. Many people do not own the shoreline allowance because they don't see a need for it. Other people purchase their shoreline allowance because they have a sandy beach. If you have a rocky shore, you may or may not purchase. It depends.

Mr. Jerry J. Ouellette: So it complicates the definition of cottage lot as to whether they purchase the 66 feet of frontage.

I think one of the aspects, Reeve Harding, is that for a lot of the individuals that we're hearing from, the concern is the actual trenching component of the prospecting moving forward, and the retention. Have you heard of any opposition to the drilling component where organizations would come in and drill because it's less intrusive and the damage done to the land or the impact is minimalized at that time? Does your municipality have any opposition to the drilling aspect of it?

Ms. Maria Harding: We haven't discussed it, to be really honest. Our concern very much right now, and this has happened during the last week, is this massive staking of our municipality. It's massive. It's almost like there's an invasion, and people are wondering what's going on. No one knows what's happening. This has happened since I agreed to come before you. We don't know why it's happening, but there isn't a stitch of Shuniah north of the shoreline that hasn't been staked during the last week. So we would like to know.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Bisson.

Mr. Gilles Bisson: Just to follow up on some of the comments made, we have the same situation across northern Ontario: a lot of private property owned by cottagers and farmers etc., where mining interests may happen. It's been my experience that there is an approach on the part of the exploration to get an agreement with the property owner before going forward. Is that not what happens in your situation?

Ms. Maria Harding: All we know is that they're out there staking. We don't know who they are. We look at the little plates that they have to attach to the posts and we still don't know who the people are who are doing it,

and we don't know why it is happening all of a sudden, within the last week.

Mr. Gilles Bisson: It's probably happening all of a sudden right now because they're anticipating a change in the act coming.

Ms. Maria Harding: We know; yes.

Mr. Gilles Bisson: I would think that's what's going on. But I guess my question is, has there been in your municipality an example where a property owner has had exploration—I'm not talking staking, but actual exploration—done on their property without the permission of the property owner?

Ms. Maria Harding: I am not aware of that.

Mr. Gilles Bisson: Okay. So if you were to have something clarified in this act that made it mandatory, that clarified the process of getting permission and what that means after, would that satisfy the citizens in your community? In other words, I'm a cottage owner or whatever it might be, I own a piece of property, and there's a mining interest that wants to come and do physical exploration on my property: (a) permission must be granted by the property owner, and (b) there's some sort of structure as to what is allowed to happen on that exploration activity.

Ms. Maria Harding: I am not sure that cottage owners would agree to that, but I can speak for landowners who own larger pieces of land.

Mr. Gilles Bisson: Okay. Now, under the current bill, and Mr. Brown alluded to this, there is a dual system. There is the southern Ontario system which says you're going to withdraw the mining rights altogether, and in northern Ontario, you have to apply to get your mining rights withdrawn. You've spoken to that. I take it what you're basically saying is that you want the same system for all of Ontario and you favour the southern model.

Ms. Maria Harding: Yes. I think it would be fair. We wouldn't be two sets of citizens in Ontario.

Mr. Gilles Bisson: So conversely, would you agree to the same system for everybody being the northern model? I'm just curious. Is it because it's different or is it because of the ultimate end?

Ms. Maria Harding: The ultimate end.

Mr. Gilles Bisson: The ultimate end. Okay. Thank you.

Ms. Maria Harding: If I may add one more thing.

The Acting Chair (Mrs. Linda Jeffrey): Yes.

Ms. Maria Harding: The name Shuniah is an Ojibway word for "silver," which means money.

The Acting Chair (Mrs. Linda Jeffrey): Excellent. Thank you very much for being here today. We appreciate it.

OJIBWAYS OF THE PIC RIVER FIRST NATION

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is the Ojibways of the Pic River First Nation. Is Jamie Michano here? Did I pronounce that right?

Mr. Jamie Michano: You did.

The Acting Chair (Mrs. Linda Jeffrey): Welcome. As you get yourself settled, you'll have 15 minutes. I'll give you a warning if you get close to the end, just a heads-up, and then we'll be able to ask questions afterwards. Whenever you're ready to start, if you could just state your name and the organization you speak for.

Mr. Jamie Michano: Good morning. My name is Jamie Michano. I'm a member of the Ojibways of the Pic River First Nation. We are a small Anishinabek community located on the north shore of Lake Superior, approximately 300 kilometres east of Thunder Bay.

A proactive community, our leadership undertook an extensive research project to better understand the territory our members historically occupied. The data collected as part of this project will be used as evidence in our aboriginal title claim currently before the Ontario court. Our traditional territory extends from the Aguasabon River near Terrace Bay, east to the Wabikoba Creek and from Lake Superior north to Highway 11.

The level of mineral exploration and mining activity within our traditional territory is quite extensive. Since our land claim was filed, 1,625 mining blocks have been licensed in our traditional territory, representing an allocation of over 240,000 hectares. Additionally, since 2001 there have been 13 long-term, 21-year leases either issued or reissued within our traditional territory. These leases account for the allocation of over 3,900 hectares of land.

It is without question that Pic River First Nation is right in the active heart of mineral exploration activity. Without a means to legally involve ourselves in discussions with prospectors, exploration companies or large mining giants, we were forced to sit on the sidelines while these large mining companies extracted billions of dollars of resources from our territory with little or no benefit to the community.

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While some exploration companies made valiant efforts to engage Pic River First Nation in discussions regarding the exploratory work they were doing, others had no legal obligation to include Pic River First Nation leadership or members in discussions surrounding the exploring or mining they were doing in our backyard.

Following the Supreme Court of Canada decisions in Haida and Taku River and Mikisew Cree in 2004 and 2005, we now see greater attempts by exploration and mining companies to engage Pic River First Nation in the consultative process, yet we still face challenges when dealing with the crown. Our challenges with the concept of consultation were based solely on operation within draft frameworks, such as the province of Ontario's draft guidelines for ministries on consultations with aboriginal peoples, dated June 2006, or INAC's interim guidelines for federal officials to fulfill the legal duty to consult, dated February 2008. With no clear guidelines to follow, Pic River First Nation leadership made the decision to develop and implement a framework which provided clarity on how the consultative process would unfold for future consultations with our First Nation. In October

2008, leadership adopted the Pic River First Nation consultation and accommodation law. This framework offered much-needed clarification on how to properly and meaningfully consult with our community. Exploration and mining companies acknowledge and respect this framework and make every effort to work within the constructs of this document.

The 2007 discussion paper Towards Developing an Aboriginal Consultation Approach for Mineral Sector Activities states: "The Ontario government wants to work with aboriginal communities, aboriginal groups and industry representatives to develop a range of tailored consultation approaches that provide clarity and direction on when and how to consult with aboriginal communities on mineral sector activities." Further, the discussion paper is named as "one of the tools MNDM is using to seek comments, concerns and ideas to help (them) collaboratively develop aboriginal consultation guidelines for mineral sector activities." The Pic River First Nation framework provides just what the Ontario government has been seeking since 2007. Yet in 2009, when Pic River First Nation has clear guidelines on their consultative process, the Ontario government and a number of its ministries continually fail to acknowledge and respect our framework.

In the context of Bill 173, Pic River First Nation leadership provided clear direction from the moment the announcement was made that the Mining Act would be modernized. We wanted to be involved and fully engaged in this process. We were prepared to provide meaningful feedback, provided we were properly informed and that we were consulted on our terms. The process that unfolded couldn't be further from our initial expectation. Rushed from the start, our leadership expressed great concern with the unreasonable timelines with the public consultations related to this very important process. Presumably after considerable political pressure from First Nations across the province, there was a one-month extension on consultations with the First Nations. With the one-month extension still being unrealistic, the First Nations continued to request more time to properly review and gather necessary technical expertise to provide meaningful feedback on the issue. The additional extension and subsequent funding provided to the Union of Ontario Indians to engage their communities in the Mining Act consultations afforded a glimmer of hope that we would finally be able to gain the appropriate level of awareness of the previous Mining Act, and then be able to collect technical knowledge and legal understanding to offer meaningful feedback regarding changes to the revised Mining Act.

The Union of Ontario Indians, along with the Ministry of Northern Development and Mines officials and their consultants, visited 11 of 43 Union of Ontario Indians communities during the month of January 2009. During these sessions, the First Nations were fed 14 questions and were asked to respond to these questions. From my understanding, there were very low turnout rates at each of the communities. At best, I figure about 400 community members attended these union sessions, which translates into about 1% of the Union of Ontario Indians membership. Following these 11 sessions, both the Ministry of Northern Development and Mines and the Union of Ontario Indians declared victory in that First Nations consultation on the modernization of the Mining Act was complete. I do not understand how meaningful and proper consultation occurs when 400 out of 43,000 members have been spoon-fed 14 specific questions.

Pic River First Nation was one of the participant communities in the union sweep of consultation sessions. At that session, there were clear expressions of concern raised by community members regarding the undertaking of consultations by a regional body engaging its communities in this process and in turn calling it "meaningful consultation" in the absence of widespread community engagement and involvement.

Another area of personal concern with the revisions is the reference to section 35 of the Canadian Constitution Act. Reference in the new Mining Act to section 35 does little to protect First Nation and aboriginal and treaty rights. Section 35 rights are still undefined in law, and more often than not, a determination of the asserted right is made at the Supreme Court of Canada and will be interpreted on a band-by-band basis.

Moreover, First Nations who assert these rights are left with the burden to prove their assertion. To support the burden of proof then leads the First Nation to undertake extensive and expensive evidence of a historical and cultural relationship to the lands where rights are asserted.

While there are provisions to support aboriginal values-mapping and community land-based planning initiatives referenced in the revisions, these initiatives are geared towards the far north only. My concern is that without provisions for all First Nations in Ontario, we will continually be faced with disputes such as the Kitchenuhmaykoosib Inninuwug and the Ardoch incidents.

I was recently hired by my home community as their lands and resources coordinator. My role is based on building positive relationships that we form not only with third parties that are operating within our traditional territory but also with both federal and provincial ministries and agencies.

This process is a perfect opportunity for Ontario to work with the First Nations towards a balanced approach on consultations on mining activity throughout Ontario. However, failure to acknowledge the consultative frameworks that have been developed by First Nations, who have a certain level of understanding of the consultation and accommodation process now, may still result in instances where disputes can occur.

I appreciate the opportunity to voice my concerns. Meegwetch. Very short.

The Acting Chair (Mrs. Linda Jeffrey): Thank you very much. Beginning with Mr. Hillier, you have about three minutes.

Mr. Randy Hillier: Thank you very much. You mentioned again, and we've been hearing this time and time again, pre-set questions, and that's been your

experience as well: no meaningful dialogue or debate. I think you used the term "spoon-fed questions."

Mr. Jamie Michano: Spoon-fed.

Mr. Randy Hillier: I'd like to get your thoughts, because you also alluded to a couple of things during your presentation, that the far north has a set of laws, the near north will have a set of different laws, and southern Ontario will have a different set of laws again.

Mr. Jamie Michano: Right.

Mr. Randy Hillier: Just your—

Mr. Gilles Bisson: We're used to it.

Mr. Randy Hillier: Justice also usually has the term "equality"—equality before the law. Do you think that that is appropriate, that we should be treating people with different sets of laws where they live, or do you think we can make this Mining Act a truly just document by treating everybody equally?

Mr. Jamie Michano: Thanks for the question. Speaking from the First Nations perspective and Pic River First Nation, I know that each First Nation is going to be unique. I guess my comment would be—

Mr. Randy Hillier: You can still be unique and still have equality.

Mr. Jamie Michano: Exactly, but when we talk about the consultation and accommodation and we talk about the consultative process and how you're going to be dealing with the First Nations, I just think that it's important to respect and acknowledge the frameworks that they have in place.

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Mr. Randy Hillier: Yes. We're also seeing the same thing from municipal governments, for example, that—

Mr. Jamie Michano: Exactly.

Mr. Randy Hillier: —municipal governments are not being consulted and engaged in the process. Individual landowners, whether aboriginal, First Nations or private landowners—whatever—are not being engaged and treated equally with process and engagement. It appears to me that that is one of the big problems that we're facing with this bill. We're trying to treat everybody differently, and of course, we're not going to get satisfaction from anybody.

Mr. Jamie Michano: It seems like we're trying to catch up. Maybe these changes could have happened progressively over the 163 years that changes haven't happened.

Mr. Randy Hillier: Thank you.

The Acting Chair (Mrs. Linda Jeffrey): You have more time. Do you want more time? A short question.

Mr. Jerry J. Ouellette: Thank you for your presentation. Would you view this as an official consultation? You're presenting; we're asking questions. Do you think this is an official consultation?

Mr. Jamie Michano: Would I view this as an official consultation?

Mr. Jerry J. Ouellette: Yes.

Mr. Jamie Michano: Not with the First Nation. I'm a single member of one First Nation.

Mr. Jerry J. Ouellette: Thank you. Also, one other quick question—

The Acting Chair (Mrs. Linda Jeffrey): Sorry; you've run out of time. Mr. Bisson.

Mr. Gilles Bisson: You stated in your presentation to us that you set in place a policy framework that I think I heard you say has been working fairly well with mining interests. Since then, have all mining explorationists adhered to this policy?

Mr. Jamie Michano: Yes.

Mr. Gilles Bisson: But then you went on to say that the province has not, and I was a little bit intrigued with what that was all about.

Mr. Jamie Michano: In our experience, the mining companies and the exploration companies that are currently operating within our territory come to the table and there is now clarity. They now understand how Pic River wants to be consulted. When it comes to one of Ontario's ministries or to other federal agencies, their arms go up and they can't even acknowledge that there's a framework in place. They say, "Oh, yes, we understand that it's there. A lot of work went into it, blah blah blah, but we can't acknowledge it and we can't follow the guidelines. We can't follow this framework."

Mr. Gilles Bisson: So that's when they come on to your territory for whatever type of work that they've got to do. Isn't that interesting?

Mr. Jamie Michano: Very.

Mr. Gilles Bisson: So let me ask you this: There's this whole discussion around map-staking versus staking. I'd fall on the staking side. I think staking is a much-preferred way of being able to do exploration rather than giving large companies an ability to map-stake. The difficulty here is, in order to attract investment and for the activity of mining to happen, you have to have open access. But there lies the problem for private property owners and for First Nations: They don't have a say sometimes about what happens on their territory.

If staking was limited—strictly staking. All you could do was go there and stake the claim, and then notify the First Nation. Then any work thereafter would be prescribed in the bill, a process of discussion, consultation and consent. Would that resolve the issue, in your view?

Mr. Jamie Michano: That would definitely help. At least we would understand where they're going. To be involved at the beginning I think would help the process.

Mr. Gilles Bisson: So it's not the activity of staking that is the source of irritation.

Mr. Jamie Michano: No.

Mr. Gilles Bisson: It's what happens after the staking.

Mr. Jamie Michano: Yes.

Mr. Gilles Bisson: Okay, thank you.

The Acting Chair (Mrs. Linda Jeffrey): Government side, Mr. Brown.

Mr. Michael A. Brown: Thank you, Madam Chair.

Good morning. It's good to see you. Just so you know, I represent the Manitoulin, so I have a reasonable association with the Union of Ontario Indians, given its present leadership. I'm interested in your 14 points of

consultation, which, as the member for Timmins–James Bay just alluded to, companies appear to be adhering to, but you're having some difficulty getting either the province or the federal government to formally recognize them. Would that be fair to say?

Mr. Jamie Michano: Right. Yes.

Mr. Michael A. Brown: Could we get—the committee itself—a copy of those 14 points so that we could have a look at them?

Mr. Jamie Michano: Sure.

Mr. Michael A. Brown: I guess one of the problems is—and my friend from eastern Ontario was alluding to it—that there seem to be different rules for different places and different laws for different places. Part of the issue here, I guess, is that different First Nations are subject to different treaties that they've made with the crown, depending on where you are, etc., and history has sort of dictated how those go. So, obviously we need to treat different First Nations differently, depending on where they are. The big issue, though, I think was raised yesterday: The relationship is with each First Nation, not with the umbrella organization, whatever it might be. Would that be your view?

Mr. Jamie Michano: Absolutely.

Mr. Michael A. Brown: For example, I represent Pic Mobert, which isn't all that far from you, and they may take a little bit different issue with how to conduct consultations than you do. So the crown's duty then, in your view, is to work with each First Nation to come to an agreement about what consultation is.

Mr. Jamie Michano: Exactly.

Mr. Michael A. Brown: Okay. I just want to thank you for coming. I know that your First Nation has been very active in resource development and is doing good work out there. I just want to commend you for coming here and making this presentation. If I could get a copy of those 14 points, I would appreciate it. Thank you.

Mr. Jamie Michano: Sure.

The Acting Chair (Mrs. Linda Jeffrey): Thank you very much for being here today.

ONTARIO NATURE

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is Ontario Nature, Peter Rosenbluth, Northern Connections coordinator. Good morning and welcome.

Mr. Peter Rosenbluth: Good morning.

The Acting Chair (Mrs. Linda Jeffrey): As you settle yourself: You have 15 minutes to speak to us and I'll give you a one-minute warning. Whenever you're ready to begin, if you could state your name and the organization you speak for. When you're done, we'll be able to ask questions.

Mr. Peter Rosenbluth: Thank you. Good morning, Madam Chair and members of the committee. My name is Peter Rosenbluth. I'm here representing Ontario Nature. We're very pleased to have this opportunity to comment on Bill 173, as well as Bill 191, the Far North Act.

I realize that you've been on the road and will be on the road for a long time, so I thank you for your patience, your interest in the topic at hand, obviously, and your careful consideration of what all of us who are here have to say.

I'll be focusing my comments on the Mining Amendment Act; however, it would be negligent of me if I didn't state first off that both of these acts are of intense interest to Ontario Nature as both of them may have enormous implications for Ontario's wild species and wild spaces.

On August 6, Caroline Schultz, who is the executive director of Ontario Nature, had a chance to speak to this committee in Toronto. She focused her comments on the Far North Act, and I trust that you will consider her comments and consider them as representative of the feelings of myself and our members in northern Ontario here.

Ontario Nature's interest in this Mining Act: We represent and work with 140 member groups across the province, 10 of which are located here in northwestern Ontario. Amongst those groups are over 30,000 individual Ontarians. Our mission is to protect wild species and wild spaces through direct conservation, education and public engagement.

Over the last decade we've begun to work more closely on mining issues and with the mining industry. As an example, during the Living Legacy efforts to disentangle mining claims in protected areas, we worked closely with several First Nations, industry representatives and government to find alternative lands in the Woman River complex of the Algoma district that could be protected within the larger protected area system. We've also long been voicing our concerns about the environmental impacts that come from the piecemeal and uncoordinated approach to mining proposals that are a relic of Ontario's old and somewhat archaic Mining Act.

Our position on Bill 173 is this: Ontario's old Mining Act has been widely criticized for lack of consideration for environmental protection and aboriginal and private landowner interests. While Ontario's mining industry is a world leader in terms of production and exports, it has a long way to go in terms of promoting and engaging in sustainable and socially just mining practices. This current legislative review provides an opportunity to update the rules and bring them up to the standards of modern mining legislation and regulation elsewhere in Canada and around the world. We're therefore extremely happy that this old act is under review, and we are supportive of Bill 173 as a first step. We're hoping that it's a first step that will develop some clarity for prospectors, for industry, for conservation groups, for First Nations. More importantly—and I'll speak to this for the most part today—we're hoping that the final bill will assure environmental sustainability and integrity while it encourages responsible prospecting, staking and exploration for mineral development. So we do want to see that balance, and we are supportive of the balanced approach.

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I should stress this fact again: We're supportive of the bill, but as a first step toward modernization. We don't

believe that the opportunity for modernization has been fully realized yet. I'm therefore going to speak about several amendments that I'd like this committee to consider.

First of all, we would like there to be a requirement for environmental impact assessments to be carried out at all stages of the mining process. Currently, mining operations in Ontario, as you are all aware, I'm sure, are exempt from environmental assessment. This is a situation that Ontario Nature is disturbed by and, to speak frankly, we find quite unacceptable, given the significant environmental impacts that mining has.

What we find more disturbing is that the declaration order that has been exempting mining from impact assessments has been extended through a series of regulatory delays for nearly three decades now. Although the Ministry of Northern Development, Mines and Forestry has been made responsible for developing requirements for environmental assessment, we are forced to wonder how high this is on their priority list, given the fact that no requirements have been instituted since 1981.

As I'm sure you've heard repeated again and again throughout the hearings that you've attended, the environmental impact from some mining operations can be devastating. I won't go into too much detail on that topic, as I'm sure you've heard much about that. Nearly every other jurisdiction in Canada and in much of the developed world requires environmental assessment at some stage of mining. Most require it at the exploration stage.

Continuing with this exemption from impact assessment would not only continue to place ecosystems and ecosystem services at risk from development activity, but would also serve to cement the legacy that Ontario has built in terms of dragging its heels on this particular policy. And, I might add, it would run counter to the very goal of modernizing the act in line with what other modern mining legislation has done.

Secondly, we would like to see some detail in terms of obtaining the consent of aboriginal people and requiring free, prior and informed consent.

I should start out by saying that we congratulate you and we applaud the fact that respecting and upholding aboriginal treaty rights has been included in the purpose statement of the act. It is indeed a vital component of the act, and we are glad that you see it that way. This is not only a matter of constitutionally protected legal rights, it's also a matter of right mode of operation and practice.

I'd like to note that the courts in Ontario have held that consultations with First Nations communities must start at the very beginning of the mining cycle. We're aware that consultative procedures will be outlined later in regulatory exercises, so I can only hope that as that goes ahead, there will be a requirement for proper consultation, in line with what individual First Nations have outlined in their own procedures, and that there be some inclusion of the fiduciary responsibility to accommodate within those guidelines.

We're also glad that there will be a conflict resolution procedure that will be developed for First Nations communities and industries down the road. Again, that's a very positive step that we support. However, the aspect of prevention of conflict may not have been significantly addressed here. Again, we'd like to suggest that avoiding the conflict and confrontation that this kind of procedure might mediate is best done through obtaining prior consent from First Nations. Again, this would also provide greater predictability for mining companies and investors, which is something we've heard directly from them.

Third, the prioritization of land use planning: Bill 173 does allow for the prioritization of land use planning in the far north. We would like to see municipalities have the ability to decide where mining activities will take place within their boundaries as well in the near north. Again, this idea that mining may be the best of all uses of the land is an archaic one, and allowing municipalities to state where mining may be feasible in the first place would save everybody considerable time and agony later.

Fourth, rules for uranium mining: A significant public outcry has resulted from the surge in uranium exploration that has occurred in Ontario recently. There are serious concerns and uncertainties regarding both human and environmental health that go hand in hand with the mining of uranium and other radioactive materials. Again, I'm sure you've heard from groups that have gone into more detail than I will regarding this. This does mean that uranium requires unique rules, and indeed, in many other provinces and jurisdictions, these concerns are addressed either through moratoria on uranium mining or through the impact assessment process. Modernization of the act requires the same kind of oversight that other jurisdictions are implementing with regard to uranium. Bill 173 should include a moratorium on uranium mining until the health and safety implications have been studied or appropriate rules established. This needs to include environmental considerations along with human health, and to consider the option of a long-term prohibition.

Fifth—and this is my last point—mostly because it is a tool that could ensure the first four, is an improved permitting system. Again, if I could start with a congratulations on the current permitting system that has been proposed for exploration, that's a great first step, but a permitting system throughout all phases of the mining process would indeed improve this act. It would ensure that there are environmental, aboriginal and other public interest screens prior to any mining interest being created, and any conflict of interest. Once a claim has been staked, security of tenure can be given through the government, although further permits would be required to explore and to mine as well.

In conclusion, to summarize our position in one message and maybe in one bite-sized piece, a modernized act should reflect the modern-day values about how public lands should be managed. Modernization of the act requires bringing it up to speed and in line with environmental, legal and planning standards that the people of Ontario expect today. These standards have

already been brought in elsewhere in Canada and around the world. In a nutshell, that's our message.

It would be embarrassing to the people of Ontario to have taken this first step towards modernization of the act and then have stumbled before we've taken the second. Ontario Nature believes that there are many components of this act which deserve congratulations. However, there are gaps in both the social and environmental responsibility components, and it now falls on legislators to ensure that these are realized. We believe that these gaps can be plugged with the amendments we've proposed.

That's what I'd like to say to you, so thank you for the opportunity to share our input.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. About three minutes for each speaker, beginning with Mr. Bisson.

Mr. Gilles Bisson: Where to start? That's a lot to put into one presentation.

Mr. Peter Rosenbluth: Just be happy I didn't talk about the Far North Act as well.

Mr. Gilles Bisson: I'll just start at the last point and the permitting. You're saying proper permitting for each stage of the exploration process. I think most people can agree that's not a bad idea, as long as we don't throw the baby out with the bathwater. However, some people have raised to me that if we're going to apply this test to the mining sector, why are we not applying it to all other sectors that touch our natural resources, and, for that fact, subdivisions, building of industry etc.? At what point is the mining sector being treated very differently than anybody else?

Mr. Peter Rosenbluth: Well, speaking on behalf of an environmental organization, if there were a process to screen environmental impacts for any kind of development activity or industry that may have significant environmental implications, such as mining, then we would support that. Of course, not all activities have the same level of impact on the environment and on human health. Mining happens to be one of those activities that we consider to have such significant potential impacts that a permitting system would be something we would support.

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Mr. Gilles Bisson: So because this is the Mining Act, you're supporting it for this, but you would see that for all development.

Mr. Peter Rosenbluth: Potentially all developments, but it's a difficult line to draw. It is dependent on the level of severity with which that development may have impacts on the environment.

Mr. Gilles Bisson: Would you agree that the rules around how mining is to take place today, as compared to what was there 30 years ago, grew by leaps and bounds when it comes to the protection of the environment, and also socio-economic—

Mr. Peter Rosenbluth: There have been some improvements. I did note that in the last 30 years, those improvements have not included a requirement for environmental assessment despite the fact that most other jurisdictions in Canada, perhaps all, have.

Mr. Gilles Bisson: Are you aware of the agreement, the IBA, signed by Attawapiskat, Fort Albany, Kashechewan and Moose Factory with Victor, the De Beers group?

Mr. Peter Rosenbluth: No.

Mr. Gilles Bisson: Because it takes into account all of that.

I guess I just want to make a statement at this point. I understand where you're coming from and there's a lot of sympathy, but to say that we need to revise this Mining Act because it's so old that it doesn't work doesn't recognize that there were already some good players in the field who have started to do the type of stuff that government should have been doing 30 years ago.

For the record, there are some bad players out there, and we've seen that with the KI situation. Apparently, it's about to surface again because they're going back in, from what I understand. But there are some players out there who have actually done some pretty good work both when it comes to protecting the environment and protecting the socio-economic situation with communities such as Attawapiskat. It may not be a perfect deal, but it's one that 85% of the community ratified. I guess what I would call for—I'll just close on this—is that we need to have some legislative framework that makes this happen as a matter of course and not just a negotiation project by project.

Mr. Peter Rosenbluth: I would agree completely with that. And we have worked with some companies that have been pretty outstanding.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Brown.

Mr. Michael A. Brown: I appreciate the conciseness of the presentation. Not all manage to put their views forth in a relatively concise way so that we understand.

Because of some of the comments made at the hearings last week, I'm interested in your comments with regard to uranium, knowing that half our electricity comes from the use of uranium, that we have refineries for uranium in the province of Ontario and the government does not appear to have any interest in stopping that. I am wondering, though: Are you speaking to the staking and exploration for uranium or the actual mining? Because the mine itself comes under the federal jurisdiction.

Mr. Peter Rosenbluth: No, I realize that exploration is currently under provincial jurisdiction, and it's the aspects of exploration—the drilling of holes, the trenching—for which there may or may not be environmental and health concerns. That is kind of the point that we're getting at, that there just has not been enough research to determine if even that level of impact or intrusiveness may result in things that we should be concerned about.

Mr. Michael A. Brown: The question that flows from that that I asked in Toronto is, practically, how do you know—a mining company, an exploration company, a developer or a prospector does not need to say what he or

she is exploring for. As a matter of fact, sometimes they're surprised at what they find. They may find something entirely different than what they originally set out to look for. So how would you have a moratorium on uranium exploration when the explorer—whoever was doing it, whether it's a prospector, a junior, whoever—may be exploring for gold and find uranium? How do you know?

Mr. Peter Rosenbluth: That's a very good question. It's a difficult one, but of course it's one that other jurisdictions have grappled with as well and have come up with various methods for dealing with. Again, there may be other groups who can speak more specifically to what they've done than I have, but from what I understand, it may be possible to put a moratorium on exploring specifically for uranium.

As you say, often people don't know what they're going to find until they begin exploration. There are systems in other provinces where, once exploration has begun, although it may not be for uranium, if concentrations above a certain amount have been found, they can be reported or they must be reported to government, and at that point there may be other provisions within legislation that have to do with whether or not exploration can continue beyond that point.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Hillier.

Mr. Randy Hillier: I just want to go through a couple of these amendments. So you're proposing an amendment that would—or Ontario Nature recognizes that local decision-making will be the best way to protect the environment on land use—I think it was (d): land use planning.

Mr. Peter Rosenbluth: Yes. Local land use planning may not be the best way to protect the environment. Of course, municipalities can decide to do whatever they want with the land: That's up to them with regard to the Planning Act. It may not be the best protection for the environment, but it will provide certainty to mining companies, to others, and it will give those municipalities the chance to determine what the best use of the land is. We feel confident that many of them will consider environmental factors when they make those decisions.

Mr. Randy Hillier: Right. And again, that would be throughout the whole province: municipalities, First Nations communities, northern Ontario, near north, whatever.

Mr. Peter Rosenbluth: We do understand that, of course, and I think this issue was brought up with past presenters. There are different circumstances that are brought about, often through former legislation, treaties, things like that, in different parts of the province. In southern Ontario, because municipal plans are updated so regularly—this may not be feasible in the near north, and certainly in the far north, as has been laid out in this plan, we think it is.

Mr. Randy Hillier: Have you any clear examples about this uranium exploration as well, because that's been raised. If people knew what was there, they wouldn't be exploring. That's the whole essence of exploration: Looking for things that are not known. There are some jurisdictions that have a moratorium on—I'm not sure if it's on uranium mining or uranium exploration. Do you have any clear examples of prohibitions on uranium exploration in this country?

Mr. Peter Rosenbluth: I can't answer that question directly, but—

Mr. Gilles Bisson: Nova Scotia.

Mr. Peter Rosenbluth: Nova Scotia, I believe, does. There's a report that has been published by Ecojustice: Balancing Needs, Minimizing Conflict. There are a few examples given in here, and right now I can't remember the detail with which they go into each of these cases.

Mr. Randy Hillier: You wouldn't know of the consequence or the impact on other mineral exploration since they've implemented that moratorium on uranium mining?

Mr. Peter Rosenbluth: I'm not aware of that right now, no.

The Acting Chair (Mrs. Linda Jeffrey): Thank you very much. Thank you for being here today. We appreciate it.

NORTHWESTERN ONTARIO PROSPECTORS ASSOCIATION

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is Northwestern Ontario Prospectors Association. Is it Mr. Bjorkman? Is that right?

Mr. Karl Bjorkman: Yes, Bjorkman.

The Acting Chair (Mrs. Linda Jeffrey): Welcome. Thank you for being here. You'll have 15 minutes to do your presentation, and if you get close to the 15-minute mark, I'll give you a one-minute warning. At the end there'll be an opportunity to ask questions. If you could state your name and the organization you speak for, for Hansard. Once you begin, the clock will start.

Mr. Karl Bjorkman: Okay. Thank you, Madam Speaker, and thank you to the honourable members here and thank the Lord for a great day in Thunder Bay; it's sunny out there.

I usually like to talk, but I had to write this stuff down, so I'll mostly read.

My name is Karl Bjorkman. I'm a prospector/claim staker living in northwestern Ontario. I'm here partially on behalf of the Northwestern Ontario Prospectors Association and partially here for myself.

I would like to thank the government for the opportunity to participate in these hearings and in the democratic process. My adult children, my wife and I all make our living working in the mineral exploration industry. I have two daughters in school now, going to university to be geologists, and the rest are prospectors. So I have four girls and one boy working as prospectors out in the field. They've been working for about 15 years.

I would like to break my presentation into four topics. The first—I'll just skip this paragraph here. Topic one is, I believe in the distribution of wealth in society and I

believe in protecting the environment, and I think most prospectors do; they work close to the ground. However, what is sometimes forgotten in this effort to further remove ourselves from having any footprint, or any non-native footprint, on the land is that something has to generate the dollars to pay for the social system we have come to enjoy.

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Something has to pay for our obligations to the First Nations peoples. In this country we have manufacturing, mining and forestry. We have a lot more, but we have those three big ones. I believe the Far North Act removes too much land from exploration and without the approval of the very people who live there, being the First Nations people. The amount of land that would be disturbed in the far north during the search for minerals is small compared with the devastation in the far south caused by urban sprawl and projects like the expansion of Highway 69. It seems unwise and unfair to remove such a large piece of Ontario from the possibility of generating wealth for both the First Nations and the coffers of the Ontario government.

Considering the proposed changes to the Mining Act, why fix something that is not broken? Ontario has been a blessed province and the envy of many when it comes to our mineral exploration industry. The government has to be very careful when it considers sweeping changes to the Mining Act that may scare off the very investors who pour money into our province, so I guess it would be nicer to have smaller changes and in small increments.

The next topic is the idea of mandatory First Nations consultation. Here again, I'm coming at this a lot from the point of view of a prospector. We go out with a hammer and a packsack, and the footprint on the ground is minimal. The idea of mandatory First Nations consultation for us as little prospectors seems unfair. I'm not against it for large things or for trenching or for big things. I'm just a prospector, not a miner. I've never worked at a mine. What I mean is, I'm not going to sink a shaft, turn a drill or dig up any ground with my own money; I'm just a prospector. The chances of the ground I walk becoming a mine is only one in 10,000 and only if I first find a showing. If I stake a piece of ground, it would only seem natural that I'm going to walk on it. Why do I need a permit or someone's permission to do this? I use my own money to prospect for myself. I do not have a person hired on to do the consultation for me like a corporation might. When I hear how all the different First Nations communities have different methods that they would like to be conducted with, like this morning—and it's very good and I have no problem with that, but I feel that as a prospector I should be able to stake a piece of ground and the government should know that if I stake that piece of ground I'm going to walk out there with a hammer in my hand, and if that's all I do I don't think I should have to go in and contact everybody to do this. I might have dozens of properties around Ontario, and if I can't go for a Sunday drive and go with my wife with a little hammer and take a look I think it's almost ridiculous, whereas when you're going to take a backhoe with you or take a diamond drill with you, that's different. It puts us at a disadvantage when you consider that our competition—or the people who might hire us sometimes but a lot of times are our competition—may have a whole department dedicated to this, and what am I going to do? I'm just one guy.

If this act is passed into law it will be the lowest-paid people in the industry who will suffer the most. I don't mind getting a permit to bring in a backhoe or a bulldozer, as I said, but why would you make me get a permit for going for a walk? Are we going to make fishermen do this? How about berry pickers and photographers? Why are we picking on the prospectors? Many elderly prospectors and some who don't know how to use the computer will be at an extreme disadvantage. This includes many First Nation prospectors. This, of course, will favour the large companies and discriminate against the little guy. Prospecting is a traditional, historic job which has been here for thousands of years. We, the prospectors, do not want to have further paperwork other than getting a licence and recording our claims. If we're going to do more than boot-and-hammer work or if we sell our ground to a junior mining company, then we are more than willing to get a permit.

Next is number three, map staking. I don't know who wants map staking but it isn't the prospector; that's for sure. Prospectors make money in the summer by prospecting and staking for other people. They also stake for themselves, and if they get lucky they make some money selling these properties. In the winter, they—we; I—survive by staking claims. It is very hard work and we do it in all weathers. We live and work close to the land. We also find mineral showings while staking claims because we are forced to go in a straight line through the worst swamps and thickets. That's why we sometimes find things that other people haven't found: because we have to go there; we have no choice.

Oftentimes the land is only looked at when it is staked. It is not that we won't be able to stake for ourselves under the new rules; we will. I'll be able to map stake just like anybody else, that's true, but I won't have any money, come spring, to do it with, and that's my worry: The little guy doesn't have that money. Big companies have flow-through shares. Big companies use other people's money, shareholders' money, but little prospectors have only got their own and if they can't stake claims and make some money—and staking is good work, it's good money, and if you can't make money during the winter, then come summer, you may not be there in our industry.

Most of us are independent contractors and there is no program in place to supplement our income. We do not qualify for EI. Why, I ask, is the government taking our jobs away? Many prospectors will not be able to survive the winter and will have to leave our industry. They may never come back. Prospectors have found their fair share of mines over the years and we are losing a valuable resource, and for what? You are not hurting the big companies with this one; just the little guys.

People use staking in order to enter the exploration industry. Even without an education, a young man or woman can work hard at staking during the winter and then be there to prospect in the summer. If you add the advent of map staking with the burden of First Nations consultation on the prospector—and I want to make sure it's clear; I'm just talking about the prospector here; I'm not against consultation at higher levels—then you can see how the most vulnerable people at the lower end of the pay scale are going to be hurt by this bill.

Last is number four, suggestions for Bill 173. The mineral exploration industry needs clarity and secure land title in order to bring dollars into the province with the ultimate goal of opening new mines. We understand the need to respect and often accommodate the First Nations and surface rights holders. Again, we need clarity: clarity of process, permitting, licensing, etc. This includes clarity in dealing with the First Nations. We need to define "consultation" and we need one law in which we can all fall back on when there's a disagreement. If we want dollars invested in Ontario to pay for our social systems and our way of life, we must provide a stable, clear, repeatable way of obtaining lasting tenure to our mineral rights; otherwise, investors will seek other places to invest where the environment is not protected and the rights of workers and citizens are second-rate.

Concerning consultation, one suggestion I first heard from Jon Baird at the PDAC is to make all consultation agreements public information. This would go a long way to alleviate the fears that some may have of unfair play or corruption at either end. An open policy where the general public, company shareholders and the First Nation peoples—those living in the towns and villages, not necessarily the leaders—can keep an eye on both sides of negotiation will build trust and better relationships in our industry.

Concerning prospectors, I suggest leaving the present system of staking in most of Ontario where there is crown land. I also live on a piece of bush out 20 miles from town and I don't have my mineral rights either. I got into this industry because someone walked across my grounds on a Sunday while we were having a hot dog, staking claims through my yard. So I've been there; I know how that feels. There are some bad apples out there, but most of us try to do a good job. Like I say, if we could leave the staking the way it is where there's crown land, it would be nice.

If we must go to map staking—and I hope we don't—as the government says, "There are too few stakers to worry about." I don't think that's true, but if that's the case, then I suggest that a scholarship fund be set up or some kind of fund to get into some other business because there's nothing there for us. Most of us are independent. We can't go on EI.

I would suggest that the prospector be given special rights concerning consultation, and I appeal here to the government and to the First Nations people that they give us a bye, that they give us the right to go just with our hammers when we stake ground to prospect. We're not going to damage the land. I think we're a lot on the same level. I think we should not have to consult in order to boot-and-hammer prospect. Ontario used to be a place where the young and ambitious and poor could go prospecting in the bush, find something new and go rub shoulders with the rich developers in Toronto. This is how the Prospectors and Developers Association of Canada started, I think. It's sort of like the little guy's dream of trying to make it. Please don't ruin this entrepreneurial dream.

Lastly, I would like to acknowledge the efforts of various groups in the past who have brought due pressure to bear on the government of yesterday to introduce the laws we have today that protect our environment and workers, and give us a platform of which we can boast in Ontario. The key is to recognize when we have a fair balance and not let the pendulum swing too far. We need the money generated by forestry, mines and manufacturing to sustain the social system for us and our children that we have all come to enjoy. Remember, if it's not broken, don't fix it. We can accommodate most of the First Nation concerns about the mining industry with minimal changes to the act, I think.

Thank you, and have a good day. That's my written presentation, at least.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. We have about three minutes for each group to ask questions, beginning with Mr. Brown.

Mr. Michael A. Brown: Thank you for coming. I appreciate your presentation. I will start out by pointing out that the act, as it's written at present, and it is only out for public hearings right now in second reading, does not require that prospectors do anything other than what they're doing now, provided they're doing the boot-and-hammer, as you describe it, prospecting.

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Mr. Karl Bjorkman: Okay; well, that's good.

Mr. Michael A. Brown: So as it's written today, that is the way it presently is described, so you do not have to have a consultation before you go prospecting. After that, you do, if you are in an area in which the First Nations have an interest.

I want to say that we also appreciate your concerns with map staking. We intend to phase in map staking across the province as we get a handle on how to do it in a way that makes sense, a made-in-Ontario solution to map staking. We are aware that there are, I think, four other provinces that do it. We have lessons we can learn from them on how that is to happen. In those provinces, we are told, there has not been a detrimental effect—that's not to say there hasn't been some—on prospectors. We can just look at their experience.

Our interest as a government is to ensure that we discover and, hopefully, develop the mineral wealth of this province and develop mines. The first step of that is you guys and gals.

Mr. Karl Bjorkman: Well—sorry.

Mr. Michael A. Brown: No, if you've got something—

Mr. Karl Bjorkman: We are a very small percentage. Even of the mineral exploration industry, we're still a very small percentage. But we are the people who find the showings. We don't find the mines and we don't—we need the rest afterwards but, yes, if we're not there. It's not going to affect part-time prospectors who might have a job, who might work at a sawmill and only prospect part-time, the same way, but for full-timers it is detrimental. I'm going to survive; it's not going to be doomsday for me. I've been around this business long enough. But younger people coming in, or my children, may have a tougher time transitioning when the winter work is gone because there is really nothing to do in the winter if you don't stake claims. It's tough.

Mr. Michael A. Brown: Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Ouellette?

Mr. Jerry J. Ouellette: Thank you for your presentation. I carry my claim tags in my truck everywhere I go, and my hammer under my seat, just in case, because you never know.

Some of the concerns that are coming forward are predominantly from southern Ontario—and I think they have to deal with the trenching issue—from a lot of individuals who own properties and all of a sudden people are showing up and trenching. Do you think there's some compromise that could be found there to deal with this trenching issue on private property, or a notification to go on properties? From your perspective, what might be a possible solution in that area?

Mr. Karl Bjorkman: Yes, for sure—trenching on private property may be one area where the act has been too strong. I think it only required notification before. Yes, I mean, permission is a good thing. I think that's fair.

At the same time, we have to remember, and I don't know if the public is made aware, that a lot of the ground that is now private and has no mineral rights, such as mine—my neighbour quit paying the mineral tax before I got there. Why, I don't know, but he gave that up. Oftentimes people have sold them, so they've made a profit. The previous owner, or maybe the farmer, maybe Grandpa, sold the mineral rights. They had them, it was a commodity, and someone along the line decided to sell them at a profit. And then, 50 years later, they're like, "Well, this isn't fair. We don't have our mineral rights." Education would go a long way in those cases, I think, and the same with—it's too late now in southern Ontario because the die is cast, I think. But had lawyers had to reveal that you had mineral rights at one time but someone sold them a long time ago, that would have done a lot with the transfer of plans, so people would know: "Hey, someone got rid of these." It's not the crown's fault; it's not the prospector's fault. That's important.

Mr. Jerry J. Ouellette: Yes. I think in southern Ontario there have been a lot of problems in what's taken place and understanding, regarding the mineral rights, where municipalities wanted to open up cottage country for other seasons and freed up the lands, yet retained the mineral rights at that time because they viewed mining and the forestry sector as key industries within their communities. Now those same communities are saying, "Well, wait a sec here. This is causing a lot of problems now," because it's gone in a full circle, so it's come to a point now where people are opposing it.

A last quick question would be, do you know the reason why there is so much staking taking place in Reeve Harding's municipality?

Mr. Karl Bjorkman: No, I don't. I've fallen out of the loop for the last week or two because we're on other projects. But probably somebody's found something somewhere. I would think it's more that than being tied to the Mining Act. Because it's a few years off, I don't think anybody's afraid yet that things are going to change. So I think probably, somebody's found something and things have gotten zoomed because of that. That's my opinion.

Mr. Jerry J. Ouellette: We're just trying to answer the question.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Bisson.

Mr. Gilles Bisson: I understand your issues around staking and, quite frankly, share your concerns. But just for the record—you've said this, but just to be clear, what you're saying is, "Allow me the ability as a prospector to prospect with minimal disturbance to the ground," and then there would be a requirement—and you're in favour of this—for both consultation and permission to go to the next step in responsibilities taken if any damages are done.

Mr. Karl Bjorkman: Yes, I think it should be staged and equal to the damage that's going to be done. I think the government, at the beginning—this is where there could be a compromise between who has to consult, the crown or the company? At the beginning, the crown could say, "Hey, Karl Bjorkman just staked a claim here on your ground. He'll probably be in there with a hammer someday. Maybe he won't, but maybe, within the next two years, he might walk your ground with a hammer in his hand." If it gets more than that, there may have to be a notification: "Hey, do you guys have a problem with us putting a little strip here, a little something? Do you mind this? We found this. What do you think?" As it gets further up, where they're going to strip a huge area and bring crews in, it's got to be more consultation, of course.

I think openness is so important. I think with consultation, it's important, like I said, for building trust so people on both sides can't say, "Oh, I heard this," and a big story rushes through the town: "Hey, there's going to be a mine there"—well, no; someone's out there, maybe with one diamond. That doesn't mean there's going to be a mine. So if there was this openness both in consultation and in First Nation cultural sites—if they were on a map, it would be so much easier. The trust would be there on both sides. Who wants to walk into someone's culturally significant area? I don't want to. I don't want to hurt

people. I respect those people, so I don't want to disturb anything that's theirs and that they hold dear.

Mr. Gilles Bisson: I'm going to ask you to speculate on something in regard to map staking. The Hemlo was found in the early 1980s by John Larche and Don McKinnon, who were prospectors on the ground with the hammers, as you say it. If we would have had map staking at that time? Who knows what would have happened after with technology? But if they had not gone on the ground, would that mine have been found?

Mr. Karl Bjorkman: In that case, yes. Because it was already a historic discovery, I believe they would have gotten the ground through maps. Their idea was to get in there and stake this off. The difference would be the amount of dollars generated; I'll say that. Had Hemlo been map-staked—let's just hypothetically say there were no claims there when they walked in there—and they went up to a company and said, "Look, we've got this great idea. You guys are going to drill here, and on your 69th hole, you're going to hit it big." Okay. So they go in there—and they would have taken a huge area, and that one company maybe could have raised $20 million on the stock market. Who knows? But the way it happened, and then the subsequent staking rush, it fragments the land. Maybe big companies don't like fragmentation, but in our industry, it's that fragmentation that actually produces more money, because the sum total of 20 companies raising money on the stock market for little parts of ground is way bigger. They can raise way more money than one company having this huge piece. No one company could raise what the sum total of all these could make. And then when these guys only have a piece of ground over here, five kilometres from the main showing, and they drill it, that's the only piece that they can work on, so they have to work on it.

Mr. Gilles Bisson: Does it lead to more exploration?

Mr. Karl Bjorkman: Absolutely, because company A, which takes all the ground, is going to focus right on the main showing. The other way, with the staking we have now, you get what you get, and maybe you find it five kilometres away, and it might not have been found there.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. Bjorkman. We appreciate you being here today.

KITCHENUHMAYKOOSIB INNINUWUG

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is Mr. Sam McKay, councillor for KI.

Welcome. Mr. McKay? Is that right?

Mr. Sam McKay: Yes.

The Acting Chair (Mrs. Linda Jeffrey): Welcome. You have 15 minutes. If you could state your name and the organization you speak for at the beginning. Then you'll have 15 minutes, and afterwards there should be an opportunity for questions. I'll give you a one-minute warning if you go over the time.

Mr. Sam McKay: My name is Samuel McKay. I'm from Kitchenuhmaykoosib Inninuwug.

The Acting Chair (Mrs. Linda Jeffrey): Could you speak a little closer to the microphone?

Mr. Sam McKay: My name is Samuel McKay. I'm from Kitchenuhmaykoosib Inninuwug. I'm just going to read the presentation.

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It is unfortunate that the Ontario Standing Committee on General Government could not accept my invitation to Big Trout Lake. My community invited you to our community because we feel it is important that this standing committee should visit us because of the impact your decision will have on our community, a fly-in community in the north.

As remote aboriginal communities who intensively use our traditional territories, we are the ones who will suffer the most serious impacts. Mining prospectors are focusing in on our territories and are staking and doing exploration without our prior informed consent. The far north, as you call it, is where we live and what we know.

The UN Declaration on the Rights of Indigenous Peoples stipulates indigenous free, prior and informed consent not only to any development that will affect our territories, but also, specifically, to any legislation that will affect us. The timetable for 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, is too short, and the failure to visit fly-in communities and any communities in what the Ontario government is attempting to designate and regulate under the Far North Act is further evidence of the failure to understand the concerns of our indigenous peoples. We reject both draft bills in their current form because they fail to substantively address aboriginal and treaty rights in regard to mining and land use planning.

Under the existing Mining Act, the Kitchenuhmaykoosib Inninuwug council went to jail for standing up for our aboriginal and treaty rights. We are known in the popular media as the "KI 6." We went to jail because we do not want Platinex to engage in any mining exploration or mining activities in our indigenous territory, because it will destroy our land and take food from our table. We are committed to peacefully defending our fundamental human rights as indigenous peoples. We are one with the land.

Our concepts of preserving Mother Nature are more powerful than the approach of the Ontario government to promoting mining activities for mere profit. We are one with the land, we depend on it to feed our families, and we have thousands of years of intergenerational experience with how to live in harmony with the land and preserve it, not destroy it in a few years.

We have two very different concepts of development. That is why the Mining Act was used to put us in jail. That is why we were prepared and did go to jail. The legislative changes that we are considering here today must get us beyond the use of physical force as a means of getting your way. Public opinion and the courts have asked us to seek out mutually agreeable solutions that balance our respective rights and interests.

We need to resolve this fundamental conflict. This standing committee must understand that our inextricable link to land is inalienable. We have lived in our territories, what you call the far north, since time immemorial, and continue to live there as a matter of choice, a choice that has to be respected and valued by non-aboriginal people.

We cannot be racially discriminated—we have much more knowledge about our territories than any settler or scientist will ever be able to acquire, and we are only indigenous to our own territories.

Protecting our territory goes beyond the Eurocentric concept of property. We look beyond ownership and revenue-sharing, and look at protection of our lands as a responsibility to protect the land for all living beings, including animals and trees. We look at protection as the preserving of our land, in its present condition, for future generations. We do not believe in cashing in our resources at the expense of future generations.

We have just received letters from the Platinex and De Beers corporations. Platinex is scheduled to come to Big Trout Lake on August 25, 2009, to embark on a campaign to attract international investors to invest in their proposed mining activity at Kitchenuhmaykoosib Inninuwug.

We sent a letter to the Honourable Michael Gravelle on July 30, 2009, telling the minister that we need to specifically meet on this ongoing conflict or we are going to be in the same trouble we were in last year. We want to follow what the Ontario Court of Appeal asked us to do, and that is to negotiate and find a mutual solution. We have not received any answer from the Ontario government to this letter.

In their letters, Platinex is accusing the government of irresponsible governance, arguably to set up claims against the government. Rather than ignoring the issues and pretending that silence is consent to mining activities and letting mining corporations push their agenda, the government should stand with us and implement the internationally recognized requirement of free, prior and informed consent of indigenous peoples.

In regard to the letter from De Beers of Canada, our council agreed to their request to meet on August 24, 2009, in our territory. It is clear that the mining industry realizes that on the ground they must develop a working relationship with indigenous peoples. In the Platinex case, they are fairly clear that they would not like any conflict to happen, but that they want to continue to promote their interests, including the tour of prospective investors, if necessary by engaging the Ontario Provincial Police and the Ontario courts. They understand that any kind of altercation could result in investors losing interest in investing in Platinex. Mining companies understand that economic certainty is contingent upon good working relationships with indigenous peoples, despite what may or may not be contained in legislation.

These letters underline the urgency of the issues we are discussing here today. What Platinex and my community do on August 25 will be significant. Platinex and my community were part of the reason Ontario has decided to amend the Mining Act. The real question is, will the proposed Mining Act amendments address the Platinex and Kitchenuhmaykoosib Inninuwug problem?

When the Ontario government announced that the Mining Act was going to be amended, we understood the necessity but we were also very cautious. We know from experience that the federal and provincial governments do not recognize aboriginal and treaty rights because they want to maintain the existing mutually exclusive jurisdiction between the federal and provincial governments. The proposed legislation maintains the unilateral decision-making power of the minister. Aboriginal and treaty rights are treated more as a burden on provincial jurisdiction and at the total discretion of the minister, despite the fact that we as indigenous peoples have our own jurisdiction and rights over our territories that are not substantively taken into account in the legislation. Kitchenuhmaykoosib Inninuwug does not accept or endorse Bill 173 and Bill 191 in their present form. Substantial changes must made to bring the legislation in line with the minimum standards set out by the courts and in the UN Declaration on the Rights of Indigenous Peoples before we will even consider accepting or endorsing these pieces of legislation.

Canada and the provinces must recognize aboriginal and treaty rights. This will fundamentally change the distribution of power between Canada, Ontario and indigenous peoples. Ontario does not propose this to happen in Bill 173 or Bill 191. The province still claims 100% power and control over our territories. Aboriginal and treaty rights are not taken into account and just referred to as interests with limited procedural guarantees, but no substantive recognition.

When Kitchenuhmaykoosib lnninuwug examined Bill 173 and Bill 191, we looked toward seeing if it contained any solutions for the kind of problem we have with Platinex. These bills do not give us any solutions for these kinds of fundamental problems. Recognition of aboriginal and treaty rights means that the provincial ministers cannot maintain unilateral power over decisions that will ultimately undermine our aboriginal and treaty rights. What you call the “far north” is not the far north to us; it is our home. We need real participation in decision-making, based on the principle of free, prior and informed consent, otherwise our objections to mining planning will cause ever-increasing economic uncertainty for the Ontario economy. This level of economic uncertainty is the consequence of us standing up for our aboriginal and treaty rights. Ontario has shown some understanding of this connection, but we must now develop it into a legislative framework that we are satisfied with or the problem will persist.

Canada and Ontario cannot rely on mutual exclusivity or 100% control any longer. The courts have rendered very strong and clear decisions that aboriginal and treaty rights must be taken into consideration. This means that recognition of aboriginal and treaty rights proportionately diminishes federal and provincial powers as aboriginal

and treaty rights are recognized as being paramount to federal and provincial jurisdiction. That is what we are trying to define here as we are considering Bill 173 and Bill 191. The people of Kitchenuhmaykoosib Inninuwug know that Bill 173 and Bill 191 are totally inadequate in regard to protecting our aboriginal and treaty rights as defined in subsection 35(1) of the Canadian Constitution, 1982.

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Subsection 35(1) gives Kitchenuhmaykoosib Inninuwug the power to address any provincial legislation that impacts aboriginal and treaty rights, plus it obligates the Ontario government to take our concerns seriously. Subsection 35(1) establishes in constitutional terms the dynamic relationship that exists between indigenous peoples and the Canadian and provincial governments. Provincial mining activity and recognition of aboriginal peoples' land use planning are very key areas which impact our aboriginal and treaty rights.

Kitchenuhmaykoosib Inninuwug, as stated before, rejects Bill 173 and Bill 191 and asks that the Ontario government devote more time and energy to resolve this conflict. The urgency and importance of these bills are evident in the conflict we face with Platinex. The mining industry is looking for leadership. Trying to sweep this thorny issue under the rug will not work. We need to find mutually agreeable solutions. Aboriginal and treaty rights must be recognized.

For example, amendments to the Mining Act must not only reflect Ontario government values in terms of restricted lands. Restricted lands must include our indigenous values and activities. Restricted lands need to take into account our aboriginal and treaty rights. It is imperative that Ontario recognize and affirm our aboriginal and treaty rights and substantively establish parameters to engage in land use planning in our indigenous territory.

We fully sustain ourselves on the land. We depend on ecological biodiversity. That is why our land use planning has always been to protect our land from permanent destruction. It is our land use planning and utilization that has made the 225,000 square kilometres available for Bill 191 to allocate to be protected under that legislation. In this regard, Bill 191 is less than adequate because it does not recognize aboriginal and treaty rights as being the real basis for all decisions in our territory.

Good land use planning in our territories is really contingent on good indigenous-based land use and occupancy research being done. Kitchenuhmaykoosib Inninuwug is presently organizing indigenous land use research. We have engaged Mr. Terry Tobias, who is a nationally and internationally recognized expert in this area, and he is appalled at how the Ontario government is trying to make our research superficial. We will be having a meeting with Ontario on August 17, 2009, to discuss this matter, and hopefully Ontario will understand that this kind of research is very complicated and takes time to do if we really want to preserve the ecological biodiversity that Bill 191 proposes to protect.

Kitchenuhmaykoosib Inninuwug did provide an independent submission on October 10, 2008, before this legislation was drafted into Bill 173 and Bill 191. We set out our fundamental principles; international law; how current federal and provincial policies violate KI rights; Ontario Mining Act and policies, specific elements of Ontario's mining review, and KI principles regarding mining exploration.

We have not been and will not be silenced about protecting our rights. We have gone to prison to emphasize our commitment to our rights that have been ignored by the Canadian and Ontario governments. We know that our legitimate concerns do have real value and do contribute to protecting our environment for the future benefit of all Canadian and Ontario citizens. This is the responsibility of indigenous peoples. This is the manifestation of what recognition of aboriginal and treaty rights means from our perspective.

We have also made submission to the—

The Acting Chair (Mrs. Linda Jeffrey): Mr. McKay, you have just over a minute left.

Mr. Sam McKay: Okay. I'm just going to do the conclusion.

Despite the fact that we do not support Bill 173 and Bill 191 in their current form, we understand the need for legislative reform. The present Mining Act, with its free-entry system, fundamentally violates our human and indigenous rights. We need to move forward. Ontario must recognize aboriginal and treaty rights in a substantive way. We need to learn how to coexist. We want to protect our territory for future generations. Our values and links to the land are why Ontario can allocate the 225,000 square kilometres as a protected zone.

We know that any changes to the Mining Act and land use planning in the far north will be long-standing. We therefore need to get it right. We need to start by giving indigenous peoples real participation in creating these laws because they directly affect our aboriginal and treaty rights.

There is no easy answer to the problems we face, and we need to understand that we must balance the difference between two very different concepts. We must recognize aboriginal and treaty rights in terms of protecting the environment as having as much value as developing mines and creating jobs. We will not accept being marginalized. Where development is agreed to take place, it must be according to social and environmental standards we set, and with fair and just revenue-sharing agreements.

We have a lot of work to do and I hope this standing committee accepts this challenge. We can establish a new record here in Canada and the world or we can just waste our time. The choice is ours.

Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Exactly; perfect timing. Beginning with Mr. Bisson, you have about a minute and a half.

Mr. Gilles Bisson: You were saying that Platinex is back again. I take it they're not changing their ways, is

what you're saying. They're prepared to go ahead and, if need be, use the courts and use the police to enforce. So we can expect we may be back where we were before.

Mr. Sam McKay: Exactly.

Mr. Gilles Bisson: The experience with De Beers is different, is that what you're saying in your submission?

Mr. Sam McKay: They've been coming to KI, approaching KI through various forms over the years. I did personally meet with De Beers representatives in March. They want to sit down and do things right. That's what they've told us.

Mr. Gilles Bisson: So they're taking the example as what they did in Attawapiskat; nothing goes forward without your consent.

Mr. Sam McKay: Yes.

Mr. Gilles Bisson: So that's what this legislation should be all about, the long and the short of it.

Mr. Sam McKay: Yes.

Mr. Gilles Bisson: Okay. Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Government side; Mr. Brown.

Mr. Michael A. Brown: Thank you for coming to see us today. It's an important part of our learning experience that you're here. We really appreciate that. I just want to say that Minister Gravelle has been meeting with your folks. The chief, I know, met with them in the middle of July, and our staff is continuing—the Ministry of Northern Development, Mines and Forestry staff have been meeting, I understand, on a regular basis with people from the First Nation.

We had before us—I'm just throwing this out because it happened not too long ago. The Ojibways of Pic River were here. They are about to provide us with a 14-point process for the correct consultation with their First Nation. Does one exist for your First Nation, a protocol about what consultation—not in the government's view, but in your view, how it should take place?

Mr. Sam McKay: We have a copy of it. We do have a protocol in place and that was never taken into consideration throughout this whole process with Platinex in Ontario; it was disregarded.

Mr. Michael A. Brown: Okay, so the ministry has—

Mr. Sam McKay: It does exist for us, yes. It was provided to Ontario before.

Mr. Michael A. Brown: Okay. Thank you very much.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Ouellette.

Mr. Jerry J. Ouellette: Thank you very much, Mr. McKay, for your presentation. I think some of the difficulty is the understanding of the differences in many communities in Ontario. I just want to ask you a couple of questions to give people a sense of understanding a little bit better. What is the price of gas per litre in your community and how much is a bag of milk, and how do you get it there?

Mr. Sam McKay: Gas is $2 a litre.

Mr. Jerry J. Ouellette: Two dollars a litre.

Mr. Sam McKay: I don't know how much milk is; I don't drink milk.

Mr. Jerry J. Ouellette: How do you get the gas there?

Mr. Sam McKay: Winter road.

Mr. Jerry J. Ouellette: By winter road. So all your gas comes in, depending on the weather, for the entire year, in about a month, a month-and-a-half period.

Mr. Sam McKay: Yes.

Mr. Jerry J. Ouellette: I just wanted people to gain an understanding of that for those who will be listening to this. I know my colleague has some questions.

Mr. Randy Hillier: I know there's been a lot of discussion and disappointment about Bills 173 and 191. Going back to early in your presentation, there's a mention in here that we need to resolve this fundamental conflict. It wasn't clear to me. Is the fundamental conflict the consultation approach or just what exactly is the fundamental conflict and what is the solution to that conflict? It was on page 2 of your presentation.

Mr. Sam McKay: I think the fundamental conflict is the difference of land use.

Mr. Randy Hillier: Of land use.

Mr. Sam McKay: And also land preservation, and I guess in resource development.

Mr. Randy Hillier: Now—

The Acting Chair (Mrs. Linda Jeffrey): I'm sorry, Mr. Hillier; you've run out of time. Thank you, Mr. McKay. We appreciate you being here today.

Mr. Sam McKay: Thank you.

COMMON VOICE NORTHWEST

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is Common Voice Northwest, Gwen Garbutt. Would she be here?

Welcome. As you get yourself settled, you'll have 15 minutes to present to committee with five minutes for questions afterward. If you could state your name and the organization you speak for; if you get close to the end of your presentation, I'll give you a one-minute warning. Okay?

1120

Ms. Gwen Garbutt: Thank you. I'm assuming the mic works by itself every time I speak, yes? Okay. Thank you for the opportunity for Common Voice Northwest to present to you on the Mining Act and the Far North Act, two vital pieces of legislation from your government that you have chosen to bundle together for the purpose of public hearings across Ontario. My name is Gwen Garbutt and I am the secretary-treasurer of Common Voice Northwest. Vacation and travel time made it impossible for other members of the executive to join me this morning.

First, let me briefly describe who Common Voice Northwest is. Our role is to identify, promote and develop economic opportunities in and for northwestern Ontario. We are made up of the leadership of the region: municipal, business, labour, post-secondary education, school boards, training boards and the multicultural and immigration community.

Let me now turn to your mandate. We want to state categorically that combining these two bills for public consultation is unacceptable. They are stand-alone acts and should be treated as such. Both are extremely important to the economic and social future of northern Ontario, and you need to provide adequate time for their review and comment as separate pieces of legislation. They were not tabled as an omnibus bill so they should not be treated as such when it comes to consulting with the people of the north.

That being said, we find it shocking that at a time when all of us have been extensively engaged in the Grow North exercise, your government has chosen to introduce legislation that will control the future of a massive part of northern Ontario and then expect us to tell the legislative committee of all of our concerns in 15-minute presentations in the middle of the summer. What happened to your commitment through Grow North to make this legislation that will govern our future for decades to come?

Members, we have one message to you today: Suspend the review of the Far North Act and wait until the conclusion of the Grow North process to see what direction the people of northern Ontario want you to follow. To allow the Far North Act to proceed through the Legislature and become law before the Grow North process has concluded makes a mockery of your commitment to the north. It also makes a mockery of your duty to consult with the First Nations who live north of the undertaking.

That having been said, and in case this committee and the government of Ontario do not accede to our request, we want to provide you with some comments about the specifics of each act.

Let me turn to the Mining Act. Our sense is that the majority of the stakeholders are either supportive of this act or have decided to hold their noses and support it. There are a few items that need to be tweaked, however. The first is the map-staking component. Municipalities and First Nations have long opposed map staking because it reduces the employment opportunities for the people of the immediate area. It also provides an opportunity to have a sense of what is happening in the area. If map staking becomes the norm, then it will be another blow to our economy.

However, we recognize the value of a digitized system of map recording and sharing. We also recognize that there is an opportunity for new skills to be developed and jobs to be created. To this end, we recommend that the Ministry of Northern Development, Mines and Forestry work directly with the Ministry of Training, Colleges and Universities, Confederation College and Lakehead University and the communities and leadership north of the undertaking to develop community-based programs that will ensure that existing line-cutters receive the upgrades necessary to meet the new demands of map staking.

The second point of concern is found in section 35.1, where surface rights owners in the south have more protection than surface rights owners in the north. In the north, it is up to the minister to decide if our privately held lands are protected, whereas in the south it's enshrined in law. It's not as if there is an abundance of private land up here—most of it is crown land. Don't treat us like children. Give our landowners the same rights the rest of the province has.

Secondly, we believe that any mining activity, whether it be exploration or development, within municipal boundaries must adhere to the official plan of that community and that any deviation from the provisions of the official plan must receive the approval of the municipal council through the normal procedures provided under the Planning Act.

Now let me now turn to the Far North Act. In addition to our earlier comment that the consideration of this act should be suspended until the Grow North plan has been completed and its legislation finalized, we feel it prudent to comment on some of the components. The arbitrariness of setting aside 50% of the land north of the undertaking is astounding to us. For the government to set aside "at least 225,000 square kilometres of the far north in an interconnected network of protected areas" is to say we are going to take away from you one half of the economic area of the north. That is unacceptable.

Let me put that size in context. If you take four of the five Great Lakes together—Lake Superior, Lake Michigan, Lake Ontario and Lake Huron—they would cover the land that the government has decided must be protected. Put it another way: If the protected area was placed over top the United Kingdom—England, Ireland and Wales—there would be 7% of the island country left for any kind of development. A bit excessive, we think, and designed to appease the environmentalists who live in their air conditioned homes and condos in the urban cities of southern Ontario.

Mr. Chairman, members of the committee, just because the population north of the undertaking is sparse, there is no reason to arbitrarily restrict their economic future. Now, don't get us wrong. We are all environmentalists up here. We cherish our natural resources and the unique features that come with the land we live in. This is about process. Let the community land use planning process proceed, identify the cultural areas to be protected, identify the flora and fauna that need special reserves, verify the interesting tourism features that should be protected and perhaps even formalized into a park. At the same time, the community land use planning process will identify those areas where it is appropriate for resource-based economic activity. The 50% edict must be a laudable goal and to arbitrarily make it a legislated goal is against proper land use planning and also goes against the constitutionally imbedded rights of the First Nations to be consulted. We echo the position of the Nishnawbe Aski Nation in seeking upfront funding to enable all of the First Nation communities to launch their individual land use planning programs.

One of the areas north of the undertaking that is ready to take off is the Ring of Fire in the James Bay lowland

230 miles north of Nakina that has seen more successful staking in the last three years than in the entire province since staking commenced. This is a hot property. There are discussions around constructing a new rail line to connect this area with the CN main line at Nakina and to bring ore all the way south to Thunder Bay for processing. Land use planning must start immediately, and if the First Nations are to be true partners in this process, Ontario must provide the funding immediately to ensure that this valuable work can commence.

Mr. Chairman, members of the committee, thank you for the opportunity to make our views known to you. We look forward to seeing those views incorporated into your report to the Legislature.

1130

The Acting Chair (Mrs. Linda Jeffrey): Thank you. We have about three minutes for each party to—

Ms. Gwen Garbutt: I'm sorry. I'm having trouble hearing you.

The Acting Chair (Mrs. Linda Jeffrey): Sorry. We have about three minutes for each party to ask questions, beginning with the government side. Mr. Mauro.

Mr. Bill Mauro: Gwen, it's good to see you. Thanks for being here this morning. I'm going to go very quickly because I want to share some time with my colleague Mr. Brown.

First of all, Common Voice: Do they have any resolutions in regard to these particular pieces of legislation which you could share with us?

Ms. Gwen Garbutt: I don't know that they've actually been passed by the board yet, Bill. I know we're working on them.

Mr. Bill Mauro: Fair enough. So what we're reading today, then, is a brief provided by—

Ms. Gwen Garbutt: The executive put the brief together.

Mr. Bill Mauro: Okay, thank you very much. On Bill 191, the Far North Act, it's important, please—I'm not sure if you're aware—that this is first reading of Bill 191. It's very unusual for the government to go forward with public consultations after first reading. That's what we're doing here. We've been very clear in terms of our commitments, given the hoped-for co-operation of the other parties, after consultations with House leaders, that there will be opportunity for further consultation on Bill 191 after second reading. I wanted to let you know that as well.

Your comment about Grow North and this seeming to be, perhaps, a bit quick: I gathered from your comment that you saw this as being somehow smothering any potential economic activity that might occur in what is described as the far north. Currently, as you're probably aware, no commercial forestry at all is occurring up there. What is likely to occur will be mining, which requires a very small footprint, and any hydroelectric projects, as well as some eco-based tourism. I just wanted to mention that, to put some context around that.

The land use planning exercise that you talked about: It's important to recognize that there have already been successes—Pikangikum—as well as some very forward-moving processes around Cat Lake and Slate Falls. There's some really good stuff going on there already as well.

I just wanted to mention that to you and quickly try to share some time with my colleague. Thank you.

Mr. Michael A. Brown: Thank you, and thank you for appearing here this morning. I just want to share my colleague's observation that this is part of the consultation. Especially with Bill 191, there will, in all probability, depending on the co-operation of the opposition parties, be another opportunity.

I just wanted to talk about the Mining Act—that's my responsibility here—and just say that we also understand that there need to be some opportunities for prospectors to seek upgrading, maybe, of their skills. We understand, through map staking, that in other jurisdictions it has not had the negative effect that you seem to be suggesting here. But one of the interests we have is of ensuring that those folks have every opportunity to gain the skills they need. As a matter of fact, there will be a prospector's course offered for sensitizing people to some of the new realities.

Maybe you could have some comment. I know you have some wonderful educational opportunities here in northwestern Ontario.

Ms. Gwen Garbutt: I guess my first question would be, is the province planning to subsidize this course or are these prospectors going to have to pay their own way? Some of our prospectors are in their 60s, 70s, 80s.

Mr. Michael A. Brown: The—

The Acting Chair (Mrs. Linda Jeffrey): I'm sorry; you've run out of time. Maybe the answers will come through. Mr. Hillier.

Mr. Randy Hillier: I loved your presentation. I think, on Bill 191, you're absolutely correct: We've heard from many delegates at these committee hearings that the only people who were informed of the 50%-protected edict by the Premier were the environmental groups, the World Wildlife Fund and whatnot. The First Nations communities, prospectors, developers and municipalities were all unaware of that 50%-protected zone.

With what we're hearing from the south as well, and from many communities, about using the law to treat people in a different fashion, recognizing that communities should be involved in land use planning in the far north but not believing that they should be in the south or near north, treating landowners differently in the south than in the north. Do you believe that this can be and ought to be an amendment in this bill, treating all municipalities and all people with due process and the same process?

Ms. Gwen Garbutt: Yes, I do. There was a time when people up here used to be called second-class citizens. Now I think, because the south was always treated differently and when things went wrong within the south we had to pay the bill up here, there are all kinds of things to prove that point. Of course, now we have the Metro Toronto bill, the GTA bill. So now we've become, in my

personal opinion, third-class citizens: First there's Toronto, then there's the rest of southern Ontario, and then there's, "Gee, you guys are a pain up here." That's strictly personal, okay?

Mr. Randy Hillier: I think maybe you could also use the view from Toronto as third rate as well as third class, often, with this legislation, I happen to agree—that different hierarchy that we're building in this province.

Ms. Gwen Garbutt: We sort of feel that we're probably the best of the province up here. You can hit me afterwards, Mr. Mauro.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Bisson.

Mr. Gilles Bisson: You comment with regard to how there needs to be a mechanism in order to fund First Nations for them to be able to do the land use planning, and we should be doing that rather than trying to do this overarching bill that's basically not going to satisfy them. But my question is this: Even if we went down that road—let's say we followed that model and we said that each individual First Nation community and/or tribal council, in whatever configuration they want, is responsible for doing their land use planning—you would still need to have some sort of overarching principles that are entrenched in legislation so that there is some consistency with what comes out at the end. So the question is, which comes first? Should we allow them to do the land use planning first and determine what those principles are and then we come in with the legislation? Or should we try to declare what the principles are and let them go out and do the actual work?

Ms. Gwen Garbutt: All municipalities right now have rules that they have to follow when they prepare land use official plans, land use planning. I don't see that there should be any difference between the way First Nations communities do their planning and the rules we have to follow.

Mr. Gilles Bisson: My question is, though, should we be concentrating not so much on trying to develop what the land use plan is but on setting out what the principles are that would be contained in your land use planning so that First Nations and others are able to actually go out and do that work on a community-by-community basis, of course in consultation with First Nations? It seems to me that we're putting the cart before the horse.

Ms. Gwen Garbutt: When my own municipality does its official plan reviews or official plan amendments or whatever, we have rules that we're required to follow that are set out in the Planning Act. I see no reason why those same rules in the Planning Act shouldn't apply to First Nations or to any other area.

Mr. Gilles Bisson: There was a suggestion by somebody earlier, and I thought it was an interesting one, in regard to surface rights, that people who own the surface rights don't own mining rights. In many cases the mining rights were tied to the surface rights but were sold off at one point in the past number of years, and he was suggesting that there be some sort of amendment put in this legislation that makes the lawyer on the case—somebody—responsible, in case of sale, for informing the property owner that there used to be mining rights but they've been extinguished because they were sold by the previous owner. Can you speak to that? Do you see that as part of the solution here?

Ms. Gwen Garbutt: Yes, it definitely is part of the solution. The other thing is that the same rules that apply in southern Ontario to surface rights should apply to northern Ontario.

Mr. Gilles Bisson: As a northerner, I get it. And by the way, if there's going to be a rail line or road, we're expecting to build it out of the northeast up to James Bay, just so you know.

Ms. Gwen Garbutt: I think it should definitely go from Thunder Bay, okay?

Mr. Gilles Bisson: You and I will have a fight on that one.

The Acting Chair (Mrs. Linda Jeffrey): Thanks for being here today. We appreciate your delegation.

Ms. Gwen Garbutt: Thank you.

Mr. Gilles Bisson: You know we do find ways of always providing for ourselves.

ONTARIO MINING ASSOCIATION

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is the Ontario Mining Association: Mr. Hodgson and Mr. Blogg. Welcome, gentlemen. Thank you for coming. We're going—

Interjection.

The Acting Chair (Mrs. Linda Jeffrey): Would you like Mr. Mauro to come back? I can call him. Welcome. Thank you for coming today. As you get yourselves settled, you know you have 15 minutes; I'll give you a one-minute warning if you get close to the one-minute mark, and there'll be opportunity for questions and answers afterwards. If you're all going to speak, could you identify yourselves for Hansard before you begin?

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Mr. Chris Hodgson: Sure. Good morning, Chair, and members of the committee. My name is Chris Hodgson. I'm the president of the Ontario Mining Association. With me today are John Blogg, the Ontario Mining Association secretary and manager of industrial relations; Adele Faubert, manager of aboriginal affairs at Goldcorp Canada's Musselwhite mine; and sitting behind us is Jerome Girard, who is the mill superintendent at the Musselwhite mine.

We appreciate the opportunity to appear today to offer a presentation and answer your questions related to Bill 173 and Bill 191. In addition, we will provide you with a full written submission before the September 4 deadline.

The Ontario Mining Association was established in 1920 and is one of the longest-serving trade organizations in the country. Our members include operating mines, metallurgical plants, contractors, suppliers and engineering firms. They are located throughout Ontario, driving wealth creation and regional development while significantly contributing to the province's tax base and balance of trade.

The Ontario Mining Association has a long history of working in concert with the government, communities of interest and the public to ensure that the mining industry in Ontario is competitive and serves to benefit everyone in the province. This Ontario mining profile, which I've included in your package, will give you some indication of the extent of our contribution. You will note that the handouts contain more than just figures with dollar signs that illustrate the economic impact of mining. As an industry association, we realize that it's not enough just to provide economic benefit to communities. Our values have evolved, along with our communities of interest, and are driven by a commitment to continual improvement as it relates to economic, environmental and social performance. We see fundamental value in operating in a responsible way to generate prosperity today, without compromising the opportunities of future generations.

Because our members strive to be leaders in sustainable development and community building, they are supportive of the general intent and direction of Bill 173 and Bill 191. The Ontario government should be commended for its intent to, in Minister Gravelle's words, "find a balance" in developing legislation that reflects the changing needs and aspirations of a dynamic society while supporting a vibrant, safe and environmentally sound industry.

We believe that the government took the right approach by consulting widely on the Mining Act, even before the official introduction of the legislation. As a result, the scope of the changes to the legislation is reflective of the key areas of concern to the public. We are certainly grateful for the opportunity to take part in the ongoing multi-stakeholder dialogue, including through the minister's Mining Act advisory committee, on issues that are of significant concern to our members, and to continue to have our views heard today and in the future.

For the purposes of clarity in today's presentation, I will speak first about Bill 173, the Mining Amendment Act, and second, about Bill 191, the Far North Act.

In its revision of the Mining Act, the government of Ontario laid the foundation for the continued success of the mining sector in the province by recognizing the need to preserve a mineral tenure regime that offers a level of confidentiality, security and certainty that will allow large and small companies to compete on a level playing field.

While retaining competitive staking, the government nonetheless addressed the concerns of private landowners by removing the need to physically access land prior to claim acquisition through the introduction of an electronic map staking system. The Ontario Mining Association is supportive of this approach, as it makes it possible to avoid unnecessary disturbance to the land, inconvenience to the surface rights holders and/or potential infringement on aboriginal or treaty rights. There are other advantages associated with map-staking, which include greater efficiency, avoidance of unnecessary costs and the ability to channel resources to more value-added activities, avoidance of safety risks, as well as a reduction in the use of fossil fuels and, thus, lower emissions of greenhouse gases. The Ontario Mining Association commends the government for offering a workable and progressive solution that meets the needs of a variety of stakeholders, and supports the provision of $40 million to implement the changes to the Mining Act.

At the same time, the Ontario Mining Association does have some concerns with Bill 173 and would like to seek clarification on some other aspects of the proposed legislation, ensuring that there are no ambiguities impairing the ability of mining to continue to play the major role it does in the economic and social development of Ontario.

A basic foundation of mining success in Ontario—the thing that sets us apart and gives us an advantage over some other jurisdictions with significant mineral potential—is rule of law and certainty of title. For that reason, the aboriginal consultation provisions in Bill 173 need to be clear, transparent and consistent with current case law, which states that the government has the primary duty, with some exceptions, to consult with aboriginal communities. "Duty to consult," as presented in the bill, seems to demand consultation by a proponent far beyond the requirements of case law, an ambiguity that may be reflective of the current general practice in the province which sees proponents, including our members, engage almost exclusively in consultation, both in the interest of relationship building and in furthering results to meet business timelines and objectives. There is no doubt that relationship building from the outset is essential and has, indeed, become common practice among OMA members. However, when it comes to ensuring transparency and the supremacy of the rule of law, the duty to consult is placed unequivocally with the crown. This means that the act should make explicit reference to government-appointed mineral development officers bearing full responsibility not just for the approval but for the actual conduct of consultation, thus fulfilling the government's duty to consult.

Given these clear provisions, and recognizing that they would constitute appropriate consideration of community interests, the industry would be prepared to accept the added regulatory burden of exploration plans and permits, the reintroduction of which runs counter to the government's overriding Open for Business policy. Needless to say, we expect that the government will work within the spirit of the Open for Business policy by putting in place administrative measures that will ensure fixed timelines and efficient processes associated with any new regulatory measures.

Having stated our general concern around the duty to consult, allow me to hone in on another area of the act that may need to be clarified. Under subsection 143(2) of the current Mining Act, a proponent is required to file a notice of material changes to a certified closure plan whenever such changes occur. The amendment proposed in Bill 173 adds the provision that such changes require authorization and that the amended certified closure plan needs to be filed with MNDM prior to undertaking the

changes described in the submitted notice of material changes.

The proposed subsection 141(2) of Bill 173, to have the amended certified closure plan filed before commencing the work, is a significant change to the act. The most onerous aspect of this change is the obligation on the proponent to conduct aboriginal consultations on the amendment to the satisfaction of the director. Let me recount a real-life story to illustrate what this change might mean to a mining operation:

Company A, a leading mineral producer and employer in a northern Ontario community, was the proponent of a certified closure plan for XYZ mine, which was filed with MNDM four years ago. Subsequently, the company submitted a notice of material change that reflected significant changes to the mining project, as described in the original closure plan. In response, MNDM requested an amended closure plan, which company A duly submitted, and which was approved by the ministry several months later.

Meanwhile, company A embarked on a consultation on the changes to the closure plan with the neighbouring AB First Nation. After a cordial first meeting with the community leadership, plans were made for a follow-up meeting. Despite numerous letters and phone calls from company A, the follow-up meeting date was not set until six months later, at which time it fell through due to the last-minute unavailability of the chief and council. Given an offer by the legal counsel of AB First Nation to arrange for a meeting, company A complied with his request to send in a copy of the notice of material change previously submitted to MNDM.

Since that time, 17 months have passed and, despite active efforts on the part of company A to arrange a meeting with AB First Nation, no further discussion about the notice and the proposed closure plan amendment has taken place. In conversation with the MNDM director, company A learned that its attempts to consult with AB First Nation would not be considered sufficient for their closure plan amendment to be accepted for filing. Therefore, if the requirement to have an amended certified plan filed with MNDM prior to undertaking the changes had been in force, XYZ mine would have been closed for over a year and remained shut down indefinitely, while company A pursued its attempts to consult with AB First Nation.

I am sure that you will agree that this level of uncertainty for a mining proponent is not acceptable in a province that is facing dire economic circumstances and making efforts to be open for business. To be sure, the revised Mining Act will probably not be implemented this way and will probably follow the present way we amend closure plans on existing operations. However, it would help if this was clarified or this part of the amendment was deleted.

In terms of promoting fair and balanced development, the government has taken the right approach in proposing improvements to the dispute resolution process by introducing the notion of a tribunal. We would like to take this opportunity to stress that a truly robust process needs to be unambiguous, fair and transparent. Therefore, in addition to being experienced mediators, tribunal members must understand the issues and the law. In defining tribunal nomination criteria, the government, in our opinion, should consider the need to engage individuals with local expertise, including aboriginal representatives. As with the consultation process, clear timelines must be associated with the dispute resolution process to ensure security of investment and business continuity, taking into account factors such as timing of flow-through shares and the access to some of our sites, i.e., the winter roads.

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I would like to switch now to Bill 191 and make comments on land use planning and protection in the far north. Once again, we are appreciative of the government's efforts to foster a multi-stakeholder dialogue and to build consensus through the far north advisory council, which I had the privilege of being a part of, and whose recommendations we support.

The Ontario Mining Association is supportive of the government's stated intent to involve aboriginal communities in the land use planning process. We also strongly agree with the goal to strike the right balance between conservation and development, which was set out in the Premier's July 14, 2008, announcement. That is why we are concerned that the wording of the subsequent communication on this initiative, as well as the bill itself, is strong on conservation targets but non-existent on development targets. If we are to respect the integrity of the Premier's words and ensure the well-being of far north communities, development targets need to be included in the legislation.

Why not a target of 10 new mines in the next 10 years? A recent University of Toronto study concluded that the contribution of even a single representative mine can have an impressive effect on local employment and economic output. I have copies beside me if anyone wishes to read the whole report. At the same time, the actual footprint of a mine on the landscape is very small. The only two mines in the far north that are examples of this are the Victor mine in Attawapiskat, which brought a $1-billion dollar investment by De Beers to the province, and the Musselwhite mine, which brings considerable benefits to a remote area of Ontario. Both mines rely heavily on the local aboriginal workforce.

While operating mines occupy a very small area, they are rare and very difficult to find, especially in a vast, remote area like the far north, where the geology is largely unknown. Because the geological survey work would be ongoing over an extensive period of time, the Far North Act needs to make provisions for regular review of the land use plans, perhaps every five years. New mineral discoveries, new science, the changing needs of northern residents, technological changes and shifting circumstances may all trigger review of land use plans. As with our comments on the mining act, we would like to stress that the review process in this case also needs to be objective, fair and transparent.

Given the level of effort involved in land use planning and review, including the need to conduct comprehensive, long-range data collection and geological mapping, a key determining factor in the success of the government's land use planning initiative is the sustained availability of adequate resources. Proposals for land use planning in the far north place a large responsibility and scope of work on First Nations, local authorities and companies alike. The legislation cannot achieve its goals unless greater governmental resources are dedicated to enhance the capacity for land use planning in the far north.

The government has rightly allocated $40 million to implement the mining act, and it will require much more—hundreds of millions of dollars—to achieve the goals set out in the Far North Act. In embarking on the monumental task of land use planning in the far north, the government needs to ensure the necessary funding mechanisms are in place or it won't work.

In conclusion, I would like to point out that the mining companies function in a fiercely competitive and increasingly mobile global market. Ontario needs to remain open for mining business. Recent turbulence in the economy has had a negative impact on our industry, but there are steps that the government can take to ensure Ontario is in the best position to take advantage of the next upswing in commodity prices.

Sustained success of mining as part of Ontario's economy requires the following:

—certainty of the rule of law and land title;

—land access for mineral exploration;

—investments in training, infrastructure and technology;

—regulatory efficiency and certainty.

We believe that in developing the proposed legislation there is an opportunity to foster an environment that promotes fair and balanced development that benefits all Ontarians.

We look forward to working with you and answering any of your questions. Thank you very much.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. You've left about two minutes for each party to ask a question, beginning with Mr. Hillier.

Mr. Randy Hillier: Thank you very much for being here today. I'll just start off with a quick first question. Were you aware of the Premier's announcement regarding Bill 191 and the protection of that much land before the announcement was made?

Mr. Chris Hodgson: Oh yes, for sure. We've been consulted for at least three years on this. It was mentioned in the campaign documents of the last election.

Mr. Randy Hillier: That a quarter million square kilometres would be prevented from development in the far north?

Mr. Chris Hodgson: We understood the ramifications of that at the last election.

Mr. Randy Hillier: Okay.

A recent Fraser Institute study showed that Ontario was falling in our ranking on mining investment. Does Bill 191, taking out a quarter of a million square kilometres—how do you see that affecting the mining industry and our ranking? Is that trend of declining investment going to be severely impacted with Bill 191?

Mr. Chris Hodgson: There's a lot of competition for mining dollars throughout the world now, and unless you have clear rules that are well-funded and implemented, you're going to lose that investment.

Mr. Randy Hillier: There was also one mention—and again, "protection" conjures up different images with different people. Ontario Nature, one of their comments was that this would prevent any industrial activity in the north, not just 50% of the protected area.

Mr. Chris Hodgson: Well, I've had the privilege of serving on an advisory council with responsible environmental groups, and I think they realize that a mine actually takes up a very small footprint of the landscape and that modern mining companies want to be socially and environmentally responsible. So I think there's a balance there. I think we've moved beyond whether it's industry or the environment; I think we have to have both. That's what this plan should be about. It's just disappointing to me that—it's positive they sent it out at first reading, a lot of changes can be made. But the key one has to be the funding. You have to also live up to allowing First Nations and local people more of a say in the local planning.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Bisson.

Mr. Gilles Bisson: Just following up on Mr. Hillier: The comments that I'm getting, not only through this committee but also in communications that I've had with different people, is that their sense is we're throwing a pretty big net out there north of the undertaking. Who's going to know what 50% is going to be protected? The premise is that if I don't know what the 50% is now, why would I do any investments, when it comes to mining north of the undertaking, if we're not at the end of the process? So a quick question: Will this, in its present form, assist in attracting more investment to mining north of the undertaking?

Mr. Chris Hodgson: Well, the bill is so broad—it's sort of an umbrella legislation; you can put anything you want in it. One thing I would suggest is that the committee try to narrow down what the bill actually does. But if you have a plan that's properly funded, you will have a framework for a certainty of investment, a certainty of timelines and rules. If you are absent of the money to make this happen you'll have uncertainty, and money won't flow to an area that you don't know if you can bring in to develop.

Mr. Gilles Bisson: So we agree what the effect could be, so here's the nub: The reality is that 99% of north of the undertaking is already protected—99.999%. There's very little in the way of development north of the undertaking. You've got Musselwhite, which is yours, you've got De Beers and a little bit of hydro and some communities. So rather than trying to set out a number, saying 50%, why don't we make a process by which we

figure out how development is going to happen north of the undertaking so that (1) there is a minimal impact on the environment; (2) First Nations have a real say about where developments should take place; and (3) they benefit and the province benefits from those projects? Wouldn't that be a better approach?

Mr. Chris Hodgson: We suggested one in our approach here, that you have economic development targets, and we suggested a number of mines. Hold people accountable for having economic targets. I think that's a positive way. If you take all the mining activity in the province's history—past mines and present mines—it only takes up 0.03% of the total landscape. You could have 99.7% if you had all the mines in the province located just in the far north. It's a small area that actually takes place in modern mining.

Mr. Gilles Bisson: You should add up how many strip malls are out there now. I bet you the strip mall number—

Mr. Chris Hodgson: Our numbers are very small but have huge economic contributions.

Mr. Gilles Bisson: Do I have time for a question?

The Acting Chair (Mrs. Linda Jeffrey): No, you don't. You can talk to him afterwards. Mr. Brown?

Mr. Michael A. Brown: Good morning. Thank you for appearing. I don't really have many questions. What I'm really looking forward to is your more comprehensive brief, and you said it would be available by September 4. All the parties will be needing to prepare their amendments, so we look forward to that.

I think you make the point very clearly that what we're looking for is certainty. You can live with the rules as long as you know what the rules are and the rules are followed by everyone. That creates a climate we need to create here in Ontario for an even larger and more important mining industry in the province. I just wanted to thank you for appearing and I look forward to seeing your more extensive submission.

Mr. Chris Hodgson: I appreciate that. Thank you very much. Thank you, Chair, for your time.

The Acting Chair (Mrs. Linda Jeffrey): Thank you for being here.

Committee, this brings to a close our delegations for this morning. We're going to be taking a recess for an hour now. The room is going to be locked. You can leave your effects here. I wouldn't leave anything you value.

Mr. Gilles Bisson: Can we leave our papers here?

The Acting Chair (Mrs. Linda Jeffrey): You can leave your papers. The room will be locked and the room will be emptied. We will be meeting in the Icelandic room for lunch. We will be breaking for an hour and reconvening at 1 o'clock.

The committee recessed from 1159 to 1300.

The Acting Chair (Mrs. Linda Jeffrey): I call the meeting to order. This is the Standing Committee on General Government and we're here to discuss 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.

MÉTIS NATION OF ONTARIO

The Acting Chair (Mrs. Linda Jeffrey): Our first delegation this afternoon is the Métis Nation of Ontario, Gary Lipinski, president.

Good afternoon and welcome. Once you get yourself settled, you'll have 15 minutes to make your presentation. If you could announce who you are and the organization you speak for at the beginning, for Hansard. If you get close to the 15-minute mark I'll give you a one-minute warning, and after that the three parties will ask you questions.

Mr. Gary Lipinski: Thank you, Madam Chair. It's certainly my pleasure to be here. I have passed out written copies of the presentation I'll be giving for your reference as well to go through.

Good afternoon, committee members. I want to thank you in advance for the good work you're doing in undertaking this. I know what it takes to sit through some of these long sessions, and I'm reminded of something an instructor once told me as I was taking a four-hour course to jump out of an airplane: "The mind can only absorb what the seat can withstand." So I hope you all have comfortable seats.

My name is Gary Lipinski. I'm president of the Métis Nation of Ontario. I'm joined here by some of my other Métis colleagues in leadership within the Métis Nation. I'll mention them specifically, and they're sitting in the front row behind me. Secretary-treasurer Tim Pile: Tim holds a seat on our provincial governing body. He lives here in Thunder Bay, so it's wonderful that he could also join us here today. Cam Burgess as well is back there. Cam is our Region 2 councillor, and in our government structure that would be like an MPP position on our provisional council. Senator Bob McKay is also there, and he's a member of the local community, in local community council. Joining him is the president of the Thunder Bay Métis community council, Wendy Landry, and vice-president and our chair, Robert Graham, all from the Thunder Bay Métis Council. In addition, joining the delegation from the Métis Nation of Ontario at the back here is Ken Simard, who is our captain of the hunt and responsible for ensuring a safe and effective harvest with the Métis Nation.

Again, I have provided written copies of my presentation. In the benefit and interest of time, the first six pages go through in detail some fairly good information for your benefit that identifies the Métis Nation's governance structures, some of the challenges we face here in Ontario, some specific demographics that I think you will find interesting. But with your indulgence, I think I'll turn and get right into the meat and potatoes of our presentation and I'll then move to page 7 and begin on general comments on the act. Again, at your time, I think it would be beneficial for you to review those other pages, but I know what your time is like.

On the whole, the Métis Nation believes the modernization of the act is an extremely important and worthwhile initiative being undertaken by the government of Ontario. We believe the Ontario government should be

commended for attempting to reconcile this piece of legislation with the new legal realities in Canada; namely, the recognition of aboriginal and treaty rights of First Nations and Métis peoples in Ontario and the crown's constitutional duties and obligations that flow from these rights and the honour of the crown.

The MNO believes that all Ontarians, including Métis communities, can benefit from creating a stable, predictable and sustainable mining sector. Unfortunately, history has shown us that, by and large, Métis people and Métis communities have not been able to directly benefit or reasonably share in the benefits created through the mining industry in this province.

More often than not, mining companies as well as the crown have ignored the potential impacts of development on the people who are most closely connected to the land and who will still be on the land long after the mine has closed. Our rights and interests have largely been ignored due to either government denial or a regulatory regime that had no process to adequately deal with these important issues.

Equally frustrating, even though our traditional territories are rich in mineral resources, we have not shared in much of the economic benefits derived from these territories.

With that said, the MNO is supportive of any government initiative that will ensure these past realities are not repeated in the future. We are optimistic that a new act will transform the non-existent relationship between Métis communities, the crown and the proponents on mining development in Ontario to one of respect, collaboration and partnership. We are also optimistic that the often one-sided relationship between aboriginal rights and interests and economic development can be rebalanced in order to create a win-win situation for all involved.

Within the proposed act, we applaud the Ontario government's efforts to recognize aboriginal treaty rights, to acknowledge the crown's constitutional obligations vis-à-vis consultation and accommodation, to limit staking and exploration on lands that are important to aboriginal peoples, and to create a dispute resolution process in order to promote reconciliation and avoid the courts. However, the Métis Nation's support for the act is qualified and conditional because there remain many unanswered questions on exactly how these laudable commitments will be implemented through the act's regulations.

While the MNO appreciates that regulations cannot be developed until the act is passed into law, Métis remain concerned that many of the commitments could prove to be hollow for the Métis if the regulations are not arrived at through collaborative and meaningful processes that incorporate the unique perspectives of the Métis.

The MNO wants to ensure that the regulations establish a collaborative MNO/Ministry of Northern Development and Mines process for the identification of the regional rights-bearing Métis communities that need to be consulted in any given situation. Further, the regulations should recognize and direct proponents to engage the regional consultation protocols which are a new part of the MNO's governance structure. As well, the MNO believes that within the regulations, adequate consultation and accommodation should require that a mining company operating within a traditional territory or Métis community have an impacts and benefits agreement in place with those communities prior to crown authorizations being approved. The MNO believes that unless the regulations achieve the act's stated purpose, the praiseworthy commitments in the act will essentially be meaningless. Simply put, the devil is in the details.

With that said, the MNO remains committed to working with the Ministry of Northern Development and Mines to ensure that the regulations fulfill the act's stated purpose and goals. To be successful, this regulation development process must be respectful, transparent and funded, and must treat Métis communities and First Nations equally.

The MNO is optimistic that such a process can be put in place, based not only on the relationship that has been building between Métis Nation of Ontario and ministry officials, but also Minister Gravelle's long-standing respect, inclusion, and support for the Métis Nation. As such, subject to the foregoing caveats and with the specific points I am about to discuss, the MNO is generally supportive of the act.

I want to now provide some specific comments on the MNO's concerns with respect to the act's proposed amendments and offer some suggestions in order to address these concerns.

(1) Use of the "aboriginal communities" descriptor: One of the MNO's overarching concerns with the act's amendments is the use of the term "aboriginal communities" throughout the legislation, rather than using the more specific and inclusive descriptor of "First Nation and Métis communities." It has been the MNO's experience that when this type of generic "aboriginal community" language is used, Métis are often excluded because some government officials as well as proponents wrongly assume that only First Nations are considered "aboriginal communities." In particular, in the mining sector we have already been witness to some proponents consulting and accommodating First Nations; however, Métis communities that are similarly situated and actually sharing a territory with these First Nations are being completely ignored. We believe the act's ambiguous "aboriginal community" language, which has no clear definition in the act itself, will only perpetuate this ongoing Métis exclusion.

While we appreciate that "aboriginal community" could be defined in the accompanying regulations, there is no guarantee of that occurring, and we do not believe that the inclusion of Métis communities should be limited just to the act, where the significance of the point too often gets lost in the fine print.

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For Métis people, the specific inclusion of Métis communities in this legislation is extremely important at both a practical and symbolic level. Since the Powley case,

instead of being completely ignored and always watching from the sidelines on government initiatives, Métis have been increasingly involved and included as partners in many of the McGuinty government's commendable commitments to aboriginal people, including the new relationship fund, resource- and benefit-sharing discussions, and increasing First Nations and Métis involvement in the Ontario energy sector.

It is the MNO's opinion that the success of many of these initiatives for Métis has turned on the explicit inclusion of First Nations and Métis communities in government policy announcements and direction from ministries. For example, the intentional inclusion of Métis communities in the new relationship fund announcement has expanded opportunities for MNO to work collaboratively with the Ministry of Aboriginal Affairs to develop a uniquely Métis approach for building consultation capacity in Métis communities throughout the province. The Minister of Energy and Infrastructure's September 2008 directive to the Ontario Power Authority on promoting aboriginal partnership opportunities specifically included First Nations and Métis communities as well. This explicit recognition has fostered the MNO's work with the Ontario Power Authority and other proponents on Métis-specific approaches to achieve the minister's directive. As a result, Métis-specific solutions have been allowed to take shape, and Métis communities are beginning to see real benefit from many of the initiatives currently supported by the Ontario government.

We also believe that this type of inclusive and explicit language vis-à-vis Métis communities befits the reality that Ontario is the home of the landmark Powley case and reflects the progressive and positive relationship that is building between the Ontario government and the Métis Nation.

Simply put, we are looking to turn the page on Métis being referred to as "the forgotten people" in this province. However, the only way to do that is by ensuring that our existence begins to be reflected in the written record of this province. Since laws reflect the goals and aspirations of a government at various points in time in history, we believe it makes sense that Métis communities be explicitly referenced in the act.

In sum, we would request that all references to "aboriginal communities" in the act be changed to "First Nations and Métis communities."

(2) The duty is not an aboriginal right and includes the duty to accommodate: MNO has two concerns with respect to the legal drafting dealing with the recognition of aboriginal and treaty rights and the crown's duty to consult and accommodate. The problematic language first appears in section 2, the purpose section of the act. Specifically, the text of concern reads that the act is to operate "in a manner consistent with the recognition and affirmation of existing aboriginal and treaty rights in section 35 of the Constitution Act, 1982, including the duty to consult...." This is repeated in various forms throughout the act. While the MNO fully supports the underlying purpose of the inclusion of this language in section 2 of the act and throughout the act, our concerns relate to whether the chosen language is actually consistent with the current state of law as it relates to the duty to consult and accommodate.

Our first concern is that the proposed language could be construed that the "duty to consult" is actually an aboriginal right recognized and affirmed in section 35 of the Constitution Act, 1982. It is MNO's understanding of the current state of the law that the duty to consult and accommodate is a super-added constitutional duty that flows from the honour of the crown and the recognition and affirmation of aboriginal and treaty rights in section 35. It is not an aboriginal right per se.

The second concern is that the proposed language only acknowledges that there is a "duty to consult"; however, the Supreme Court of Canada has articulated that as the duty to consult and accommodate. We believe that if the act is going to acknowledge the duty, it should be the one recognized by the Supreme Court of Canada, not a circumscribed description of the duty. Moreover, we believe that simply describing the duty as the "duty to consult" undercuts the fundamental purpose of the duty itself. In our opinion, consultation without appropriate accommodation renders the duty almost meaningless.

Through the consultation aspect of the duty, potential impacts or infringements of section 35 rights are identified. However, without accommodation being recognized as the corollary of the consultation process, the duty's very purpose cannot be achieved.

The MNO suggests that the language throughout the act be changed to read, "in a manner consistent with the recognition and affirmation of existing aboriginal and treaty rights in section 35 of the Constitution Act, 1982, as well as the crown's duty to consult and accommodate." We believe this language actually reflects the state of the law as it relates to the crown's duty to consult and accommodate and could avoid future litigation over ambiguities in the current drafting.

(3) Withdrawal of land with cultural significance: The MNO is concerned that the language in the act with respect to the type of land that may be withdrawn from prospective staking based on aboriginal interests is too limiting. Specifically, section 35(2)(a) of the act provides that land may be withdrawn if it meets "the prescribed criteria as a site of aboriginal cultural significance."

While the MNO recognizes that the prescribed criteria will be set out in the regulations, the guidance for the development of those criteria will be based on the language used in the act. In the MNO's opinion, the current language being proposed is problematic for two reasons:

(i) The use of the word "site" is overly narrow. In common usage, this word connotes a specific location or discrete place. This would appear to exclude broader areas or a region which may have cultural significance to an aboriginal people. The MNO suggests using the term "location" or "area" instead of "site."

The Acting Chair (Mrs. Linda Jeffrey): Mr. Lipinski, you have about a minute left.

Mr. Gary Lipinski: (ii) Limiting the aboriginal significance of a site to something that is purely "cultural" may exclude locations of economic or historical import-

ance to an aboriginal people. For example, a Hudson's Bay Company location may be of historical importance to a Métis community, but that importance may not be cultural per se. Further, a community could have an economic activity interest in a location that is not cultural. The MNO suggests removing the "cultural" qualifier.

Based on these points, the MNO suggests that the act state that land may be withdrawn if it meets the prescribed criteria as a location or area of aboriginal significance. Clearly, the prescribed criteria in the regulations would identify and describe what could qualify, but the MNO does not believe the act should be overly restrictive until adequate consultations with First Nation and Métis communities occur on what they would define as "aboriginal significance."

In closing, once again the MNO would like to thank the committee for this opportunity to provide its perspectives on the act. We hope the committee will seriously consider our recommended changes to the current draft of the act. As I indicated, the MNO will be providing a more formal written submission to the committee and the Ontario government by the end of the month.

On behalf of the Métis Nation of Ontario, we look forward to continuing to work with the Ontario government on this important initiative. If there are any questions, I would be more than willing to answer them now, Madam Chair.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. We have about a minute and a half for each questioner, beginning with Mr. Bisson.

Mr. Gilles Bisson: I'm just reading your comments on section 35(2), that "the act provides that land may be withdrawn," and you're saying it's not descriptive enough? I wonder if you could elaborate on that a bit. It's too limiting, as you put it?

Mr. Gary Lipinski: I'm sorry, Gilles, what page?

Mr. Gilles Bisson: Page 18. I'm just wondering what your remedy is for that.

Mr. Gary Lipinski: I think we make the suggestion for some wordings. The word "site": When you refer to a site, I think we all think of a particular small dot on the map. For aboriginal people, it may be a region that has significance. If it's based on strictly culture—maybe there are economic activities or other activities that could render that particular area of extreme importance to the aboriginal community. So our suggestion is in the alternative wording suggestion there.

Mr. Gilles Bisson: Okay. And in regard to the Far North Act, the same concerns?

Mr. Gary Lipinski: We haven't been as engaged in the Far North Act, so it's a bit harder and more challenging to give comments on that.

Mr. Gilles Bisson: That's what I figured. I just wanted to see if there was an overarching comment you were making here. Okay, good.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Brown.

Mr. Michael A. Brown: Thank you for appearing. I have some questions mostly related to exactly how your organization is structured, because we need to understand how the consultation, in your view, needs to proceed. We had two representations yesterday in Sioux Lookout from the Congress of Aboriginal Peoples concerning non-status Indians besides Métis. One of the problems I see and I'm trying to understand is, because this is—how should I put it?—very geographically defined, do we consult with the provincial organization or do we need to consult with a specific geographical area of your organization, for example? I just want your views on that.

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Mr. Gary Lipinski: Thank you; that's an extremely important question. I think you'll get a lot more detail in the first six pages than I'll provide right now. We have put in a tremendous amount of work over the past two years. I heard some of your presenters this morning raising the concern about, "How do you consult? How did you consult with aboriginal people in the past two years, with a great deal of support from the Minister of Aboriginal Affairs, to put forward a consultation process?"

The Métis Nation of Ontario has actually established a provincial consultation process. We've established regional consultation protocol units that encompass large regional rights-bearing Métis communities. An example is, you might have three or four community councils working in collaboration because it's a larger regional rights-bearing community that could be affected. Recently, with the new relationship funding, those will be supported, so we'll begin to have some sort of core capacity.

First of all, the Métis are one of the three distinct aboriginal peoples; they're recognized in the Constitution with those rights. The Powley case confirms that. We have an accommodation agreement with the Ministry of Natural Resources on our harvesting. That agreement sets out our traditional territories across the province of Ontario, and so, clearly, our territories are mapped and identified in that agreement, and our protocols are being set up similarly along with that. So we do have a process. The province-wide consultation policy and the regional protocol units are all in place. We're very happy now to share that with governments and proponents, and they'll know who and how to engage the Métis Nation on consultations.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Ouellette.

Mr. Jerry J. Ouellette: Thank you for your presentation. Just to follow up on the question, you mentioned the territories and that MNR and the allocation basis has some—but that's only based on the Powley case, I believe, in the Soo area. How, for example, do you envision yourself if something is taking place with the Garden River reserve and the Métis Nation in there? How would the consultation move forward or how would the revenue sharing or any benefits be put in place?

Mr. Gary Lipinski: I think reservation lands are very specific to First Nations, so I think your question is

perhaps broader in the larger regional territory. However, the Powley case, absolutely, the home of it was Sault Ste. Marie, but it's a case that has national significance. It's a landmark test case for Métis. Similar to how Sparrow in British Columbia affected First Nations rights across Canada, Powley affected Métis rights across Ontario and Canada.

The agreement we have with the Ministry of Natural Resources is a province-wide agreement. The regional territories are identified in that agreement so there are a number of territories across the province where Métis are allowed to harvest food for sustenance etc., based on that agreement.

Mr. Jerry J. Ouellette: So you're saying that those territories would be how you would determine which organization would be consulted or receive benefit, consultation or revenue sharing?

Mr. Gary Lipinski: I'm saying that that is the basis that triggers, obviously, a duty to consult; there's no question. The lands are many things. You can have them described as crown lands—they are; they're crown lands. First Nations would be up here and say they're treaty lands, and they are. They are also Métis lands. That's what our agreement reflects: The lands are many things to many people. They're Métis lands, they're crown lands, and they're treaty lands. We all have an interest in them.

The second part of your question is, who and how to trigger it? Again, the Métis Nation of Ontario represents Métis people across Ontario. We have a democratic process to elect its officials, its leadership. They have a four-year term, ballot box elections etc. That's all outlined in the first six pages. I'm here expressing provincial opinion, but as I said, the policy we've created has allowances for local or regional consultations. For instance, if there is a project taking place in the Sault Ste. Marie area, there's a regional protocol set up in that area that has two community councils working collaboratively on activities that could be of interest or concern in that region.

Again, we understand capacity is always going to be an issue as you go forward, particularly with duty-to-consult obligations. We have not set up a process whereby you need, in every community, an expert on duty to consult and a scientist and a geologist etc. We've set up a process within the Métis Nation of Ontario where you have head office support and you have staff at the regional level that can—let's say, for instance, you need to have an expert geologist go in to work with proponents in a particular area. That can be provided with head office support or on a consultation basis.

The Acting Chair (Mrs. Linda Jeffrey): Thank you very much. Thanks for being here today. We appreciate it.

Mr. Gary Lipinski: Thank you again.

THREE ELDERS

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is a teleconference and we're going to just skip over them because they're not quite ready yet. So we're going to go—yes?

Mr. Jerry J. Ouellette: Chair, I would ask the researcher to provide the MNR breakdown of the province-wide information as it relates to the Metis breakdown that was mentioned here, within the MNR, so that we can get a sense of which Metis community and how that actually unfolds. So if the researcher would be able to provide that, it would be greatly appreciated.

The Acting Chair (Mrs. Linda Jeffrey): Okay. Do you understand the question? All right.

So we're going to our third delegation this afternoon, which is Three Elders, Mike Morris. Is he here? Mr. Morris? Yes, please, have a seat. Welcome. Thank you for coming today. You have 15 minutes to speak. If you get close to the 15-minute mark, I'll give you a one-minute warning. Then after that there will be an opportunity to ask questions. If you could state your name and the group that you speak for before you begin, you have 15 minutes whenever you're ready.

Mr. Mike Morris: My name is Mike Morris. I'm a member of Kitchenuhmaykoosib Nation and I'm a signatory to Treaty 9, the James Bay Treaty.

First of all, I usually start with God bless. I'm not a traditional powwow native person. I'm a Christian. I want to start with these two scriptures that have been given to me. The first one, from Acts 17:26, tells me that I'm part of the family of man and we are to use our traditional lands and resources, which in our own law is a system of governance. God has determined how long our people can live on our traditional lands. These are the lands that He provided to our people. The second scripture, Hebrews 8:10, tells me that—we're in an oral-based society, so the laws that He gave to us, He put them in our minds and wrote them on our hearts. These are the laws that I call our own constitution. It has been with us since time began for us.

I called the presentation the Three Elders because I had the honour of working with these Three Elders. Jeremiah McKay left this world on September 17, 2008, and Moses Angees left this world in 2006. Peter Barkman couldn't be here. He's living in Sachigo. These are the elders who taught me about Chief Jimmy Tait. In 2003, one of my aunties provided me with the Chief Jimmy Tait book. This book is written in our original language from the 1880s. It's not the language that we use now.

I'm not allowed to provide a copy of the book at this time, but one of the teachings that we get from there is the aboriginal title. These sayings might be different from what you people understand. Aboriginal title is a collective right to land and is communal in nature. What that means is that the map that you have been provided with—every member of the Kitchenuhmaykoosib Nation holds aboriginal title to every part of that land. It's a legal right. We've been there since time immemorial. It's independent of any form of non-native legislative enactment, like Ontario or Canada. It's governed by two principles. One is that the title gives our people the right to use the land for a variety of reasons for the way of life that God gave to us. Number two, we can't use this land in a manner which it is not provided for us to use. None of us

can say that we own the land as individual people and all decisions with respect to lands and resources must be made by all of our people.

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You people have the map that was provided to us. These are our traditional lands. The indigenous term for them is the Omajiiweenehwah lands. This work was done by Chief Jimmy Tait and his helpers from 1896 to 1904. It was our response to the coming of Treaty 9, the James Bay Treaty. These lands, our traditional lands, were to be located outside the reserve system, which is operated by Canada in the present day, and outside the designated Ontario crown lands. Our people would own all lands and resources within these lands and they would control and own any and all resource development projects.

Based on their knowledge of the land at that time—the late 1890s—our people helped Chief Jimmy Tait identify the lands which would be included. They did the work during the summer months and utilized all the river systems which are in our traditional territories. The plan, as has been explained to me, was that all habitable areas for our people were to be included: all the known mineral deposits, all the water ways, all the sustainable forestry areas, all the animal habitats, all the potential agricultural areas and all the good fishing areas.

I cannot tell you how the work was exactly done, where the markers are located, what the markers look like and who his helpers were, but our people knew the territory. In the year 2000, at Big Trout Lake, at Kitchenuhmaykoosib, it took some of our elders one afternoon to complete identifying the boundaries of our traditional lands. What must be understood is the lands we agreed to share, as per Treaty 9, are those lands outside the traditional lands. What must also be understood is that we can only speak for our own nation, plus the Ojijahkoosuk people, the North Caribou Lake people.

What does this all mean? Our aboriginal rights come directly from God and our people have a sacred obligation to protect our lands. The foundation has been explained to me: Manitou Ohtoonachikewin—that's the natural law; Kanaawaynimedisowin is our sovereignty; Innineemowin is our language; and the Chief Jimmy Tait lands are our lands. Our aboriginal rights also include the right to self-determination; customary indigenous law; indigenous land rights—aboriginal title to our lands; and land-based rights.

Our Kitchenuhmaykoosib Kanaawaynimedisowin, our sovereignty, provides the right of jurisdiction over the Chief Jimmy Tait lands. These lands were provided for the continual use and benefit of the Kitchenuhmaykoosib people and our ultimate obligation, our sacred responsibility, is to protect the land for the future generations to come.

Nationhood: When you talk about nationhood, this is coming from your former Prime Minister Pierre Elliott Trudeau. He said, "Nations make treaties; treaties do not make nations" when he was talking to our chiefs. There is a list of four requirements of any nation as we were made to understand, and we respond to them in terms of how Kitchenuhmaykoosib Nation meets these requirements.

The James Bay Treaty—Treaty 9: I'm not going to go through what your treaty rights or treaty obligations are, but the one thing I want to say right here is, I was very happy to hear about two weeks ago, in one of the papers I was reading up in Dryden, that one of my non-native brothers said, "I'm so happy that I finally understand that I have treaty rights and treaty obligations." That includes all of you who are here.

A treaty is a two-party deal. Each one of us, each party, has treaty rights; each party has treaty obligations. Treaty 9 did not deprive the Kitchenuhmaykoosib people of their sovereignty but rather, because we could conclude the treaty, it confirmed our sovereignty.

Sovereign relations between peoples is very important in terms of treaties, and Treaty 9 is the highest law of the land. I don't think I'm out of point to say that our people regard the treaty as the highest law, because we have tried every which way to uphold that treaty. It's also the foundation between our two peoples. As a signatory to Treaty 9, each one of us has the immense responsibility to maintain the treaty obligations and our treaty rights. All this information points to what I've called our previously-existing-since-time-immemorial constitution as a people who belong to the Kitchenuhmaykoosib Nation. I am well aware of the history of Canada, that in 1867, 142 years ago, the Canada act came into force. I can tell you that my great-great-grandfather was alive and well in 1866, so whatever constitution we had at that time, this is what I'm calling it. Our aboriginal rights must always remain with our people.

This goes against section 35—you'll notice I don't really say too much about the Mining Act and everything else. Treaty 9 is there. This is the foundation of the relationship between our two peoples, and it's the highest law of the land as far as we're concerned.

Therein lies the problem that we want to leave with this committee. According to the Constitution Act, 1867, Canada's powers are outlined in section 91; Ontario's powers are outlined in sections 92 and 93. We hold the belief that it is Canada which became the successor to King George V of England in regards to Treaty 9. We are also aware that Ontario played a big part in the drafting of Treaty 9, and this action contributes to the ongoing problem.

Within your Constitution Act, we ask these questions: Does Ontario, as a province, have the required jurisdiction and powers to enter into any treaty? Does Ontario, as a province, have the power to continually breach Treaty 9?

Like I said, I'm not here to talk about the Far North Act. I'll leave that to other people that like to meddle in somebody else's business. I'm not here to talk about the Mining Act. What I'm trying to say here is, if you look at that map, it says "draft mining policy" around that red area that we call our traditional lands. This is the way that these elders have taught me: that the people within this traditional territory have the wherewithal, the sovereignty, to

be able to have their own mining act, and Ontario can have their own mining act. The work should be on how these two policies would work together, how the two peoples can work together in one house. We're in this territory together, and we have to learn to function together.

I guess for people like me, we don't participate in contemporary aboriginal politics like Nishnawbe Aski Nation. I don't participate there. This is what I believe in. This is what our elders have been talking about. I wish that you people had the understanding of our language. If you ever listen to Wawatay radio, you should ask your people to translate for you what our elders are saying. It's a lot different from what NAN tribal councils say.

For me, I wanted to put this on record in memory of the two elders who have left. I've been talking with the remaining elder for us to complete the translation of the Chief Jimmy Tait book. Like I said, it has been very taxing, because my abilities are very limited, but we have people who are willing to work with us.

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I wanted to make these statements in front of the standing committee, that there is a different understanding out there amongst some of us and it doesn't have much to do with having to meddle in your affairs so much. What we're more concerned about is that there are two peoples here; there is a treaty that was signed by two parties. I hate to say this, but the racism that is inherent in your legislation contributes to these two peoples being undermined. As long at that remains, there's never going to be peace; there's always going to be friction, and that's what we're trying to address here. We're not complete, but we're getting there.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Morris, you have one minute left.

Mr. Mike Morris: That's about all I wanted to say. Like I said, I'm a Christian. I'm not here to fight with anybody, but I'm here to say there is a sacred responsibility that we have. We're going to be becoming very vocal as time goes on. I hold nothing against what you people are doing with your acts and everything else; that's your business. I have mine, and that's where we're going to be working.

So with that, thank you very much to everybody and God bless.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. Morris. About a minute and a half for each questioner, beginning with—

Mr. Mike Morris: Before anybody asks questions, I'm also very deaf, so you have to speak up.

The Acting Chair (Mrs. Linda Jeffrey): Okay. Mr. Morris, you've left about a minute and a half for each questioner, beginning with the government side. Mr. Brown, are you going to be asking a question?

Mr. Michael A. Brown: Thank you, Mr. Morris, for appearing. You've brought a perspective we needed to hear and we wish you well with making your representations.

Mr. Mike Morris: Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Okay. Mr. Ouellette.

Mr. Jerry J. Ouellette: Thank you very much for your presentation, Mr. Morris. Yesterday we had a presentation from the Cat Lake and the Slate Falls communities, where they brought forward the land use planning initiative that they have. When I look at your draft mining policy with the map and when I look at their map, there appears to be a lot of land that overlaps. How do you resolve which community has control or has initiative or any workings in those areas?

Mr. Mike Morris: That has been an ongoing issue in many areas. Muskrat Dam and Sandy Lake is one that comes to mind. What we're trying to say here is, you know, this is our problem. We should try to work it out on our own. We shouldn't let other people's process come to try to dictate how we resolve our conflicts.

Mr. Jerry J. Ouellette: I think that just gaining an understanding of some of the complexities between the various land expectations, between the various First Nations communities, for the committee is very important. Which part of the north are you from, Mr. Morris?

Mr. Mike Morris: Actually, I'm from Kitchenuhmaykoosib. I was born and raised in Big Trout Lake, but I live in Kasabonika Lake right now.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Bisson.

Mr. Gilles Bisson: Like Mr. Brown, I think that your perspective is important for people to understand because that's one of the first things I learnt in becoming a legislator for the James Bay, which is mostly the Mushkegowuk Cree, the Wabin and also the Mattawa: Signing a treaty didn't mean to say that you gave up anything; it just meant to say that you were going to share. The problem is that we forgot how to share, and now we're trying to figure out how to do that all over again. So I think your perspective is good.

I was intrigued—in your comment here, you say, "We hold the belief it is Canada who became the successor to King George V of England in regards to Treaty 9," and you go on to say that Ontario probably doesn't have the right to sign a treaty. I think constitutionally that's an interesting argument, because it was the provinces that created the federal government at the very beginning, and we, by right of the Legislature, have our authority through the crown. So in fact the province has jurisdiction, and that's why we're dealing with the Mining Act. I'm just wondering, in your estimation, where do we go from here? Because the province certainly feels that it has jurisdiction.

Mr. Mike Morris: That's the ongoing issue that should be looked at. Instead of these acts, we should take a step back and talk about that treaty relationship. When I'm asked that question, I'm reminded of the softwood lumber issue. There was a story that was told to me that the province of British Columbia wanted to sue the United States government because of all the problems that had been created in BC. They were told to go back to Canada. They were told that only Canada can enforce

that treaty. So that's why you have that twist. That's where I'm coming from: how you resolve that. I think that should be one of the first things that is done, instead of these acts being looked at too much right now.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. Morris.

Mr. Gilles Bisson: I guess my comment, as you're leaving, is that Ontario thinks it's already resolved that, because it's always been the position of Ontario that it has jurisdiction. We're responsible for crown lands and we've entrusted the Queen to do that.

The Acting Chair (Mrs. Linda Jeffrey): Thank you for being here.

CENTRAL CANADIAN FEDERATION OF MINERALOGICAL SOCIETIES

The Acting Chair (Mrs. Linda Jeffrey): Committee, for our next delegation we're going backwards now to the former delegation, which is the Central Canadian Federation of Mineralogical Societies, Mr. Beckett, president, and we're on a teleconference.

Mr. Beckett, are you there?

Mr. Robert Beckett: Yes, I am.

The Acting Chair (Mrs. Linda Jeffrey): You can hear me? Hi, this is Linda Jeffrey. I'm the Chair of general government during the meeting today. You have 15 minutes for your presentation. I will give you a one-minute warning after you've begun if you get close to the 15-minute mark. Following that, you will have an opportunity to answer questions of our committee. I will tell you who is speaking when we get to that point in the meeting. When you begin, if you could state your name and your organization for Hansard, and you'll have 15 minutes.

Mr. Robert Beckett: I'm sorry, but you keep fading out on me. I'll do what I can here.

Good afternoon, Madam Chair and members of the committee. My name is Robert Beckett. I'm the president of the Central Canadian Federation of Mineralogical Societies, known as the CCFMS. On behalf of our member organizations, I'd like to thank you for allowing us to have this opportunity to comment on the proposed Mining Act amendment, Bill 173.

A little background on who we are: The CCFMS is a non-profit federation of rock and mineral lapidary clubs. We're obviously in central Canada and represent 25 member organizations in three provinces, 21 of which are in Ontario, representing approximately 1,800 members.

The CCFMS has been serving its member organizations since 1969 and was incorporated in 1972. One of our primary objectives is to encourage educational research, plus co-operation and information exchange amongst member organizations—institutions such as the Royal Ontario Museum in Toronto and the Canadian Museum of Nature in Ottawa—and other societies, federations and organizations interested in geology, mineralogy and the lapidary arts.

Our membership covers a wide range of personal backgrounds with equally varied depths of interest and expertise in the various geological and mineralogical fields. We recognize and agree that mineral collecting in the province of Ontario is a privilege, rather than a right. As you are aware, hobby mineral collecting, or rockhounding, in the province of Ontario is currently regulated through the Mining Act by the Ontario mineral collecting policy L.P. 701-1 and Mineral Collecting in Ontario: Guide for Rockhounds. The CCFMS was a party to the development of this policy.

The Ontario mineral collecting policy recognizes the benefits of mineral collecting, or rockhounding, as a recreational, educational hobby. In fact, it states that anyone can be a hobby mineral collector in Ontario. You do not need a special licence or permit. You do, however, need to know about the regulation governing the use of Ontario's mining lands and mining rights.

Our primary concerns regarding the amendments stated in Bill 173 are focused in three sections: section 1, interpretations, subsection 18(1) and subsection 19(1). In subsection 1(1), the definition of prospector means the investigation of, or search for, minerals. In subsection 18(1), it states that no person shall, without a prospector's licence, do any of the following with respect to land that has not been recorded as part of a mining claim for which the mining rights are held by the crown: One is prospect on land, two is stake a mining claim, and three, make an application to record the staking of a mining claim.

Based on the definition of prospecting in subsection 1(1) and the restrictions stated in subsection 18(1), no one will be able to search for minerals or prospect on the land without a prospector's licence. With such a broad definition and restrictions, "prospecting" would include not only prospectors but anyone who has an interest in geology, mineral or gem collecting, including rockhounds, university and other students on educational trips, vacationing families just wanting to pick up a few mementoes of the trip—essentially anyone on crown land who picks up or removes a rock or mineral for education and study would contravene subsection 18(1) of the act.

Subsection 18(1), if left as stated in the current amendment, would contradict the Ontario mineral collecting policy and place unreasonable restrictions on most of the general public and severely restrict anyone from pursuing hobby mineral collecting or studying practical geology and mineralogy in the field. It would also have a significantly negative impact on mineral natural-resource-based tourism in many areas of the province, such as those in the Bancroft and Haliburton areas, that rely on the millions of dollars in mineral tourism brought to the areas each year.

As you're aware, all mining lands beneath private surface rights have been withdrawn from staking in southern Ontario, with no expectation of any change in the near future. This actually is having a significant effect on the mineral-based tourism program in Bancroft and surrounding areas, where many collecting sites are no longer available to the hobby collector. It's also affecting the economic development strategies of places such as Hastings county.

It is unclear if the government intends to have mineral collecting, including hobby collecting by a wide spectrum of the Ontario public, governed solely by the act. Similarly, in subsection 19(1), to obtain a prospector's licence, one must complete a government-prescribed prospector's awareness program, which may include aboriginal engagement practices, guidelines to exploration on private lands, and environmental rehabilitation. Is it the government's intention that all hobby mineral collectors must adhere to the same awareness programs etc., or will our federation be allowed to educate its membership in the appropriate manner of our choosing, where due regard for the environment is concerned?

Our major concern is that in Bill 173, amending the Mining Act, the government does not clarify the acceptance and recognition of hobby mineral collecting adequately, and indirectly subjects hobby mineral collectors to new inspection and enforcement provisions not currently included in Ontario's mineral collecting policy, L.P. 701-1.

If Bill 173, amending the Mining Act, included a clause stating that hobby mineral collecting is exempt from certain sections of the act, as prescribed by the Ontario mineral collecting policy, this would clarify hobby collecting. Or would it be more effective to have a definition of hobby collecting included in the act and its regulations?

Mr. Chairman and members of the committee, that ends my short presentation, and I thank you for your time and attention.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Beckett, are you done right now?

Mr. Robert Beckett: I am, yes, thank you.

The Acting Chair (Mrs. Linda Jeffrey): Okay. Can I ask, for the committee, because my guess is they may have had some difficulty hearing every word that you said: Will you be providing a written version of your thoughts?

Mr. Robert Beckett: Yes, I can do that. No problem at all.

The Acting Chair (Mrs. Linda Jeffrey): Just so our researcher can get it all later on, to capture what you said.

Mr. Robert Beckett: Yes.

The Acting Chair (Mrs. Linda Jeffrey): Our first speaker this afternoon is from the Conservative Party. Mr. Ouellette is going to be asking you a question.

Mr. Jerry J. Ouellette: Thank you for your presentation. I guess the sense of what I'm hearing is that basically rockhounds are your concern, and whether they will be disallowed to go onto properties or crown land in order to collect gems or precious rocks in any way, shape or form. Is that correct?

Mr. Robert Beckett: I'm sorry, I can't hear you. You keep fading in and out.

Mr. Jerry J. Ouellette: The feeling is mutual. Essentially what you're concerned with is the fact that rockhounds will be disallowed from participating in rockhound activities, should this legislation pass in the current form.

Mr. Robert Beckett: That's correct, yes. Exactly.

Mr. Jerry J. Ouellette: I don't understand how it would differ now, currently, without this legislation, as it would once it passes. When a rockhound is out there, they're not actually prospecting; they're collecting, as opposed to prospecting. Could you explain the difference from present legislation to how this would change it, or do you feel that there needs to be a designation of collector included in the legislation as well?

Mr. Robert Beckett: Yes, that's what we feel. We feel that a designation for a collector, or a definition of collector, should be included in the legislation.

Mr. Jerry J. Ouellette: Okay.

The Acting Chair (Mrs. Linda Jeffrey): No more questions? Our next questioner is Mr. Bisson.

Mr. Gilles Bisson: I'm going to go down the same line here. How would you propose this amendment be structured? Can you be a little bit more specific?

Mr. Robert Beckett: Well, basically, what we'd like to see is we'd like to have a definition of a hobby collector included in the act and its regulations, so that it's clear. Currently, it's unclear, with the mineral collecting policy and the guidelines for rockhounding. Nothing is very succinct. It's all unclear.

Mr. Gilles Bisson: So something, in effect, in the definition clause that would describe who a rockhound is, and saying that this act doesn't apply to them when it comes to their activities.

Mr. Robert Beckett: That would be great. In the same clause, it could state that hobby mineral collecting is governed by the mineral collecting policy, L.P. 701-1.

Mr. Gilles Bisson: Thank you.

Mr. Robert Beckett: Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Our last questioner is Mr. Brown.

Mr. Michael A. Brown: Hello. Thank you for your presentation.

Mr. Robert Beckett: Thank you.

Mr. Michael A. Brown: I want to assure you that it is not the government's intention to cause rockhounds any difficulty out there and confuse them with prospectors, so we will take note of your presentation and see if we can clarify it as we go forward.

Mr. Robert Beckett: Thank you, sir.

The Acting Chair (Mrs. Linda Jeffrey): I don't have any more questioners. Mr. Beckett, thank you very much for making the effort, and we look forward to receiving your presentation.

Mr. Robert Beckett: Thank you very much. Bye-bye.

The Acting Chair (Mrs. Linda Jeffrey): Yes, Mr. Ouellette?

Mr. Jerry J. Ouellette: I'd ask the researcher—we've been hearing quite a bit about the various treaties that have been involved from the various communities. I would ask the researcher to provide the committee with copies of the treaties so that we, as committee members, can review them—I would say, everything that falls into Bill 191, but as well, Treaty 3, which was outside that area, just so we can have a copy and review it on our own as well.

The Acting Chair (Mrs. Linda Jeffrey): Our last presentation is the Boreal Prospectors Association, Mr. David Gordon. Is he here?

We're a little ahead of schedule. We have five minutes before he technically would have been here, so we're going to take a five-minute recess.

The committee recessed from 1356 to 1402.

The Acting Chair (Mrs. Linda Jeffrey): Committee, we're reconvening. Our last deputation, Mr. David Gordon from the Boreal Prospectors Association, is MIA. We cannot find him. We've called and have had no answer. So I'm going to have to say that this concludes our presentations for today and we're going to adjourn. There are no more deputants.

But I would remind committee members that we're travelling tomorrow. You need to be in the lobby at 8 a.m. to catch the shuttle for the plane tomorrow; 8 a.m. in the lobby, please.

I'm going to adjourn the meeting unless there's any other business. Seeing none, we're adjourned.

The committee adjourned at 1403.

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