SENATE SÉNAT

CANADA

Observations regarding Bill C-15, the Northwest Territories Devolution Act

Report of the
Standing Senate Committee on Energy, the Environment and Natural Resources

The Honourable Richard Neufeld, Chair
The Honourable Grant Mitchell, Deputy Chair

MARCH 2014

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The Honourable Senator Grant Mitchell, Deputy Chair

and

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ORDER OF REFERENCE

Extract from the *Journals of the Senate*, Thursday, February 27, 2014:

Second reading of Bill C-15, An Act to replace the Northwest Territories Act to implement certain provisions of the Northwest Territories Lands and Resources Devolution Agreement and to repeal or make amendments to the Territorial Lands Act, the Northwest Territories Waters Act, the Mackenzie Valley Resource Management Act, other Acts and certain orders and regulations.

The Honourable Senator Patterson moved, seconded by the Honourable Senator Bellemare, that the bill be read the second time.

After debate,

The question being put on the motion, it was adopted.

The bill was then read the second time.

The Honourable Senator Patterson moved, seconded by the Honourable Senator Wallace, that the bill be referred to the Standing Senate Committee on Energy, the Environment and Natural Resources.

The question being put on the motion, it was adopted.

Gary W. O'Brien

Clerk of the Senate

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INTRODUCTION

The Standing Senate Committee on Energy, the Environment and Natural Resources concluded its pre-study of Bill C-15, An Act to replace the Northwest Territories Act to implement certain provisions of the Northwest Territories Lands and Resources Devolution Agreement and to repeal or make amendments to the Territorial Lands Act, the Northwest Territories Waters Act, the Mackenzie Valley Resource Management Act, other Acts and certain orders and regulations (short title: Northwest Territories Devolution Act) on February 13, 2014.

The committee held eight meetings and heard from 31 witnesses, and also received a number of written submissions. Witnesses included the Honourable Bernard Valcourt, Minister of Aboriginal Affairs and Northern Development (AAND) and officials from both AAND and the Department of Justice as well as the Honourable Bob McLeod, Premier of the Northwest Territories and the Honourable Michael Miltenberger, Minister of Environment and Natural Resources of the Northwest Territories. In addition, the committee heard from Aboriginal governments and industry and environmental stakeholders. The committee also heard from a former Premier of Yukon, as well as experts in northern regulatory regimes.

Bill C-15 gives effect to the *Northwest Territories Lands and Resources Devolution Agreement* and also streamlines the territory's regulatory regime in accordance with commitments set out in the federal government's 2010 *Action Plan to Improve Northern Regulatory Regimes*.

DEVOLUTION TO THE NORTHWEST TERRITORIES

The process of transferring powers from the federal to the territorial government has been an evolving one. Since the 1970s, more and more province-like powers have been transferred to the territorial government, together with the additional financial resources necessary to administer and manage those responsibilities. These include responsibility for education, local government, social services, transportation, taxation, health care and the administration of justice. While the territorial government is now responsible for the administration and management of almost all aspects of territorial governance, the federal government currently retains authority for the administration and management of public lands, water resources, mineral resources and oil and gas management.

The *Northwest Territories Lands and Resources Devolution Agreement* signed on June 25, 2013 marked the final step in a process of transferring responsibility for land and resource management to the territory. The Agreement is the result of 30 years of negotiations and was signed between the Government of Canada, the Government of the Northwest Territories (the GNWT), the Inuvialuit Regional Corporation, the Gwich'in Tribal Counsel, the Sahtu Secretariat Incorporated, the Tlicho Government and the Northwest Territory Métis Nation.[1] It represents an

[1] Two Aboriginal governments have not signed onto this agreement. The Dehcho First Nation and the Akaitcho Treaty 8 Chiefs were involved in the devolution negotiations but were not signatories to the agreement. Neither has finalized land claims agreements in place. It should be noted that the devolution process is independent of Aboriginal land claim and self-government negotiations, and nothing in the devolution agreement will take away from Aboriginal treaty rights or the federal government's ability to negotiate land, resource and governance issues with Aboriginal groups. Accordingly, should the Dehcho First Nation and the Akaitcho Treaty 8 Chiefs decide to join the devolution agreement, it will not affect their ongoing land claims negotiations. According to the devolution agreement, the Dehcho First Nation and the Akaitcho Treaty 8 Chiefs can join the agreement within one year of the

historic step in the constitutional, political and economic development of the Northwest Territories (the N.W.T.).

Significant provisions of the *Northwest Territories Lands and Resources Devolution Agreement* include:

- $26.5 million in one-time funding to the GNWT to support transitional activities, such as preparing an implementation plan, developing an organizational design, and ensuring necessary human resources are in place;
- $67.3 million in ongoing funding to the GNWT to support the land and resource management responsibilities provided through devolution;
- a Net Fiscal Benefit of 50% of the resource revenues up to a maximum limit (5% of the GNWT's Gross Expenditure Base);
- a sharing arrangement between participating Aboriginal governments and the GNWT, whereby the GNWT will share up to 25% of its resource revenues;
- a framework for managing and coordinating the responsibility regarding remediation of contaminated waste sites;
- the transfer of federal positions to the GNWT in order to fulfill the land resource administration responsibilities provided through devolution; and
- the transfer of buildings, leases, assets and records pertaining to land and resource management.

Once Bill C-15 becomes law, the territorial government will be responsible for the management of onshore lands, including onshore minerals and oil and gas (with the exception of limited federal lands), and will collect and share in resource revenues generated in the territory. These measures will place decision-making in the hands of Northerners and give territorial residents greater self-determination and control over their economy. The effective target date of the transfer is April 1st 2014.

WHAT DOES THE BILL SAY?

Bill C-15 is comprised of four parts but can be divided into two major sections:

- **Part 1** creates a new *Northwest Territories Act* and amends numerous pieces of federal and territorial legislation to provide the GNWT new provincial-like responsibilities in the administration and control over its onshore land and resources, and it modernizes the language of the Act.
- **Parts 2 to 4** set out a series of amendments to the *Territorial Lands Act*, *Northwest Territories Waters Act* and *Mackenzie Valley Resource Management Act*. The amendments seek to modernize the territorial regulatory regime. They also seek to ensure there are no gaps in the federal regulatory regime applied to federal lands and federally managed sites in the territories following devolution.

transfer date without the consent of the GNWT and the federal government. After one year, the concurrence of the governments of the N.W.T. and Canada is required.

A. Part 1: *The Northwest Territories Act*

The *Northwest Territories Act* set out in Part 1 of the bill gives effect to and implements the provisions of the *Northwest Territories Lands and Resources Devolution Agreement*. The Act is repealed and replaced with an updated version to reflect the changed legislative responsibilities that the GNWT will assume upon devolution. As devolution consists of the transfer of legislative authority from one government to another, the GNWT will enact territorial legislation that mirrors those federal powers either repealed or transferred.

The new *Northwest Territories Act* sets out the post-devolution legislative framework that includes responsibility for the administration, management and control of public lands and rights in respect of water and natural resources in the N.W.T., subject to specified exceptions. The GNWT will have law-making power over onshore public lands, inland waters and non-renewable natural resources, subject to some limited onshore public lands which will remain federal, as specified in the devolution agreement. These include the Norman Wells Proven Area Oil Field, offshore oil and gas resources, and specified contaminated sites.

The new Act is modernized to reflect current language and concepts of responsible government. For example, the term “ordinance” is updated to “law,” “Council” is changed to “Legislative Assembly” and “Commissioner in Council” is renamed “Legislature of the Northwest Territories.”

In addition to devolving province-like powers in the management and sharing of revenues from lands and resources in the N.W.T, the bill also contains provisions reflecting the political and constitutional development of the N.W.T. Territorial authorities are updated, giving the GNWT greater power over its public intuitions. For example, the Legislative Assembly will have authority over its size, oaths of office, rules of procedure, and number of annual sittings. The term of the Legislative Assembly is extended from four to five years, which is consistent with practices throughout Canada. As well, the Commissioner, rather than the Governor in Council, will have the power to dissolve the Assembly before the end of its five year term.

The Act currently empowers the Minister of Aboriginal Affairs and Northern Development or the Governor in Council to provide instructions to the Commissioner for the administration of government in the territory from time to time; the Commissioner must act in accordance with these instructions. This provision is retained in the new Act, but will be repealed ten years after the coming into force of the Act. This is consistent with the *Yukon Act*, which was enacted in 2003 to effect devolution in Yukon.

B. Part 2: *The Territorial Lands Act*

The *Territorial Lands Act* addresses the management of Crown lands throughout the N.W.T., including the issuance of permits and leases, mineral, quarry and coal rights, the setting of fees, terms and conditions and an enforcement regime. Upon devolution, the *Territorial Lands Act* will continue to apply to federal land and certain federally-managed sites in the territory, but will not apply to land under the administration and control of the Commissioner of the Northwest Territories. Accordingly, the *Territorial Lands Act* is amended to be rendered inapplicable in respect of public lands under the control of the N.W.T.; the Legislative Assembly of the Northwest Territories will enact legislation governing land under its control.

In addition, the Act is amended by increasing fines under which offenses are committed. Consistent with other federal legislation, an Administrative Monetary Penalty (AMP) scheme is introduced. AMPs are an additional means of ensuring compliance with legislation. They are penalties determined through an administrative process, rather than through prosecution and court hearings, and as such allow for a more flexible and proportionate response to particular instances of non-compliance.

C. Part 3: *The Northwest Territories Waters Act*

The *Northwest Territories Waters Act* establishes the Northwest Territories Water Board, which licenses the use of water and deposits of waste and considers detrimental effects of that use or deposit.

The Bill would replace the Northwest Territories Water Board with the Inuvialuit Water Board which will have jurisdiction within the Inuvialuit Settlement Region. It also introduces time limits on water licence reviews, cost recovery measures, increases existing fines and introduces an AMP scheme for contraventions of the Act.

Upon devolution, the N.W.T. will assume responsibility for most land and water administration and management within the territory. The N.W.T. will therefore enact territorial legislation that substantially mirrors the amended *Northwest Territories Waters Act* and the federal legislation will be repealed.

The federal government will retain responsibility for managing water use and the deposit of waste on federal lands and contaminated sites following devolution. Accordingly, many provisions of the amended *Northwest Territories Waters Act* will be "imported" into the federal *Mackenzie Valley Resource Management Act* in order to enable the Mackenzie Valley Land and Water Board to issue water licences on federal lands in the Mackenzie Valley.

D. Part 4: *The Mackenzie Valley Resource Management Act*

Bill C-15 makes several significant amendments to the *Mackenzie Valley Resource Management Act*.

Currently, public and private lands and waters throughout the Mackenzie Valley region of the N.W.T. are regulated under the *Mackenzie Valley Resource Management Act* (MVRMA). These lands and waters are managed by an integrated co-management system. Land use planning boards, where they exist, first determine how land will be developed; land and water boards are responsible for issuing licenses and permits for approved projects on those lands.

There are currently three regional land and water boards in addition to the Mackenzie Valley Land and Water Board. The three regional land and water boards – the Gwich'in Land and Water Board, Sahtu Land and Water Board, Wek'èezhìi Land and Water Board – were each established in accordance with land claims agreements. The Mackenzie Valley Land and Water Board is responsible for regulating projects within unsettled land claim areas (Dehcho and South Slave regions) and transboundary projects in the settled regions.

Land and water boards review a developer's application for licenses, permits or authorizations through a preliminary screening process which includes assessing whether the application conforms to a land use plan if applicable. A board may determine that an environmental

assessment is necessary if the proposed project is deemed to potentially cause significant adverse impacts on the environment or is deemed to be a cause for public concern. If an environmental assessment is required then it is conducted by the Mackenzie Valley Environmental Impact Review Board.[2]

Bill C-15 establishes the restructured Mackenzie Valley Land and Water Board to consolidate and replace the existing three regional land and water boards. This consolidation aligns with the federal government's *Action Plan to Improve Northern Regulatory Regimes* which seeks to align northern regulatory regimes with those in the rest of Canada to ensure that the "Northern regulatory regime will be strong, effective, efficient and predictable."[3]

The restructured Mackenzie Valley Land and Water Board will consist of one 11-member board, with the Chairperson appointed by the Minister of Aboriginal Affairs and Northern Development. The Minister will also appoint three additional members of the board. The Tlicho government will appoint a member as per the Tlicho Agreement, while the remaining members would be appointed by the federal Minister upon nomination of the Gwich'in (1 member), the Sahtu (1 member), the Territorial Government (2 members), and in consultation with First Nations without settled claims (2 members). The amended Act will allow the Chair to establish smaller committees of three board members to hear and dispose of applications before the Mackenzie Valley Land and Water Board. Where it is "reasonable to do so," the Chair must appoint the regionally nominated representative to the smaller committees when they are considering an application wholly within that region.

The federal Minister's authority to provide written, binding policy direction to boards established under the Act is expanded. Currently, the Minister can issue policy directions to land use planning and water boards; the expanded power will permit the Minister to issue binding written policy directions to all boards under the Act, including the Mackenzie Valley Environmental Impact Review Board as well as the land and water boards. This will be used to communicate broad policy advice and objectives to the boards. However, there are constraints on the Minister's powers; for example, the Minister cannot direct the board to deviate from a land use plan and policy direction cannot be applied to a specific file. Moreover, the restructured Mackenzie Valley Land and Water Board cannot deviate from a land use plan.

Timelines for the review process of a project are introduced in the Act, setting out fixed time frames within which decisions must be made. Existing fines are increased and an AMP scheme is introduced to ensure compliance with the Act. As well, a cost recovery mechanism is established.

E. Coming into Force and Next Steps

The next steps for this bill include its implementation and the coming into force of its different parts and sections. Before the effective date of devolution, currently set for April 1st, 2014, the GNWT must pass legislation and regulations that mirror those federal powers that were transferred to the territory.

In order to accommodate the devolution and new regulatory provisions, the bill will be implemented in stages, in order to provide time for the enactment of necessary territorial

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2 Mackenzie Valley Review Board, *Process Diagrams*.

3 Aboriginal Affairs and Northern Development Canada, *Action Plan to Improve Northern Regulatory Regimes*.

legislation, and to ensure appropriate administration capacity is in place. The operation of the MVRMA will be reviewed five years after devolution to assess how it is functioning in a devolved environment.

WHAT THE COMMITTEE HEARD

There was broad support for federal devolution of land, water and resource management to the GNWT across all stakeholders. The transfer of powers was seen as not only historic but also of major economic consequence to the N.W.T., since the territory holds globally significant resources such as minerals and oil and natural gas, of which much are untapped.

The Premier of the Northwest Territories said that devolution was the key to a new era of prosperity for the N.W.T. He stated that Northerners will have more say in growing an economy based on northern needs and priorities. The benefits of local control over local resources were expressed throughout the committee's deliberations and supported by all witnesses. Premier McLeod told the committee, "Our time has come. It is time for Northerners to make their own decisions about our economy, our environment and our society. Devolution is critical to the long-term well-being and prosperity of the people of the Northwest Territories and of Canada, and the Government of the Northwest Territories supports the timely passage of this bill."[4]

Former Premier of Yukon, Dennis Fentie, provided the committee with his insights on the experience of devolution in Yukon which occurred 10 years ago. He said that devolution is primarily about responsible government and decision-making. With devolution, Yukon obtained control of lands, waters and resources and Yukoners now make decisions on matters in which they are directly affected. Mr. Fentie pointed out that devolution and the settlement of land claims were significant factors in Yukon's impressive economic growth over the past decade and as a result, the territory was better able to contribute to the prosperity of the nation.

A. Consultation

The committee was told that extensive consultation preceded the crafting of Bill C-15, which completes a process of federal transfers that began over 40 years ago. The Minister of Aboriginal Affairs and Northern Development stressed the lengthy process of study, engagement, consultation and negotiations with Aboriginal groups, Northerners and other stakeholders that preceded the development of this legislation. Successive drafts of the devolution agreements were reviewed by the parties, and modified as a result of consultations. For example, the agreement states that nothing in the agreement impairs any negotiation processes that are currently underway in the N.W.T. The wording prior to these consultations dealt with only resident groups, but as a result of consultations with the Athabasca and the Manitoba Dene Suline, whose territory transcends provincial and territorial boundaries, the language was modified to ensure to that their negotiations in the N.W.T. were not affected as a result of the agreement.

The Premier also emphasized the extensive consultations with Aboriginal governments to ensure their full participation in devolution, noting that their engagement is necessary for successful implementation. He stressed that the GNWT continues to negotiate with the remaining Aboriginal governments who are not signatories to the devolution agreement in an effort to

[4] Senate, Standing Committee on Energy, the Environment and Natural Resources, *Evidence*, 2nd Session, 41st Parliament, 5 December 2013.

obtain their participation. It should be noted that many Aboriginal governments did not feel that they were adequately consulted in the processing leading to Bill C-15; their concern was primarily focused on the regulatory reform aspects of the bill, which are explored below.

The committee was advised that devolution will not complete the evolution of the N.W.T. as it assumes province-like powers; rather, it will be the beginning of a period of acclimatization as the new partnership between Aboriginal and public governments matures following the implementation of devolution on April 1st, 2014. As such, devolution is seen in broad strokes, with the details to be worked through as the partners move forward.

B. Revenue Sharing

After devolution, the GNWT will collect all royalties in the N.W.T. It will keep 50% of these revenues, up to 5% of the territorial gross expenditure base, a formula related to federal transfer funds and that is consistent with provincial arrangements under the equalization scheme. The remaining 50% will be remitted to the federal government.

The committee was told that revenue sharing will also respect land claims agreements. Currently, each of the Gwich'in, Sahtu and Tlicho land claims agreements provide for the sharing of resource revenues on public lands in the Mackenzie Valley. The Gwich'in and Sahtu are each entitled to receive 7.5% of the first $2 million of resource revenues collected, or $150,000, and 1.5% of any additional revenues collected annually. The Tlicho receive 10.429% of the first $2 million of resource revenues collected, or $208,580, and 2.086% of any additional resource revenues collected annually. These shares are based on the population of the Aboriginal groups in the territory. Revenue resource obligations are constitutionally protected and will not be affected by devolution.

The GNWT has committed to share up to 25% of its resource revenues with Aboriginal governments that are signatories to the devolution agreement. This will be in addition to the resource sharing obligations set out in existing land claims agreements. The committee was told that should the Dehcho and Akaitcho become signatories to the devolution agreement, they will then participate in this additional revenue sharing.

However, in a written submission, the Dehcho told the committee that they have a legitimate entitlement to share in the benefits of land and resources whether they sign the devolution agreement or not, and object to what they perceive as the use of revenue sharing as a coercive tactic.[5]

C. Federal Employee and Asset Transfer

The committee was told that at least 300 jobs will be transferred from the Government of Canada to the GNWT.[6] The GNWT made job offers to all of the affected federal employees, and all but two accepted a job with the territorial government. Work is also underway with respect to the

[5] The Dehcho do not have a land claim agreement in place and they have not signed the devolution agreement. They have negotiated interim and framework agreements that outline the processes for resolving land and governance issues in their proposed settlement area (known as the Dehcho Process) as they work towards a final agreement.

[6] Senate, Standing Committee on Energy, the Environment and Natural Resources, *Evidence*, 2nd Session, 41st Parliament, 5 December 2013.

transfer of inventory and assets such as buildings, vehicles, warehouses, information technology equipment and data, between now and April 1st, 2014. The Premier has committed to ensuring that some government programs, services and offices will be decentralized from Yellowknife to smaller communities in various regions. Funding for the construction of up to 100 houses and office space in those communities in the next three years has been identified.

D. Retaining Federal Responsibly

Officials from Aboriginal Affairs and Northern Development told the committee that while control and administration of land and water resources is being transferred to the GNWT, the devolution agreement has provisions that allow the federal government to "take back lands" in specified circumstances. These are lands: in the "national interest," a term that includes for national defence or security, the establishment of national parks, and the creation of infrastructure for the transportation of energy.

The Dehcho First Nations expressed concern with the way devolution will be implemented, and in particular that that the federal government retain its responsibility to negotiate with them as their treaty partner. Moreover, the federal government must ensure that the implementation of devolution be accomplished in a way that protects Dehcho rights, and does not interfere with ongoing land claim negotiations through the imposition of time limits or land selection processes.

Federal officials told the committee that the federal government retains the right to take back land from GNWT control to settle any land claims. If the Dehcho First Nations, Akaitcho First Nations or the Northwest Territory Metis were to settle their land claims, there are provisions within the devolution agreement that allow the federal government to take back lands upon consultation with the GNWT to fulfil those land claim agreements.

E. Devolution and Regulatory Reform

The transfer of responsibility over land and water resources was accompanied by reforms to regulatory systems and tools used to manage these resources. The federal government pointed out that the regulatory improvements in the North were a necessary step in realizing the full benefits of devolution and were a priority of the government.

The Minister of Aboriginal Affairs and Northern Development told the committee that the regulatory improvements set out in Bill C-15 build on several reports and recommendations dating back a number of years. Regulatory improvement was identified as a key priority in Canada's Northern Strategy in 2005, followed by the 2008 report *Road to Improvement: The Review of the Regulatory Systems Across the North* led by Neil McCrank submitted to the then Department of Indian and Northern Affairs Canada, and in 2010 by the Action Plan to Improve Northern Regulatory Regimes.

The Premier of the N.W.T. also supported regulatory reform, stating that the regulatory enhancements will give Northerners the necessary tools and authorities to responsibly develop the territory's natural resource potential, promote investment and economic development, and manage the land and environment sustainably. Crucially, the regulatory regime will respect the land claims and provide for regional and community views to be heard.

Representatives from the Mackenzie Valley Land and Water Board were also supportive of the bill's devolution and regulatory efficiency goals, stating that devolution represents a milestone in

the constitutional evolution of the N.W.T. and the regulatory provisions will improve the consistency and predictability of the regulatory process.

Witnesses from both mining and oil and gas sectors supported the bill, including the reforms to the regulatory regime to ensure that the North continues to attract private sector investment. The committee was told that while mining investments in the territory exceed $12 billion over the last 15 years, there has been an alarming decline over that same period in territorial exploration as a share of total Canadian mining exploration. According to the Northwest Territories & Nunavut Chamber of Mines and the Prospectors & Developers Association of Canada, this is linked to both a regulatory system that is burdensome, expensive, lengthy and unpredictable, and the presence of unsettled land claims.

It was also noted that regulatory complexity was particularly burdensome on small companies which, unlike larger companies, lack resources and expertise necessary to navigate through regulatory systems. As a result, these smaller companies, which often take on more risk, look elsewhere when directing their exploration activities.

The Canadian Association of Petroleum Producers echoed the concerns of the mineral mining sector, stating that regulatory reforms will be important for attracting investment, which will in turn create economic growth and employment for the N.W.T. They said that in a globally competitive market it is important for Canada to reduce regulatory barriers and delays in order to attract investment. They noted that regulatory bottlenecks in the past have led to projects either being delayed or cancelled, resulting in the loss of economic and social benefits.

1. Restructuring and Amalgamation of Regional Land and Water Boards

The restructuring of the existing regional land and water boards into one larger board for the entire Mackenzie Valley region was the dominant issue of Bill C-15. The committee heard a mix of views concerning this measure.

The restructuring of the boards was discussed in Neil McCrank's 2008 report *Road to Improvement: The Review of the Regulatory Systems Across the North* (commonly known as the McCrank report), which examined regulatory regimes in the North. At that time, Neil McCrank was the Minister's Special Representative for the federal government's Northern Regulatory Improvement Initiative.

Mr. McCrank told the committee that following an extensive consultation process, the report provided a number of recommendations including introducing timelines for environmental assessments and setting, as a priority, the completion of land use plans. The report endorsed restructuring the three existing regional land and water boards into one amalgamated board for the entire Mackenzie Valley region. Mr. McCrank told the committee that the report offered a second restructuring option whereby the regional boards would not be discontinued but become designated administrative boards with no quasi-judicial responsibilities. However, the single larger board was the preferred option.

One of the main concerns that the committee heard was that the existing Mackenzie Valley Land and Water Board, which regulated projects within unsettled regions and transboundary projects in settled regions, would become unwieldy. This is because all five members of each of the three regional boards are also automatically added to the existing five members of the Mackenzie Valley Land and Water Board, resulting in a 20-member board. If more land claims become

settled, the Mackenzie Valley Land and Water Board would grow in membership by each additional regional board. Also, the committee was told that there were capacity issues in populating the regional boards with relevant expertise, particularly in light of the relatively small population in the North.

In 2010, the Minister of Aboriginal Affairs and Northern Development announced Canada's *Action Plan to Improve Northern Regulatory Regimes in the Northwest Territories*. As part of this initiative John Pollard was appointed as Canada's Chief Federal Negotiator to consult on the restructuring of the boards. Mr. Pollard told the committee the objective of the Action Plan was to ensure an effective, predictable regime that would provide greater certainty to Northerners and industry. Following consultation with Aboriginal groups, industry and other stakeholders, Mr. Pollard made recommendations to the Minister to restructure the regional land and water boards into a single board; these recommendations were incorporated in Part 4 of Bill C-15.

Mr. Pollard told the committee that board restructuring was not supported by Aboriginal groups in settled or unsettled regions. There was a concern over the removal of the existing process for regional input into projects that affected local residents. In response, the Minister agreed to include in the legislation the ability of the Chairperson to form smaller subcommittees with a minimum of three people and to designate a member, if reasonable to do so, from the region where the project is being assessed. The subcommittee would be a decision-making body and could travel to the region to hear the application first hand. This was aimed at striking a balance between the regulatory efficiency of a single board and the need for regional representation.

The committee heard that during the implementation phase there would be a discussion to ensure resources are in place to support the subcommittee. Additionally, Premier McLeod told the committee that devolution would be followed by a decentralization of some government programs, services and offices from Yellowknife to the smaller communities.

The committee heard from each of the Aboriginal governments that have regional land and water boards: the Sahtu Secretariat Incorporated, the Tlicho Government and the Gwich'in Tribal Counsel. They were united in their opposition to the restructuring of the boards. They stated that the board restructuring is contrary to the spirit and intent of their land claims agreement and removes the regional presence that has proven effective in carrying out board mandates. They expressed concern that, given diminished regional involvement, the board will likely make poor decisions concerning land and water management because it will not take into account community information and knowledge. They saw no need or justification for board restructuring, stating that each regional board functioned effectively and efficiently.

They told the committee that the board restructuring measures were not part of the devolution negotiations, were not necessary for devolution and there were no discussions on the range of other options available for regulatory improvement. The Gwich'in and Tlicho urged the committee to separate the devolution aspects of the bill from those related to the restructuring of the boards established under the MVRMA.

The Sahtu, Tlicho and Gwich'in acknowledged that their land claims agreements contemplate the establishment of land and water boards for larger areas, and that Bill C-15 does allow for smaller regional panels of three board members. According to the Sahtu, however, this is unacceptable because a single representative sitting on a committee of the board is no replacement for the current regional land and water board which is better situated to engage and consult with communities most directly affected by their decisions. The Tlicho stated that decisions about

development that transcend territorial boundaries will be made with no Tlicho input at all, which will be devastating to their ability to protect their way of life.

In a written submission to the committee, the Dehcho First Nations, which has not yet settled its land claim, also objected to the restructuring of the land and water boards. They said this provision was not part of devolution negotiations and that the two issues should be addressed in separate legislation. The Dehcho First Nations said that the restructuring of the boards was contrary to the principle of equal representation for treaty First Nations, and it significantly diminishes their control over their land and water. Moreover, they say the imposition of a single board is detrimental to their ongoing land claim negotiations and represents a breach of good faith. The Dehcho felt that they were not consulted with in a meaningful way to develop a new regulatory regime.

The Inuvialuit Regional Corporation supplied a written submission supporting the passage of Bill C-15. It stated that the bill will help achieve two consistent objectives of the Inuvialuit: gaining more local control over decisions affecting the Inuvialuit and their traditional lands, and improving the processes for making those decisions. Further, devolution will also provide additional fiscal resources that will support the provision of new or enhanced programs and services to the Inuvialuit and their communities. It should be noted that while the bill reduces membership on the Inuvialuit Water Board to be established under territorial legislation (from nine to five members), the Inuvialuit Settlement Region is governed by a different regulatory regime other than the MVRMA and thus is unaffected by the amendments in Part 4 of Bill C-15.

Ecology North and Alternatives North, in a joint submission, echoed many of the concerns expressed by the Sahtu, Tlicho and Gwich'in. It was their opinion that the measures in Part 4 will undermine the existing integrity of the environmental management system in the N.W.T. and there is no evidence that regional boards are inefficient, ineffective or lack timeliness. They added that delays are often caused by the uncertainty in decision-making roles as a result of unsettled land claims and that there is nothing in this bill that would address that issue. It was viewed that eliminating the regional boards will create a more adversarial rather than cooperative environmental assessment and regulatory system that will be detrimental to environmental management and sustainable northern development.

Witnesses from the mining, mineral and petroleum industries supported the restructuring of the land and water boards. It was generally viewed that the amalgamation of the boards would lead to improved regulatory outcomes. However, they also stressed that Northerners have a close attachment to the land and water and therefore they supported community involvement in the review of projects proposed in their regions. The Canadian Association of Petroleum Producers supported regional nominees as members of subcommittees considering projects wholly within a region outlined in Bill C-15.

It is worth noting that, in his testimony before the committee, the Minister of Aboriginal Affairs and Northern Development acknowledged that the department had incorporated the concerns of stakeholders into the current legislation. In particular, he explained that in response to concerns expressed over board restructuring, amendments were drafted to allow the Chair to establish smaller committees to deal with applications before the Mackenzie Valley Land and Water Board. Further, in response to comments received through the consultations, the proposed legislation requires the Chair to appoint the regionally nominated representative to the smaller committees when they are considering an application wholly within that region.

Other witnesses, such as John Pollard, also spoke of the importance of the consultation process and its role in shaping the legislation. He explained, for example, that one local concern was that there was no guarantee that an Aboriginal appointee from a region was going to be on that three-person subcommittee. He said, "So we went back and looked at it. We couldn't write it into the legislation for sure that that person would be there because we wouldn't know if the person was ill or on vacation, et cetera. As much as possible, however, we have accommodated that by saying that the Chairperson should make every effort of right of first refusal for a person from the region to be able to be at that hearing."[7]

Additionally, Mr. McCrank suggested that community and regional involvement enters into the resource development process at various times, including at the critical stage of land use planning. When the decision is made as to whether or not there should be any development in an area, the community who will be directly affected must make the final decision on the issue. Once a land use plan is in place, then the actual process of regulating that activity involves a move towards professional expertise in managing technical issues specific to the project.

2. Appointment of Chairperson of the Mackenzie Valley Land and Water Board

The Dehcho, Tlicho and Gwich'in expressed concern with the way in which the Chair of the restructured board will be appointed. Under the amendments in Bill C-15, the Minister will appoint a chair. The Gwich'in and Tlicho would like to retain the current procedure in which a majority of the board nominates a person who is then appointed by the Minister.

Ecology North and Alternatives North also noted concerns with provisions of the bill that increase the authority of the federal Minister, such as the power to appoint the Chair of the board and give written policy directions to boards. They suggest this will undermine the independence of the boards and could increase the potential for political interference in board decisions. Moreover, they say it is counter to the political and legislative intent of devolution, which is to transfer greater authority over land and resource decisions to Northerners.

3. Environmental Assessments, Definition of Public Concern and Cost Recovery Measures

The Northwest Territories & Nunavut Chamber of Mines, the Prospectors & Developers Association of Canada, and the Mining Association of Canada suggested that an environmental impact review set out under the MVRMA could begin at the same time as an environmental assessment rather than one after the completion of the other, thus saving a potential 24 months of process.

They further suggested that the board is occasionally burdened with unwarranted referrals for environmental assessments for activities that typically have little physical environmental impact. They suggest that a definition of the term "significant public concern," its scope and appropriate application would reduce frivolous claims and permit the board to focus on more significant impacts. In this latter recommendation they were joined by the Northwest Territories Chamber of Commerce, who also supported greater specificity with respect to the referral of projects for environmental screening. Noting that sometimes small and simple projects are referred for an

[7] Senate, Standing Committee on Energy, the Environment and Natural Resources, *Evidence*, 2nd Session, 41st Parliament, 13 February 2014.

environmental assessment, they suggest a reasonable definition for project referral for environmental assessment, perhaps based on the scale of the project.

The cost recovery measures in the bill are of concern to the Northwest Territories & Nunavut Chamber of Mines and the Prospectors & Developers Association of Canada. They note that, relative to the rest of Canada, the N.W.T. is already an expensive jurisdiction in which to do business. They fear that making explorers and developers responsible for the recovery for certain costs of the environmental impact assessment and water regulatory processes will add additional financial burdens and further deter exploration and development investment. They recommend that only costs that are peculiar to the application or development in question be made recoverable, and not those expenditures usually incurred by public authorities in the conduct of their normal activities.

F. Other Issues

The Mackenzie Valley Land and Water Board identified three changes they felt would improve the legislation by enhancing certainty, predictability and timeliness.

The bill addresses board member's liability in provisions intended to protect members and employees when acting in good faith to conduct public business. The Mackenzie Valley Land and Water Board pointed out what could be a disparity in the levels of protection given to different boards. While the *Northwest Territories Waters Act* provides board members of the new Inuvialuit Water Board with immunity for acts done in good faith, the MVRMA states that members "are not liable" for acts done in good faith. In their view, there is a distinction between being "immune" and "not liable" and they wonder why the bill sets out two different standards of protection for boards.

The Mackenzie Valley Land and Water Board also raised a concern with respect to the potential loss of quorum during proceedings when a board member's term is nearing expiry. Where quorum may be lost due to the expiry of a member's term, the Chair of the Board must write the federal Minister two months in advance seeking the extension of the member's term. The Minister is deemed to approve if he does not respond. The Mackenzie Valley Land and Water Board suggests that this approach leaves the board and a licence applicant with a great deal of uncertainty. They noted that this particular provision is found in the proposed amendments to the *Northwest Territories Waters Act* and the MVRMA. They said it would be clearer, simpler and more efficient to establish that if a board member is necessary for quorum and his or her term is going to expire during a proceeding, then the term is automatically extended until a board decision is rendered.

The Mackenzie Valley Land and Water Board supports predictable timelines for licencing proceedings. Accordingly, they expressed a concern that the procedure and time required for amending a water licence or development certificate issued under the MVRMA could cause undue delay. They stated that if a condition in a water licence included in a development certificate must be amended, given the timelines set out in the bill, it could take up to nine months to amend a water licence and an additional eight months to amend a development certificate. They recommend that consideration be given to a more expedited process for amendments that do not pose material environmental risks.

The Northwest Territories Chamber of Commerce calls for a single window application process for resource projects within the N.W.T. in which all aspects of exploration or development

applications, such as land and water use permits and licences, are addressed concurrently. They suggest this will create greater efficiencies.

CONCLUSION

The committee thanks all those who appeared personally or submitted written briefs for their thoughtful input. Having given careful consideration to all evidence received and comments raised, the committee is comfortable passing this bill without amendment and with these observations.

APPENDIX A: WITNESS LIST AND WRITTEN SUBMISSIONS

February 13, 2014

Daniel Pagowski, Legal Counsel, Negotiations and Northern Affairs *(Aboriginal Affairs and Northern Development Canada)*

John Pollard *(As an individual)*

February 11, 2014

Alex Ferguson, Vice-President, Policy and Environment (Canadian Association of Petroleum Producers)

Mike Hardin, Legal Counsel (Northwest Territories and Nunavut Chamber of Mines)

Tom Hoefer, Executive Director (Northwest Territories and Nunavut Chamber of Mines)

Aaron Miller, Manager, Northern Canada (Canadian Association of Petroleum Producers)

Vida Ramin, Director, Lands and Regulations (Prospectors and Developers Association of Canada)

Allen Stanzell, 1st Vice-President (Northwest Territories Chamber of Commerce)

February 6, 2014

Dawn Tremblay, Office Manager (Ecology North)

Christine Wenman, Manager, Policy and Planning (Ecology North)

February 4, 2014

Kirk Cameron (As an individual)

Dennis Fentie, Former Premier of Yukon (As an individual)

Neil McCrank, Q.C. (As an individual)

January 30, 2014

Robert Alexie, President (Gwich'in Tribal Council)

Ethel Blondin-Andrew, Chairperson (Sahtu Secretariat Incorporated)

Eddie Erasmus, Grand Chief (Tlicho Government)

Daryn R. Leas, Legal Counsel (Sahtu Secretariat Incorporated)

Patrick Tomlinson, Director, Intergovernmental Relations (Gwich'in Tribal Council)

Bertha Rabesca Zoe, Lawyer (Tlicho Government)

January 28, 2014

John Donihee, Legal Counsel (MacKenzie Valley Land and Water Board)

Willard Hagen, Chair and Chief Executive Officer (MacKenzie Valley Land and Water Board)

Zabey Nevitt, Executive Director (MacKenzie Valley Land and Water Board)

December 12, 2013

Tom Isaac, Senior Counsel, Negotiations, Northern Affairs and Federal Interlocutor (Department of Justice)

Alison Lobsinger, Manager, Legislation and Policy (Aboriginal Affairs and Northern Development Canada)

Tara Shannon, Director, Resource Policy and Programs Directorate (Aboriginal Affairs and Northern Development Canada)

Wayne Walsh, Director, Northwest Devolution Negotiations (Aboriginal Affairs and Northern Development Canada)

December 5, 2013

The Honourable Bernard Valcourt, P.C., M.P., Minister of Aboriginal Affairs and Northern Development

The Honourable Bob McLeod, Premier of the Northwest Territories

Tom Isaac, Senior Counsel, Negotiations, Northern Affairs and Federal Interlocutor (Department of Justice)

Paula Isaak, Director General, Natural Resources and Environment Branch (Aboriginal Affairs and Northern Development Canada)

Tara Shannon, Director, Resource Policy and Programs Directorate (Aboriginal Affairs and Northern Development Canada)

Wayne Walsh, Director, Northwest Devolution Negotiations (Aboriginal Affairs and Northern Development Canada)

Michael Miltenberger, Minister of Environment and Natural Resources (Government of the Northwest Territories)

Shaleen Woodword, Assistant Deputy Minister of Devolution Implementation (Government of the Northwest Territories)

Written Submissions

1. Dehcho First Nations
2. Inuvialuit Regional Corporation
3. Mining Association of Canada