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Thursday 13 August 2009

Journal des débats (Hansard)

Jeudi 13 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 Oraziotti
Clerk: Trevor Day

Président : David Oraziotti
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Hansard Reporting and Interpretation Services
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
GENERAL GOVERNMENT**

**COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES**

Thursday 13 August 2009

Jeudi 13 août 2009

The committee met at 0900 in Cedar Meadows Resort, Timmins.

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): Good morning. This is the Standing Committee on General Government. 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.

TIMMINS CHAMBER OF COMMERCE

The Acting Chair (Mrs. Linda Jeffrey): Our first delegation this morning is the Timmins Chamber of Commerce. Would Mr. Galloway be here? Come forward; have a seat.

Mr. Galloway, welcome. Thank you for being here this morning. You will have 15 minutes when you begin your presentation. I'll give you a one-minute warning when you get close to the 15 minutes. Afterwards, there'll be an opportunity for questions. Whenever you're ready to begin, if you could state your name and the organization you speak for. You can begin.

Mr. Rob Galloway: Thank you. Welcome to Timmins. It's a beautiful summer day, finally. My name is Rob Galloway and I'm here as the representative of the 750 members of the Timmins Chamber of Commerce. I'm also confident that I'm representing other concerns of businesses throughout northeastern Ontario. We've discussed with many other chambers around the area. Northern Ontario in particular has its origins in prospecting, exploration and mining, as you've heard for the last few days, and continues to be a powerful player in Canada's economy, especially in Timmins and the region's economy.

I was looking at some of the newscast as you've been travelling around the province. You've heard lots of these numbers already. It is vital—the \$6.6 billion that is generated in northern Ontario. Here in this area, in Timmins, we still are doing quite well economically compared to other places. We're lucky that way. A big part of that is not forestry at the moment because it's not doing very well, but it's the diversity of minerals that we depend on and use in this city.

Interjection.

Mr. Rob Galloway: I'm just waiting for him. Good morning, Gilles.

Mr. Gilles Bisson: Sorry, Chair.

Mr. Rob Galloway: I would just like to outline some of the Mining Act amendments proposed in Bill 173 and the concerns that we have with those.

On the withdrawal of land: We realize that there were large pressures on the government to do this, and it is relatively a smaller part of the mining portion of the province, but it still has high potential for value, so we have concerns that we've given away a public asset to those individual landowners, and that will solve some of the quite real concerns and worries that they had. But there hasn't been any knowledge about what that was worth. What are they getting that we, the people of Ontario, will give them as the mining rights under their surface rights? What's that total value and what have the people of Ontario given to those folks? I think that should be known. We also have worries about land that has already been withdrawn from staking even though this hasn't passed yet. We have some concerns over that.

First Nations consultations: Consultation with the First Nations is a constitutional obligation of the crown, and yet Bill 173 appears to transfer some of that obligation to third parties. We have some concerns with that. Entities wishing to prospect and explore have to consult, and that's not the concern; it's that we could spend a lot of time consulting and the First Nation might say, "That wasn't consulting with Ontario, and we need Ontario there." So we very much wish to stay. We know we have to consult with them. There have been lots of agreements in mining already with First Nations—that's the good news—but we're worried about that process: Can it be taken offline with a constitutional issue that this might hinder? We have concerns over that.

We also foresee a situation unfolding in which multiple businesses independently consult with the First

Nations without ground rules, standards, consistencies and timelines, and we think this will be a scenario for chaos, both for business and for the First Nations. It'll be hard for them to adapt, as well, if they get swamped with requests for decisions on exploration plans, for example. So a plan is needed to develop some guidelines amongst Ontario First Nations and the mining industry that will work for now and be flexible enough to change as new practices or knowledge occur.

It's our position that the government remains the best entity to continue to lead that First Nation consultation, set the stage, the ground rules, bring some clarity to what has been and continues to be a complex and sensitive topic. To put the onus on businesses and individual First Nations, where capacities might be limited in either of those, is unfair, we believe.

We have two concerns about the map-staking changes. The first is that map staking potentially gives larger mining and exploration firms an advantage over smaller firms. The reason for that is the larger companies have the technological financing, the capital equipment, in place that can make that much easier. The second concern is that in spite of increased efficiencies that may be achieved through map staking, physical prospecting generates significant economic activity—and that economic value should not be overlooked either. According to MNDMF, \$66 million was spent on exploration in 2008. Also, the prospectors' association has proposed alternative solutions such as real-time GPS location. We think any alternatives to make that easier and more fair should be considered.

Exploration is a starting point of any mine. It's the key to Ontario's economic health, particularly northern Ontario. It is a pillar of our economy here, locally especially. The regulations have not been clarified, and there are concerns about additional costs and burdens to business as we proceed. It's not well defined yet—it's an enabling act, we realize—but has the potential to stunt the development of claims, particularly if either the First Nation or an exploration company lacks the resources to meet some regulatory requirements. We need to see some timelines and guidelines for that process and some funding to allow that process to happen. There are provisions for penalties to businesses, for example, that fail to obey "cease exploration" orders, but there are no penalty provisions for third parties who cause the unauthorized ceasing of exploration. So who in this bill is looking out for the interests of claim holders, explorers and other businesses around the mining activity?

On the dispute resolution part, the fact that the Ontario Mining and Lands Commissioner is not involved with this is a concern for us. There's an expertise there that has been developed over time. Does this mean there'll be two systems, two sets of criteria? Who will do it—individuals or tribunals? To whom will a report be submitted—it says to the ministry at present—and if it is submitted, what are the timelines for the decisions around that? That's the big concern. If it takes too long and it's an onerous process, people will not invest and we won't be mining in this area and any new ones will be much restricted.

It's difficult to say exactly how Bill 173 is going to impact. So many details are yet to be established, and we have a concern about that ambiguity, lack of clarity, and excessive regulation. There are also questions about the right to appeal and how that would work, and that needs to be clarified. What we don't want is a situation where the rules are sufficiently unclear to drive away exploration and investment in our province because exploration companies are confused and face undue administrative pressures from overly burdensome regulations. For example, we heard some mention of independent planning boards, and we don't think that would be a good idea at all. This is 42% of the province, and we think the people of Ontario, represented by the government, can work that through with the First Nations and the businesses and the people involved in the area, and should maintain that.

The lack of clarity really creates uncertainty, and already we're seeing that in investment in the new exploration and mine staking going on. From what we've seen, it also worries aboriginal communities, investors, prospectors and the mining companies. Everybody has concerns over that. We really want to be involved and for others that are active stakeholders in this business to be involved.

0910

Bill 191, the Far North Act: We just want to have a quick mention of this. It has serious implications for northwestern and northeastern Ontario. There is undeniably a need for economic development opportunities for Canada's aboriginals, including those in the far north, but as it's currently written, it has the potential to paralyze future developments in Ontario's far north. There will be no new mines, and 50% of the area is protected already, although it hasn't been defined as to where.

We know communities may lack the capacity to develop community-based land use plans, and we think there's a serious need for funding that's available to them and that's available to those key government ministries that are proceeding with that as well.

We've heard, and echo the call, of a number of groups, including Nishnawbe Aski Nation and the PDAC, for the government to withdraw and reconsider that bill, but we really have concerns over how it will affect the business from this area of Timmins, which supplies the northeast part of that area.

I'm almost done—two more here. This is just from the MNDM's site of the Premier's commitments. The first one there: They ensure the mining industry remains strong—we certainly like that one—and modernize the way it is done and respect landowners and aboriginal communities. There's no issue with that. Steps have already been made that way.

"Ontario believes ... exploration and ... mine development ... take place ... consultation": Those processes are already ongoing. There are various companies that have made great strides in that, so that's not an issue either.

The next one: The protection of 225,000 square kilometres, we found, was arbitrary—is it going to be

community-based planning?—and we've already undertaken that half of it will be in the protected area, so we have concerns about that.

Also, the need for planning and community input for forestry and mines opening “in the ... north would require community land use plans”: If the communities, and the organizations working with them, don't have funding or expertise to proceed on that, it will be a very difficult and long process, and that, to us, is a big worry in that area. That would virtually eliminate the development of mines. The timelines needed for that process, how fast it's going to be done and which areas are going to be priorities are all things that we wish to have some more detail on so people can make investments.

The resource benefits sharing issue that the Premier mentioned is, without a doubt, the largest issue. Most companies we talk with agree with that and would like it to move forward. Not having that hinders the other agreements. If you had that in place and knew what the rules were, it would allow the communities and the businesses that wish to do business to really move forward on the possibilities around their communities.

So in conclusion, Bills 173 and 191 are critical to the economic health of northern Ontario, and particularly in this Timmins area and region. The impact of prospecting, mining and exploration on the Canadian economy is large and cannot be understated. It's important that the full economic implications are explored, understood and reflected in these bills. Care must be taken so that Ontario does not become a mining jurisdiction rampant with delays, disputes, overregulation and confusion. That would not be good for businesses we represent or for those First Nations communities that businesses would be dealing with.

I thank you for your time and consideration of these comments.

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

Mr. Jerry J. Ouellette: Thank you very much for your presentation, Mr. Galloway. First of all I'd like to put on the record that I'd like to congratulate you for your long and distinguished service with the Ministry of Natural Resources, and I'm sure that the Timmins Chamber of Commerce will do well from the experience that you've gained within the ministry. Again, you've done a wonderful job there. Continue on with the presentation that you had today to show that that will continue.

You covered quite a broad area, but you didn't talk about one aspect: the payments in lieu for the perceived ability to tie up tracts of land for development or non-development. Do you have a position or have you discussed that? What do you believe would be the impact on this?

Mr. Rob Galloway: We haven't discussed that particular one very much so far. I think the impact we're worried about is that the delays will happen because of the lack of knowledge of how any process is supposed to

work. We see that confusion already. Investment is sort of slowing in those areas. It's pretty hard to go get new financing to move forward around that. It's that confusion and lack of knowledge of the rules, more than anything, as any one specific thing that people are worried about.

Mr. Jerry J. Ouellette: You also mentioned the concern regarding this from the investing community. Now, I imagine, to use an internal MNR term, the parkies would be very happy within the MNR—

Mr. Rob Galloway: I never use that.

Mr. Jerry J. Ouellette:—within the 225,000 square kilometres. But is that the largest concern? Is it the boundaries of the 225,000 kilometres, or deciding where it is? What is the uncertainty that is felt by the investing community here in Timmins?

Mr. Rob Galloway: The concern is the size of that, and there are no boundaries defined yet that will go forward. So then, what impact will it have? It's unknown. That's the big concern, that and the fact that it takes away over half of the area that there might be mining possibilities in without knowing what you've given up.

So that's the largest concern: It's a huge area that's taken out, percentage-wise, and then the process to figure out: “Okay, what's the schedule for knowing what that is? What are the boundaries? Where can you work? Where can't you work?” On the broad level, with that total plan, and then as each community develops their plan, what will be the process? How are they going to afford to do it? How are they going to have the expertise to do it with, and the stakeholders that they would be involved with; even some of the smaller mining folks, how are they going to have the expertise too? How is it going to be funded? What are the timelines? We don't want to be waiting here long for it to get going and for it to be a process that doesn't end.

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

Mr. Gilles Bisson: Well, I have two questions. First of all, welcome, Rob. Always good to see you. Just for committee members, as Jerry said, Rob has served with the ministry for a number of years but particularly understands the First Nations stuff right well in his role as—regional manager? Area manager?

Mr. Rob Galloway: Regional director.

Mr. Gilles Bisson: All of that stuff, yes, exactly.

So, specifically to that, on the duty to consult—because you probably understand this issue as much as anybody in this room except for one of your colleagues, or a few colleagues I see in the room here as well, all hailing from the city of Timmins—there is a possibility, the way the bill is drafted now, that the crown will delegate some of that responsibility onto the private sector. The question I have is twofold: One, does that put us in the position of possibly seeing ourselves again before the courts because a First Nations community can say no? The decisions of the Supreme Court have been clear: It's the crown's duty to consult. So is there a possibility for further litigation?

Number two, if there is a way to delegate, how would you see that happening?

Mr. Rob Galloway: Our big concern is around the first one. So you could go through, the company could spend money, time and effort working out a thing, as could the community, and then if something came up and it was deemed that Ontario wasn't there, it's totally invalid. So that's a worry, both for the money wasted and spent at the time and the time process. Why would you invest, then, if you had that concern?

Mr. Gilles Bisson: So can I reword my second question? If the crown has to be involved in being a part of the lead in this, how do you make that happen while at the same time protecting the right of the investor?

Mr. Rob Galloway: I think the crown needs some negotiators or facilitators—I'm not sure what you'd like to call them—who would work with the specific communities involved and the specific businesses involved as they're going in. I think that could be made to work so that it passes the Supreme Court test of being the crown's consultation, and Ontario and the First Nation can sign that agreement and it passes that test, but it can also be done in a good, common-sense way that works out for the community and the business as well. I think there's a way to do that, perhaps.

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

Mr. Michael A. Brown: Thank you, Madam Chair. Welcome, Mr. Galloway. We've traipsed around this place a bit together too over the years, and I appreciate all the work you've done for the province.

My first comment will be that you know for Bill 191, this bill is in first reading. It is very unusual for a committee to hold hearings on first reading of a bill, and one of the reasons for that is we've come out to get input on it. There will be, of course, second reading, and then, with the co-operation of the opposition parties, there will be another round of legislative consultation on that bill. I just wanted to clarify that so we know.

0920

Two days ago we heard an interesting presentation from the Ontario Mining Association, which takes the view that this bill, the mining act, will assist business in finding investment in the province. I wonder what the chamber of commerce's view of that might be, seeing as the people who invest the dollars seem to believe this act to be a good one.

Mr. Rob Galloway: We agree, even though it sounds like I'm disagreeing, but what businesses we represent and have talked to are looking for is some clarity in that. The act does modernize, does make clear that you have to deal with the First Nations aboriginal communities, and people have been doing that already. The big worries are about what the process is going to be, how it's going to work, and whether it will work fast enough to keep investment there. So there's a possibility, yes. That's good news; you're right. That's why we really want to have people involved in developing those regulations and the processes, and we want a commitment to funding

some people on the government side who are there to work with the local companies and local First Nations, to fund some of the First Nations that are going to need help, for sure. That's the good news on this. Our big worries are about how it's going to work, when it's going to work, and what the decision timeline is going to be. Folks have commented on my past history, but in forestry there are some definite timelines. There have been really large issues, at times, that have put that in place. You need a time that's reasonable for the community—that they have enough time to get their input in, and then it's also reasonable and there's a decision point that happens. That'll be critical to making it work. That's the concern.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. Galloway. We appreciate you being here today and your deputation.

Mr. Brown.

Mr. Michael A. Brown: I wish to make a motion that relates to staff from the Ministry of Northern Development and Mines travelling on an aircraft, by the committee. I'll read it, and then we can talk about it.

I move that any available seats on the charter flight back to Toronto be offered to ministry and caucus staff on a chargeback basis.

That's to accommodate some folks who can't get on a scheduled flight, and it saves both the Legislature and the ministry some money.

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

Mr. Gilles Bisson: I appreciate the difficulty, and as long as it's a chargeback, that's not a problem for me.

The Acting Chair (Mrs. Linda Jeffrey): Any further discussion? Seeing none, all those in favour? All those opposed? That's carried.

PORCUPINE PROSPECTORS AND DEVELOPERS ASSOCIATION

The Acting Chair (Mrs. Linda Jeffrey): Our next deputation is the Porcupine Prospectors and Developers Association.

Good morning. Thank you for being here, Mr. Straub—is that right?

Mr. Kristan Straub: That's correct.

The Acting Chair (Mrs. Linda Jeffrey): Wonderful. We've seen your name a few times. We weren't sure who you were. It's nice to see you. There were lots of people who came forward—not that they weren't good, but we're glad to see you.

So, welcome. You have 15 minutes. When you get close to the mark, I will give you a one-minute warning, and after that there'll be an opportunity to ask questions. Please state the organization you speak for and your name before you begin for Hansard. You have 15 minutes.

Mr. Kristan Straub: My name is Kristan Straub. I'm president of the Porcupine Prospectors and Developers Association. Thank you for providing the opportunity for me to present to you today.

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 the Ontario ministries and departments on any issues that affect the progression from prospecting through to exploration, to mine development and closure. We generally maintain a membership of 120 individuals and 15 corporate members. We have been, by far, the most active regional prospecting and developers' association in Ontario, and are responsible for the establishment and structure of what is now the Ontario Prospectors Association.

Throughout the consultation process surrounding Bill 173 and Bill 191, there have been many erroneous statements regarding the age of the Mining Act in Ontario. The act was first put in place in 1873, and revised or rewritten on a regular basis, with the latest revision taking place in 1990, when the act was modernized to reflect the values of the time, with changes implemented to protect surface rights holders and to simplify the system for maintaining title to crown land mining rights.

At present, exploration and mining activities are governed by the Mining Act and are now heavily impacted by the Endangered Species Act, the boreal initiative, and now the Far North Act and the Mining Act modernization. We operate with permits and guidance from the Ministry of Labour, the Ministry of Natural Resources, the Ministry of the Environment, the Department of Oceans and Fisheries, the Public Lands Act, the Forest Fires Prevention Act, the Endangered Species Act and the Parks Act, among many others.

The PPDA position on Bill 173 and Bill 191: Both acts have been authored and tabled far too quickly, with many contentious issues inadequately addressed, the ramifications of which are not yet fully understood by all stakeholders, including the government who drafted the legislation. The lack of clarity in the legislation as drafted is overwhelming. Given the speed at which these bills have been pushed forward, it is questionable as to whether the government has fulfilled its duty to provide adequate consultation with all impacted stakeholders. To this point, it is the position of the PPDA that Bill 191 is constructed in a fashion which will impair efforts to achieve a balance between economic, environmental, and social and cultural goals in the far north and will only serve to alienate 50% of the far north land mass from the present stakeholders in the region.

Bill 191 in its present form is so poorly constructed that it has to be withdrawn and rewritten to be clear in identifying all of the affected stakeholders impacted by the proposed legislation. Additionally, appropriate funding must be put in place to move forward with meaningful consultation and scientific study on a reasonable timeline to develop a sound foundation for the bill.

The minister's statements on Bill 173 emphasize that the new act takes the form of a balanced approach. Does this mean that the present act is unbalanced? Public opinion suggests that the Mining Act is being rewritten to appease and placate special interest groups, such as

cottagers and certain surface rights holders in southern Ontario, and some general interest groups who do not live in the north. These groups will be minimally affected by the consequences of the proposed change as the Mining Act is an act which mainly affects the land base in northern Ontario.

In an effort to achieve balance, the specific issues that have been identified by our membership with Bill 173 are the following:

(1) Free entry restrictions and security of title. Free entry has been a long-standing right in Ontario, a right that enables an individual or a company to acquire in confidence and hold the mining rights to a specific parcel of land. If the crown allows an individual to stake a claim there, there has to be an inherent right to be able to explore said claim and a reasonable expectation that mining could take place. As one of my colleagues previously stated, upon acquiring the mining rights under the proposed legislation, if a company cannot then explore the property, it's like renting an apartment but having to get permission from the other tenants to move in.

Who, then, is in control of the mining rights? Certainly not the crown, if small vocal groups can force the crown to remove mining rights for the personal interests of special interest groups. How does this achieve balance?

(2) The indiscriminate 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 withdrawals in northern Ontario. By enabling the legislation as proposed, the government creates two classes of Ontarians with different rights as fee simple property holders. This process for withdrawal should not differentiate between northern and southern Ontario nor should it provide an absolute removal of mineral rights. Again, how does this achieve balance?

(3) Far too much is being pushed into regulations. The details of specific regulations to enforce and support the proposed legislation have not yet been constructed. The PPDA is concerned with the amount of detail that has been left out of the legislation and relegated to the regulations. Of key concern is the reliance of Bill 173 on Bill 191 for several key points, namely, the community land use plans and the land use designations in the far north. These specific phrases lack a clear and concise definition—a definition that has been left under the regulation. A specific example is how the issuance of work permits by the director of exploration is reliant on aboriginal consultation having occurred in accordance with prescribed requirements. How can we effectively assess the impact of such legislation without knowing what the prescribed requirements are and who, specifically, is required to conduct the aboriginal consultation? Again, no clear, concise information is presented within the legislation.

We ask that the act not come into effect until the full regulatory environment has been created. We also ask that the development of the regulations be via an ad-

visory group, one that is comprised of the key stakeholders impacted by the proposed act. We also ask that the draft of the regulations be posted in the Environmental Registry to allow all affected stakeholders the opportunity for consultation and comment prior to the enactment of the regulations, enabling the balance sought by the minister.

0930

(4) Exploration permits. Exploration permits were put in place in the late 1970s. The previous permits to some degree facilitated exploration and confidentiality and were tailored to indicate simply where you were exploring on a property, the type of work you were conducting and the equipment that was used. These permits were designed to have a 30-day turnaround time, but before they were eliminated in the mid-1990s, the response time became longer and longer, rendering the process ineffective.

The new exploration permit proposal will be handled by the Ministry of Northern Development, Mines and Forestry. It calls for little, if any, deviation from the details of the exploration plan without reapplying for a new permit. Without the allocation of sufficient funds and the creation of a structure to adequately staff the permitting process, unnecessary delays will be created. We need only look at the present situation with the mining lands and the assessment approval process and its inability to respond in a timely manner. Again, how does this achieve balance?

(5) The power of search and seizure exceeds necessity. Bill 173 enables inspectors appointed by the minister to enter, search and seize without hindrance “any place, mining lands or other lands or premises connected ... with any staking,” exploration or mining activity without warrant. These powers exceed those of our current police force and only require the inspector to obtain a warrant when the inspector has been hindered or believes there is reasonable grounds that a person will prevent the inspector from entering the grounds. There is no mention of reasonable grounds required for the initial entry. How does this promote a fair and equitable balance between licensed prospectors, explorers and the remainder of Ontarians when we are no longer afforded the same rights?

(6) Downloading the responsibility of consultation with First Nations communities. There have been many issues with consultation that our members have experienced. Past and current experience indicates that some groups do not have the capacity to effectively deal with the present amount of requests for consultation in a timely fashion. What will happen when all active parties are mandated to consult? How will the priority for consultation be established? The prospectors and small exploration companies are certain to take a back seat to the larger, more well-funded explorationists.

The *KI v. Platinox* court decision clearly mandated that the crown has the responsibility to take the lead in negotiations between mining companies and First Nations. Under the proposed legislation, the lack of clarity

on this issue indicates that the responsibility appears to be downloaded onto individuals and companies. Bill 173 is very vague on the issue of dispute resolution, which is sure to arise from consultation between the very persons and groups rather than with the crown.

Presently there are no guidelines for the establishment of timelines for resolution or how the individual in the enviable position can accomplish the mediation in a timely manner. Experiences with the mining commissioner indicate that some issues could take years to resolve. We concur with other associations that Bill 173 will only confuse and create adverse and confrontational situations between industry and First Nations communities, which is contrary to the intent of the bill. Not enough thought or consultation has been input into this issue to come to an amicable solution.

(7) Payment in lieu of assessment to maintain mining rights. Under the present Mining Act, prospectors and exploration companies are required to file assessment work, satisfactory to the Ministry of Northern Development, Mines and Forestry, to maintain their right to explore mining claims in Ontario. This work ranges from airborne surveys over property if it's large enough, to ground geophysical surveys, prospecting, geological mapping and in some cases diamond drilling. Each of these activities has a standard dollar value associated with it and requires the approval of the ministry. Bill 173, however, proposes to allow that the claim holder pay a fee in lieu of assessment work.

There are major flaws in this approach, as the payment of a fee does not create employment in any sector, nor does it benefit the development of a publicly available geoscience information database. The only clear winner in this approach is the general ledger of the government. This fee will enter the government's coffers and will not likely flow back into the NDMF budget to provide the net benefit to the public.

(8) Lastly, the prospector awareness program. The new Mining Act will require that all presently licensed and future prospectors take and pass a prospector awareness course designed to increase their sensitivity to and awareness of the rights of property owners, surface rights holders and the rights of First Nations. In principle, it does not sound onerous, but it would suggest that prospectors over the last 200 years have not been sensitive to these issues, and to that end I would disagree. No prospector has a desire to create conflict with a stakeholder. We are fully aware of our need to coexist and maintain confidentiality for a period of time as they complete their work, prospecting and acquiring land. The work of a prospector is to prospect and acquire mineral rights. The present act clearly lays out where they can stake, how to stake in areas where someone else owns the surface, and to report to that surface owner the fact that they have staked the ground before they continue to do any work. The present act clearly lays out the rules regarding compensation due to the surface rights holder, and these cannot be contravened.

As for the rights of First Nations, the government is obligated to make prospectors aware of these rights and

to set the rules around these lands in consultation with the First Nations. The mining industry and prospecting in the province are highly regulated at this point, and requiring a long-term prospector to pass an awareness course seems to us to be unnecessary.

In closing, Bill 173 and Bill 191 have been tabled to the Legislature long before they are ready. It is clearly done for political posturing, with little regard for full consultation with all parties impacted. The full ramifications of the proposed legislation and regulation may not be fully understood for 20 or more years. Is this government willing to be seen as a government that would rather do something quickly to placate special interest groups or would it rather be recognized as working in the best interests possible for all Ontarians?

The parks act is in place to protect parks, the environmental 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 search for, and development of, new mines, a much-needed wealth generator for the province of Ontario? The future of Ontario, if this legislation is enacted, is that the rocks hosting the mineral deposits do not stop at the provincial boundaries. If this bill is not changed, the grass will always be greener across the border and further exploration funds will flow to other jurisdictions. Any further erosion of the wealth generation in the province is a disservice to all Ontarians.

Thank you. I will now be pleased to answer any questions you may have.

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

Mr. Gilles Bisson: I too, when I first read the bill, looked at the section on powers of search and was a bit taken aback. In fact, I called a number of people in industry to have them look at it. What could happen under the powers of search now? What could happen under this new bill, under the powers of search section, that couldn't happen now, and what would that mean?

Mr. Kristan Straub: As constructed under the new proposed act, it consolidates all of the procedures around inspection and search and seizure. Therefore, it reinforces that power through there. The disconcerting part to prospectors, explorers and mining companies is that it now enables the inspector, as a designated representative of the minister, to enter property without warrant. It's simply the lack of regard for having grounds warranted to enter and inspect a property.

Mr. Gilles Bisson: Do you feel that could be abused?

Mr. Kristan Straub: I would not suggest it has been abused in the past, but any time legislation is enabled and laws are put in place that allow for abuse, it brings up the possibility for it happen. I think it's just a lack of understanding of how to put it together.

Mr. Gilles Bisson: I thought your section on the exploration permits was good because there was a reason why we got rid of them. So bringing them back means what, in the long run?

Mr. Kristan Straub: In the long run, returning the exploration permits to this process—the permits as outlined in the current act, with the level of detail required—will not allow for an efficient exploration process to take place. With the permits proposed, with the detail required and through it, it severely limits and impacts the ability of an explorer, prospector or mining company to actually execute an exploration and change that plan as results are warranted. It'll further drive exploration dollars out of Ontario and out of the north.

The Acting Chair (Mrs. Linda Jeffrey): You have 15 seconds.

Mr. Gilles Bisson: I'm happy to see you here.

Mr. Kristan Straub: Thanks, Gilles; happy you have finally made it.

Mr. Gilles Bisson: What are you going to do with 15 seconds?

The Acting Chair (Mrs. Linda Jeffrey): Not much. Mr. Brown.

Mr. Michael A. Brown: Thank you for appearing. I think the various prospectors associations that have come before us have provided us with some good food for thought as we move forward in this consultation. As you know, one of the criticisms of this act is that much of it will be put in place through regulation, and there is a reason for that: The field out there, if I could call it that, is rapidly changing. The issues surrounding aboriginal consultation, a whole host of technological changes, cause differences to happen, and as you pointed out, the last time there were any serious amendments to this act was in 1990, which I was actually around for.

I guess regulations give us and the industry, and the other stakeholders, the opportunity to more quickly change the reality of the day we're in, and of course court decisions and other decisions have changed the way we do business. Would your association commit itself to work with the government to develop regulations that are appropriate for now and on an ongoing basis?

Mr. Kristan Straub: Thanks for the question. I can understand the government's rationale for wanting to move more into regulations and remove it out of legislation, because of the onerous task of amending and changing legislation. But the one caveat is that regulation no longer affords the public scrutiny that legislation does in that process. That's our main concern.

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On the latter part of your question, we would be more than willing to work with the government to develop regulation on an ongoing basis.

Mr. Michael A. Brown: The point about consultation is one that, I think it's fair to say, governments across the country are grappling with on a number of issues with First Nations. The actual definition of what a consultation is will change, as we've heard at these committee hearings, depending on who you're speaking with. So defining that will not solely be a prerogative of government or industry or First Nations. The courts will, I'm afraid, at some point, be back—

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

Mr. Michael A. Brown: Oops. Sorry.

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

Mr. Jerry J. Ouellette: Thank you for your presentation. The First Nations communities have been asked to develop land use planning initiatives. As a prospector in your association, how do you determine—do you think these land use planning initiatives will resolve traditional lands and where claims can be staked or not?

Mr. Kristan Straub: I don't believe that the development of land use plans, as constructed in Bill 191, will aid us in any way, shape or form. I believe that the length of time required to develop those land use plans, and the uncertainty created around that length of time, and the uncertainty created around the security of mineral title through there, will only negatively impact this end of the industry in Ontario.

Mr. Jerry J. Ouellette: So do you believe that prospecting will cease while those land use planning initiatives are being developed?

Mr. Kristan Straub: I would not go on record or ever say that prospecting would cease. I think prospecting in that area will be relegated to a group of persons with a higher level of risk, just like you see mining and activities taking place in Zimbabwe and the Democratic Republic of the Congo. There are areas in this world where persons of high-risk tolerance will continue to explore for mining, for mineral rights. I think that when you relegate—when you increase the lack of security around mineral interests title in the north, which these bills will do, you will then relegate it to higher-risk explorers.

Mr. Jerry J. Ouellette: Would timelines, do you feel, in developing these land use planning initiatives speed that process up or resolve a lot of it for you?

Mr. Kristan Straub: Timelines will, if we can adhere to the timelines and if we can get to a process where all stakeholders will agree on the timelines. I think that timeline, right now, is an undeveloped timeline.

Mr. Jerry J. Ouellette: How do you think that prospectors wanting to go on to traditional lands for prospecting purposes would follow through, with the processes laid out in the bills, to stake a claim in a First Nations community, where consultation is required before going on to the property? How would that unfold?

Mr. Kristan Straub: Sorry, I didn't want to interject in your question. I missed the first part of it.

Mr. Jerry J. Ouellette: How would—

Mr. Kristan Straub: Sorry.

Mr. Jerry J. Ouellette: The impact of the legislation—

The Acting Chair (Mrs. Linda Jeffrey): It's a long question, so it's going to need a really short answer.

Mr. Jerry J. Ouellette: The impact of the legislation: How is that going to affect—how is a prospector going to be able to go, eventually, on traditional lands? Is it going to be them doing the negotiation? Do they approach the province to go do the negotiation? Do they approach a company before? How?

Mr. Kristan Straub: I believe the crown has the required duty to consult with the First Nations beforehand, and the crown has the responsibility to put in place a framework for prospecting to take place through there. If the mineral rights are truly held by the crown, then the rights and access should be open for all. How should we be differentiated from anyone who's willing to go in and partake in a canoe trip or fish down the areas and through there?

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

Mr. Kristan Straub: Thank you.

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

CITY OF TIMMINS

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is the city of Timmins. I believe I have Councillor Doody. Is that right? Welcome. Thank you very much for being here today. We appreciate it. As I stated earlier, you have 15 minutes. If you could state your name and the organization you speak for, you'll have 15 minutes. I will give you a one-minute warning if you get close to the end. We'll be asking you questions afterwards.

Mr. Michael Doody: Thank you. Michael Doody, councillor, city of Timmins.

Madam Chair, members of the committee, I'd also like to acknowledge our member of Parliament for the riding of Timmins—James Bay, Gilles Bisson. Nice to see you here this morning.

On behalf of Mayor Tom Laughren, members of city council and all citizens who owe their existence to mining, I welcome to Timmins your government's consultation process to hear our views with respect to modernizing Ontario's Mining Act.

Mining is the *raison d'être* of our city and has contributed to the sustained economic life of our community for many years and, we hope, for many more. In fact, this year we're celebrating our 100th anniversary of mining in the Porcupine.

Your government's review of the Ontario Mining Act will have a profound effect on our city, and for this reason I feel an extensive amount of consultation is required.

Mining is an important economic driver for all of Ontario, but recently our position in the world has become somewhat lessened. In 2001-02, Ontario's investment attractiveness rating was two, only surpassed by Quebec. In 2005-06, it decreased to nine. In 2007-08, it further decreased to 27. We cannot allow this trend to continue, nor can we make policy decisions that would increase this deterioration.

In addition, our manufacturing sector is suffering and the forestry industry is facing very serious challenges. We cannot allow Ontario's strength in mining to crumble.

The city of Timmins supports the government's objective to ensure that mining legislation promotes fair,

balanced and sustainable mining development that benefits all Ontarians. The key to this objective is balance, and we, as leaders, must ensure that the mining industry is allowed to explore, develop and grow within the parameters of fair legislation and regulation.

When the announcement was made in August 2008 that your ministry intended to enact legislation to amend the Mining Act, a committee was convened to study and reply to the proposed amendments. This committee brought together representatives of the city of Timmins, the Timmins Economic Development Corp., the chamber of commerce, the Porcupine Prospectors and Developers Association and interested members of the general public. The committee was structured in this manner to provide a broad and balanced perspective to the discussions. The committee carefully evaluated each proposed change and prepared a response to provide our comments to your representatives. It was with great interest that we watched the rollout of the bill through your webcast on April 30, 2009, and read the bill as published.

We applaud the effort by the ministry to develop a balanced approach in the amended act, but we have significant concerns with the bill as presented. One major concern is the amount of legislation that has been relegated to the status of regulations, which, in our understanding, will not be prepared until the bill is passed. It would have been preferable to have more law than regulations, as regulations can be manipulated without consultation or parliamentary approval. That being said, we hope that, at the time of writing the regulations, the ministry works toward the balance promised and includes representatives of the northern mining communities, which will be most affected by these changes.

The Mining Act, although based on 100-year-old principles, is more modern than that, and several people in our community were part of the group that participated in the last major overhaul in the late 1980s and early 1990s. During the public session in Timmins, we strongly indicated that land access and surety of title were paramount in the development of mineral properties. Investors need to know that once a claim is staked, the right to mine any minerals found in that claim is assured, subject to the environmental assessment required under the present Mining Act. Far from providing certainty to the issue, the words in the amended act create uncertainty and, in the case of the far north, have jeopardized companies' ability to raise money for exploration.

In southern Ontario, the amended act has returned, or given, the mineral rights under lands with a surface rights owner to that person or entity. Although the amount of land returned was small, the value of that land was not predetermined and could be very significant. Giving away this land was a disservice to the people of Ontario, as the act states that if not used for mining purposes, it is not taxed as mining lands. Bill 173 states that the withdrawal of these lands would occur when subsection 35.1(2) comes into force, which should be the day the amended act comes into force, but the lands have been withdrawn already by order of the minister.

The amended act has placed a burden on the First Nations in the far north that they may not have the capacity to bear. The development of any new mines in the far north is dependent on the development of land use plans commissioned and authorized by the First Nations. We feel that, at the present time, the First Nations may not have the capacity to develop these plans in a timely fashion. Any delay in producing these plans will force global exploration companies to look elsewhere for potential mineral resources—once again, a disservice to the people of Ontario through the loss of jobs and tax revenue.

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The exploration industry is currently suffering from lack of investment funding due to present economic conditions, and with fewer dollars at their disposal, risk management dictates that the funds be used where success is most likely and tenure assured. This may not be in a far-offshore location; it may be in jurisdictions immediately to the east or west of this province.

The amended act also requires companies to obtain exploration permits, with the rules surrounding these permits again being part of the regulations. These permits, which will be submitted to a director of exploration, will require First Nations approval in areas of traditional lands. Again, the First Nations that have been reluctant to designate these areas in the past will determine their traditional lands. The companies will be required to consult First Nations before exploring, and this could be an overwhelming task if the area becomes part of a hot target area, like the McFaulds Lake Ring of Fire. With multiple permit requests flooding any First Nation, delays will be inevitable.

Assessment work is required, under the act, to keep claims in good standing and is time-sensitive. When will the assessment clock start? Presently it is on the date of filing the claim, but will the regulations change that to the date the exploration permit is issued? Exploration plans will be required to obtain the permit, with all plans being stipulated at that time. In an industry accustomed to quickly following up on success, this does not allow for the flexibility and timely re-evaluation of programs where success or failure dictates or requires a change in the plan.

Raising funds on the open market is highly dependent on timely dissemination of good news. If the news is delayed for any reason, the interest of investors is lost. They move on, and the ability to raise additional funding is severely compromised.

The present act and the amended act both require First Nations consultation. This consultation can be costly and time consuming. For large companies this is not an insurmountable problem, but for junior mining companies it may present a barrier they are unable to overcome, forcing them to re-evaluate where they spend their exploration dollars.

We feel that negotiation of the right to explore falls within the mandate of your ministry, and the Supreme Court of Canada has hard arguments—that has found in

favour of that opinion. To have several companies negotiating several deals in a vacuum serves no one, whereas if the government took the lead, the rights of the First Nations and the right to explore could be determined more appropriately and could form part of the act.

The introduction of inspectors, in our opinion, plays into the belief that the mining companies have something to hide and are circumventing the law. These inspectors will have more power than police and will be able to enter and seize without warrants. Their authority to do so is outside the rule of law. Moreover, they can be any representative of the ministry and, according to the act, require no training. It is the responsibility of MNDM to support the environmentally sound development of the rich resources of this province for the benefit of the people, and we feel that the amended act hinders that development and subscribes to the notion that the exploration and mining industry is underregulated, when in fact it is one of the most highly regulated industries in the province.

We welcome the opportunity to continue the discussion surrounding the development of the amended Mining Act and our concerns, and will make ourselves available to the ministry in the development of necessary changes to the act in the regulations. We hope that as the ministry moves forward with these proposed changes, northern communities will be included in round-table discussions so that the modern Mining Act can create the balance that will benefit all of Ontario and provide the economic development that is needed in the north. We in Timmins look forward to hosting such a round-table discussion. Thank you. Merci. Meegwetch.

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

Mr. Michael A. Brown: It's good to see you, Mr. Doody. I appreciate you coming here on behalf of the municipality. Timmins, of course, is one of the great mining camps in Canada and employs a great number of people in northern Ontario directly, right here, or in the offshoots, the prospecting and equipment sectors of the industry. So I realize the strong stake the municipality and its citizens have in the act. You're right, the last major change to the act was in the late 1980s—I guess it was proclaimed in 1990—and I was part of that.

I guess the question the government has is—we go and we hear deputations, and we hear some people say, “You've moved too quickly. You are not coming to decisions. It's not spelled out well enough. You haven't consulted enough,” and then we hear people say to us, “Well, you should have had more clarity but we need it right now because we're having trouble in certain parts of the province staking these claims.”

So I guess we're at the point where decisions need to be taken relatively quickly. What I hear you saying is that the municipality and the interests within it want to be consulted in the drafting of the regulations. Would that be a fair statement?

Mr. Michael Doody: I think that would be a fair statement—giving the feeling to the people who are

directly involved in the mining industry that they've had some input and to feel when we have the finished product that everybody can sit across the table from each other and say, “We did everything we could to work together and we think we've produced a fair document.”

Mr. Michael A. Brown: Bill 191 is also part of this consultation. It's in first reading, so that's a very unusual process for the government to undertake. We're out here for the very reason that we want to hear what people have to say about the initial act and then we have the opportunity after second reading, if it gets second reading, and I presume it will—but if it does, with the consent of the opposition parties, we intend to take it out for another public consultation at a legislative basis. So we're hoping to include, given the support of the opposition parties, the northern communities again in that consultation so that we can move forward, because we do need the certainty, and the old act isn't providing it either. So we need to move, and I think it's fair to say that there are people on both sides at a standstill: “You're going too fast”; on the other hand, “You're not moving fast enough.”

Mr. Michael Doody: It's a dilemma that you people are faced with, but I certainly think that at any time you're willing to sit down at a round table to get input from people who make their living at it, their families depend on it, and our future—as Mr. Bisson knows, this is my 26th year in municipal politics in the city of Timmins. My dad made his living as a prospector. All you have to do—and I remind all members of Parliament in the province of Ontario: Take a look at the true map of Ontario that is the true scale of the size of northern Ontario. When you take a look at that, I like to say that Canada is very lucky that the province of Ontario is the breadbasket of natural resources, not only for the province but for the country and the world. Yes, I think there are times that it becomes delicate, what we're doing, and we're probably at that time in our history. We are discussing things that we never thought we would discuss before with First Nations people. At our very first meeting that we had—in fact, we were the first community to have a public meeting once it was rolled out on the Web page. We had it here and, you know, at the end of it, people got up, there were strong feelings; people attended from the south. We just said, “All we want is a document that is fair.”

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

Mr. Jerry J. Ouellette: Thank you for your presentation. You had mentioned about how Ontario has moved as a place to invest in the mining sector from I believe it was second to 27th. In those same time frames, have you seen how Ontario has been listed by organizations who are viewed as protectionist jurisdictions or how the changing of Ontario has taken place? Has there been an equal balance reverting Ontario?

Mr. Michael Doody: I truthfully can't stand here in front of you and tell you that.

Mr. Jerry J. Ouellette: That's okay.

Mr. Michael Doody: We got those figures from the Economic Development Corp.

Mr. Jerry J. Ouellette: During the Lands for Life process that took place, there were provisions that allowed for flexibility on boundaries of parks. I know for a fact, and Mr. Galloway would know as well, the Montcalm mine enacted one of those and allowed the park boundary to be changed to accommodate the Montcalm mine.

This new protected area is 225,000 square kilometres. Some of the difficulty is that it would be virtually impossible for any claims to be moved. What do you think the impact of that would be? It would completely eliminate—whereas at least the Lands for Life gave accommodation to have the flexibility to change that boundary.

Mr. Michael Doody: That is very true, but someone said to me just the other day, “Just think if the province somewhere down the line had designated the Porcupine as a park.” Each and every person that lives in this community is here because of mining. I don’t pretend to have all the answers. Decisions have to be made and you live by those decisions. “Flexible” is a good word. I have no problems with that at all.

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Mr. Jerry J. Ouellette: Some of the other difficulties are that in protected areas—the definition of “protected area” is that there is no mining, there is no commercial forestry operation and there’s no new hydro development to take place. When the stipulation as laid out by the 225,000 square kilometres runs the entire length of the province, essentially, from what I understand, the difficulty in some of the parks areas is that you are unable to cross those areas. So, for example, if a mine should take place or a forestry sector should take place on the opposite side of that, there’s no provision in some of the parks now to be able to even cross those areas unless they’re flown in. What do you think would be the impact for the areas north of the protected area if it’s going to be so-called “open” for development?

Mr. Michael Doody: Well, it’s a decision, and there should be a body that should be able to take a look at it. Some of what I think is going to come out of this, and I think from everybody that is involved and has been in the round-table discussions, is that you have to have people from all sides of the issue sitting on these bodies that make the decisions. Generally speaking, most people are willing to take a look at it at face value and some of the times the decisions are tough. But if the people who are being affected sit on those particular bodies, I think that would be acceptable.

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

Mr. Gilles Bisson: Just a couple of things. First of all it’s true that this bill, Bill 191, the far north planning bill, is in first reading, but to say that this is earth-shattering is a bit of a stretch. The reality is that this bill is at first reading, it might even get withdrawn at the end of this process—I would be surprised if it wasn’t—but if it does come back for second reading, the opposition obviously wouldn’t stand in the way of having any kinds of public hearings on it.

The payment in lieu is what I want to touch on, because you have a pretty unique perspective; I’ve known you for years. Your dad was a prospector and made his living at it. What’s being proposed in this bill is that we go to map staking, and at the end of the map staking process, when it’s finally fully implemented in five years, a mining company or an interest of some type—it could be a company in Chile, it could be a company in China or somewhere in Texas—decides that they’re going to stake a whole bunch of territory, let’s say, around the Ring of Fire in Attawapiskat because they think it’s interesting. In order to hold on to that property for a long period of time so that nobody else can get it, under this legislation they’re going to be able to make a payment in lieu for work that would normally be done on that property to keep that claim in good standing. What does that mean to you, from the perspective of a northerner and somebody with some experience, but what does it mean for mining overall?

Mr. Michael Doody: As a very young body who had to follow my dad to stake claims, whether it was in the dead of winter or in the heat of summer—I think there’s a very strong feeling, Gilles, that it’s something that is being taken away from the prospecting culture. Again, there are both sides to it too. I don’t want to use the word “small,” but the low-level prospecting at a small company as opposed to maybe one of the big multinationals from wherever who just do the staking by computer—I think there is that feeling. So what is fair? You’d slice it down the middle? It’s a difficult question.

Mr. Gilles Bisson: Do you think it’s fair, though, that somebody could be allowed to hold on to a claim even though they’re doing no geological work whatsoever on that claim?

Mr. Michael Doody: Doesn’t sound very good.

Mr. Gilles Bisson: Do I still have time? My oh my, this is so much fun.

The Acting Chair (Mrs. Linda Jeffrey): You have 52 seconds—

Mr. Gilles Bisson: You made a comment in regard to exploration permits, and I just want to understand something: that the timing by which the permit is issued is critical. I want you to explain that a bit.

Mr. Michael Doody: I would have preferred that you would have asked—I think Bill is coming up to speak.

Mr. Gilles Bisson: Okay. I’ll ask it later because I think that’s a very important point. Other than that, thank you for coming before us.

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

Mr. Michael Doody: I appreciate being heard. Thank you.

FORT ALBANY FIRST NATION

The Chair (Mrs. Linda Jeffrey): Our next delegation is Fort Albany First Nation. Is there someone here? Good morning and thank you for being here today. If you could

state your name and the organization you speak for, you'll have 15 minutes. I'll give you a one-minute warning if you get close to the 15-minute mark, and there'll be an opportunity for us to ask questions. You can begin whenever you're ready.

Mr. Chris Metatawabin: Thank you, Chair. Thank you, committee members, for allowing us to make a statement. My request to travel down to Timmins was turned down, so we didn't really prepare a statement at that time. We were surprised. We had a telephone call from the MNR office here in South Porcupine, and they provided two tickets for Fort Albany to fly down here. I'm here with Joseph Sutherland, a councillor in Fort Albany. He has the portfolio of economic development. My name is Chris Metatawabin, economic development officer for Fort Albany First Nation. I'm also glad to hear that the MNDM is getting a seat with the charter to fly down back to Toronto. That charter should have come to Fort Albany too.

Being sort of taken by surprise and showing up here at the table, we just made a rough speech, a statement or point of view.

Government talks about new partnerships with aboriginal people and putting First Nations into the driver's seat for land use planning and development, but they don't resolve territory and governance issues. Therefore, the government continues to prevent First Nations from being in the driver's seat and from defining development on First Nation terms.

Tabling legislation already defined and developed demonstrates that Ontario thinks of itself as the driver. Consultation on something already written undermines the ability of First Nations to define their own approaches to development. Rapid pace and timing over the summer months when everyone is away is extremely problematic for First Nations. We don't have enough time to get together, to analyze and to develop a common position. Cree and Ojibway territory relationships are based on principles of a collective rather than private property, and the process undermines the ability for a collective response to be developed. A collective takes longer as it needs to be based on meaningful, community-oriented dialogue where everyone understands the issues using the Cree language, etc.

Language is problematic with the legislation. Aboriginal leaders think they are on equal footing with the language but they are not. Legal language is constantly changing too, and can be shaped and changed according to those who can work the language best. People at the grassroots level are left out of real decisions because of inaccessible languages that are rooted in a different world view. Decisions are being made down south and not in our homelands. There are no resources for simultaneous translation, and things get lost in translation because of timing.

As for the title of Bill 191, this opens the door for anyone to come in and do what they want. They define their stake in the territory. We should have a title like "Treaty 9," "Land Use Planning," "Land Decisions" or

something like that. It should be specific for the people of the area. The current title opens the doors for anyone. This is demonstrated by the recent position statement by the prospectors association, for example, who have already criticized the legislation because of the potential limits to their own interests in mining and development, etc., in the area.

We are trying to preserve a culture, identity and a way of life, like the Paquataskimik term that describes a way of life. Government is trying to ensure profit is made and then they will disappear after, as has happened elsewhere in Ontario. We want a policy that will keep our identity alive. We want to make a living off the land, but we need resources to do that. We don't get any revenue trying to live in the bush; all we can get is money from welfare. If the area is to be kept alive according to an aboriginal worldview, then resources need to be given to support that way of life.

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Newcomers, like the immigrants, who are made to pay taxes are given services and funds for all sorts of programming etc. Aboriginal people, whose land is the basis of the Treaty 9 agreement instead of taxes, are not being afforded the same support as immigrants. Aboriginal collective land ownership is not understood or recognized, and becomes undermined through the policy process which favours private property, individual property rights and taxation.

The Indian Act, 1876, is protectionist, as it makes aboriginals be put into areas like a zoo; we are, like animals, put on reserves where people like tourists come to look, take pictures, rather than letting people like us live our lives as autonomous and self-sustaining communities. We are just learning about capitalism, the exploitation of land. Back in 1492 we had to train Europeans how to survive off the land. Once the resources are depleted we might have to go back to that same relationship, like in 1492.

Coming to a conclusion, I have some questions for your consideration. We know that the Green Energy Act has a lot of clout in the province, and if we want to protect an area through the Far North Planning Initiative, like the Albany River, for cultural and ecological purposes, does the Green Energy Act supersede the far north planning initiative in areas we want to protect?

Along the same lines, the already-existing northern rivers agreement sets out 25-megawatt limits to hydro development along the Albany River. Does this get superseded by the Green Energy Act? Can the far north planning initiative allow for us to designate the Albany River as an ecological and cultural heritage site?

On behalf of Fort Albany, we thank you.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. You've left about four minutes for each group to ask questions, beginning with Mr. Ouellette.

Mr. Jerry J. Ouellette: Thank you very much for your presentation. A couple of questions: How is it that your community determines its traditional land areas? People in the south always view that First Nations' tra-

ditional lands are always reserve land, and they don't gain a different perspective unless we get these sort of things on record. How is it you and your community determine traditional lands?

Mr. Chris Metatawabin: Before MNR was around, the Inninuwig people were roaming all over that area, the coastal areas of Hudson and James Bay. So that was a tribal area. We were not separated as it is right now; there was no Attawapiskat, there was no Peawanuck; there was just Inninuwig living in that area. It's only when MNR came around that we were put into reserves like Fort Albany, which lives on only 144 acres of land. That is not going to help us in the future. We are overcrowded in that same reserve space, so we need to overlap. We need to claim that whole area.

Mr. Jerry J. Ouellette: Yesterday we heard from Frank Beardy of the Nishnawbe Aski Nation, who spoke about the \$30 million that was made available. He expressed that \$20 million of that, or over \$20 million, was for internal use only. What do you think for your community, for the consultation process and to be able to get to and from the meetings and to attend, to get the message back and forth: How much would a realistic cost be associated with developing that for your community?

Mr. Chris Metatawabin: The Nishnawbe Aski has 49 communities in a large area. We managed to get \$19,000 from Nishnawbe Aski to do a preliminary land use project. That was only enough to cover one worker, so to do comprehensive land use planning for each community—also, to ask for technical assistance to help us do that—I would think that \$1 million for each community times 49 would be a starting point, but to do really comprehensive land use planning for the whole area, we might need more.

Mr. Jerry J. Ouellette: So that would be \$1 million that you would have access to, not \$1 million allocated where portions wouldn't be occupied by the various ministries involved, correct? Your community would essentially need \$1 million to be realistic in order to implement everything.

Mr. Chris Metatawabin: I would prefer it came from one entity. I don't want pieces from different ministries.

Mr. Jerry J. Ouellette: It makes it more difficult for the application processes.

Mr. Chris Metatawabin: That's right.

Mr. Jerry J. Ouellette: I'm not sure if you have any midline radar sites in your community or in the area.

Mr. Chris Metatawabin: Yes, we do.

Mr. Jerry J. Ouellette: How have they been cleaned up?

Mr. Chris Metatawabin: Fort Albany was cleaned up a few years ago, but there are still pieces from that site in the community. We have the generators at the hospital sitting right now. Those are from that area. They're still sitting at the hospital, not being used.

Mr. Jerry J. Ouellette: So there are still lots of problems. Potentially, this 225,000-square-kilometre protected area would take on a responsibility of cleaning up a lot of these mid-line radar sites, you would hope.

Mr. Chris Metatawabin: That's right, especially up in the Fort Severn, Peawanuck and Attawapiskat areas. They have more areas to clean up and more distance.

Mr. Jerry J. Ouellette: One last question—

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

Mr. Gilles Bisson: Thank you very much, Chris. I'm glad you were able to make it here. Unfortunately, the committee did not vote as a majority to allow your trip, but the MNR went to bat. We want to thank the MNR for that and thank you for coming.

A couple of questions: You'll be aware that OPG is looking at the potential development of hydro on the Albany River. You mentioned the Green Energy Act. There's a possibility under this act that, in fact, we could end up protecting part of the Albany River—that would essentially take that away from any possibility of development. If such a decision was to be made, who should make that decision? Who should have the power?

Mr. Chris Metatawabin: I don't think we need to protect Fort Albany. That polar bear park up in Peawanuck—it doesn't serve anybody. The polar bears don't live there. They roam wherever they please, so we should get rid of that polar bear park. It's the same with the Albany River. We don't need a protected area. We just want that for our own use to follow our way of life called Paquataskimik.

Mr. Gilles Bisson: The potential is that if parts of the Albany River or territories in and around your community are protected, you could end up in a situation where some forms of traditional use may be prescribed as not being legal, for example, hunting or gathering. So my point is that if we're going to get into any of these kinds of discussions, in your words, who should be driving the decisions?

Mr. Chris Metatawabin: I see. I think that community awareness training is a first step. People have to understand the whole project using the Cree language. We need facilitators to spread the word. Then, once we get the consent from the people, the project can proceed from there.

Mr. Gilles Bisson: So you would have to be in charge?

Mr. Chris Metatawabin: Yes.

Mr. Gilles Bisson: Okay. One of the things that is raised in part of the debate around this legislation is the issue of consent. The way the bill is currently written, there is no requirement that there needs to be consent on the part of First Nations to allow development to go forward. I find that a little bit odd because in municipalities—for example, here in the city of Timmins, as you might know, Goldcorp is looking at reopening the Hollinger pits smack dab in the middle of the city of Timmins, and we as citizens have a say because they would have to get permission from the city to do that. Our community members here in the city of Timmins have to give consent to Goldcorp in order to go forward with that project. Yet, in this legislation, we're not going to give the same type of right to First Nations. It kind of boggles my mind. So my question to you is: What do you

have to say about that, when there seem to be two different—I don't want to use the word "classes" of citizens, because that's a bit strong, but that you're being treated differently than others?

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Mr. Chris Metatawabin: I think the first problem is the language barrier. When we had dealings with De Beers when they first came up to spread the word about the mine, they sent their engineers and they were using \$64 words to explain the project. The translator had a hard time translating for De Beers to promote that project to the local people. We didn't understand what was going on. So I think any extraction company coming into the area should hire some local people who speak the language to be part of the negotiating team, to translate for them on a daily basis in order to make that project understandable to the local people. So it's language that we have to overcome.

The Acting Chair (Mrs. Linda Jeffrey): Ms. Mitchell.

Mrs. Carol Mitchell: Thank you very much for coming and making a presentation today.

I just have a couple of questions. You talked about the Green Energy Act and the potential within your community, so I just want to expand a bit further from where Gilles went. Part of the Far North Act is the community-based planning. Do you see that as an important piece of moving forward on any renewable energy project?

Mr. Chris Metatawabin: As long as we're in the driver's seat in defining the land use plan for our communities. We don't want to use the English language to define the land use plan because it tends to be neutral; it doesn't specify who's part of the group. That's why we want a specific name like "Treaty 9 land use plan," because it identifies the people who live there, who will always live there, who need to survive there. That's why we need to be in the driver's seat in determining these legislation papers.

Mrs. Carol Mitchell: So you see that as the larger community.

Mr. Chris Metatawabin: Yes.

Mrs. Carol Mitchell: And specifically, you said Fort Albany—144 acres?

Mr. Chris Metatawabin: Yes.

Mrs. Carol Mitchell: That is the acreage today.

Mr. Chris Metatawabin: Yes.

Mrs. Carol Mitchell: I just wanted clarification: You also talked about \$1 million. Was that per—

Mr. Chris Metatawabin: Per community.

Mrs. Carol Mitchell: So Fort Albany, at 144 acres: You're looking for \$1 million for planning purposes?

Mr. Chris Metatawabin: Yes. More than that, too. We want to start with \$1 million, but if we need to do more, then we need more.

Mrs. Carol Mitchell: So that \$1 million would be used in your community of 144 and not the larger community of the Treaty 9.

Mr. Chris Metatawabin: No, all the communities inside Treaty 9. Each community should have a baseline like that.

Mrs. Carol Mitchell: How would you allocate that \$1 million? What would you use that \$1 million for?

Mr. Chris Metatawabin: For land use planning?

Mrs. Carol Mitchell: Yes.

Mr. Chris Metatawabin: Well, for Fort Albany, we need to hire our technical assistance people. We also need multimedia technology to document all this information. We also need to hire our own aboriginal—the elders' knowledge. We need to identify them as specialized people, almost like technical assistance people, to be paid at the same level as these consultants from outside.

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

ATTAWAPISKAT FIRST NATION

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is Attawapiskat First Nation. I believe Chief Hall is here, and Jennifer Hill.

Good morning. Thank you for being here. Are you both going to be speaking today?

Chief Theresa Hall: No, just me.

The Acting Chair (Mrs. Linda Jeffrey): Terrific. You have 15 minutes. When you begin, if you could say your name for Hansard and the group that you speak for, you'll have 15 minutes. I'll give you a one-minute warning if you get close the 15-minute mark, but whenever you're ready, begin.

Chief Theresa Hall: Thank you. I'm not sure whether I can do it within the 15 minutes. That's not how we do it with my First Nation. When people come to our community we allow them as much time as possible to address their issues, so right away there's the difference of cultures that we face right now. Those are the kind of barriers we experience all the time in our communities and in our lives.

I will read the paper that was prepared with my council.

Good morning, Chairperson and members of the committee. I'm Theresa Hall, Chief of Attawapiskat First Nation. I'm pleased to have this opportunity to address my community's concerns with respect to Bills 173 and 191 as a First Nation community in the far north with a diamond mine in our traditional territory.

To begin with, I would like to share with you a bit of our community governance and experience with mining development before I make remarks about the two bills. Traditionally, we occupied a large area that extended from Kapiskau River in the south to the Hudson Bay in the far north, from Akimiski Island to Lake Missisa in the west. We traditionally spent much of our time inland in search of moose, caribou and other game. We were widely distributed in the forest inland from James Bay. Today, the community of Attawapiskat is an isolated one located at the mouth of the Attawapiskat River which drains into the James Bay. There are 2,800 members with approximately 1,300 of those members living on just 2.5 square miles of reserve. We are a member of the Mush-

kegowuk Council and of the Nishnawbe Aski Nation First Nation. However we are independent and autonomous from both and speak of our traditional territory as owners and stewards of our lands. We are the only First Nation in the far north of Ontario with a diamond mine development on our traditional territory.

Our relationship with De Beers began around 10 years ago; however De Beers has been on our land since the late 1980s. Our experience with De Beers has forced us to learn a great deal about our lands and our rights in the mining sector. The process was long and at times extremely difficult. However, we were able to enter into an impact benefit agreement with De Beers, which we negotiated with the ability to say no to future mining on our lands and receive participation and other benefits from the project. Prior to the project, other than our traditional economy, our local economy was virtually non-existent. We have learned a lot and are still learning about mining. We do know that development can bring great success for the community and hope for our young people for the future. However, it is important to understand that the Victor project is not in and of itself sufficient to cure the perils of our community and to bring the standard of living to par with the mainstream society in Canada.

The majority of our members are living in poverty. Our community is cramped and on a little over two square miles of land and we have a significant housing crisis. Our school is contaminated and we can't drink water from our tap. Further, we are routinely evacuated from our community during break up, yet despite all this I believe we are one of the wealthiest First Nations in Canada. We still have our language, our culture and we are still able to go out on our land and to engage in our traditional aboriginal practices. We still have aboriginal title and this includes the land, the water and the minerals because we never signed on to Treaty 9. Our territory includes about two dozen identified kimberlites which may well be diamond-bearing. While those kimberlites are subject to De Beers's so-called mineral claims, De Beers has agreed with us that they cannot develop them into mines without our consent. This will require, as a precondition, the province agreeing to share a portion of its revenues with us, including Victor.

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In addition, the eastern portion of the territory includes the more recently discovered Ring of Fire, which contains vast mineral wealth and has spawned numerous interested inquiries from exploration companies. It is important to note that these exploration companies are not permitted to use the Victor site, which includes the airstrip and the camp, as a staging area for their exploration activities without Attawapiskat's consent.

Last month a large delegation from China expressed interest in engaging in exploration and other activities and visited our community to discuss our First Nations, our lands and our resources. We considered this to be a state visit. We plan to reciprocate that in the future.

We expect nothing less than this with Ontario—a government-to-government relationship—making me

wonder why I have to sit here and present my comments to you in less than 20 minutes, instead of in Toronto with your Premier.

I want to make clear that these bills, if passed, will not be recognized as valid laws in our territory. We hold aboriginal rights, including title, to our unceded and un-surrendered traditional territory. We have never signed on to Treaty 9 or surrendered our lands, and as such, the province has no jurisdiction over our traditional territory. We are currently working on preparing a land claim, which we'll be raising with Canada, the province of Ontario, and perhaps the courts. We are providing the following comments under these circumstances: We are not a treaty First Nation; we have aboriginal title to our un-surrendered traditional territory, which includes minerals located within; we are home to the only diamond mine in Ontario and are a party to the only impact benefit agreement in the north. We have our own consultation and accommodation policy, a policy of exploration, and we are in the process of developing a lands and resources policy.

Bill 173 has fundamental flaws, as I see it. There is no doubt that Bill 173 is an improvement and a step forward, compared to the current legislation. However, it is far from where it should be.

Overall, the Mining Act is a fundamentally flawed and outdated piece of legislation for 2009, and flies in the face of our aboriginal rights. The reason for this is that the legislation maintains a free-entry system, purporting to grant exclusive interests to minerals which we own, without our consent, consultation, or even notice.

The processes in place for the various approvals in the act are granted automatically and with no room or guidance for addressing our rights. Why bother consulting if approvals are proceeding in the event?

Environmental assessment for large-scale projects in Ontario is a regulatory mess, which includes a patchwork of assessments. There are numerous holes and regulatory vacuums, leaving the environment unprotected and unregulated.

Lastly, as I will mention later, there is no process for revenue sharing, to accommodate the impacts and allow First Nations to receive a portion of the wealth coming from their lands.

I'd like to acknowledge some of the improvements which are made: the amended purpose clause, which includes some recognition and affirmation of our rights under section 35; the requirement of future closure plans for advanced exploration and production; the requirement to submit an exploration plan and obtain an exploration permit, and to do so in accordance with the requirements for aboriginal community consultations; the requirement for land use plans in the far north; and aboriginal dispute resolution. While I appreciate the sentiment behind these provisions, I do have some questions and concerns with the specifics and how they will pan out.

Exploration plans and permits: Firstly, with respect to the exploration plans and permits, it is unclear as to which type of exploration will require a submission of a

plan or a permit. It is also unclear who is approving these plans. If the plan was for exploration in my community's traditional lands, I would hope that we would be included in that decision-making, but I see none.

It seems a lot of these questions will be answered in the regulations. This is a common theme throughout the bill. Much of the detail is left to the development of the regulations. It is crucial that First Nations are involved in the drafting of the regulations.

Aboriginal dispute resolution: The details of the aboriginal dispute resolution are also left completely to the regulations. We expect there will be First Nations representation, both in the development of the resolution's process and design, as well as in carrying out the actual hearings. It is the only way this will work. It must be driven by First Nations and reflect aboriginal values.

Land use plans: It is a step forward to require a community-based land use plan to be followed in order to develop a mine in the far north. These plans need to be our plans, not others', with only our involvement. The land use plan, if required, is to be submitted at the advanced exploration or production mining stages. This is too late. Illegal claim staking and exploration activities on existing claims are up to the point of requiring a closure plan carried out prior to the completion of any land use plans.

Also, the government has the ultimate power, with the explicit discretion under the bill, to override any land use plan and permits a new mine to be developed if it is in the economic and social interest of the province to do so. I take this as an insult. This is essentially saying that my community could prepare a land use plan, identify an area of land which, for whatever reason—whether cultural, traditional or environmental—is off limits for mining development and the government has the authority to basically say that there are economic and social interests of the province which are more important than my community's interest and proceed to permit the mine.

Revenue sharing: In April 2007, a letter of political agreement was signed between NAN, Nishnawbe Aski Nation, and the government of Ontario. In the letter, it states the parties will work to enable the aboriginal people of Nishnawbe Aski Nation First Nation to share fairly in the benefits of natural resources development, including revenue sharing, yet there is no mention of revenue sharing in the bill. This issue of revenue sharing is long overdue. I have to say I'm disappointed that the government actually thought they could present this bill without addressing this issue. Let me simplify this for you: There is a direct connection between access to resources and revenue sharing from Attawapiskat lands.

Consent: Moving on to the issue of consent, I think it was a very poor choice to exclude the requirement of First Nations consent. The 2007 United Nations Declaration on the Rights of Indigenous Peoples set minimum standards for government consultation with indigenous people; recognized indigenous land and resource rights; the rights of self-government; and the principle of free, prior and informed consent. I urge the province to take a

leadership role in the Confederation and incorporate the principle of free, prior and informed consent as an example to Canada.

The Acting Chair (Mrs. Linda Jeffrey): Chief Hall, you have a minute left.

Chief Theresa Hall: How much?

The Acting Chair (Mrs. Linda Jeffrey): About a minute.

Chief Theresa Hall: I'd like to move on to Bill 191 at this time. It is no secret what my position is, being one of the NAN First Nations and having seconded resolution 09/41 condemning the bill.

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The stated purpose of the bill is to provide for community-based land use planning in the far north that directly involves First Nations in the planning. We see land use plans as exercising our inherent right to self-government. Our self-government will not be subsumed by provincial legislation. While we need the province's support, we do not need the province to hold our hands through the process and unilaterally legislate how we can be involved in planning the use of our land. The legislation is essentially interfering with our government relationship with our land.

Our main concerns with the bill are as follows:

The bill purports to control First Nations autonomous land use planning not imposed on us through provincial legislation—

The Acting Chair (Mrs. Linda Jeffrey): Chief Hall, I'm sorry, but your minute—

Mr. Gilles Bisson: I'll give her my time.

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

Chief Theresa Hall: Sorry. Thank you.

The bill arbitrarily splits First Nations from the south, First Nations below the 58th parallel, glossing over the many past wrongs done to First Nations by projects in the south.

The bill requires 225,000 square kilometres. The First Nations' traditional territory is protected and off limits with respect to development. This was made without consultation with us or any First Nation in the far north, and means that there will be instances when a First Nation wishes to support development on their land but is barred from doing so due to it being protected land.

If the government is serious, there must be reasonable and adequate funding for us for land use plans, which is accessible to each First Nation. We've been involved in land use plans, we've picked the projects, so we know what's involved and required. The funding the government has offered to Ontario First Nations is incredibly insufficient and needs at least two more zeros added to what has been offered.

We are willing to discuss the importance of land use plans, but we must be in a process that is First Nations-driven, according to our culture and not imposed on us through provincial legislation. Let's not make the same mistake as the Indian Act and apply one system to the very diverse and distinct First Nations throughout Ontario.

As chief of Attawapiskat, it is my responsibility to ensure that these bills I have spoken about today are in the best interests of my community for today and for the future. At this point and as these bills stand, if passed, they will not be seen as valid in my community's territory. We will not accept legislation which forces development on our lands without our consent, meaningful involvement and benefit—and legislates how we are to protect and plan for our future. Meegwetch.

The Acting Chair (Mrs. Linda Jeffrey): It was Mr. Bisson's turn and he gave up his time, so one minute for each party, beginning with Mr. Brown.

Chief Theresa Hall: I'm here with Jennifer, so Jennifer can also assist me.

The Acting Chair (Mrs. Linda Jeffrey): If Jennifer is going to speak to it, she'll just need to say her name before she answers the question, okay? Mr. Brown.

Mr. Michael A. Brown: Good to see you, Chief Hall. Your community has had probably one of the most active, if not the most active, consultations and agreements with the mining industry.

We talk about land use planning and we talk about all these issues. Your experience is probably one that we all need to share amongst not just First Nations communities but all communities, including the province.

One of the things that we are grappling with is the right of each First Nation to make their own agreements about resource development, which I understand. Do you have an overarching plan? Do you think all of those in the area Bill 191 describes should have a unified vision of how this works, or should it be left to the individual First Nations?

Chief Theresa Hall: I cannot speak for other First Nations; I can only speak for Attawapiskat. We are different from the other First Nations in the fact that we have never signed on to the treaty because we were north of the Albany River. So we still maintain that our territory was never surrendered, as opposed to people who signed on to the treaty. That's how we differ.

Mr. Michael A. Brown: Thank you.

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

Mr. Randy Hillier: There are a couple of things that you mention in your presentation. First off is that Bill 173 is both insulting and also a regulatory mess. You mentioned in your presentation that you were forced to learn your rights dealing with De Beers. I'd like to ask two questions. The first is, has your community benefited significantly from De Beers being involved in your community? And with regard to revenue sharing—I think this is an important factor as well—no municipalities, no other people are getting any share of the revenue, not just aboriginal, First Nations people. Your view on the revenue sharing and your relationship with De Beers, if you could expand on that a little bit and how we could improve those things in Bill 173?

Chief Theresa Hall: Yes, we have some benefits from De Beers; that is, training and employment and business and—

Mr. Randy Hillier: Has employment increased significantly?

The Acting Chair (Mrs. Linda Jeffrey): Mr. Hillier, you've exhausted your time. Just let the chief answer the question.

Chief Theresa Hall: However, because our people are not educated and not meeting the requirements for the standard of education that De Beers requires, those people are not benefiting. With the aboriginal skills program that we were a part of along the James Bay, Attawapiskat was left upgrading their people rather than preparing for on-the-job training. So that's where we were left out on that. The agreement sounds good in principle, but in actual reality there are a lot of loopholes that we didn't foresee because we didn't have that experience first-hand. We're learning now and we're trying to give that information to other First Nations as well.

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

MUSHKEGOWUK COUNCIL

The Acting Chair (Mrs. Linda Jeffrey): Committee, our next delegation was a "to be determined," and someone from this afternoon has kindly agreed to fill that gap. That's Mushkegowuk Council. Grand Chief Stan Louttit I think is here.

Mr. Gilles Bisson: Mushkegowuk: Stan, that's you.

The Acting Chair (Mrs. Linda Jeffrey): I'm sorry if I garbled it.

Chief, thank you for accommodating our schedule. We appreciate you being here today. As you make yourself comfortable: you will have 15 minutes. I'll give you a one-minute warning as you get close to the end, if you do. If you could say your name and the group that you speak for at the very beginning for Hansard, you can begin whenever you're ready.

Grand Chief Stan Louttit: Thank you to the committee for coming to what they call north, I guess.

Laughter.

Grand Chief Stan Louttit: I'll be inviting you to our territory by the time I'm finished here.

My name is Stan Louttit. I'm the elected grand chief of the members of the communities that I work with, namely Attawapiskat, Kashechewan, Fort Albany, Moose Cree, Taykwa Tagamou, Chapleau Cree and Missanabie Cree. I'm happy to be here to talk about Bills 191 and 173.

I'd like to recognize the presentation made just before me, Chief Hall—she makes a lot of good points, some of which I'll touch on as well—and as well, the presentation from Chris Metatawabin, from Fort Albany. I'm sure you heard various other chiefs in your travels, including where you came from yesterday, in Chapleau.

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Mushkegowuk Council, as I said, consists of seven First Nations along the western coast of James Bay, including some inland that I mentioned. Four of the Mushkegowuk communities are remote and not accessible by road, and three are further south, in the Cochrane and

Chapleau areas. All together, the lands of the Mushkegowuk encompass approximately one quarter of the province.

Before I address specific concerns about the two bills you're considering today, I want to highlight that I, as elected leader of the Mushkegowuk nation of peoples, have a direct and unique relationship to you, as elected representatives of the province of Ontario.

When Ontario was formed out of Upper Canada in 1867, the entire Mushkegowuk territory was controlled by Great Britain, in what was known then as Rupert's Land. It was several years after Confederation that Britain agreed to transfer the lands to the new nation and provinces of Canada, but first, Canada and the provinces agreed to a protection pledge, and this is the actual wording of the pledge that was written in that legal document: that "it will be our duty to make adequate provision for the protection of the Indian tribes whose interests and well-being are involved in the transfer." So when we consider these two bills, it must be in the context of the best interests of the Mushkegowuk and the other First Nations in the north. The spirit and intent of the 1869 protection pledge is as relevant today as it was then.

Our relationship to you became formalized through Treaty 9 in 1905. Our extensive memories of that agreement were that we agreed to share the land but our use of and relationship to the land would not be changed or challenged by the province of Ontario.

This has been recently validated through the discovery of the diaries of Ontario's own treaty commissioner who negotiated the treaty. You are all aware that Ontario is a signatory to Treaty 9. George MacMartin, a miner from Perth, was appointed by your government of the day to be part of that treaty. His personal diaries, which I have in my hand right here, were found—after being lost—in the archives some years ago. His context and understanding of the treaty differs from the actual wording that you may see today, and that is that our land was never given up. We are free to hunt and fish anywhere in our lands, as we have always done, as, he says in his diaries, "in the days of yore."

We have before us today two bills of the province of Ontario that need to live up to the historic relationship between us. The Mushkegowuk have been interested in land use planning for many years and have had many discussions with the province about how this could occur. In the 1990s, we began mapping our use of the land, in preparation for planning. Once a year, the Mushkegowuk hold a general assembly where the seven First Nations gather to collectively make decisions. At last year's assembly, we agreed that planning would be led by the First Nations and that the goal would be to produce one plan for the overall Mushkegowuk region that would include all of the First Nations.

The current version of Bill 191 would split the Mushkegowuk territory and only allow the participation of the northern part. The far north land is arbitrary and meaningless, and it was drawn for the administrative ease

of MNR. It cuts through ecological regions, it cuts through watersheds, it cuts through Treaty 9 and it cuts through Mushkegowuk.

The current version of Bill 173 does not provide for consent, a key requirement put forward by the First Nations in Ontario. Currently, Ontario feels that it can consult and accommodate, but at the end of the day, the resource development can or, more than likely, would occur. Consent is the key to ensuring effective and meaningful partnerships and prosperity for First Nations and the province.

A far better alternative would be to consider all the northern watershed as part of the far north. The height of land separating the rivers flowing north and those flowing south is also very close to the boundaries of Treaty 9.

The second major issue for the Mushkegowuk is that both these bills allow business as usual for claim staking and mineral exploration. The First Nations of Treaty 9 have a right to consent to or deny, as the case may be, these activities on their territories, as recognized by the United Nations and now specified by Chief Hall. The most obvious way to bring this about is by pausing new staking and exploration activities until the First Nations have had an opportunity to complete land use plans, which would outline areas where the activities could take place. Land use planning must be led by the First Nations, including the development of objectives, strategies and land use designations. These will guide how planning occurs and should not be developed by MNR. A good example is the provincial commitment or plan to 225,000 square kilometres of protected areas. Given the opportunity, the Mushkegowuk may agree to either more or less protected areas in their territories, but this cannot be imposed by the province before the planning process begins. The current thinking is strictly against the spirit and intent of Treaty 9 and more recently, the stated desire of Ontario to improve relationships with First Nations in the province.

The province of Ontario likewise should not pass the Far North Act with provisions that would allow the provincial government of the day to override plans when they feel it is in the social and economic interests of Ontario. What about the social and economic interests of the peoples of the north? We will be affected the most and should be considered first. If plans are developed and agreed to by both First Nations and the province, then it stands to reason that both parties would meet to agree to changes to the plans.

The Far North Act must also create funding mechanisms to carry out the participation of First Nations and planning. Financial support should be placed in a separate fund that will be administered jointly by the province and the First Nations. Last year, the province committed \$30 million to far north planning, but only a tiny percentage ever reached First Nations—maybe \$1 million, I think. The rest went to MNR for research projects—MNR mapping products and capacity-building for MNR.

The Far North Act must allow for the potential for greater co-operation between First Nations. For example,

Mushkegowuk First Nations have agreed to work together to produce one regional land use plan that is community-based but shares common resources and information amongst the First Nations. The bill, as it stands, makes no provision for such a scenario. We submitted a proposal to MNR several months ago to begin the process but have received no response.

Thank you for taking the time to travel this far north. As I indicated, I'd like to extend a personal invitation to the members of this committee to travel to Kashechewan First Nation and the Mushkegowuk general assembly in the last week of August. I am sure that the experience will be enlightening for all of you and give you the opportunity to better understand the challenges faced by northern First Nations.

The final point I would like to make is that the current drafts of Bill 173 and Bill 191 do not satisfy the spirit and the intent of Treaty 9, nor do they satisfy the spirit and intent of the Rupert's Land protection pledge.

The far north is unique, the far north is different, the far north is the last frontier and the far north is the home of my people. This is our land and we unequivocally state today that we will defend it unless the Ontario government agrees to the common-sense approach of consent. Think about your own backyard. A utility company comes in and wishes to dig up your backyard. You find them there; you're surprised and shocked; you're asking them what they're doing there. You'd want to know exactly what they're doing there and you'd want them to ask you.

Come and ask us before you do something. Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. You've left about three minutes for everybody to ask questions, beginning with Mr. Brown.

Mr. Michael A. Brown: Thank you for coming and agreeing to take the earlier time slot. It's helpful to all of us. I will come back to the question I have asked before. First Nations have spoken to us, saying that the agreements need to be between specific First Nations and the province of Ontario. How do you see the various councils that we have, regional councils in Mushkegowuk First Nations? Is it with the individual First Nations within that council or should the council be making the overarching plan? I'm talking about land use.

1100

Grand Chief Stan Louttit: Yes. There are two things: The First Nations have to be directly involved in the actual work. It is their land, it is their authority, and they're the ones who actually do the work. If the stated First Nations—for example, in our territory, when I talked about our assembly resolution and mandate, it states that we will work together, that we'll coordinate this together. But at the end of the day, it's the communities that work on it, do it, and we kind of act in a facilitative and coordinated way.

Mr. Michael A. Brown: Thank you. That's helpful.

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

Mr. Randy Hillier: Thank you very much for being here today. You've mentioned a couple of things and I'd like to ask a couple of questions in regard to your presentation. First off, you've stated that these bills are for administrative ease and against the spirit and intent of Treaty 9. I agree with you about administrative ease and how it's against the spirit and intent.

I've asked many of the delegations and the presenters if they were informed ahead of time. When Mr. McGuinty made the announcement of protecting a quarter of a million square kilometres of the north, were you notified of this imposition of an arbitrary number by the Premier beforehand?

Grand Chief Stan Louttit: The Premier did not come to us and ask for our opinion in terms of the protected areas. There was an announcement one day that there would be protected areas of 250,000 square kilometres in our territory, much to our chagrin. We were quite shocked, because we felt that with the recent developments as far as Ontario went, they had been trying to make improvements in terms of relationships—they set up a stand-alone Ministry of Aboriginal Affairs, they've gone on the record as wanting to work with us, and then making arbitrary decisions like that without talking to us was very, very shocking.

Mr. Randy Hillier: I've heard the same thing about Bill 173. I think some of the presenters used the term "spoon-fed and predetermined questions," no real meaningful discussion or debate. What's your view about the discussions on Bill 173 and your involvement and participation?

Grand Chief Stan Louttit: We have been involved right from the outset—not in our terms of what we desired to be consultation. Ontario has attempted to have discussions by bringing people together in urban centres and thereby calling it consultation, I suppose. We've told the province from day one that it is the people in our home communities who need to have the discussion and need to have input into the process. That has fallen on deaf ears.

At the end of the day, unfortunately, it has to do with dollars and having the ability to be able to visit the 40-plus First Nations as opposed to having five meetings with some First Nations. At the end of the day, the dollar speaks, which is very, very unfortunate. We feel that we have not been fully consulted, as we have put forward to the Premier and to the various ministers right from day one—and that is for that discussion to take place right in the community.

Mr. Randy Hillier: Just one last question—

The Acting Chair (Mrs. Linda Jeffrey): It had better be quick. There are 12 seconds.

Mr. Randy Hillier: —from the earlier presentation about the First Nations communities not receiving the full benefit of this economic development, and it was with regard to education. Have there been any discussions surrounding these bills to really amplify that benefit of development for the First Nations community and how to possibly include it in the bills or any of that discussion?

Grand Chief Stan Louttit: As Chief Hall stated, revenue sharing is a key, and it has to be recognized by the province. Right now we're basically left to ourselves to sit down and negotiate with a resource developer on whether they wish to partake in some kind of an agreement. Sometimes it's good, sometimes it's bad, but I think at the end of the day, Ontario has to come forward and put some kind of revenue-sharing requirement so that we don't have to fight tooth and nail with resource developers in terms of benefits.

Mr. Randy Hillier: Thank you very much.

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

Mr. Gilles Bisson: Just in regard to your comments that this committee has not gone into communities in the far north, I couldn't agree with you more. I think there's more to be learned by us as legislators as to what needs to happen by not only listening to you as an elected chief—that's fine and good, but the community members, at the end of the day, are where you derive your power and your wisdom. So not going there is a real problem, and the committee needs to understand that it puts the elected leaders in a heck of a position because they can do nothing without the consent of their communities. It's unlike our system, where we make all the decisions and everybody follows us. Their system is much more consensual, and this is representing, I think, a big problem in the process to get the land use planning.

So with all of this being said, I guess what you're saying is that this process isn't really legitimate—the long and the short? Comments?

Grand Chief Stan Louttit: Exactly. I have it written here, and I didn't say it. I'm glad you brought it up, Gilles. I was going to question the merit of this committee: Will it do any good? I have apprehensions. I have questions.

At the end of the day, if the acts go through, will the things that have been most commonly heard and the various positions put forward by people, not only us as leaders—will it be heard and will it change things? Or is there, as we feel a lot of times, some preconceived notion by Ontario that in fact these things are already there; they're drafted by your technicians and you're going through this process for public perception—for the public good, but at the end of the day, what good does it do? So I have concerns. And if, in fact, we are heard and there are legitimate changes based on our cries for help and input, then we will be satisfied, but right now I have questions.

Mr. Gilles Bisson: So as I understand it, clearly, Mushkegowuk has been in the forefront of land use planning. You've done quite a bit of work, as I well know. I guess what you're saying to us is, "Take a step back. This has to be community-driven," and at the end of the day you accept the premise of land use planning. You want to have development, but you want to have a say about how that's going to happen.

One of the things that's key in all of this is the issue of consent. I've raised it with a few other people before. In

many cases, if it's anything from a strip mall to the building of a new factory or a mine in a community, a municipality under the Municipal Act has the right to be able to determine what kind of development happens in their municipality. If that's not in here, what's the point?

Your comment?

Grand Chief Stan Louttit: Exactly. The point we're making, and I've said it here, is that resource developers and the province and government can consult with what they deem to be consultation until they're blue in the face, and they can accommodate us and accommodate certain things. I suppose that's fine, but at the end of the day, there has to be consent. And it's not a scary word. I told this to Mr. Duguid in a meeting similar to this: "Don't be intimidated by consent."

All we're asking is, in our territory, we want to be able to have a say: "Yes, that can happen there," or "No, it cannot happen there. Maybe it can happen over there, or maybe over there." That's why it's important to have land use plans so that we'll be in a position to be able to identify where our people are buried, where our animals are, where our plants are and where all of these things are, so at the end of the day, we can sit down across from resource development people, across from the government and say, "You know what? We agree. That area would be good. We want to prosper. We want to have a good decent living, and that area is prime and there's potential. But in that area, some of our people are buried there. In that area, the moose and caribou migrate and live there, and we count on them."

That's the kind of thing that we need to do, and I think you've got to understand our picture before this goes any further.

Mr. Gilles Bisson: Thank you very much.

The Acting Chair (Mrs. Linda Jeffrey): Thank you very much. Thank you for being here today and thank you for accommodating our schedule. I appreciate it.

Grand Chief Stan Louttit: Thank you. Meegwetch.

DE BEERS CANADA

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is De Beers Canada, Mr. Jim Gowans and Mr. Tom Ormsby.

Welcome, gentlemen, and as you get yourselves seated, I'll go through my preamble. If you're both going to speak, if you could state your names before you speak for the record so that Hansard gets an accurate record of who's here. After you've introduced yourself—

Interjections.

The Acting Chair (Mrs. Linda Jeffrey): Gentlemen, if you could hold it down a little bit, I'd appreciate it.

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You'll have 15 minutes once you've begun—after you've introduced yourself. I'll give you a one-minute warning if you get close to the end. There'll be time for questions afterwards. Welcome.

Mr. Jim Gowans: Good morning. My name is Jim Gowans, and I'm president and CEO of De Beers

Canada. Joining me today is Tom Ormsby, our director of external communications—corporate affairs—for De Beers Canada, and he's a member of the Victor senior management team.

I'd like to acknowledge Madam Chairman and the committee members here for providing us the opportunity to present our comments and recommendations regarding proposed revisions to the Mining Act, or Bill 173, and the Far North Act, or Bill 191.

De Beers Canada is appearing before this committee today and is also providing a written submission to the committee on Bills 173 and 191 to expand upon our concerns and recommendations outlined in this presentation. We'd also be pleased to take any questions that committee members have at the end of this presentation.

We are participating in this process as we believe our lengthy experience in Ontario's far north will assist the committee and others to a better understanding of the challenges of working in this area and of how to turn these challenges into opportunities for our industry, First Nations and the people of Ontario. We support the intent of the bills, but we do have concerns in a number of areas that we would like to highlight today.

De Beers Canada is the owner and operator of the Victor mine, which is located in Ontario's far north in the traditional lands of the Attawapiskat First Nations. It is the first and only diamond mine in the history of Ontario. We began exploration in Ontario's far north about 50 years ago. A lot of people don't know that, but we've been here for a long time. The diamond-bearing kimberlites that are now known as the Victor mine were discovered in about 1987-88—more than 20 years ago. Members of the Attawapiskat First Nation and other local First Nations communities have worked with us over that time. Our Victor mine officially opened last year, more than 20 years after the discovery of these original kimberlites.

In this map, you can see that it shows where—it's a bit of artistic licence, I'll admit, but it gives you a general idea. Most southerners wouldn't know the difference anyway. There is no year-round access in this area in Canada's far north, and the cost to operate this mine in this area is quite expensive—no permanent road, and we're about 300 kilometres from the nearest rail line at Moosonee. Weather permitting, there is about a 300-kilometre community seasonal winter road that averages about 35 days a year to transport our fuel, supplies, parts and heavy equipment. We contribute several millions of dollars to the construction and maintenance of this community road every year.

We also build and maintain about another 100 kilometres of seasonal road, entirely at our own expense, from Attawapiskat to the mine site. The planning and execution of this program is year-round, and it costs us in the millions of dollars as well. Everything else must be flown into the mine, including our employees, contractors, equipment that cannot risk travel on these roads or in extreme cold weather, emergency parts and critical spares, our training consultants and, of course, food.

I'll give you an idea of some of the costs incurred: advanced exploration feasibility studies for the Victor mine were approximately \$130 million. Development of a diamond mine is extremely expensive because of the nature of doing the sampling. Our permitting, our community consultation and construction of our mine were a little over \$1 billion.

Just to give you an idea of the contribution, the direct and indirect economic benefits of the Victor mine have been and continue to be quite substantial—a \$6.7-billion impact on the GDP of Ontario and a \$4.2-billion impact on the GDP of northern Ontario. These were taken from a study done in January 2004. Currently, over \$10 million in direct payments to the First Nations that we have IBAs with have been done to date, and about \$167 million in construction contracts have been awarded to First Nations joint-venture companies, and about \$90 million in operations contracts awarded to the First Nations joint ventures to date. In addition, over 900 positions—part-time and full-time—during construction were filled by First Nations community members. Over 80% of our construction workforce came from northern Ontario, of which about 85% of our current workforce is from northern Ontario and about 40% are First Nation members.

We'd like to highlight this information to demonstrate the tremendous effort, time and cost required to bring the development of property into commercial and sustainable production. De Beers Canada understands the need to refresh and modernize our legislation to ensure it reflects the interests of the people of the province, and we believe that these two bills together may introduce additional layers of uncertainty, bureaucracy and financial burden on an industry considering or already operating in our far north.

Specifically on Bill 173 we'd like to highlight some of the following:

Let's talk about the duty to consult. The language in our proposed bill appears contradictory to the consistent rulings of the court that the duty to consult with First Nations lies with the crown. As the bill currently reads, it appears that the government may be downloading this legal responsibility to the industry and private citizens. If so, it may actually lead to additional challenges in the courts, especially where disputes may arise between parties rendering some of the proposed dispute process references ineffective. We would recommend greater clarity on the complete definitions of "consult" and "consultation" used throughout this bill before drafting of the regulations. We further recommend that the government clarify its own role on the consultation process before the drafting of the regulations. We recommend that the government clarify the taxable benefits regarding the additional consultation requirements before the drafting of the same regulations.

Let's talk about exploration permits and planning. In Bill 173, new steps have been added regarding the exploration plans and exploration permit applications related requirements, including aboriginal community consultation. These are to be submitted to a director of

exploration who will then decide whether or not to issue the permit. In the proposed act, the director has the authority to impose any additional terms he or she deems appropriate. There's no clarity regarding the definition of what comprises an exploration plan, the definition of community consultation for an exploration plan, the expected administrative timelines of these additional steps in our process and whether or not the additional time to achieve the above steps will be added to the time frame to work or to maintain a mining claim, which I think is critically important. There's no clarity regarding the ability to appeal any additional term imposed by this director of exploration. This is the far north, where most exploration work is seasonal, so if you lose a season, you lose the whole year. We recommend greater clarity on the above before the drafting of these regulations.

Let's talk about the opening of new mines in the far north. Under the current wording of Bill 173, it can be interpreted that mining companies may be able to complete all the work and investment regarding exploration, discovery, permitting and construction of a new mine that cannot open the doors without an improved community-based land use plan in place. We understand that interim arrangements, agreements and/or MOUs may be put in place in the absence of a formal community-based land use plan. While somewhat of a comfort, industry requires certainty in order to justify the significant investments required to find, assess, develop and open a mine. We recommend greater clarity on what constitutes an acceptable interim agreement in the absence of these formal land use plans before the drafting of the regulations.

I want to move on to Bill 191. As I stated in our opening, we will provide greater details of our concerns in our written submission but I'd like to just address a couple of these now. As companion legislation to Bill 173, Bill 191 has a tremendous impact on all phases of mining in Ontario's far north.

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De Beers Canada recognizes the need to protect and enhance our environment. We are proud that our operations are ISO 14,000-certified, an international recognition of high standards we maintain regarding our environmental management systems. We are also proud of the fact that we have achieved this same certification for our entire construction phase, which was a first in Canada.

De Beers Canada also recognizes the importance of working together with our First Nations partners. At the Victor mine, we signed impact benefit agreements with four First Nations communities, as well as a working agreement with a fifth First Nations community. We also develop agreements related to certain exploration activities. These agreements outline local benefits, in the form of direct or indirect compensation for use and for potential impacts on the traditional lands of these communities that may result from the construction, operation or closure of a mine. Key areas include environmental management, employment, business opportunities, skills training of the community members, social investment

and other benefits that can be developed in co-operation with communities. Reaching such agreements takes time and requires a substantial financial investment for proper community engagement to ensure that the concerns of each community have been heard. The Attawapiskat First Nation IBA, signed in November 2005, took three and half years to negotiate. There were over 100 community meetings as part of that consultation process. Our most recent IBA with Fort Albany and Kashechewan First Nations took more than five years to complete. We are currently more than two years into discussions with one community regarding additional exploration work.

We believe Bill 191, in its current form, brings forward a number of concerns and introduces greater uncertainty for companies currently operating or looking to operate in Ontario's far north. We require more clarity in a number of areas, especially in the area of community-based land use plans, which are the main focus of this legislation.

We believe the bill needs to demonstrate more balance regarding economic development of the far north. Although the word "balance" is used in the proposed legislation, Bill 191 does not appear to ensure that economic development opportunities will be guaranteed.

To meet the allotted time for today's presentation, we'd like to highlight the following concerns we have about this bill in its current form.

Let's talk about the land use plans. As we meet here today, there are 33 First Nations communities in the area of undertaking in Ontario's far north. Of those 33 communities, only one has a formal land use plan, and it's our understanding that it took nearly 10 years for that community to complete this. Since Bill 191 states that no new mines will open without a community-based land use plan in place that supports the operation of a mine, the attractiveness of investing in Ontario's far north becomes diminished immediately. The possibility that companies will need to wait up to 10 years for the remaining 32 communities to develop formal land use plans for approval is a huge disincentive to invest, with no guarantee that approval will be granted. We recommend clarity regarding the interim process that communities can use to approve the development of a mine in the absence of one of these formal land use plans.

There's also no definition of what a community-based land use plan is. There are no apparent formal processes or timelines in place regarding final sign-off of a community-based land use plan once completed by a community. Clarity is required on the exact boundary of the area of undertaking to ensure that companies understand where Bill 191 will be applied. We recommend greater clarity on these areas.

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

Mr. Jim Gowans: Okay.

Other clarification is required concerning these plans. How will disputes between First Nations communities regarding the ownership of traditional plans be resolved, and what are the processes and expected timelines to

resolve these? Will the tribal or regional councils have any standing regarding the submission of these plans to their membership area, and if so, to what extent? What is the government's position if more than 50% of the far north is designated for the development of First Nations communities? Will the government reject these plans? Will there be a process to amend the formerly approved plans should the community wish to do so?

Bill 191 sets out to protect at least 50% of the area of the undertaking; however, there are no specific details on how this is going to be achieved other than that it will not permit mines or other industrial development. Will it be the first 50% total that's submitted? Each community expected to protect at least 50%? How will these areas be connected? Where's the flexibility going to be in this? And how are we going to share access corridors to all regions of the north? We strongly recommend that the government provide clarity on these concerns.

In terms of the balance, we do not believe it provides balance to provide certainty and stimulate interest in investing in the far north. At least 50% of the area is to be protected from development. That percentage appears to have no limit under the bill in its current form, and we are unaware of government plans to provide support for the infrastructure, such as hydro corridors and permanent roads.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Gowans, your time has expired. Maybe you can get to some of your other points in the answers to the questions that committee members will have for you.

Beginning with Mr. Ouellette, you have about two minutes per party.

Mr. Jerry J. Ouellette: Thank you for your presentation and thank you for investing in the province of Ontario. Some of the things you've laid out—you've paid several million dollars in winter roads. I assume that you're not the only entity utilizing those winter roads.

Mr. Jim Gowans: No, the communities along the coast are also utilizing the roads.

Mr. Jerry J. Ouellette: You mentioned the \$130 million that you initiated the program with; over \$1 billion to get the operation up and running; the \$10 million that is paid out in negotiations; also the \$167 million in construction contracts; and the other \$90 million, and the list seems to go on. Essentially, once the mine is fully operational and running, any idea what the taxes on an annual basis would be? Just approximately.

Mr. Jim Gowans: I don't know what the taxes on an annual basis are, Jerry. If I look at the life of a mine, and given the current economic circumstances, both in our foreign exchange and the collapse of diamond prices, we're probably estimating that, until the end of the mine in the next 10 years, we're looking at somewhere between \$20 million and \$35 million in royalties, and we're looking at somewhere between \$50 million and a hundred-and-something million dollars in provincial taxes.

Mr. Jerry J. Ouellette: So \$50 million to \$100 million. I think some of the difficulty is that we hear on a

regular basis about revenue sharing. The difficulty is the definition of revenue sharing. From, possibly, a southern perspective, the amount that you contribute back into the economy that goes back to the crown or the multiple users is the entity that should be initializing and, possibly, in my belief, is the revenue that gets shared with the other communities that are out there. Do you have any idea what, of the millions and millions that you pay out, would actually transpire from the crown—that you pay to the crown—actually goes to the First Nations that are in those areas?

Mr. Jim Gowans: I don't exactly, although we have some joint investments like training facilities, so that comes back both from our investments as well as provincial and federal government investments; that's money that comes back. In terms of the other ones, I'm not too sure what comes back. If you look at who's got the biggest benefits and you look at all those plans right now, we're still in a loss position until we pay off our billion dollars. At current prices, that's going to take several years, in excess of probably five to seven years. First Nations communities have gotten their money right up front and they continue to get employment opportunities, and northern contractors, so in terms of if I looked at the best benefits, I would say those are a few. Then, the government right now, the only benefits they're getting are income taxes from the employees.

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

Mr. Gilles Bisson: First of all, I think it's a bit of a lost opportunity on the part of this committee not to have had more time for players such as yourself and others who are here today, because you're the only company other than, I guess, Goldcorp to be in a position to actually have gone out and developed in the far north and done impact benefit agreements and gone through the process. I think there's a lot to be learned, because I know from my involvement it was extremely difficult for all parties. So just from my perspective, I think it's too bad that we didn't take more time to consult.

I want to get to the issue of consent with you. You, as a company, early on said, "We are not developing, we're not going to do anything when it comes to extraction of diamonds in that area until we get consent from the First Nations"—without their approval. This bill doesn't deal with that issue. It doesn't in any way give the First Nations communities any kind of comfort when it comes to the ability to decide what will or will not happen on their territory. Should it be included, considering your experiences?

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Mr. Jim Gowans: It continues to be our policy. I think that aspect has to be involved in the planning. I would argue that that was probably one of the original intentions of changes in the Mining Act.

Having said that, I also would recognize that that is a huge frustration because I think De Beers Canada does a pretty good job. We're not perfect, but we certainly go well out of our way to ensure as much consultation with the First Nations communities as we can in terms of

exploration and stuff like that. It's very frustrating to know that we won't go into an area until we have those dialogues and consent when we lose opportunities because of the nature of the business.

Mr. Gilles Bisson: The Far North Act deals with—

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

Mr. Gilles Bisson: Can I ask the government for just two seconds to ask a question, because it's relevant?

The Acting Chair (Mrs. Linda Jeffrey): Mr. Brown is agreeing, so yes.

Mr. Gilles Bisson: The act takes the premise of protecting a defined percentage of land. Would we not be better off as far as providing clarity to actually work on rules of development and protection? Rather than just saying, "50%," we just say, "Here are the goals that we want at the end: protection of the environment, economic etc.?"

Mr. Jim Gowans: I think the whole idea behind 50% has to be that it has to be extremely flexible. Even the land use plans have to be flexible, because I don't think that people today know what the true potential of the land is. Even 20 years ago, we didn't know that there were kimberlite pipes in northern Ontario, and now we have our first diamond mine.

So I think, at the end of the day, if you have 50% set aside for carbon capture and other aspects, then you're fine, but it has to be flexible and you have to be able to move that around. If you try to lock in on specific blocks, I think this destroys the intent of this legislation.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Brown, your remaining time is a minute if you want to squeeze a question in.

Mr. Gilles Bisson: I would agree to it if you extend his time.

The Acting Chair (Mrs. Linda Jeffrey): That's nice. I'm not allowing that.

Mr. Gilles Bisson: I move a motion in order to extend the time of the government.

The Acting Chair (Mrs. Linda Jeffrey): All right. Two minutes, then, if you want.

Mr. Michael A. Brown: My question revolves around the consultations with the First Nations. You pointed out in the presentation that you had consultations and agreements with four and now five First Nations. Can you tell us a little bit about how that evolved in terms of who you negotiated with and how you consulted with them? Had you already decided there were four First Nations and then a fifth one came aboard, or how did that work?

Mr. Jim Gowans: It was kind of an interim process, I would admit. Obviously, the Attawapiskat was a key one, but we knew that we would have impacts on the other communities along the James Bay coast, and so we entered into discussions with them. Of course, as we went along and the closer the mine got developed, that dialogue started to strengthen up into forming into a benefits agreement.

Four of the ones that are not far away from that, it was just to have in a working agreement. The fifth one, it's because they're more remote, but we have impacts, so we did that.

Mr. Michael A. Brown: Okay, thank you.

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

CHARLES FICNER

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is Charles Ficner. Is he here? Is Mr. Ficner here? Okay, great. That's you? Thank you. Welcome.

Mr. Charles Ficner: I'm sorry. If you could just bear with me for one—

The Acting Chair (Mrs. Linda Jeffrey): It's okay. I understand there are some technical challenges, but I will just go through my preamble and remind you that you'll have 15 minutes. I will give you a one-minute warning if you get too close. There will be questions at the end by our members, and when you're ready to begin, if you could state your name for Hansard. I understand you're an individual; you're not speaking for any organization. If you could just state your name before you begin, you'll have 15 minutes.

Mr. Charles Ficner: My name is Charles Ficner. I am here because the Mining Act impacts on citizens. Members of Parliament have—

Interjections.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Ficner, could you just hold for a second? If anybody wants to have a conversation at the back of the room, could you please take it outside? It's being picked up by the microphones. Please. I'd appreciate it.

Thank you, Mr. Ficner.

Mr. Charles Ficner: I'm here as an individual who has been affected by the Mining Act and who knows what damage can be done through the Mining Act. Since members of Parliament are very much those who are in charge of setting the laws of this land, I think it's vital that you know the implications of the bill and of the act.

This bill has resulted in the extortion of property from citizens; it denies equal treatment; and it's necessary for this Parliament to reverse the theft.

Only Parliament makes laws. We live in a society that lives under the rule of law, and that means Parliament sets the laws. Much harm is done under this bill in the name of Parliament. It needs to be changed.

In 1913, Parliament said, "We will avoid conflicts between mining companies and landowners by making sure that all of the minerals under private land are owned by the landowners." It gave all of the minerals retroactively, 100%, and it said, "All land sold from here on will also include the minerals, unless it is expressly prohibited in the deed." The effect was that everyone owned the minerals.

Bureaucrats, however, don't recognize this. Here are some formal statements written by bureaucrats. "They are moving to tax properties, to take it away from citi-

zens.” “The tax is intended to take property from citizens.” “No compensation is made.” “The crown does not benefit.” Instead, the crown takes the confiscated property and gives it to private companies for their private benefit. Explicit statements from senior government officials.

Interjection.

Mr. Charles Ficner: Could you hold? I’ll run through them—

Interjection.

Mr. Charles Ficner: It’s very clear: The policy has been pursued vigorously. The policy effectively says, “We will use the taxation powers of government to extort property from citizens and give it to mining companies.” Officials have acted as a “heavy” for the mining industry.

As a consequence, they have managed to claw back 1.4% of the minerals under private land. Eighty-seven per cent of the land in the province is crown land. Of the other 13%, 1.4% of that has been clawed back, and it’s clawed back by the levying of the tax.

Officials have pursued this policy for years, and they have transmitted the intent of this policy effectively to ministers. In 1991, I was told by Gilles Pouliot what it says on this slide: “Unless we take the property away from Arizona widows, Ontario will not prosper and mines will not develop.” That is not the intent of Parliament. It is not the intent clearly expressed in 1913.

What bureaucrats do is they impose an additional tax, now called the mining lands tax, on a very small percentage of private lands. In my own case, that tax is now two and a half times as great as the municipal and school taxes combined. It applies to half of my land, and the purpose is to cause me to give my property to the government for nothing so it can give it to mining companies for nothing: blunt and plain. That’s what officials are doing under this act.

I do not believe—I know—that Parliament never gave that authorization. I cannot believe that this Parliament would ever agree to use taxation powers to steal property from citizens so as to give it to mining firms.

Where the tax was authorized—and there is a tax—was on lands that were granted that would not otherwise have been granted by the crown: on lands in unorganized territories not intended for settlement. Mining companies said, “We want to develop that,” and the crown said, “Yes, you can have it.” In 1907, the government said, “Okay, we’re going to start taxing those properties.” It imposed, under the Supplementary Revenue Act, a tax on those lands. They were not subject to municipal taxation.

That act also said that we will tax those minerals that are owned by a different person than the person who owns the mining rights. There’s a sample of the provisions in 1907: on a mining location—defined in the act; mining claim—defined in the act; and if you didn’t mine them, they reverted to the crown—it was clear in the title; and on minerals owned by any person other than the person owning the surface rights.

In 1946, essentially the same; in 1955 and on—minerals are dealt with separately from the surface. Very

clear: It didn’t apply to lands that were not severed; it did not apply to lands in municipalities; it didn’t apply to properties that were not mining locations and mining claims.

But bureaucrats apply the tax on a lot of properties, including properties that were not subject to the tax. There is no doubt about this. In 1989, as they proceeded with the last major amendment to this act, they boasted: “In the past 20 years, 400,000 acres were reverted to the crown.”

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Officials have built other very interesting provisions into the act too. They get Parliament to approve interesting clauses. If you don’t pay the tax, the bureaucrats have the minister sign a certificate of forfeiture, and here’s what subsection 197(5) of the act currently says: “... absolute and conclusive evidence of the forfeiture to the crown” and cannot be challenged in the “court by reason of the omission of any act or thing leading up to the forfeiture.” If bureaucrats don’t do what the law requires, it’s still going to be taken, and no citizen can take the government back to court. That’s what the laws of the Parliament of Ontario say. It’s really threatening and intimidating, and I can’t believe that any member of Parliament ever understood what that provision meant.

In 1989, it’s very clear, officials knew they had been illegally taxing properties and they tried to sneak a clever change into the act by changing the name of the tax from the acreage tax—we were moving away from imperial to metric—to the mining lands tax. But they also changed the definition of “mining rights,” which had a very sneaky effect. However, making that change was not sufficient to make the act allow the tax on other properties because Parliament sets our laws and our laws are determined in the courts by the intent of Parliament. What was the intent? It was clear, as the explanatory notes say, that all references to the acreage tax will be changed and the rates will be prescribed by regulation. Simply, there were two purposes in changing that part of the act in 1989: to allow the tax rate to be set by regulation and to change the name of the tax, not to levy the tax on any other properties. That was Parliament’s intent. Sean Conway, the minister under whom the bill was drafted, not the minister who introduced it, made that very clear: “... not the intention of the Liberal government.” It would be “a violation of the principles of fairness and justice ... intended”—Sean Conway, absolute and clear. But officials apply the tax nonetheless.

I think it’s a very interesting statement. “Up until 1955, and after 1991, it was the intention of the Legislature that it was legal”—a senior official in the ministry. “When talking about the provisions in the act, the legislators didn’t reflect their intent properly in the legislation.” What? An official can decide what the intent of legislators is, and it’s not reflected properly in the legislation?

It ignores the statutory provisions, it’s opposed by the explanatory notes, and it’s contradicted by this statement of a government minister under whom the bill was developed. But officials did levy the tax.

The top statement, again, is actually very interesting because there's a clear acknowledgement in that top statement that the Legislature didn't intend to tax between 1955 and 1991, but it did tax. The ministry did tax and it did confiscate properties for non-payment of the tax during that period. As a result of that confiscation, some properties were brought back to the crown that didn't belong to the crown and that the crown had no legal right to. That's part of the 1.4% of the private land. A very senior person in the political office of the minister makes it very clear: "There's an agreement, in principle, that you were not taxed correctly." And look at the second statement: "I might be more cynical than you, Mr. Ficner. What I see as the most likely explanation is the reflexive self-interest of organizations." They're "very uncomfortable with admitting that they have been wrong ... they don't want you to be the thin edge of the wedge." What does that say? "We're going to continue to tax. We're going to cover it up. We're not going to do what the Legislature said."

The consequence is that some of this land, some of the minerals were confiscated. It's part of that 1.4% and it's time for the Legislature to put it right to avoid the misleading by bureaucrats. But bureaucrats are determined. I've been at this for 20 years. This has consumed 20 years of my life. It has been a real hell; it's been abuse.

They broke the law again. I went to the Legislature: "What is your intent?" I helped draft a bill—legislative drafting staff. My member introduced it in 1991. Then, bureaucrats had a minister sign the letter that broke the privacy laws, that misused private information about me and said, "Ignore this guy. Just brush him off." And it didn't get done.

A minister recently confirmed that his ministry and another would each provide me with \$5,000 on the condition that I agree that my complaint that they broke the law has been addressed. "Officer, I'll give you \$100 if you agree that your complaint that I was speeding has been addressed." I raised this concern with the Attorney General, I raised it with the Premier. I got nowhere; I got stonewalled.

Early on, the senior lawyer from the ministry said that he would do everything in his power to ensure that the government didn't lose. What does the senior staffer say, again, in the minister's office? "It has nothing to do with ill will toward you. It has everything to do with the fact that they're trying to limit their liability; they're embarrassed. They would rather give you money and not admit it than admit it, even if it's going to cost less money to admit it." This does not look good to me. This does not look to me like what I think the Legislature, which upholds the rule of law, wants bureaucrats and officials to do.

What does the minister say? This is relating to this bill. I say, "Fix it. You broke the law. Repay the taxes. Stop taxing me. Don't tax me ever. You're not allowed." He says if the bill becomes law, I'll be able to apply to him, and upon successful application to him, he might stop taxing me and then my son and I will not be subject

to the tax that is not legally applicable in the first place. What kind of abuse is this? Is this what this Parliament intends?

What else does he say? "At my instruction, my chief of staff has twice attempted to engage you on the topic of compensation." I've made it clear: Yes, you've done immense damage to me over the last 20 years, it has cost me a lot of time, it has cost me a lot of harm, it has cost me a lot of money, but I want you to respect the law. That's what I expect of my government. I expect you to do what Parliament set out. But their concern is with how much money I want. In the bill, I can go to the minister and beg on bended knee, "Please don't tax me," and if I behave nicely, then he might not tax me. That's not protection of the law; that's arbitrary issues.

Again, a senior staffer in the political office: "You've been very fair. I appreciate that, because it would be quite understandable for you to conclude that we're just the same bunch of liars and crooks as the previous bunch"—pretty clear. But what's happening to me here?

This has broad implications. It has implications for the 1.4% of minerals that have been confiscated by the crown. That's 1.4%; it's trivial. In the south, what does the minister say? "Well, we're going to exempt it from mining companies going on it." But it's not going to return it to the landowners. It's not going to do what the Legislature said it intended in 1913, and it's not going to do what the Legislature confirmed in 1997 it would do with the minerals it owned under the Canada Company's Lands Act: It gave them back to the owner.

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

Mr. Charles Ficner: Thank you.

So, what's the solution? Change the bill. Stop the inequitable taxation. Give back the land, the minerals under that small percentage of private land. Treat them the same as the 98.6% of property owners in the south and the 99.6% of property owners in the north. Don't discriminate. Respect the charter. Stop applying the confiscatory tax. Make the act clear. Remove any ambiguity. Make it impossible for bureaucrats to go around implementing a policy that they invent to use the taxation powers of government to take property from citizens so as to give it to mining companies for nothing.

Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Bisson, you have about a minute and 30.

Mr. Gilles Bisson: I'm going to try.

I want to understand this: Your argument is that if you own mining rights, you shouldn't pay tax. Is that what the argument is?

Mr. Charles Ficner: My argument is, I own a 200-acre lot—and I came to know this in a very interesting way. I own the minerals under my land. I own it under both halves of my land. Under one half of my land, I pay no tax to the province. I pay municipal tax, like everyone else, but I pay no tax to the province. On the other half—

Mr. Gilles Bisson: I need to understand, do you have mineral rights under both halves?

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Mr. Charles Ficner: Yes, absolutely.

Mr. Gilles Bisson: All right. Carry on.

Mr. Charles Ficner: So under the one half, they have been levying the tax in a way that the act makes absolutely clear they have no right to do. They've even admitted that they had no right to do it—"Yeah, we're going to refund the tax"—in that time period. Yes, there is a very, very small percentage of private landowners, of that 98.6% of them who own the minerals, who are forced to pay this tax.

Mr. Gilles Bisson: Why do you pay tax on one half and not the other?

Mr. Charles Ficner: That's a very good question: Because the bureaucrats arbitrarily decided to do it against the law.

Mr. Gilles Bisson: Maybe the parliamentary assistant can clarify for me.

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

Mr. Michael A. Brown: I can't. I'm not clear, as you are not, why one half of the land would pay mining tax and the other half would not. We can undertake to see if we can discover that, but off the top, I don't know.

The Acting Chair (Mrs. Linda Jeffrey): Any further questions, Mr. Brown? No? Mr. Hillier.

Mr. Gilles Bisson: I move that we give Mr. Hillier extra time because he'll decipher this for me.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Bisson, I'm not going to be entertaining any more of those motions.

Mr. Randy Hillier: May I go along? I might add some clarification there.

The Acting Chair (Mrs. Linda Jeffrey): Go ahead. You have a minute and a half.

Mr. Randy Hillier: Mr. Ficner, you've mentioned in a number of your slides—obviously, I'm not going to be afforded time to have some clarification on this—senior government officials using phrases like, "We're just the same bunch of liars and crooks" and a host of different—do you have the names of those senior government officials?

Mr. Charles Ficner: There are two officials. The one in the minister's office is Eric McGoe, he's the minister's chief of staff; and the senior bureaucrat is Kevin Costante, the Deputy Minister of Northern Development and Mines.

Mr. Randy Hillier: Right. Okay. And do we know how many people are affected—I think this is one clarification that we should do: 1.4% of private lands, where the mineral rights are not held by the surface owner, have indeed reverted to the crown in many cases under the illegal levy of a mineral tax where there is no mining operation.

Mr. Charles Ficner: They did refer for the non-payment of the tax, yes. The percentage that was illegally levied I can't precisely say. But what I can say is, there is still a small percentage that is being subject to the tax, and that small percentage is extremely small. Those citizens who have tried—myself—to get it resolved—

I've been offered all sorts of deals if I keep my mouth shut.

Mr. Randy Hillier: The last comment: You said, from the minister, you've been offered money, but not to change the law, not to actually abide by the law—just take some money and don't say anything? Is that—

Mr. Charles Ficner: Well, you can see the comments. The minister's comments—you have a copy of the presentation—are pretty clear. "We're concerned about dealing with the compensation." I have a whole stack of documentation, let me assure you. Twenty years has taken a lot of my life in this.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Hillier, you can't ask any more questions. I'll let Mr. Ficner finish your answer.

Mr. Charles Ficner: I think I've said enough. What I want this committee to do is to recognize that this process, the subjecting of citizens to that tax, which generates about \$2 million of revenue across the whole province, a trivial amount, causes immense damage and harm. Stop doing it. If the properties are subject to municipal tax, don't tax them this additional provincial tax. It's dead easy.

With respect to the 1.4% that you have confiscated from the surface owners and that the crown owns, just give it back. It's dead easy. It doesn't cost the government or the parliament a cent and it ensures that every citizen is treated absolutely equally under the law—that they can have the protections guaranteed in their deed for the quiet possession of their property for their sole and only use forever, not subject to the potential of being taxed exorbitantly or forced to suffer a mining company at some future date coming on to their land. The bill says that you will not allow the mining companies to go onto that land any longer. Why not do the full measure? Give the minerals back.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. Ficner. We appreciate it.

CPAWS WILDLANDS LEAGUE

The Acting Chair (Mrs. Linda Jeffrey): Our last delegation this morning is CPAWS Wildlands League, Janet Sumner and Anna Baggio. Have I pronounced that right? Baggio, is that right?

Ms. Anna Baggio: That's good, close enough.

The Acting Chair (Mrs. Linda Jeffrey): Close enough. Okay. Good morning and welcome. I know you were here earlier this morning but I will go through my preamble. If you're both going to speak, if you could state your name and the organization you speak for before you begin. You'll have 15 minutes; I will give you a one-minute warning if you get that close to the time. Whenever you're ready to begin, you have 15 minutes, and we'll be asking questions afterwards.

Ms. Janet Sumner: Thank you, Chair and committee members, for the opportunity to speak before you about Bill 173 and Bill 191. My name is Janet Sumner and I am the executive director of CPAWS Wildlands League.

Today, I am accompanied by Anna Baggio, Wildlands League director of conservation and land use planning.

Wildlands League is a leading not-for-profit environmental organization in Ontario. We combine credible science and visionary solutions to save, protect and enhance Ontario's wilderness areas. As a solutions group, we have a long history of working in partnership with industry, government, First Nations and citizens. For example, we have relationships with over 15 First Nations in the far north. We are honoured to have a good relationship with the Mushkegowuk Tribal Council, for example, and several months ago we supported a recent council resolution on land use planning and environmental assessment and consent. Last year we hired a bilingual Oji-Cree-speaking mining coordinator from the far north to reach out to communities about mining issues.

We believe that the First Nations communities who live in the far north should have a say in how traditional lands will be planned for and managed. We also have worked with the Ontario Prospectors Association to disentangle protected areas from mineral tenure. In fact, in this part of Ontario we worked with the First Nations, Ontario Prospectors Association, the forest industry, various provincial ministries and others on the Woman River Complex conservation reserve. Due to a mapping error, a proposed protected area overlapped with patent lands. We all worked together to fix this problem and agreed on new protected-areas recommendations.

We believe in the art of the possible, and reaching out to unlikely allies gives us the best opportunity to create long-lasting policy solutions that are in the best public interest. Wildlands League has an active interest in both Bill 173 and Bill 191. We will be speaking to both today.

I now ask my colleague Anna Baggio to speak on the Mining Amendment Act before I share our comments on the Far North Act.

Ms. Anna Baggio: Thanks, Janet. We welcome the opportunity today to provide comments on proposed legislative amendments to Ontario's Mining Act to reflect modern-day values associated with our public lands, alleviate land use conflicts and to protect the public interest.

On April 30, 2009, Wildlands League was pleased to see several changes proposed by Minister Gravelle with respect to Ontario's Mining Act. In particular, we believe there is potential in the proposed new dispute resolution process for aboriginal-related issues to mining, withdrawals of areas that are culturally significant and an increased regulatory system for exploration. Bill 173 also proposes to enshrine in law the requirement for approved community land use plans prior to the opening of new mines in the far north. This is precedent-setting, and we look forward to working with MNDMF and MNR on operationalizing this requirement. Overall, we'd like to recognize the minister and his staff for working diligently to find creative solutions to seemingly intractable problems.

After reading Bill 173, there are several areas where significant improvements are needed to the bill in order

to reflect a modernization of the law. Below, we list six areas where improvements are needed. These are: consent of aboriginal peoples, prioritizing land use planning, environmental assessment, improved permitting, sufficient rules for uranium mining, and financial security for 100% of the cleanup costs.

In the interest of being brief and expedient, I will just provide three examples of the types of changes we'd like to see in Bill 173. We've already given a full description of these changes to the EBR and will be submitting a full description to this committee as well.

With respect to the consent of aboriginal peoples, Wildlands League supports the UN Declaration on the Rights of Indigenous Peoples, which mandates that First Nations provide free, prior and informed consent to any activity that may impact their interests. In relation to the handing out of exploration plans and permits, we suggest that the director of exploration plans and permits consider whether aboriginal community consent has been obtained, which may include consideration of any arrangements that have been made with aboriginal communities affected by the exploration.

With respect to the proposed dispute resolution mechanism, we recommend that aboriginal communities have a role in choosing individuals responsible for dispute resolution processes. Our recommendation for some new language would go as follows: "The minister shall designate the individuals or body under subsection (1) only if the aboriginal community agrees to the individual or members of the body being considered by the minister for designation."

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Finally, I'd like to turn your attention to the lack of environmental assessment for mining activities in Ontario.

We remain concerned that mining activities in Ontario are exempt from environmental assessment. Recently the Ministry of the Environment granted MNDM's request for extensions of the two declaration orders that exempt mining activities from environmental assessment. We suggest that the committee look at the lack of environmental assessment and consider that these two declaration orders, namely MNDM-3 and MNDM-4, which expire on December 31, 2012, not be extended or renewed by the minister.

Ms. Janet Sumner: We also welcome the opportunity to provide comments on Bill 191, An Act with respect to land use planning and protection in the Far North.

Wildlands League has a long history on and interest in this file. We congratulated the Premier on this precedent-setting announcement last year and we continue to offer our enthusiastic support for the Premier's vision.

Most recently, we sat on the Minister of Natural Resources's far north planning advisory council and worked with our colleagues in industry and other groups to produce sound consensus advice for the minister. The council submitted its advice to the minister in March 2009. CPAWS Wildlands League stands by the recommendations of the far north advisory council.

Bill 191, in its current form, however, does not give life to the incredible vision and commitment made by the Premier. It also doesn't reflect the fulsome consensus advice provided by the council in March or the aspirations of First Nations as indicated recently in a letter to the Premier by Grand Chief Stan Beardy of NAN.

As council noted in its advice, this initiative "has the potential to transform this unique region in a number of ... ways that would make it a precedent-setting model for the world:

"(a) to provide the people who live in the region with an active decision-making role over planning their own future;

"(b) to establish an internationally significant, connected network of culturally and ecologically important protected lands and waters within a still-intact boreal region of our world, which is experiencing global climate change;

"(c) to accomplish long-term economic prosperity for northern communities based on the best environmental practices by business, and a new government-to-government resource-benefit sharing regime."

It is in the best interests of all Ontarians that Bill 191 be substantially changed in order to fulfill the incredible vision laid out by the Premier and to make it truly precedent-setting for the world. We want to see this bill substantively improved, not withdrawn, as others have recommended.

Here is a summary of some of our key recommendations.

Institute a new, independent board, as the far north advisory council recommended, to be made up of provincial and First Nation appointees, to oversee the implementation of the far north planning process. This independent board would approve local plans, coordinate the development of a regional strategy and integrate the broad-scale strategy at the local level. It would aid in dispute resolution and disburse funds in an open and transparent manner.

Close the loophole that allows transmission lines and roads to proceed ahead of land use planning. Unplanned and ill-considered transmission lines and roads could lead to permanent fragmentation and ecological harm to the intact northern boreal region. At the very least, the independent board should be mandated to coordinate the planning of transmission lines and accompanying roads at the landscape level.

Make it clear that First Nations will be enabled to establish and manage a permanent network of interconnected protected areas—areas free, essentially, of industrial development. That would be consistent with the Premier's vision.

Adequately resource this initiative. We support the far north advisory council recommendation of a new investment of \$100 million over five years. If you're going to plan 43% of the province, you'd better put your money where your planning is. This initiative will fail if it is not properly resourced. We know that of the \$30 million originally dedicated to this initiative, two thirds

went to MNR and only one third is dedicated to enable community planning over four years. This means that, to date, the province has allocated approximately \$10 million over four years to plan for 45 million hectares, or 43% of the province. The lack of resources is seriously impeding the province's ability to deliver the Premier's spectacular vision. It is also not inspiring confidence in its key stakeholders or the First Nations people who live there.

Outline in legislation the functions that a far north science committee shall perform to support implementation of the Premier's announcement.

Thank you for your time today.

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

Mr. Michael A. Brown: Thank you for appearing and helping us with these two issues.

I want to speak first to 191, which is in first reading; an unusual but not totally unique process, but we usually as a Legislature do not conduct public hearings after first reading. It is our hope, and I will tell you this, that after second reading—if it gets second reading, because no one should ever presume that—there will be another set of hearings and I appreciate your direct recommendations that might help us.

One of the questions I have been asking, though, about this—you're suggesting in 191 that there be a planning council that would coordinate the various planning activities of First Nations within the area. One of the problems I see and I think others see is that each First Nation tells us that they do not cede the responsibility to anyone to do that planning. Have you got some views on how we could work with the First Nations to make sure we have a coordinated plan?

Ms. Janet Sumner: Yes. I mean, this planning board would be made up of both First Nations representatives and government, so it would not be out of the hands of First Nations, number one. There are different scales or levels of planning. When you're planning for a road infrastructure that is going to crisscross several First Nations, you would want to make sure that it was a coordinated plan, that there was consideration across that full watershed or that regional area where you would be contemplating that. Same thing with large-scale transmission corridors, those kinds of things. You would need to have that kind of coordination. That even goes to coordination that happens between different types of land uses.

Right now, in the absence of any kind of planning act, what's happening is mining is going forward, but is that compromising where you might want to put hydro development? Those two things are happening in separate ministries, so that's another reason to create some kind of a planning board, that it actually will be cross-ministerial and looking at the planning that's happening, which could actually be compromising not just natural values but also industrial and economic values.

It's very true that we believe that the First Nations should be leading the planning for their communities and

that's another level of planning. It's really where you put the level and the onus and what responsibility, so when you're doing those large scales, it's not that the individual community is not part of that, just in the same way that Mushkegowuk is working because they're looking at a regional level. It doesn't mean that their local communities are not actually doing any planning; they are, very much so.

Mr. Michael A. Brown: We had presentations earlier in the week from First Nations that are very close to finalizing their land use planning. The other issue we have, I suppose, is that there are various levels of work that have been done to this point. So you see this planning council or advisory council as a way of bringing everyone along with the same result, I guess?

Ms. Janet Sumner: There are many communities that are further along and some that aren't as far along and they're choosing their own path. I know some communities that really want to engage in a mapping out, a full exercise; they're not rushed, they don't want to move forward on mining right away. They're interested in taking a slow and very deliberate approach. There are others—we've worked with Constance Lake, which is interested in moving forward on a land use plan but they're also interested in moving forward on a mine. We get that and we think there needs to be some dovetailing of where those processes are; you can't ignore that.

Mr. Michael A. Brown: Thank you.

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

Mr. Jerry J. Ouellette: Thank you for your presentation. On page 1 of your presentation you state, "We believe that the communities who live in the far north should have a say in how traditional lands will be planned for and managed." We've heard, both at the committee level and outside the committee, that a large number of the First Nations communities are opposed to the 225,000 kilometres of protected area. How do you feel about that? Should they be able to shut down those 225,000 square kilometres?

Ms. Anna Baggio: In terms of how we envision the 225,000 square kilometres, that's a vision that was put forward by the Premier. In terms of how we see it being implemented, we know that First Nations want to protect their lands and we know First Nations want to develop parts of their lands as well. How we see that being implemented or how we envisioned it is that First Nations would actually be designating the lands they want protected and designating the lands where they want development. When we actually sit down with First Nations and look at how they want to take care of their lands, and when we look at the experience across Canada, they actually end up protecting quite a large portion of these lands because it's so integral to their culture and their survival. So we have a lot of faith that when First Nations are able to do the planning on their own without being encumbered by other interests or even our own interest, they'll do a fair job. We think that if the province sits with the First Nations together in a shared decision-

making format, that vision will likely be exceeded because of the ties that the First Nations have to the land.

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Mr. Jerry J. Ouellette: The previous legislation that has passed in the House gives the Minister of Energy the authority to develop hydro development in protected areas. How do you think that would play out, having a minister not responsible for natural resources making decisions about how you could move forward with developing hydro development in, say, the 225,000 square kilometres?

Ms. Janet Sumner: That's in the parks act, and we worked on the parks act as well. What it says is that you can do hydro development in lands that are without other industrial footprint specifically for the use of First Nations, so those two things are not inconsistent. The Premier's vision was to have conservation lands without a significant industrial footprint. When it is for a community, for example, that's trying to get off of diesel and they want to have hydroelectric development, that's not going to be inconsistent with that vision.

Mr. Jerry J. Ouellette: You also mentioned the \$100 million in funds needed but you don't really give a breakdown, because currently the problem is that two thirds have gone to the government agencies to use that. Do you have a breakdown of the \$100 million and how you feel that should unfold throughout the communities?

Ms. Janet Sumner: Yes. In terms of the \$100 million, not necessarily a breakdown per se, but rather that that would flow through this independent board or planning body that would be constituted of First Nations and government, so they would decide how that would be distributed and it would be an open and above-board process. Presumably, if First Nations are participating in that, they would have a say in how that \$100 million was to be distributed, whether it was to go for more scientific research or more aboriginal knowledge, traditional knowledge, or it was to be for specific communities to do planning, rather than the current situation, where you find somebody like the Grand Chief Stan Louttit going to the government, saying, "I'd really like to get this planning going. Can we really get it going? Come on." It's on this individual project basis and you have all this piecemeal stuff where the northern Ontario heritage fund is funding road infrastructure, but nobody is funding the land use planning that needs to be ahead of that.

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

Mr. Gilles Bisson: Just a simple question up front, then a couple after: Do you support Bill 173 in its current form?

Ms. Janet Sumner: We've made some very substantive recommendations on changes, so we'd like to see those changes.

Mr. Gilles Bisson: And the same thing under Bill 191.

Ms. Janet Sumner: Yes.

Mr. Gilles Bisson: Okay. Now, you made a comment in your presentation in regard to no road or hydroelectric transmission corridors being allowed until—I take it what

you're saying is until the land use plans are put in place. Considering that Mushkegowuk Council, as you know, is working towards getting a road, have you had the discussion with them in regard to how they feel about that?

Ms. Anna Baggio: We've spoken about roads a lot over the years with the communities. It's not one 15-minute conversation; we've spoken about roads a lot. See, in order to actually construct the road network, you have to sit down and plan for it across the large scale anyway, so if they have to do that anyway, why don't they just formalize it and have the board facilitate a process where they bring all these communities together in a cross-ministerial way that's going to make sense, instead of having this ad hoc "I'm going to punch a road here, punch a road there"? These linear disturbances are so detrimental from an ecological perspective, and they're permanent. Once you punch a road through, it causes all other kinds of development to come through—transmission lines. You can't fix that mistake if you put it in the wrong spot. For us, it's not about stopping those lines; it's about making sure they go in the right spot so that we're taking into account things like cultural areas, watersheds, you name it.

Mr. Gilles Bisson: But if First Nations are in the driver's seat when it comes to determining where the road is, is that sufficient comfort?

Ms. Janet Sumner: I'll take that one. I think there's also—we might look at land use planning; there's a final product. You can look at many First Nations that are developing their land use plans, and is it ever final? There are going to be different stages in which you're going to be able to say, "Do you know what? We're really comfortable. We've looked at the options here. We know that we'd like to move forward on this hydro development," or "We've decided that these are where the burial grounds are and we know that we want to withdraw those from mining." So there would be some clear decision points where you've looked at things. I think roads are like that.

But at the same time, you really need to have that regional look. I know Mushkegowuk has been trying its best, but right now nobody's been funding the land use planning, and that's where we have to make sure—they're going after the funding for the roads planning because it exists. Nobody is really giving the money out to actually complete the land use plans or expediting it, or saying those two things are tied. It's because we don't have a planning act that that's happening.

Mr. Gilles Bisson: But also because they want a road.

Ms. Janet Sumner: Yes, but if they had money to do the land use planning, would they perhaps not be doing that as well? I know the grand chief has been in there asking for the money to do that.

Mr. Gilles Bisson: The other thing is that—

The Acting Chair (Mrs. Linda Jeffrey): It'll be a really quick question.

Mr. Gilles Bisson: It's hard to do; it's all around permitting. So we'll have the conversation as we draft amendments.

Ms. Janet Sumner: Okay.

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

Committee, we're in recess right now. It's a quarter after 12. You have 45 minutes for lunch. We'll be starting promptly at 1 o'clock.

The committee recessed from 1215 to 1302.

The Acting Chair (Mrs. Linda Jeffrey): We're reconvening general government. This is our afternoon portion, discussing—

Mr. Gilles Bisson: Point of order—

The Acting Chair (Mrs. Linda Jeffrey): After I read this.

We're discussing 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. Bisson.

Mr. Gilles Bisson: I just got notification from one of the prospectors that Mr. Dave Munier would like to present, if we could add him at the end of the presenters, please.

The Acting Chair (Mrs. Linda Jeffrey): I think we need to have a discussion amongst the committee about that.

Mr. Gilles Bisson: The subcommittee decided that anybody who was here would be able to present, that we'd put them on.

The Acting Chair (Mrs. Linda Jeffrey): All right. Is there any discussion about that? Mr. Brown.

Mr. Michael A. Brown: I have a fairly tight time frame in terms of flights this afternoon—that's the only issue I have. I need to be able to get to Pearson to catch another flight.

Mr. Gilles Bisson: Are you going to the NDP convention?

Mr. Michael A. Brown: Is there one?

Mr. Gilles Bisson: A federal one, yes.

Mr. Michael A. Brown: What closet is that in?

Interjection.

Mr. Michael A. Brown: No, I don't know what—

Mr. Gilles Bisson: He's not requiring a lot of time. We'd be done by about 2:45.

Mr. Michael A. Brown: I would like to hear him. I'm just wondering, do we—

The Acting Chair (Mrs. Linda Jeffrey): So there's a willingness to hear an additional delegation?

Mr. Michael A. Brown: Isn't there a space this afternoon?

The Acting Chair (Mrs. Linda Jeffrey): We have one person who has presented this morning who could technically—

Mr. Michael A. Brown: So there is an opening in the schedule. What I'm saying is, rather than waiting until the end—

The Acting Chair (Mrs. Linda Jeffrey): No, we just push everybody up.

Mr. Michael A. Brown: Push everybody up, if they're here. So at 2 o'clock we could hear him for a—

The Acting Chair (Mrs. Linda Jeffrey): We'll work it out. You don't need to worry about the time. Who are you adding, Mr. Bisson?

Mr. Gilles Bisson: Mr. Dave Munier.

The Acting Chair (Mrs. Linda Jeffrey): Okay. He'll be added to the schedule. I presume he's here in the building?

Mr. Gilles Bisson: Yes.

The Acting Chair (Mrs. Linda Jeffrey): Okay, great. Really, what he should be doing is waiting in the audience, because we're going to try to move through the others, and nobody's on exactly where they said they were going to be.

NORTHWATCH

The Acting Chair (Mrs. Linda Jeffrey): Our first delegation is from Northwatch. Is that you?

Ms. Brennain Lloyd: That's me.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Everything is changing; I'm never sure who I have in front of me.

Thank you for coming. We appreciate you being here, and you have 15 minutes to make your presentation. I will give you a one-minute warning if you get close to the 15-minute mark. Whenever you're ready to begin, if you could state your name and the organization you speak for, and then you'll have 15 minutes. Afterwards, we'll ask questions.

Ms. Brennain Lloyd: Thank you, Madam Chair and members of the committee. My name is Brennain Lloyd, and I'm here representing Northwatch. Northwatch is a regional coalition in northeastern Ontario. We've been around for about 20 years and we work on regional issues from a northeastern Ontario perspective, primarily related to land use and natural resource planning: mining; forestry; energy issues; electricity issues; waste from time to time, particularly if there are proponents from outside the region seeking to make a project in northeastern Ontario for imported waste.

We have an extensive history working on mining issues, both project review and policy review. We were part of the leadership council of the Whitehorse Mining Initiative in the mid-1980s and are represented on the minister's Mining Act advisory committee for the Ministry of Northern Development and Mines in Ontario. We also participate in a number of different federal initiatives related to mining and mine remediation, including the National Orphaned/Abandoned Mines Initiative, of which I'm a member of the steering committee.

I'm pleased to be here this afternoon and speak to you about this important bill, Bill 173. Bill 173 reflects both Northwatch's assessment of what changes are required, but also reflects the expectations of the people of Ontario that I think flow from the commitments made by the Premier of Ontario and the minister about a year ago, during the summer of 2008. The minister, in his July 14 statements, committed to create a resource benefit-sharing system related to mining revenues and also to

review and revive, reform and modernize Ontario's Mining Act. A discussion paper was released on August 11, just over a year ago, discussing the modernization of the Mining Act.

I think that these commitments quite rightfully created an expectation among the people of Ontario that our Mining Act would be truly modernized. I think that some of the language in the Mining Act was appropriately describing those expectations that it would create a sustainable and socially appropriate mining regime, and certainly environmental responsibility would be part of that. We, however, found the scope of the discussion paper last year to be quite narrow. It really focused primarily on the exploration stage, and while certainly the exploration stage might be the part of the mining sequence that is least regulated and so perhaps most in need of reform, we think that if you are going to truly modernize the Mining Act, there were other key sections of the act that need attention as well. We have provided those in our comments on the discussion paper but have yet to see them reflected in the output of that public consultation and review process from last summer.

In a broad sense, Bill 173 does represent modest progress towards the modernization of mining in Ontario, but it's simply not enough progress and certainly doesn't match the expectations or the commitments made last year by the Premier and by the minister. The extent of the improvements is yet to be determined, because much of what is to be delivered through Bill 173 will actually be delivered in regulations. Those have not yet been drafted, and so we still can't assess, at the point when we're before committee, what the effectiveness of this act is truly going to be because we don't yet know what's in regulations. It is largely a set of enabling revisions that we're seeing. Certainly the ones that we're more positive about are changes that enable further change, but we don't know what those regulations are going to look like and so how satisfied we'll be and how close they will come to actually modernizing the Mining Act for Ontario, but also, more importantly, modernizing mining in Ontario. That's really the focus.

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There are two key areas of improvement in Bill 173. One is the improvement of the requirements for exploration plans and permits, as outlined in section 78. That's a very important set of improvements. It's a very important change, but it is the change that is perhaps the most mysterious because its delivery, its effectiveness, is going to rest almost entirely on what is in the regulations that are yet to be written.

Another very important area of improvement was the amendment of the act including the purpose, and in its purpose to require that, "prospecting, staking and exploration for the development of mineral resources"—and I quote from Bill 173—be conducted "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..." It's a very important change, and we applaud the government

for making that change. We're not sure yet that we see the commitment that changes made by including those statements in the act will actually be operationalized, so it's another area still to be seen.

Our review of Bill 173 includes a review of the progress made on our recommendations provided in 2008 in response to the discussion paper, as well as a section-by-section review on key elements in the bill. What I've provided for you today is a preliminary draft; it's not yet comprehensive. We'll be making a final submission for the September 4 deadline.

We have looked at the act through those two lenses, one taking a progress report approach, viewing the changes proposed through Bill 173 by comparing them to the recommendations that we made last year in response to the discussion paper, and that's outlined for you in pages through to about 6 of the submission that I provided for you. As you'll see, there has been progress, but progress has been modest. One of our key recommendations was that the permitting system must be established for early exploration activities. This is authorized by section 78, and as I've said is one of the areas that we view very positively in Bill 173. But again, the effectiveness of this section will be determined and decided by what actually makes it into regulation.

We also recommended that inventories of natural, cultural and social values be made when a claim is first staked, before there's any exploration activity, before there's any disturbance of the site, before any of those values are lost, be they cultural, natural heritage, ecological, social values. We don't see that there. It could potentially be included in the regulations that are to be developed.

Following section 78, we're concerned that the bill is not specific enough in its direction to actually enable those requirements to be delivered in regulation. We're not sure. I'm not a lawyer. Perhaps legal can give some advice on that, but at this point it's an unknown.

We had also really looked to see shared decision-making processes with First Nations, and those must be developed on a government-to-government basis. Those changes to the purpose of the act, and that recognition of aboriginal and treaty rights in the constitutional enshrinement of those rights, suggests that we should see progress in that direction, but again, we don't see it operationalized.

The revenue sharing with aboriginal peoples, or, as the city of Sudbury strongly promoted during the consultations on the discussion paper last year, revenue sharing with municipalities, with all communities: We simply don't see them there.

We had also made specific recommendations around rehabilitation plans, which could, again, be delivered through regulations under section 78. It's an unknown.

Public consultation is a very important element of mining project review. It's minimal in terms of how the current version of the act requires public consultation. We don't see any improvements in that and we don't see any particular specific note in section 78 that ensures that

there will be public consultation and public review opportunities during the development of exploration permits and plans. We think that's a high-level priority.

There are a number of recommendations we made on land use planning in the north which potentially are being met by Bill 191, but again, only potentially.

There were also important elements that were missing from the review. This is what's required if we're going to truly modernize mining in Ontario. We have to take a more comprehensive approach than was done either in the discussion paper or in Bill 173. In particular, I would point to a short list of areas. Financial assurances came into Ontario in the mid- to late 1990s. We've been working with them for a decade. There's a low level of public confidence around the system that we have in place. It needed to be reviewed. That wasn't included in either the review of last year or reflected in Bill 173.

Exit tickets are a new mechanism—well, a decade old, but relatively new. Exit tickets were introduced in the changes to the Mining Act in the mid-1990s. The criteria for determining the basis for providing an exit ticket, allowing a company to turn its properties back—there are no criteria in existence. There has only been one application for surrender of land under this subsection—subsection 183(1) of the current act—and there were no criteria available. From what we could determine at that time, largely in discussions with Ministry of Northern Development and Mines staff, there was no guidance document available to them. In the end, the fee that was proposed to the proponent was the amount of money that would be required to maintain the fencing around an open hole in the ground that had developed after a crown pillar collapsed post-closure. After the closure plan had identified that the ground was stable, the ground collapsed, and the fence was put up. The fees required are to maintain the fencing. There is nothing to deal with the chemical instability, the physical instability of the site.

We recommended that public consultation requirements had to be improved. Mining reporting requirements that were removed or reduced over the last decade—there's no longer a requirement for annual reports. That's an important gap that should be closed.

Right now, we have an approval process. We have a number of different ministries—the Ministry of Northern Development and Mines, the Ministry of the Environment, the Ministry of Natural Resources all have different pieces of the approval process. There's not a coordinated approach—certainly not a coordinated approach in the public consultation, in the public review aspects of the permitting processes. We've actually seen mine proposals that changed from the Ministry of the Environment sewage works application for a certificate of approval to the Ministry of Northern Development and Mines' closure plans. Important aspects of the mining project changed. That's problematic. Perhaps it can't be fixed through a single change to the Mining Act, but a coordinated approach is required and necessary if we're going to truly modernize mining in Ontario.

The section-by-section review of Bill 173—we note with concern that the definition of inspector has been

removed. There has been a new section added later in the act in, I believe, part X of the act. That removal of the definition, I think, undermines section 78.3 in particular. The rationale provided to us for that removal of the definition of inspector was because it related solely to section 75. I think section 78.3 also relied on that definition.

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The purpose of the act—I've already spoken to this in a couple of points—really should be to regulate rather than to encourage mining, prospecting and mineral development. We have other instruments for encouraging mining. The purpose of the act should be to regulate, to govern, to oversee. But to encourage—

The Acting Chair (Mrs. Linda Jeffrey): Ms. Lloyd, you have less than a minute left.

Ms. Brennain Lloyd: Thank you.

Other important changes: We support the changes to section 78 but we think that the effectiveness of this section is still unknown. It needs to include requirements for public consultation, and it doesn't clearly identify the requirements for environmental protection, inventories, baseline studies and remediation.

We support the addition of the section on inspection but, as noted, feel that it still needs to be supported by the definitions section.

Finally, the subsection in part XIV, "Far north," on "No new mines": This section undermines itself. Really, what it says on reading is, "No new mine unless there's a new mine," because this includes an ability for an order in council to actually approve a mine in the far north prior to the completion of a land use plan, by order in council, if it's in the economic interests of the people of Ontario. I think that really undermines the bill and really is in stark contrast to the commitments of the Premier and the minister last year.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Bisson, you have a minute and a half.

Mr. Gilles Bisson: I want to thank you for what is a pretty in-depth look at the legislation. Excuse me; I've got a bit of a cold here.

Where to start? In the affirmation clause, you're making the point that you see this as good but it's lacking in detail. What I take it you're arguing is that there's nothing wrong with inserting that in the legislation but there needs to be more detail about what that right means. Can you elaborate on that a bit?

Ms. Brennain Lloyd: Yes. I think we all understand that legislation enables and regulations operationalize. But whether or not this legislation has enough enablement to actually make good the commitments now inserted into the purposes, and how it's going to be operationalized in the regulations—I don't see that.

Some examples of other gaps we've identified: the absence of any commitment to revenue sharing. I think those are key omissions. It's good to have the commitment, but commitments are only commitments on paper unless they're operationalized.

Mr. Gilles Bisson: In regard to the exploration permits, the argument you make is that there have been gaps

between what was given in a permit and what actually ended up being in the closure plan at the end. We hear mining outfits that come before us, and others, who say that at times, conditions change. How should you deal with change without making it too onerous?

Ms. Brennain Lloyd: The difference I was referring to was a mine that, in one of their permitting documents, said they were going to process the ore in Sudbury, and one of their permitting documents said they were going to process the ore in Timmins. I think that's a significant difference in a mine project. They were described differently in two permitting documents for two different ministries.

I think that some of the concern of the exploration industry is that they don't want to be too specific in their exploration plans because they might want to change their minds in the field. We hear that from the forest industry as well, and they found ways to deal with it. So I think the mining industry can find ways, the exploration sector can find ways, to deal with that. I think that you need to know what's in the field, to ensure that you're not going to lose what's in the field from an environmental and ecological perspective.

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

Mr. Michael A. Brown: Thank you, Madam Chair. Obviously, good to see you again, Ms. Lloyd.

Ms. Brennain Lloyd: Thank you.

Mr. Michael A. Brown: You have provided us with a very comprehensive document that I haven't quite digested yet. I think our officials need to have a good look at the points you make as you go through and identify specific improvements that might be made to the legislation.

I would just tell you, of course, that Bill 191, the Far North Act, is in first reading and the reason for that is to come out and hear what people have to say so that we have two opportunities to make changes to it. One would be now, before it goes back to the Legislature for second reading, and if it succeeds at second reading, to do it again, to see if we've gotten it right. I just want to throw that out to you so you'll recognize that there's at least a second kick at that particular cat.

Ongoing, as you point out, the operational side of this is in regulation, and we're hoping there continues to be a dialogue on how we provide the regulations within this act.

I don't particularly have a question, because you've put so much in front of me I'm not quite sure what to ask—other than to point out that we need some kind of transition period, especially in the 191 area, to provide for communities that have not gotten to the state of having their land use plan totally done and yet have identified a project as being one that they would want to go ahead—

The Acting Chair (Mrs. Linda Jeffrey): Mr. Brown, could you get to the question, please?

Mr. Michael A. Brown: So if you understand, that's about transition rather than trying to negate the act.

Ms. Brennain Lloyd: I understand it's potentially about transition and it's potentially about overriding, and it's impossible to tell at this point which it's going to be. I think if I had another 15 minutes I could talk about Bill 191, but I will say it suffers from some of the same shortcomings as the far north section of Bill 173. It has that same tone of, "No new mine unless there's a new mine. No mining unless there's mining."

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

Mr. Randy Hillier: We all recognize the value of mining, especially in the north. Indeed, this city and this resort and places might not be here if it wasn't for mining and probably none of us would be attending these meetings at all. So I was a little bit taken aback when your statement was that this bill ought to regulate and not encourage mining. Of course, if we're not going to encourage, then the only conclusion is that we're there to discourage mining through regulation. These amendments that you're proposing: Is it the intent to discourage mining in the north and prevent that development of prosperity and jobs in this area?

Ms. Brennain Lloyd: Absolutely not. I don't think the act should discourage mining either. It should be neutral. There are other instruments for encouraging mining. We have subsidies available. There are other mechanisms of government that provide that encouragement. We're certainly very aware of the importance of the mining sector and the importance of having a very stable and long-term mining industry in northeastern Ontario. We've certainly suffered some difficult times when they've gone out quickly and other projects have proposed to fill the gap. So we're very much not intending to discourage or reduce the presence of mining; we're intending to encourage responsible mining and encourage government to play the role of regulator in this piece of legislation.

Mr. Randy Hillier: So you're suggesting that it should be, instead of a streamlined and effective model that would encourage mining through subsidies or things of that nature—that we'd be better off to encourage mining instead of a streamlined process?

Ms. Brennain Lloyd: No, I'm saying those are other mechanisms that are already in place. I think a streamlined and effective mining regulatory regime can be exactly that: streamlined and effective. You don't have to trade off efficiency for effectiveness.

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

OTTAWA COALITION AGAINST MINING URANIUM

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is the Ottawa Coalition Against Mining Uranium. Is Mr. David Gill here? Welcome. Thank you for being here. I know you've been here for a little while, but I'll still go through my preamble as you get yourself seated, because we do have some new delegations. You'll

have 15 minutes. I will give you a one-minute warning before you get to the 15-minute mark, should you get there, and there'll be an opportunity for questions. If you could state your name and the organization you speak for, you can begin whenever you're ready.

Mr. David Gill: My name is David Gill. I'm here to speak on behalf of the Ottawa Coalition Against Mining Uranium. This coalition exists in the city of Ottawa.

I'd like to say thank you for the opportunity to speak on Bill 173. I want to make it clear that—a lot of people have taken a lot of time to do a lot of analysis, to take a look at submitting some of our own time, our own lives and resources, to try to make Ontario better, because this is about trying to get good law and good legislation.

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OCAMU, the Ottawa Coalition Against Mining Uranium, came about primarily because of the Frontenac Ventures mess in Frontenac county. I live in Frontenac county, Central Frontenac. I also have a home in Ottawa because I work in Ottawa. I'm an economist and I work for the Treasury Board of Canada.

This problem that happened in Central Frontenac with staking of a large area of private and crown land for the purpose of uranium got a lot of people pretty upset. I was part of that group that was upset. I started to do some research about uranium. Of course, uranium is a pretty sexy kind of thing and it does get people upset because it relates to nuclear and radiation and all of that. But the more we started to really understand what was really going on in the situation, we recognized that it was perfectly legal for Frontenac Ventures to do what they did.

I joined with several people in my community. My neighbours are the Shabot Obaadjiwaan Algonquin and the Ardoch Algonquin. I joined with them to protest this. In fact, I was behind the barricade quite a bit during that time and I came to know Bob Lovelace and Chief Doreen Davis very well, and I realized they were honourable people trying to represent their communities. I had the honour of canoeing from the headwaters of the Mississippi to carry water down to Ottawa, right to the Ottawa Parliament building, to show that the water flows from where they wanted to put tailings, into Crotch Lake in our area there, and this was potentially going to be a health risk to the city of Ottawa.

That's how the Ottawa Coalition Against Mining Uranium came about. Lots of people started to hear about this after that canoe protest, and I'm happy to say that several municipal councillors in Ottawa joined with us and put forward a petition to the city of Ottawa, where several people from many communities around, of all ethnicities, came together to present to the Ottawa city council. They passed a resolution on February 27, 2008, to petition the government of Ontario for a moratorium on uranium mining in eastern Ontario. There was a unanimous decision to do that. That letter went to the province of Ontario and, as I understand it, there hasn't even been the common courtesy of a response. Kingston, another fairly large municipality, did the same thing:

passed a resolution asking for a moratorium—and Peterborough. I understand some 24 different municipal-level governments and townships joined together and asked for a moratorium on uranium mining.

Now, what happened is, we started to realize that it wasn't the uranium so much that was the issue; it was the way municipal governments interact with the provincial level of government and the total ignoring of the requests that were being made. So OCAMU, the Ottawa Coalition Against Mining Uranium, joined a coalition called CBMAR, the Coalition for Balanced Mining Act Reform, because we recognized that the Mining Act itself was very much part of the problem.

It's my understanding that as early as 2004—perhaps 2005; I don't have the exact date—the Association of Municipalities of Ontario in fact put forward something to recommend to the province, something that grasped the attention of the Coalition for Balanced Mining Act Reform, and we called this our modest proposal one. You've heard some fairly in-depth problems about reunification of surface and subsurface rights. As my understanding goes, this has been completely ignored by the province and has not been related or reflected in any of the wording of Bill 173. Ottawa, Kingston, Peterborough, Perth, North Frontenac, Central Frontenac, South Frontenac, Haliburton and umpteen others have all been asking for these developments in the legislation to try to give them some real opportunities to do proper land use planning.

We know mining is important, okay? There's no need to be defensive, people in Timmins. I've spoken to some geologists and they seem to think that we're all against mining. Of course we know that metals and minerals support our modern society, and the consumerism that we all are part of, yes, is either going to kill us or it's going to send us out into space one day, one or the other, but we're not against mining. We need the materials that come from mining. But with all due respect to one-horse economies or mining economy towns—and it's a venerable profession that Canada historically has been involved with, prospecting and mining—we have to be very aware and you have to be very aware that of all the people who have jobs, 500 times more people in this province are not employed in mining, not in the mining sector at all.

Yes, of course, I'm an economist; I understand there's an echo effect and lots of other jobs come from a sector like mining and vice versa. Their rights, the people who aren't involved in mining, must be considered and protected. It may be perfectly reasonable to have good, fair, responsible mining going on in a community, but I think communities know whether that's the right thing for them or not. This relationship of the municipal level government to the provincial government is what we have asked for in our second proposal. We want to have community-based, municipal-based land use planning respected by the province. We need to have this written into the bill. If you're going to ask me for wording of the bill, yes, we'd be very happy to provide wording to the

bill. We probably will submit a more detailed submission to the EBR, but the last time that stuff went into the EBR, I'm not sure if anybody read it because you ignored everything when you drafted this bill.

Let me say that community-based land use planning in the north has been put on the table in Bill 173. I think it's an extremely good idea, and if it's good for the north, why is it not good for the south and for the near north? It's true, there aren't that many places that are incorporated townships in the north. Well, there are communities that have interest in their lands and their traditional territories. This is not entirely an aboriginal issue, a First Nations issue. I stand shoulder to shoulder with my First Nations neighbours and I'm prepared to listen to their concerns about their relationship to the land, but I want to speak for my people. I want to speak for the people who I represent in OCAMU from all over the place, settlers, people who care about their land and their communities just as much as anyone else.

There have been some lands withdrawn from staking and mining, but section 175 of the bill is still a pretty vociferous piece of wording. We know it says that any land, under certain circumstances where it's convenient, can be used and abused for mining purposes. Can it be legally overridden, therefore, for cemeteries to be removed? They did it for the St. Lawrence Seaway. Sacred lands and cemeteries were moved away in order to accommodate. I understand you're constrained here with this process—and it's a shaky process; it's a broken process. I went to three of the consultation meetings that the Ministry of Northern Development and Mines held here in Timmins a year ago. I went to Kingston and I also presented in Toronto. I can tell you that the majority of what I heard at those consultations was trying very hard to get around these constrained areas of the discussion paper, these five areas, the three prescribed questions—it was a broken process. I'm sorry, it was just a broken process.

It's not about mining or no mining; it's not a dichotomy just like that at all; it's about fairness. It's for all parties involved, for citizens, First Nations and settlers, for communities that want and do not want mining to have a say in what goes on and what's to be the prevalent activity in their region. It's not about money and investment, although I suspect perhaps it has got a lot to do with money and investment, but I'm not going to get into that today. You cannot convince me that commodifying nature and natural resources without respecting their relationship to all the other important parts of our lives and our livelihoods—it just can't be.

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So of course mining is important, and more power to those communities that can make a good living and a livelihood through mining, but I tend to think that it's not right for everyone. There are lots of places where mining doesn't work, and perhaps in that area where I live, in eastern Ontario, there's limited opportunity for real mining to be successful because of the friction and the collision it will have with other sectors of the economy

that people get their livelihoods from—farming, tourism and so on. So, yes, mining when it's appropriate and when it's responsible and when it's decided upon by the community, by the municipality.

So what are we asking for? We're asking for you to protect our rights, to respect the charter, and for all people equally under the law, not one kind of law for the far north, another kind of law for the people who are interested in mining in the near north, and where it's probably correct for them, and another kind of situation for the people in the south, where most of the people live. It's far better for you to protect these rights and our lives rather than to perpetuate the process that's turning Ontario into a Liberia of mining. Some 1,400 mining companies have their headquarters here in Ontario and are traded on the TSX—only 43 mines in the province. So there is some money and investment stuff going on here. That's perfectly okay. It's part of the economy.

In conclusion, I'd just like to say that we have supported and continue to support the Coalition for Balanced Mining Act Reform and three very modest proposals that we would like to see as protections put into this bill. As I said before, we'd be more than willing to help with suggestions of wording. I haven't got time in my 15 minutes to actually go into all of that, but essentially our three modest proposals are as follows.

Single ownership: Reunify the mineral rights and the surface rights—one owner of all land. If you want to mine it, you have to own it. And you can still own it and mine it if you want to.

Real local land-based planning control: Let the communities in the north and municipalities in the near north and south have a say in how things are going to be developed in their area. I know that this is going to require a lot more dialogue and a mechanism that needs to be sorted out, and that's your job, to help get a parliamentary commission to figure that out.

The third proposal is that we want to have, before exploration, not staking, because I don't want to mess up security of tenure, but before any real exploration, digging of trenches and so on goes on, and before mining actually takes place, let there be a full, open, public, comprehensive impact analysis that really determines, is this the right thing?

The Acting Chair (Mrs. Linda Jeffrey): Mr. Gill, this is your one-minute warning.

Mr. David Gill: I don't need that last minute. Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Okay. Thank you. Committee, you have about two minutes each, beginning with Mr. Brown.

Mr. Michael A. Brown: Thank you for your presentation. I take it we've evolved from it being anti-uranium-mining to an issue of mining in general. Would that be a correct statement?

Mr. David Gill: I don't like the word "anti." You don't need to use that word.

Mr. Michael A. Brown: Against uranium mining.

Mr. David Gill: We were concerned about uranium mining, yes.

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

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

Mr. Randy Hillier: Thank you very much. I do agree with you in that the process is broken. We've heard that time and time again from everybody who attended the minister's workshops in Timmins and Kingston and Toronto, and as well, indeed, through this whole committee process.

In addition to those 24 municipalities that you mentioned, I'm not sure if you're aware and if the committee is aware that on June 19 the Eastern Ontario Wardens' Caucus also passed a resolution very similar to your three points, that the reunification of mineral and surface rights be undertaken in this act and that municipalities in southern Ontario be part of the consulting and planning process for mining activities, just as we're promoting for the Far North, looking for equality in the law for all of Ontario. When we look at all the delegations that have come to these committee hearings, we can boil down a lot of it to that: There is inequality being proposed within the law. Different places, different people, different communities are going to be treated differently—

Mr. David Gill: It seems to be in contravention of section 15 of the charter, in my opinion. I'm not a lawyer.

Mr. Randy Hillier: Thank you.

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

Mr. Gilles Bisson: I have a couple of questions. I don't know which one to start with because I don't have enough time, but how about we try this one here: You're saying single ownership of property; you want to unify, as I understand it, mining rights with property rights. Would that be—

Mr. David Gill: Surface rights.

Mr. Gilles Bisson: Yes, surface rights—property rights, wrong term—with mining rights. Are you saying that for all properties in Ontario?

Mr. David Gill: All private properties. There's only 1.4% that are not currently owning both surface and subsurface rights.

Mr. Gilles Bisson: But if I own a lot in downtown Timmins or Scarborough, I don't have mining rights.

Mr. Randy Hillier: Yes, you do.

Mr. Gilles Bisson: You do? That's what I was trying to figure out.

Mr. Randy Hillier: Absolutely.

Mr. Michael A. Brown: You might.

Mr. David Gill: You might not be able to mine, but you certainly own—

The Acting Chair (Mrs. Linda Jeffrey): —to the delegation, Mr. Bisson?

Mr. Gilles Bisson: Well, it's helpful.

The Acting Chair (Mrs. Linda Jeffrey): I understand, but just ask the delegation for now, please.

Mr. Gilles Bisson: All right, just to clearly understand where you're going, the next logical step to that is, if all private properties have mining rights, you're then basically saying that whoever has property rights would have the right to determine if mining is to happen on their lands, yes or no?

Mr. David Gill: Isn't that the way it is now?

Mr. Gilles Bisson: Not really, because we do lots of mining under the city of Timmins.

Mr. David Gill: But they don't own their mineral rights.

Mr. Gilles Bisson: Well, they own the property; this is the point. I'm trying to figure out where you would go with that. But anyways, I'm going to get some research done on that. That's another question.

Interjection.

Mr. Gilles Bisson: That's an interesting concept, I must say.

Impact analysis after staking is needed: What do you mean by that in the sense of, would you see that as a way of slowing down mining or a way of trying to figure out how to do it in a sustainable way? Where are you going?

Mr. David Gill: Well, I think what is required—and I recognize that there's a lot of dialogue needed for a mechanism on exactly how to do this. We talk about environmental impact assessment: Are you going to mess up the water? Are you going to screw up the water intake for—

Mr. Gilles Bisson: But that's already done. That's why I'm trying to figure out—

Mr. David Gill: Yes, perhaps it's done; perhaps it's not done as sufficiently as it should be. But let's say—

Mr. Gilles Bisson: Listen, I have them come knocking on my door, and they find it's quite onerous at times. That's why I'm trying to—

Mr. David Gill: Well, for example, in Central Frontenac when Frontenac Ventures went in there, they completely destroyed a whole bunch of wetlands putting in roads and so on—

Mr. Gilles Bisson: And you're saying they got permit from the Ministry of the Environment to do that?

The Acting Chair (Mrs. Linda Jeffrey): Thank you. I'm sorry, Mr. Bisson, we've run out of time. I'm really sorry. Thank you very much for being here—

Mr. Gilles Bisson: Did they get permit by the ministry to do that?

Mr. David Gill: Yes, they did.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Bisson, thank you very much.

Interjections.

The Acting Chair (Mrs. Linda Jeffrey): I know. You're stretching my patience here.

STEVEN KIDD

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is Steven Kidd. We're trying to stay on schedule. They're an unruly lot. They're hard to control.

Mr. Steven Kidd: They are an unruly lot.

The Acting Chair (Mrs. Linda Jeffrey): They are unruly—they're interested.

Welcome. Thank you for being here. I know you know the drill, but I'll go through it. You have 15 minutes. I'll give you a one-minute warning if you go that long, and if

you leave us some extra time we'll be able to ask questions at the end. Welcome.

Mr. Steven Kidd: Thank you very much.

The Acting Chair (Mrs. Linda Jeffrey): And if you could state your name. I don't believe you're representing an organization, just yourself?

Mr. Steven Kidd: Do you know what, I'll get right into my preamble in respect of the 15 minutes. Have you started your clock yet?

The Acting Chair (Mrs. Linda Jeffrey): No. My promise is, not until you've introduced yourself.

Mr. Steven Kidd: Thank you for allowing me to speak this afternoon. My name is Steve Kidd. I'm speaking as a private citizen today. I'm a past president of the Northeastern Ontario Chamber of Commerce and the Timmins Chamber of Commerce. My political affiliations are well known throughout the north. I'm going to be taking much more of a holistic-type view in terms of both bills in that they're intertwined so closely.

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I think that there's a bit of an introduction required just for those who have never been to Timmins or Kirkland Lake or Sudbury or any of the mining communities. Our economy is based on mining and forestry. Those are the fundamental drivers of our economy. We speak English, we speak French, we speak Cree, and we speak Oji-Cree. That, fundamentally, will cover off the vast majority of the population and the vast majority of the workforce.

We're in a situation right now where Hearst, Smooth Rock Falls, Timmins, Iroquois Falls and a host of other communities have lost tens and tens of thousands of jobs in the forestry industry. I'm not going to speak to the forestry industry, but it is part of what I'm speaking of. A large number of those jobs are not replaceable. We can't hold the government accountable for economic forces throughout the world. Some of these jobs will return, but I think it would be crazy to assume that they will all return. The future of our small communities, depends largely upon mining exploration to replace these jobs in the absence of any policy whatsoever in terms of forestry by the current government.

Exploration by juniors is key. Right now, for your information, in Timmins we have over 60 junior mining companies working within our community. It is generally covert. Most people don't even know they are here, but the number is 60-plus. It could be 70 as of today. We have a tremendous find going at the west end of the city right now. In our mining background, we contribute over \$10 billion towards Ontario's GDP—a very, very important financial driver.

When we talk about exploration north of the 50th parallel, it's imperative we encourage it rather than block it. The north is known to have tens of millions of dollars, that particular area—minerals; anecdotally, billions of dollars. Base metals: The James Bay coast is a tremendous future opportunity. My question to you is, why on earth would you want to arbitrarily shut down half of everything north of 50, or 42% of the entire land mass of Ontario? Does it make the slightest bit of sense, shutting

that down? Are you similarly planning on shutting down the same amount of space in Toronto, Etobicoke, London or Hamilton for the same purpose? Because that's where you work.

Our mining industry has to compete with nations that have little regard for environmental issues, yet we do, successfully. But for how long? Exploration is the lifeblood of mining, and to impair it is a death sentence for northern Ontario.

Rather than shut down half of the north in response to some of these interest groups, the government should be looking at streamlining the permitting process. I know for the De Beers mine, it took over a year for the government to decide which ministry would go first, and there were 41 permits that were required. That's not right.

I have no idea how this bill could have ever even gotten to this stage. If you look at the advisory group, none of them are stakeholders. It's a collection of interest groups that have no stake in northern Ontario whatsoever. I really don't understand how on earth they got to the point where they could start dictating policy to the north, where we actually live it every day. It has been very troubling to me.

I remember a report was done under the Harris government to determine how to improve northern Ontario. It came back basically suggesting that the north be left to die. That particular government rejected it outright. With the policies this government is bringing forward, it appears as though you may be actually adopting it. Your electricity policy, in conjunction with the Mining Act revisions, is to continually raise electricity prices. If that type of behaviour continues, our mills will never reopen again, and in Timmins or in Sudbury, where we have smelting and refining, these are multinational companies: Vale Inco in Sudbury, Xstrata in Timmins. Why would they continue to carry on doing smelting and refining in Ontario when the cost of electricity in Ontario is double that of Manitoba, where they have facilities, and Quebec is running at 75%?

In terms of a forestry policy, there is none. If you look at our existing forestry policy, everything is stuck. Nothing is moving. The big mills are shut down and the entrepreneurs can't get into the bush. There has been no support whatsoever for the forestry industry from this government.

Mrs. Carol Mitchell: That's not true.

Mr. Steven Kidd: There was a \$1-billion fund that was set up, of which \$200 million was spent. The other \$800 million was never spent, not five cents in Timmins—James Bay.

Interjection.

Mr. Steven Kidd: No, we're not the same affiliation, but Mr. Bisson and I are in agreement—

The Acting Chair (Mrs. Linda Jeffrey): Committee, can we stop the heckling, please? Let the delegation finish. You can ask questions when there's a break.

Mr. Steven Kidd: And then when we do get a good thing going, we get a surprise diamond tax on De Beers. Zero growth, artificial subsidies—I'm waiting for the

northern Ontario growth plan to come out. I have no idea what north is going to be in it.

Now I'll put my mainstream hat down and speak to what's by far the most insidious part of the legislation, and that's the treatment of the First Nations. There are a host of First Nations communities north of 50 characterized by poverty and a feeling of helplessness and despair, and you're telling them that 50% of their traditional lands cannot be developed? You're condemning them to a never-ending circle of poverty because some interest groups want to set land aside? You want to usurp the entire First Nations governance model? It's an outrage. It's right up there with the beads-for-Manhattan deal. I can't speak for the First Nations, but I'm certain from what I've heard and read—and unfortunately I missed Chief Stan's presentation this morning, but I'm confident they're as outraged as I am.

But there's a silver lining here, as with most things that are completely intolerable when presented: It will give the First Nations and the mainstream communities a wonderful opportunity to stand united against a bill that's bent on good politics in urban areas rather than good policy for the people who actually live in the area.

I would call on you to withdraw these two bills. Bring them back to committee. Get proper consultation. Think it through. This is just another in a series of policies that are damaging northern Ontario. They're out of tune with how we live and, in all due candour, the rest of the world is fighting a recession right now through stimulus, job creation and rebuilding economic wealth. Why on earth are you taking us on this path?

Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Okay, that gives us about two and a half minutes for each party to ask questions, beginning with Mr. Ouellette.

Mr. Jerry J. Ouellette: Thank you very much, Mr. Kidd, for your presentation. I'm not sure that all members would know exactly what a junior is, and you mentioned that there are 60 or 70 juniors operating in Timmins. Do you know how many juniors are actually members of the OMA?

Mr. Steven Kidd: Well, no. I can't answer that.

Mr. Jerry J. Ouellette: I don't think there are any.

Mr. Steven Kidd: My suspicion would be very, very few. A lot of the juniors operate out of Vancouver.

Mr. Gilles Bisson: They used to be here.

Mr. Steven Kidd: They used to be here, yes, when things were different. But the junior mining companies, I'm certain—again, I cannot speak on behalf of others, but I am certain that the view towards this policy that the junior miners would take vis-à-vis some of the senior miners would not necessarily be in alignment.

Junior miners find things. Eventually the senior miners take them over and they mine them, creating tremendous jobs and wealth for all concerned.

Mr. Jerry J. Ouellette: To my knowledge there aren't any juniors involved and it's all seniors in the OMA. I think there are 14 members now, if I remember correctly,

key members that are operating in the province of Ontario that represent the Ontario Mining Association.

Do you think there should be other incentives as an increase of the ability for flow-through shares in Ontario?

Mr. Steven Kidd: Well, if you look at flow-through shares, again, that's been a very large, hot button for all of us who are involved with economic development in northern Ontario: political people, mayors—I guess mayors are political people—business. Everybody is fully behind flow-through shares. Flow-through shares have developed a great deal of new mines over the years. Right now—Gilles, you might know—was West Timmins flow-through?

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Mr. Gilles Bisson: Yes.

Mr. Steven Kidd: There was some flow-through there, there's flow-through at Nebu, Temex, in Kirkland Lake. Flow-through shares are absolutely something that should be considered in any revision of the Mining Act, along with streamlining the permit process.

Mr. Jerry J. Ouellette: Thank you.

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

Mr. Gilles Bisson: You made a comment with respect to the far north planning act and said, in short, that you're taking 50% of the land mass away, thus tying the hands behind the backs of those people who most need the economic stimulus. But in saying that—and just for the record, I want you to clarify something—you support the idea that any development that takes place has to be done in an environmentally sustainable way, right?

Mr. Steven Kidd: Absolutely.

Mr. Gilles Bisson: And you also support that the First Nations have to have a say in what happens when it comes to development.

Mr. Steven Kidd: To give you complete clarity, the government should deal with NAN, they should deal with Mushkegowuk, but in terms of each case, if there is a mining opportunity, they should develop an IBA in conjunction with the local community. Those are my views.

Mr. Gilles Bisson: Yes, exactly. The point I'm making is that if the stated objective of the government is to protect the land, I don't think anybody is in disagreement. If the stated idea of the government is to give First Nations a say in it, I don't think anybody's in disagreement. So then, rather than protecting 50% of the land, should we be looking at this from the perspective of how we do development in the far north in a sustainable way and develop land use plans that reflect that, so that if you find a mine today underground where you thought there was none yesterday, you have an ability to develop it, but with the consent of the First Nations, the protection of the environment and all of those things. Would that be a more rational way of doing things?

Mr. Steven Kidd: This is one of those times, Gilles, where we're in complete agreement.

Mr. Gilles Bisson: My God, the earth has shifted. I have to say, Steve, it's always been a pleasure. I love your hydro policy. My God, you didn't get that from us, did you?

Mr. Steven Kidd: I've heard it from Howard a hundred times.

Mr. Gilles Bisson: Exactly.

Mr. Steven Kidd: A thousand times.

The Acting Chair (Mrs. Linda Jeffrey): Okay. Ms. Mitchell.

Mrs. Carol Mitchell: Thank you very much for your presentation. It was distinctly different than other presentations we had heard for the past four days. One of the things you talked about was streamlining the process and you also talked about doing that in an environmentally sustainable manner as well as in an economically sustainable manner. So what would your suggestions be?

Mr. Steven Kidd: It's rather simple. I pitched the idea, along with others, to your Minister of Finance the last go-round, and at one point even to Prime Minister Martin when he was in power. It's really not that difficult. You have a very convoluted process where you have the federal government and the provincial government with their own agencies that all have their requirements, and there doesn't seem to be a process. I know De Beers—I think it was 41 permits. It took 41 permits?

Mr. Gilles Bisson: It was more than a year.

Mr. Steven Kidd: It was more than a year before they could even decide which government agency was going to go first. This is not necessarily something I'm flaming the province on because I think that both the province and the national government are at fault.

The reality is that if you want to improve mining and you want to improve the numbers, and there is no danger to the environment by having the different processes running concurrently as opposed to, "Okay, now the ministry of this will go first. Oh, okay; now we'll go next," and you repeat the process at enormous cost and huge delay, if you were to look at it—just to give you some rationale for it, in addition to the enormous amounts of money and the huge time delays that are associated with the current permitting process, if you were to really analyze it, assuming right now—today gold is what?—around \$943.50 or something, not that I pay attention, and you want to open a gold mine, it takes you two and a half years before you're done the silly permitting process and now gold is at \$720. Oh, you don't have a mine anymore.

Mrs. Carol Mitchell: So you're talking about harmonizing policies, similar to what we've talked about in terms of harmonizing our tax policy.

Mr. Steven Kidd: Absolutely. It's so simple.

Mrs. Carol Mitchell: Thank you, Chair. That's it.

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

Mr. Steven Kidd: Thank you very much.

DAVE MUNIER

The Acting Chair (Mrs. Linda Jeffrey): Our last delegate is Mr. Munier. Is Mr. Munier here?

Interjection: He's here; he's standing at the door.

The Acting Chair (Mrs. Linda Jeffrey): This is my last call for your guest.

Mr. Gilles Bisson: Oh, he's here. He doesn't hear well. Dave.

The Acting Chair (Mrs. Linda Jeffrey): Welcome, Mr. Munier.

Mr. Dave Munier: I'm having a really hard time hearing. I heard something about "welcome."

The Acting Chair (Mrs. Linda Jeffrey): If you'd like to use the headset, that might help.

Mr. Gilles Bisson: Yes. When it comes to questions, I'll get it ready for you. Do your—

The Acting Chair (Mrs. Linda Jeffrey): Well, he might need to hear my preamble, so that wouldn't hurt. Otherwise, I'll be cutting him off.

Mr. Dave Munier: So I'll just go ahead and—

Mr. Gilles Bisson: She wants to say something.

Mr. Dave Munier: Okay.

The Acting Chair (Mrs. Linda Jeffrey): I'm telling you the rules: You have 15 minutes. When you get to 14 minutes, I will give you a warning.

Mr. Dave Munier: Yes. I'll be far shorter than that.

The Acting Chair (Mrs. Linda Jeffrey): Okay. You have the floor. If you could state your name and your organization.

Mr. Dave Munier: The name's Dave Munier. I am from South Porcupine, born and raised in this area. I got involved in prospecting as a result of the Texas Gulf discovery. You'll find that all through the world it's the discoveries that spawn new prospectors. A percentage get involved, and there's a drop-off as well when they realize that there are no quick dollars to be made in the business. What you're left with is a residual number of prospectors who stay with it as a result of seeing this find and what it means to a city or a town like Timmins or anywhere else. That small group of people are few and far between. There is no incentive that a government could give to encourage people to replace them. That doesn't exist. That comes from within, so you want to maintain that group.

The issue I have—I'll just narrow it, because I'm sure it has been spoken of before. The issue that's of paramount importance to this committee is the changes to the way we acquire ground that's being proposed; that is, map staking. While it seems like a small issue, it is actually the very foundation of this industry, and I say that because from the initial work of staking ground comes exploration, and finally development, if you're lucky enough to find a mine.

In the present system, if you encourage map staking or bring map staking in, you will no doubt have fewer people over time—not right away, but over time—involved in the industry, because it will require more money to get involved. The other thing is that large tracts of lands potentially could be tied up by a few companies, which really means, if that key land is tied up, there are fewer players to operate in the same area. Our industry thrives on competition. That's why Ontario has done very, very well over the years and why in places like

Sweden or Norway or other places—Nova Scotia, for instance—where land was tied up by a few people, there was very little exploration. You need that competition. It thrives in an area where the most people can participate. So you want the exploration community to be really diverse, made up of prospectors, junior companies and of course large companies as well. Each one feeds off the other.

The other thing I should make a point of before I go further, and it bears repeating, because most people even in mining towns forget about it too quickly: The mining industry is not just made up of mining companies, say, represented by the OMA, the production people. The other, even more important segment is the junior mining companies and the prospectors. They are the ones who raise the high-risk capital and go out and make the discovery, bring it to a certain development stage, and then the majors with more resources will come in and buy that. It's a key part of the exploration community, so you want to keep that community as large as possible, going out and taking their chances. As I told someone earlier on today, there are not many industries where you can get guys like myself in prospecting who will go out and spend their life and put in their own little savings to try and find something without much incentive from the government. So the government's got these, basically, slaves working out there for nothing.

The other benefit that accrues to the province when you leave in the present system of acquiring claims is that a lot of people in their own environments are employed and earning a very, very good wage. That's quite uncommon today. We see people being laid off all over the place with downturns in the economy. Here, people are working, like myself and others in Timmins and even in the far north. Many of the people who benefit from a stake in the present system are natives as well, and they would be put out of a job.

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They're earning a good dollar and they're learning the business as I did. They start with staking, and if they like that type of life, then they'll go on and do some other aspects of exploration like line-cutting and then get into geophysics, and the geophysical crews from southern Ontario or wherever they come in from will be doing work in their area. They employ them; they teach them. It's like on-the-job training. It can't get any better than that. The people are employed in their own environment and they're making a real good wage. They contribute big time to the mining industry and its development. But if you go the other route and bring in this map staking, those people are all eliminated; they're gone. That's one piece of the exploration community that, once again, is made up of prospectors and junior companies, the most effective group in the country for finding mines.

Now, if those people are eliminated over time, what you have left are a number of big multinational companies that mean well, but, don't forget, at that point they've got other countries they can go to and explore. They may find at different points that Ontario is not a

very good place to work. They'll explore in Chile or Peru or Argentina or over in Kazakhstan or wherever, and I'd do the same thing. You go where the best deal is. But with the juniors and the prospectors continuing to explore in the area and finding new things, those companies are naturally attracted back because they don't want to miss an opportunity. So that's really, really key to the area.

The present system of staking really is the most democratic way to ensure that everybody, from the junior prospector with an axe in his hand and a compass, can go out and acquire the land. It eliminates the speculators, people who are not really interested in mining but want to throw some money in. That's what you get with map staking as well.

The classic example of map staking was allowed in this Porcupine camp. When the camp was first discovered—let's say a prospector or a company came in and staked the Pamour mine, which is one of the poorer mines in the camp, out on the east end. With map staking they could tie up the whole piece of land, and that land in the Timmins area, where the heart of the discoveries were made, may not get developed for years because you'd be dependent on that one company to make some real money over there. So they come out and explore the other package of land they have, and if they're not making much money in that deposit, chances are this will be very slowly developed. With it open to a number of competitors, you get people coming to put money in. You get investors from all over the world, as happened here, funding these junior companies. They had a piece of land, they found a mine, down goes the shaft, and you've got a lot of people working. The land would be developed more at a pace that is good for that little company that just happened to get that little deposit on the edge of some real big deposits—and it wouldn't be explored at a pace that develops our province, which is what want. While it seems like a small thing, this map staking has the ability to blow out the whole foundation of the industry, and I don't think anybody wants that to happen.

The Acting Chair (Mrs. Linda Jeffrey): Is that it? Then you'd better give him the headset.

Mr. Gilles Bisson: Yes, it's all turned up.

The Acting Chair (Mrs. Linda Jeffrey): My first speaker is Mr. Bisson, and you have about four minutes each.

Mr. Gilles Bisson: Thank you, Dave, for taking the time to present.

Interjection.

Mr. Gilles Bisson: It should be on already, Dave. You should be able to hear. I think I took it off translation.

You make a point, and I think it's an interesting one because not anybody has raised that, and that is that if you allow map staking, what you could end up with at the end is speculators gobbling up the land. It would be somewhat akin to what happened when we were pushing the railway across Canada, where we had land speculators going in and gobbling up large pieces of land, speculating that, hopefully, the railway would come through their town, but what it ended up doing was

shoving out the smaller farmers and hurting the local things. I appreciate that, and that's something that is good.

If they're going to go to map staking—I'm opposed to map staking; I always have been and I'll propose an amendment to kill it—is there any way to build assuredness? Because the government is telling me in conversations I've had with them that there's a way of doing this that ain't going to lead to those situations that you spoke to.

Mr. Dave Munier: I think you can always try to improve upon the system. It may take years, but the fact that the system here that we have now is working really well and employing a lot more people than what map staking would do—we're essentially eliminating thousands of jobs in the north with one fell swoop by bringing this in.

Mr. Gilles Bisson: How many junior mining companies would you say existed here in 1990?

Mr. Dave Munier: I don't have those figures handy, but I would say 30, probably.

Mr. Gilles Bisson: And we have about zero now.

Mr. Dave Munier: Well, we have quite a few coming back—

Mr. Gilles Bisson: Which ones?

Mr. Dave Munier: —and part of the reason for that is that other countries have opened up their areas for acquiring land. These juniors are pretty mobile and, if blocked here, they can go to many other parts of the world.

Mr. Gilles Bisson: That's the point that I want you to speak to. In 1990, there were about 30 juniors here in the Timmins area. When things started tightening up, as far as getting money and the regulatory regime, they just picked up and went to Chile and into Africa.

Mr. Dave Munier: Yes, that's right, Gilles. Their heart is really in Canada. They come from Canada. They want to see this country develop, because any development directly impacts their families and their grandchildren. Their heart is here. They don't want to be over there, but if they have to, they'll do it.

In terms of the number of juniors working here, it's far less, maybe, than in the 1990s, but if we just go one step north, up into the Ring of Fire, there are many, many juniors there. They operate out of Timmins and go north from here, so the whole area benefits.

With the present system of staking, as my friend Art, a consulting geologist, was saying, it's like a democracy: It's not the best, but there's nothing better yet to be found, and it's a good system. But the key is that it brings in people at the ground floor, the staking process. They go on to line-cutting and then they go on to getting involved in geophysics, and some of them will go to school and become engineers or geologists. What a training ground, and they're getting paid very, very well for it.

But it's not just that little community; it's all the people who actually benefit from it as well. It's the people in the motels and hotels that are putting up stakers and line-cutters; it's the aircraft, the float people, the

helicopters; it's the little service station that's selling the gas so they can get into that ground.

Mr. Gilles Bisson: So we have a lot of history. I would just say this: John Gammon finally won at the end. You know what I'm talking about.

Mr. Dave Munier: Yes.

Mr. Gilles Bisson: Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. For the government side, Mr. Brown.

Mr. Michael A. Brown: Thanks, Dave. I appreciate seeing you. I think it's about 10 years, probably, since we last met, on Yonge or Bay Street.

I appreciate what you're saying. The government understands, I think—well, I'm sure—that there is a trade-off that has to be made, or would be made, with map staking. We're not prepared, really, to make that. We understand that there are map-staking regimes at other places in Canada. Our neighbouring province of Quebec does it and I think both Nova Scotia and New Brunswick do it. We understand that what we want to keep are the prospectors and those guys and gals out on the ground, because they provide real economic input. We think that can be done through ensuring that we don't have these large tie-ups of claims through multinational corporations. I think there are ways to do it, and we intend to do that.

We think there is also great opportunity for the prospector who still can map-stake. There's no reason a prospector can't map-stake. We do need your expertise, and that of people like you, out on the ground to prove out whatever seems to be found.

Could you maybe comment on—there's a lot more to this than just wandering through the bush and cutting a few lines here and there. Maybe you could tell the members a little bit about what a prospector really does.

Mr. Dave Munier: Well, before I start on that, I'd say that the prospector's first effort is to stake a claim. He gets acquainted with the bush. Many times, these guys say, "This life is not for me." Maybe staying out and living in the bush, staking ground, it's too hard. It's difficult; the flies are bad. So you eliminate a lot of people who are not genuinely interested in that business, right off the bat.

A prospector typically will go out and look at areas, either through reviewing government files or assessment files, seeing what is prospective. There you'll have records of everybody else's work on that property. You'll have a record kept of what work has been done. He may come up with a new idea and say, "Yes, that deserves a second look." At that point, you may go out and look at the ground before staking, or you may just stake it and start working it.

More often than not, though, these properties end up being nothing. You may turn around, if you're lucky, and sell it to a mining company and get a first-option payment. It eventually comes back to you and you maybe try to sell it again. If you can't, you may leave the property, if you don't have something encouraging coming out of that.

It's building up to these sort of the circumstances, the continual sort of letdown, letdown, letdown, that weeds out the people who are just there for quick dollars, and what you're left with are serious people who have faith that they're going to find something. Those are the key people who stand to be left aside with map staking. It's so critical to have that diverse community of the prospector and the junior companies involved.

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They're really going out and working for nothing. It's not costing the government anything. They're bringing in new money from all parts of the world and they're spending it on the ground. We need that diverse group bringing in those huge sums of money from all over the place to explore the land, because the chances of success are so slim in this business that if you just—

Mr. Michael A. Brown: One in 10,000, I think.

Mr. Dave Munier: It's a function, really, of throwing a lot of money at it and doing some good work. But to eliminate that group would be a disaster to the industry. You need that diversity. Healthy mining in this situation is dependent on those three groups working, and right now they're working very well together.

I know in the past the government has argued that there's a bit of saving in introducing map staking, but it's far less than the benefits that are accrued from having that diverse community. One of the reasons why Ontario has been so active in mining is that we have that diverse community and we have access to land. That's why we've done so well: We had competition and competition is what we need. If you eliminate that, you put yourself into the hands of those who are strong enough to be left behind to work, and then you're at the mercy of those people.

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

Mr. Jerry J. Ouellette: Thank you very much for your presentation.

Maybe you could expand on what, actually, a junior is—because I'm not sure a lot or all of the members understand what a junior is—and then further explain about the first option payments. Or you could talk about how these claims are sold off on a percentage basis, how that works out from a prospector's perspective.

Mr. Dave Munier: I'll start with the prospector. First, you acquire land. You work it, you upgrade it—you hope—to a point where you've now interested a junior company that thinks you've got something that has some merit. They come in, they review it, and if they agree with you, they say, "Well, let's enter into an option agreement."

An option agreement is one in which you set up a series of payments from the time of signing, in which case you would get an initial payment that's guaranteed, and then the payments that would come after that, typically, are after one year, two and three. That gives most companies the right, after they've paid the initial fee, the upfront money, to go in and prospect that ground and work towards eventually owning it. But after the year

is up, they have another payment to make that's been predetermined. If they want to keep working for a second year, they have to make that payment, and then they essentially have renewed the option.

After the second year, if they still like the property, they have to make that following payment. If they make all the payments then they've essentially purchased the option, but that's not the end of it for the prospector because, as I said earlier, the money that they get from the option payments is pretty small. The real money only comes if a mine is found, and that's in the form of a royalty that the prospector would have incorporated into that agreement with the junior. The royalty takes a number of forms, but it could be so many cents per tonne of rock removed from the ground. It could be a net profits type of agreement, where they share in the profits, or better still, it's what they call an NSR, net smelter return. That's favoured, because there are fewer write-offs that a company can make before they dish out your percentage of the profits.

So once again, the junior company is raising funds from all over the world. He's coming in, he's making a deal with me and he's putting money into my pocket that maybe didn't even originate in Canada—or could—and he's working. While he's working, he's cutting lines; he's employing all of us to cut lines, to do geophysics. Then he turns around and he says, "Now we've got some good targets but we have to drill it." So he hires a local driller, presumably, and the driller and his family all benefit from that.

It's a long string of benefits that accrue from someone starting the initial stage of optioning ground to a company. Most companies in themselves have exploration crews, but we're sort of another group that goes out

and looks for these things. The important point is that we've got a nice balance and the present system allows for the prospector and the junior company to flourish. That, in turn, directly benefits our province and ensures there's competition and that more money is left in the communities and the province, which is what we need.

I'll go back to the earlier statement. We in Timmins and the far north, all over the place, when we're staking or line-cutting, we're getting money and it's right from work in our hometown. All these service industries that are with us are making money. You can't get a better system than that: money flowing back into your own community, providing further incentive for a person to go out and say, "Well, maybe I can do this a second time or a third." So that's the important point: that you do not want competition to be removed, and that will be removed if the map staking comes in. You'll have fewer people involved in the exploration business. Fewer people means less money coming in, fewer discoveries, and eventually you'll have a watering down or a petering away of the great mining exploration community we have in Timmins and elsewhere.

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

Thank you, committee. This concludes five days of travel and hearings by the Standing Committee on General Government. We will be reconvening at Queen's Park on September 14 at 2 p.m. for clause-by-clause consideration of Bill 173, An Act to amend the Mining Act. The amendment deadline is September 8 at 5 p.m.

My colleagues and I would like to thank Timmins for their hospitality.

We're adjourned.

The committee adjourned at 1426.

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