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Wednesday 15 September 2010

Standing Committee on General Government

Far North Act, 2010

Journal des débats (Hansard)

Mercredi 15 septembre 2010

Comité permanent des affaires gouvernementales

Loi de 2010 sur le Grand Nord

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STANDING COMMITTEE ON GENERAL GOVERNMENT

Wednesday 15 September 2010

The committee met at 1627 in room 228.

SUBCOMMITTEE REPORT

The Vice-Chair (Ms. Helena Jaczek): I'd like to welcome everyone. Ladies and gentlemen, this is the Standing Committee on General Government. There is a live feed in the room next door. If anyone is uncomfortable standing, you can certainly move there and hear the entire proceedings.

We are going to resume debate on the amendment to the report of the subcommittee. Monsieur Bisson, would you like to read your amendment again?

Mr. Gilles Bisson: Thank you, Madam Chair. I'd like to read the amendment and just give a bit of an explanation. The amendment is number 12: "That the committee send correspondence to the House leaders requesting that Bill 191, the Far North Act, 2010, not be called for third reading until such time as a process of consultation and consent has been agreed to by the First Nation communities and the government."

The Vice-Chair (Ms. Helena Jaczek): Further debate?

Mr. Gilles Bisson: Well, it's pretty straightforward. As I was saying on Monday, it's pretty clear, if you look at who supports the legislation and who doesn't. Who doesn't is here. It's all those communities that are in the Far North, it's the chambers of commerce from northeastern and northwestern Ontario, it's the municipalities from across the area that have been saying, "This particular act doesn't cut it." First Nations want to have a land use planning process. They want development on their territories, but there needs to be legislation that meets with their approval. In the end, there needs to be some sort of a consent mechanism to development.

It is the feeling, and quite frankly it's my belief as well, that the amendments, as proposed by the government, don't meet that threshold. If we look at the legislation, at the end of the day, it doesn't respect the first premise of First Nations, which is that they want a process that will protect them when it comes to making sure that they have a mechanism of consent when it comes to development in the Far North.

The second part is that, at the end of the day, even though the government has tried to make some steps forward to deal with the issue of who really is in control and who has the final approval, it's pretty clear when you ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES AFFAIRES GOUVERNEMENTALES

Mercredi 15 septembre 2010

read the legislation that, yes, the government has amended it so that the First Nations have an approval process. But at the same time, so does the minister, as it reads in the amendments and in the current legislation, the parts that are not amended.

Clearly, First Nations are saying that this is not acceptable. I move this particular motion in the hope that we're sort of throwing—how would I say?—an offer to the government, or a bit of a life jacket. We're saying, "Listen, nobody in the Far North, the municipalities, the chambers of commerce, the mining industry or the environmentalists who live in northern Ontario is saying we can't have a planning act, but clearly this act doesn't meet the threshold."

So we're asking the government and we're giving them a way out, saying, "Don't call this at third reading. Allow a process by mutual consent between First Nations and the government to go back to the drawing board to look at how we can do this in such a way that meets with the approval of the First Nations, that ensures that in fact development can happen, that it's done in an environmentally sensitive way so that we do not damage the environment in whatever happens and that First Nations are able in the end to benefit from the activities that will happen in their home territories."

It's my hope that the government will support this amendment and, in fact, that the government will not call this bill to third reading.

The Vice-Chair (Ms. Helena Jaczek): Further debate?

Mr. David Orazietti: Mr. Bisson, while the government appreciates the suggestion and the proposed amendment to the subcommittee report, I think we know how far we have come on this bill over almost two years of discussions around this particular issue and around planning. You yourself acknowledge that land use planning and land use planning development in partnership with our First Nations is a priority. We need to know how we will have development and what type of development we will have. The First Nations that are our partners in this province and have jurisdiction over this territory, who are here today, are the individuals who should be making the decisions around their land use planning.

We are hoping to provide them with the tools and the resources that they need to decide themselves, as band councils and citizens of First Nation communities in the north, how best to plan and develop their communities.

We don't profess to fully understand all of the traditional knowledge and information that First Nations possess, and we recognize that that is a very important contribution to the land use planning process.

As I think you're aware, there are 34 of 38 First Nations in northern Ontario engaged at some level of land use planning with the province at this point. This is already taking place. Land use planning is taking place in the Far North today: 90% of First Nation communities are engaged in land use planning with the province.

We have had in the past number of years, as you know, development issues and challenges with different mining opportunities and other issues that have arisen. We want First Nations to be able to decide how best to plan their communities. That should be their choice. This government understands that very clearly, and this government, unlike past governments, is providing the resources and the tools necessary to help and assist the First Nations to plan their communities in the way that they see fit.

In the last number of years, and as you're aware, we recently committed \$10 million in additional funding directly for First Nations to undertake this land use planning. This is not something that is merely a gesture; this comes with the resources of the province to support First Nations to decide how to best plan their communities. We have invested over \$4 million directly with First Nations so that they can decide how to develop their land use plans. We have spent over \$20 million in recent years on Far North mapping workshops and other endeavours to support the development of land use plans in the Far North. As you are aware, Pikangikum First Nation does have a land use plan in the Far North. It's a success story. It's a great story about land use planning in the Far North.

I think everyone around the table recognizes that it's important to have responsible land use planning, and the people who are best suited to do the land use planning and provide the information and make the decisions around land use planning in the Far North are First Nation communities, because the First Nations live in the Far North. I think we also know that it's important to have some understanding for everyone involved-for Ontarians, for industry, for business and for First Nations-about where development can take place, where it should take place, what areas are perhaps traditional territories of the First Nations that perhaps First Nations don't want development to take place on, and those are decisions that we, as a government, want to work on with the First Nations to ensure they are put in place.

I want to be clear about something else. This bill does not in any way undermine the constitutional and treaty rights of First Nations. Those are paramount in this bill. Those are recognized in the purpose statement of this bill. Let's not twist the premise of this bill or the intent of this bill into something that it isn't, because this bill is to assist and support our First Nations with land use planning.

It does not speak to other jurisdictional issues. There may be other outstanding issues with the federal government perhaps or other related issues, but this bill, through the Ministry of Natural Resources to support land use planning, is to support First Nations. It is subject to all of the higher treaty rights that the First Nations have with the federal government. This does not in any way undermine First Nation treaty rights. It's really important that we need to be clear about that.

I want to say the minister has made considerable effort to reach out, to have discussions, to provide resources for First Nations to discuss the specifics of what is contained in this bill and how we could move forward together as a province to develop responsible land use planning.

Mr. Bisson, I appreciate the suggestion with respect to the subcommittee report, but the government will be voting against the amended report. We'll be voting in favour of the subcommittee report as it was originally drafted. Those are my comments.

The Vice-Chair (Ms. Helena Jaczek): Monsieur **Bisson**?

Mr. Gilles Bisson: I know Mr. Hillier and others-Mr. Clark-want to get on, but I just want to respond by saying a couple of things. First of all, if you understand that First Nations should be the decision-makers, why is it not in the legislation? Are all of these people wrong? Is every chief and council, every lawyer who works for band council, for tribal council, every municipality, every chamber of commerce, every mining company and everybody else who has had to deal with this legislation wrong, and you're right?

Because in the view of everyone, as they read this legislation-and I've had quite technical discussions with legal counsel in regard to what's in this legislation. The view that you portray is certainly not reflected in this legislation, and I want to make that very clear. That's the understanding of legal counsel who act on behalf of NAN, Mushkegowuk Tribal Council, Matawa, and others whom I've spoken to, who are saying, "No, it doesn't meet that." I just want to be very clear. Those are nice words, and they're appreciated. Certainly, First Nations are a gracious people, they are a people who are prepared to share and to be good hosts, but don't try to placate them by saying that you understand and somehow or other you're all going to make this work, because they're going to have to live with what's in the legislation. What's in the legislation is very different than what you portray.

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The second point, in regard to the purpose clause: Yes, it's true, the government of Ontario has put in the purpose clause basically a non-derogation clause which says it should not impose or take away from treaty. But this is one of the points that First Nations are making: What the Supreme Court decision said was there is a duty on the part of the crown to consent but also to accommodate. If you look at the purpose clause, we only speak about consent and basically respecting what is in the Constitution in regard to section 35. We don't deal with the issue of accommodation, and that's central to this debate. That's central to this issue.

First Nations are saying, "I don't want somebody coming in my community, knocking at the door, saying they've talked to me and, somehow, their constitutional obligations have been met." It's also about sitting down, having those discussions to and fro, a bit of give and take, figuring out where we've got to go, and then accommodating what you have heard that has been raised by folks.

That's why First Nations are saying, "Legislation, yes. We want a planning act." The proof is that they've been doing it for a long time. But we need to make sure that we get it right. Putting in place a system that is flawed, that is not going to give the First Nations the comfort that they need, is going to lead, in my view, to unrest that we don't need. It's going to lead to uncertainty when it comes to investment. It's going to be harder to invest in the Far North because there is not going to be certainty around the issues of planning. At the end of the day, that doesn't serve us as a province, and it doesn't serve our citizens or First Nations well.

The other point that I want to make is, you said one of the arguments is that 34 out of 38 communities are engaged in the issue of land use plans already and you need to give them the tools to make the decisions. Clearly, people were already putting together land use plans way before this legislation ever came through. What this does is set the principles and the guidelines that all land use plans will have to follow. That's the other part. First Nations need to make sure that the legislation is going to reflect and give them the ability to have the final say about what happens in their land use plans.

I just want to make this other point: There has been development in the Far North over the years, and it's been done with the blessing and the consent of First Nations. I look at Greg, who is here from Attawapiskat, who was part of the negotiations around the IBA impact benefit agreement—with De Beers. Here's what's happened: Companies like De Beers, Detour Lake and Ontario Power Generation which have negotiated impact benefit agreements in my ridings with communities from Moose Factory to Attawapiskat have had to do it on their own. The First Nations have always been prepared to have those discussions, but the bottom line is, there needs to be an end product that is going to protect their interests.

So to leave the impression that if we don't pass this legislation there can never be development because it's going to be a hindrance flies in the face of what has already happened. Ontario Power Generation's \$2.7 billion of investment, with an IBA with Moose Cree First Nation to develop the Mattagami River basin, how did they come to that? They didn't send the minister to have a chat with them in their community for half a day. I think there was a series of—who is here from Moose Cree? I think were 20-some-odd meetings that took place between Moose Cree community members and OPG.

There was a discussion to allow not only those people who lived on reserve but those people who lived in Kapuskasing, who lived in Smooth Rock Falls, who lived in Timmins and were off-reserve First Nations members. In the end, there was a final approval process, and it's a very democratic thing called a referendum. Those communities that have IBAs such as Attawapiskat with De Beers, Moose Cree with OPG and others understand from a First Nation perspective that there needs to be a final approval process by the community. It proves that First Nations are prepared to do what needs to be done. What's lacking here is a partner at the provincial level.

So I say to the government, I am extremely disappointed that you're not taking the offer that has been put forward through me from the First Nations, which is to put this whole process on hold so that we can actually go back and get it right. At the end of the day, I think it's not only a disservice and a disrespect that we give to First Nations; I think it's a disservice, quite frankly, to Ontario. It is not going to add to the certainty that we need in order to attract the type of investment that can be attracted in the Far North.

Last point, because I know Mr. Hillier wants to speak: We speak of the Ring of Fire. Go ahead with this legislation. I want the media to ask the chiefs who are here and those who represent the Ring of Fire communities what that means if this legislation is passed. It's not going to be certainty and it's not going to be good news when it comes to development. They want the development, I want the development, you want the development; all of us in Ontario want that development. Don't hinder it by having this particular bill pass the way it is, because I'm telling you, you're putting it at risk.

The Vice-Chair (Ms. Helena Jaczek): Mr. Hillier.

Mr. Randy Hillier: Thank you. First off, I'd like to welcome all our people from the First Nations communities who are here today, as well as members of the chambers of commerce in northern Ontario. Of course, it's nice to see that the Toronto media are here as well.

After listening to the parliamentary assistant's lengthy and somewhat odiferous oration, I couldn't help but see such similarities between what the parliamentary assistant said and Monte Hummel's press release from the World Wildlife Fund today. I'm sure the member must have Monte Hummel's press release today, because it sounded so much—I'm not sure who's writing whose scripts. I'd like everybody just to, maybe if you get a chance, see the World Wildlife Fund's press release today. It's very similar.

I want to say a couple of things here. First off, there was agreement on Monday to insert this clause. Everybody recognizes that there must be consultations before further reading of this bill, and we were led to believe that there was a willingness on the part of the government to undertake that. It wasn't stated definitively, but it was inferred that there would be that willingness.

It reminds me very much of what happened in June, during a time allocation motion: this atrocious move by the Liberals to arbitrarily impose dates on the First Nations when the Liberals would view it as an appropriate time for them to consult with the First Nations communities. We had agreement in the subcommittee at that time as well to seek unanimous consent of the House to alter that time frame, but of course, the marching orders came that that would not happen. Obviously, the marching orders came once again since Monday to today. After that lengthy oration by the parliamentary assistant, he finally got to the nuts of it: They're not going to support clause 12 in the subcommittee report. We've seen this in June. We see it now.

I'll make a few comments about this "34 of 38 are engaged in land use planning now." What the member didn't say is that there are no arbitrary, imposed and artificial constraints on those land use plans now being undertaken, as there would be under this bill. Under Bill 191, 225,000 square kilometres of land, of interconnected land, are off limits for First Nations; for everybody in the north. That is a big difference between how land use planning has happened up until now and how it will happen after Bill 191 is proclaimed into law. A quarter of a million square kilometres of land will have no development.

It would have been nice to see the minister here once again, and I have to give credit that the minister was here on Monday for the committee hearing, but if she really had an interest in listening to people and seeking guidance and advice before ramming this legislation through, I think she'd be here again today.

In that meeting on Monday, at the committee meeting on Monday, it was clearly spelled out—and it's still known to everybody here today—that chambers of commerce are all opposed to Bill 191 in the north. All the industry groups are opposed to Bill 191 in the north. All the First Nations are opposed to Bill 191. All the northern mayors and municipalities are opposed to Bill 191, and the minister had the gall to tell this committee that the Liberals got it right with Bill 191. You can't have it right when everybody is opposing this bill, and everybody who is affected by this bill opposes it.

1650

We might say, in some legislation, that if you have some opposition and you have some approval, compromise may have been achieved. There is no compromise on this bill; everybody opposes it. Everybody who lives in the north is compromised by this bill. And to see the parliamentary assistant and the Liberal Party say that on Monday, we thought we could have some process for consent and consultations, and now not—no interest in actually listening to people.

I want to remind the people on this committee: This is a democracy. We in government haven't gone that step so far where we don't listen to people. We have a duty and an obligation to listen and seek their consent, their advice before we impose legislation on them.

This Liberal government—and I heard this parliamentary assistant saying that he's hoping for good things to come out of this. Well, when you see that everybody is opposed to it and you still have hope that they'll come onside, I would say that's nothing more than insanity to suggest hoping for people to come onside when everybody opposes this. Following up on the member from Timmins–James Bay on this bill, in our discussions on Monday the minister said, "The First Nations will be the drivers." Clearly, nobody bought that story. Nobody bought that story. The Liberal government carries the purse strings. The Liberal government will approve the land use plans, approve the terms of reference, and they hold the purse strings before any money goes out the door. The First Nations are not in the driver's seat on Bill 191; the Liberal government is.

Thank you very much.

The Vice-Chair (Ms. Helena Jaczek): Mr. Clark.

Mr. Steve Clark: Just a couple of minutes. I think Mr. Bisson and Mr. Hillier said it all.

I'm the newest member in the Legislature. I've been here basically six months. I have to pick up on what Mr. Hillier said earlier: There was some hope on Monday. The minister was here; there was a feeling in the room that the government was going to listen. If you look at Thursday, June 3, the very first recommendation in the subcommittee's report was that they go and have hearings. It wasn't the seventh; it wasn't the eighth; it was the very first one. Mr. Bisson's motion that we supported and that we'll support here in a few minutes provided that opportunity for this government to have a climb-down so they could provide the consultation that they deserved.

Mr. Orazietti, the parliamentary assistant, talked about a gesture. Well, I'll tell you something: This gesture's a slap in the face. It's a slap in the face to our First Nation communities, it's a slap in the face to the mayors and the communities in northern Ontario and it's a slap in the face to the chambers of commerce, and I think you should be ashamed of yourself for creating the false hope that happened here on Monday at the committee by having this amendment put forward.

These people stayed around. They're here because they thought there was some hope, that we were going to have some hearings, that it wouldn't go to third reading. I just can't believe, as a new member, that you've led these people down the garden path only to pull the rug out from under them by not supporting this motion. I am ashamed of you.

That's all I have to say.

Applause.

The Vice-Chair (Ms. Helena Jaczek): Order, please. Order.

Mr. Orazietti?

Mr. David Orazietti: I want to focus on what's at hand here: this bill. I certainly don't want to get into debate with the members' record in government with respect to First Nations, because it's dismal at best, and certainly not with respect to their support for First Nations during their time in government. This is something much different in terms of the resources we are providing for First Nations so that they can decide how they develop their land use planning.

Let's be clear about the discussions and the meetings that have taken place. The Standing Committee on General Government, after first reading on the bill, travelled to the Far North. It is very, very rare for standing committees to ever travel on bills. Many times the hearings will simply be held in Toronto, if at all, and it is even more rare for a standing committee to travel to an area of the province between the first and second reading of the bill. We made a commitment, and we followed through on it, and we did travel.

The minister also, this summer, visited eight Far North communities and met with chiefs and tribal councils, spending days in those communities. The minister has met with over 25 chiefs. Over the last year, the Ministry of Natural Resources staff have held 40 separate outreach sessions on Bill 191.

Every First Nation group that has come forward with respect to wanting to have a land use plan and wanting land use planning resources has been provided resources under our government. No First Nation community that has come forward has been denied the resources they need to help support land use planning in the Far North.

There were outreach sessions held with mayors and councils and municipal leaders in nine different northern Ontario municipalities. The member is clearly wrong when it comes to the position on this legislation. First Nations will have final approval. That's what this is about. The member talks about uncertainty for development. That's what we have right now. We have uncertainty in the Far North around development. We have conflict around development right now.

This is about land use planning and bringing certainty to the Far North, and First Nations will decide for themselves what areas will be developed, what areas will be protected areas and how their land use plans will be developed and shaped. That's what this is about.

So if we want to continue down the same path, without providing resources to First Nations, as was done in the past, and continue to have conflict when it comes to development, then we can simply ignore this issue.

The member opposite says that everyone opposes the bill, but everybody is in favour of land use planning everyone is in favour of having land use planning. That's what this bill is about. This bill is about land use planning. This bill does not in any way infringe on the constitutional and treaty rights of First Nations in the province of Ontario. Those are paramount, those will continue to be respected, and that is a specific purpose statement in the bill.

Protected areas, to be clear, are not off limits for First Nations. There can be economic development activities in the area, in the proposed 225,000 square kilometres, which is a target to protect the boreal forest. We think the First Nations know best those areas to protect, and they will identify those areas in their land use plans.

I am surprised that the opposition—well, I suppose in some ways perhaps I'm not surprised at the position they have taken, given their past track record when it comes to the lack of support for First Nations. But I know that First Nations communities want clean water, they want good schools, they want health care and they want to participate in the economy. They can decide, and they have the ability and the resources, through this legislation, to decide how to best plan those communities so that their future generations can have a quality of life that is better than the quality of life that has been the challenge of some First Nations communities in more recent years and in our past. We want to see those First Nations communities succeed, and we want to see those First Nations communities develop those land use plans so that they can decide where it's best for their hospitals, their schools and their economic development to take place. But they decide that, and that's why this bill is important to everyone in Ontario, and especially important to our First Nations partners. Thank you, Chair.

1700

The Vice-Chair (Ms. Helena Jaczek): Further debate? Therefore, we will be voting on the amendment to the report of the subcommittee.

Mr. Gilles Bisson: Recorded vote.

Ayes

Bisson, Clark, Hillier.

Nays

Brown, Carroll, Kular, Orazietti, Rinaldi.

The Vice-Chair (Ms. Helena Jaczek): That is lost.

Mr. Gilles Bisson: On a point of order, Madam Speaker: I just want to clearly say that this is wrong. The government should not be doing—

The Vice-Chair (Ms. Helena Jaczek): It's not a point of order.

Mr. Gilles Bisson: On a point of order, Madam Speaker—

The Vice-Chair (Ms. Helena Jaczek): Mr. Bisson, we will be—

Mr. Gilles Bisson: I am just saying that this whole process is a sham—

Interjections.

The Vice-Chair (Ms. Helena Jaczek): Order. Order, please.

Interjections.

Mr. Gilles Bisson: That's it. You're on your own.

FAR NORTH ACT, 2010

LOI DE 2010 SUR LE GRAND NORD

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

The Vice-Chair (Ms. Helena Jaczek): The time now being 5 o'clock, as we are ordered by the House to be here at 5 p.m. on Wednesday, September 15, 2010, those amendments which have not yet been moved shall be deemed to have been moved, and the Chair of the committee shall interrupt the proceedings and shall, without

Shall section 11, as amended, carry? Carried. further debate or amendment, put every question necessary to dispose of all remaining sections of the bill and Government motion 30, subsections 12(1) and (2). any amendments thereto. That's carried. We will resume with government motion 5, sections Shall section 12, as amended, carry? Carried. Government motion 31, subsection 13(2). That's 6.1 and 6.2. All those in favour? That is carried. Now we will move to government motion 6, section 7. carried. Shall section 7, as amended, carry? That's carried. Government motion 32, subsection 13(2), paragraph 5. Section 8, government motion 7, subsections 8.1 and Carried. 8.2. Carried. Government motion 33, subsection 13(2), paragraph 6. Government motion 8, subsection 8(2.1)— That's carried. Mr. Lou Rinaldi: On a point of order, Madam Chair: Government motion 34, subsections 13(3), (4) and Just a clarification. Do they have to be read into the (4.1). That's carried. Government motion 35, subsection 13(5). Carried. record? The Vice-Chair (Ms. Helena Jaczek): They do not Shall section 13, as amended, carry? That's carried. Shall section 14 carry? Carried. need to be read into the record; we just read the title. Government motion 9, clauses 8(3)(a) and (b). Shall section 15 carry? Carried. Carried. Government motion 36, sections 16 and 16.1. That's Government motion 10, subsection 8(6). Carried. carried. Government motion 11, clause 8(7)(b). Carried. Shall section 16, as amended, carry? Carried. Government motion 12, clause 8(8)(b). Carried. Shall section 17 carry? Carried. Government motion 13, clause 8(8)(d.1). Carried. Government motion 37. It's a new section, 17.1. That's carried. Government motion 14, clause 8(8)(f). Carried. Government motion 38, clauses 18(2)(c) and (d). Government motion 15, subsection 8(10). Carried. Government motion 16, clauses 8(10)(b) and (c). Carried. Government motion 39, clause 18(2)(f). Carried. Carried. Government motion 17, clauses 8(12)(a) and (b). Shall section 18, as amended, carry? Carried. Government motion 40, subsection 19(3) of the bill, Carried. Government motion 18, clauses 8(13)(a), (b) and (c). subsection 11(1), paragraph 1. Carried. Government motion 41, subsection 19(4) of the bill, Carried. subsection 13(2), paragraph 2. That's carried. Government motion 19, subsection 8(14). Carried. Shall section 19, as amended, carry? Carried. Government motion 20, subsection 8(15). Carried. Government motion 21, subsection 8(15.1). Carried. Shall section 20 carry? Carried. Government motion 22, subsection 8(16). Carried. Government motion 42, section 21 of the bill, Government motion 23, subsection 8(20). Carried. subsection 9(6) of the Provincial Parks and Conservation Shall section 8, as amended, carry? Carried. Reserves Act, 2006. Carried. Now we're looking at section 9, government motion Shall section 21, as amended, carry? Carried. 24, subsection 9(3). Carried. Shall section 22 carry? Carried. Government motion 25, clauses 9(3)(b) and (c). Shall section 23 carry? Carried. Shall section 24 carry? Carried. Carried. Shall the title of the bill carry? Carried. Government motion 26, subsection 9(5). Carried. Government motion 27, subsection 9(6). Carried. Shall Bill 191, as amended, carry? Carried. Shall section 9, as amended, carry? Carried. Shall I report the bill, as amended, to the House? Government motion 28, subsection 10(4). Carried. Carried. Shall section 10, as amended, carry? Carried. This meeting stands adjourned. Government motion 29, section 11. Carried. The committee adjourned at 1709.

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