

37th PARLIAMENT, 2nd SESSION

Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources

EVIDENCE

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Tuesday, December 3, 2002

 **1535**



The Chair (Mr. Raymond Bonin (Nickel Belt, Lib.))



Mr. Yvan Loubier (Saint-Hyacinthe—Bagot, BQ)



The Chair



Mr. Dick Proctor (Palliser, NDP)



The Chair



Mr. John Finlay (Oxford, Lib.)



The Chair



Mr. Maurice Vellacott (Saskatoon—Wanuskewin, Canadian Alliance)

 **1540**



The Chair



Mr. Maurice Vellacott



The Chair



Mr. John Finlay



The Chair



Mr. John Finlay



The Chair



The Chair



Mr. Maurice Vellacott

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 **1655**



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Mr. Maurice Vellacott
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Mr. John Godfrey

The Chair

Mr. Inky Mark

 **1750**



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 **1755**



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CANADA

Standing Committee on Aboriginal Affairs, Northern Development and Natural Resources

NUMBER 010



2nd SESSION



37th PARLIAMENT

EVIDENCE

Tuesday, December 3, 2002

[Recorded by Electronic Apparatus]

  (1535)

[English]



The Chair (Mr. Raymond Bonin (Nickel Belt, Lib.)): We'll call the meeting to order.

Colleagues, I have a request from Monsieur Loubier, who is the organizer of the Christmas party this evening and who has a lot of work to do. He is willing to combine his amendments with other amendments.

The request I make to you is that we give him the floor for five minutes. After having dealt with his amendments, he will have to depart. Do I have your concurrence on this?

Monsieur Loubier, cinq minutes.

[Translation]



Mr. Yvan Loubier (Saint-Hyacinthe—Bagot, BQ): Thank you, Mr. Chairman. I'd also like to thank the committee members for accommodating me.

I spoke with my NDP colleague this morning and after comparing the amendments we planned to propose, we realized that many of them were similar, particularly the ones that refer to the independence of the commission and of the courts and the one calling for the minister not to be given full discretion in terms of appointments, the process and so forth. There were numerous similarities. Therefore, I wish to withdraw my amendments. The Bloc Québécois will support the amendments moved by the NDP this afternoon.

I can't stay, but my colleague Marcel Gagnon will be supporting these resolutions. We'll see if the NDP's amendments are adopted. We listened carefully to the arguments put forward by First Nations. We agree with their position and we would like to see the bill amended so that everyone is satisfied and the draft legislation more closely resembles the joint committee's proposals. I think it would be a good idea to continue this process, bearing in mind that progress will be accomplished through a spirit of cooperation and partnership, not by having views imposed on us.

Thank you for your indulgence, Mr. Chairman. We withdraw our amendments and intend to support those submitted by the NDP.



The Chair: All of the Bloc amendments are hereby withdrawn. The Bloc will vote in favour of the NDP amendments.

[*English*]

You can remove from your book all amendments by the Bloc Québécois.

Now we can proceed. We will be working from this green binder, which has been prepared for us. We want to thank everyone very much for this.

On page 1, G-1 has been dealt with. On page 2, BQ-1 has been withdrawn.

(On clause 5--*Composition*)

The Chair: We will now deal with NDP-1, on page 3. It states that Bill C-6, in clause 5, be amended by replacing lines 6 and 7 on page 3 with the following:

nor in Council on the joint recommendation of the Minister and the Assembly of First Nations—and the Commission and the

Mr. Proctor.



Mr. Dick Proctor (Palliser, NDP): Thank you Mr. Chair.

We believe this amendment addresses the concerns regarding the lack of independence of the centre. We think it's consistent with the joint task force principle that all appointments are based on joint recommendations and not simply recommendations of the minister.



The Chair: Excuse me Mr. Proctor.

Colleagues, if you vote in favour of NDP-1 you will not have to deal with CA-1. If you vote against it, we will deal with CA-1 after this.

That's it Mr. Proctor?

Mr. Proctor: Yes

The Chair: Any other comments on the amendment?

Mr. Finlay.



Mr. John Finlay (Oxford, Lib.): Mr. Chair, just to point out that the minister needs the ability to survey the broadest range of qualified people, to get the message out to individuals. He has committed to seek first nations input into appointments.



The Chair: Thank you very much.

Any other comments?

Mr. Vellacott.



Mr. Maurice Vellacott (Saskatoon—Wanuskewin, Canadian Alliance): I was just going to say, not knowing whether my amendment will even come forward—if there is a positive vote on NDP-1—the intent of both amendments, which are very similar, is to require the minister to work with them. As the parliamentary secretary has stated, this is his intent. It seems to be the intent of the government side.

I would then see no harm in having this right within the bill itself. I think it would be a good thing to have the development of that list of acceptable people from which he chooses the CEO for the centre.

  (1540)



The Chair: So, Mr. Vellacott, you're speaking in favour of NDP-1?



Mr. Maurice Vellacott: I am. We'll see what this gives.



The Chair: Do you have comments, Mr. Finlay?



Mr. John Finlay: Only that I'm not speaking in favour of it, Mr. Chair.



The Chair: No, I said Mr. Vellacott.



Mr. John Finlay: That's fine.



The Chair: Are you ready for the question?

(Amendment negatived)



The Chair: It's defeated because I have the deciding vote.

To the whip, get us another member here. I don't want to be breaking ties for the rest of the day. I can make enough enemies on my own without this.

We have defeated CA-1, therefore...

We are dealing with it?



Mr. Maurice Vellacott: Mine is different in the sense that it allows a larger mutual list and so the minister has a little more discretion in that, but it's still one worked out in terms of the total

list. He may only choose eight of those ten, but it's a mutually... so it's softened from that other one. For that reason I would suggest it merits support.



The Chair: Are there any other comments on CA-1?

(Amendment negatived—See *Minutes of Proceedings*)

(Clause 5 agreed to on division)

(On clause 8--*Term and tenure*)



The Chair: Mr. Finlay, G-2 on page 5. Please explain your amendment.



Mr. John Finlay: Thank you, Mr. Chair. I'd like to move that Bill C-6, clause 8, be amended by replacing, in the English version, lines 28 and 29 on page 3 with the following:

The Chief Executive Officer shall hold office during good behaviour for a term of not more



The Chair: So you are adding “shall” and “during good behaviour”, is that correct?



Mr. John Finlay: Yes, sir.



The Chair: Is there any debate on that?

Mr. Chatters.



Mr. David Chatters (Athabasca, Canadian Alliance): Thank you.

I would like to ask Mr. Finlay, if I could, to describe what good behaviour qualifies as there.

  (1545)



The Chair: Mr. Finlay.



Mr. John Finlay: Mr. Chairman, I looked that up once and--

Mr. David Chatters: Your mother never told you?

Mr. John Finlay: No.

I think it has to do with being a good officer of the crown. And I guess if he or she was unable to follow those intentions then he or she could be removed.



The Chair: Should we not say “in good standing”?



Mr. John Finlay: No. This is different.



The Chair: It's different.

The amendment stays as is.

Mr. Pallister.



Mr. Brian Pallister (Portage—Lisgar, Canadian Alliance): I have to ask the question, good behaviour according to whom? The parties to the dispute would be aboriginal first nations communities and the government. The difficult issue we face is one of objectivity, of independence, and the conflict of interest arguments that have been made by some of the presenters I think are important arguments. So if the good behaviour is determined by one side in the discussion, couldn't good behaviour mean favouring the government's position in a dispute? And if that's the case, doesn't having good behaviour in here, in this context, further raise the question of whether in fact the person so described is behaving in the best interests of the objective goals that we should be pursuing in resolving these disputes? In other words, is good behaviour being determined by one party to the disagreement?



The Chair: Mr. Pallister, we're inviting the officials to the table, and maybe we would ask them at this point to clarify this for us.

Welcome back to you.

Could you address the issue of good behaviour, “during good behaviour”? Who will be the judge? What is good behaviour? And what are we trying to do here?



Mr. Gilles Binda (Senior Policy Advisor, Resource Strategies, Department of Indian Affairs and Northern Development): There are two ways of appointing people from the governor in council, either on good behaviour or at pleasure, at pleasure meaning the government can decide to reappoint somebody or to put somebody in at their discretion.

Good behaviour has to do with doing the job properly, and that's why they are only removed for cause, because if he is not doing his job, “cause” is a term that is defined, that will allow the government to remove a person who is appointed to that position.



The Chair: Is that clear, Mr. Vellacott?



Mr. Maurice Vellacott: I'm not really sure it is clear, and maybe our counsel can answer. What about in the case of maybe not voting as the government of the day is--whatever that government is, the Canadian Alliance government, if it be that--not voting in line with how they would dictate on that? Is that, then, reason for removal of that person?



Mr. Robert Winogron (Senior Counsel, Specific Claims, Department of Indian Affairs and Northern Development): No, it's a defined term in the case law, and according to the case law, that would not be deemed not good behaviour. This goes to the principle of independence. When somebody is appointed or can be removed at pleasure, it detracts from the independence of the body. So to put a provision in that simply says you can only remain there during a term of good behaviour, there has to be some contraindication of that for you to be removed. It adds to the independence of the body.



Mr. Maurice Vellacott: Can you give me an example of “not good behaviour” during that term?



Mr. Robert Winogron: Those would be some scandalous acts that are deemed to be something other than good behaviour.



The Chair: Mr. Godfrey.



Mr. John Godfrey (Don Valley West, Lib.): From what you're saying, I'm assuming that the term "good behaviour" has a whole body of law about it in employment law. It would have to do with whether you had carried out the intentions of the act, whether you had fulfilled your contractual obligations, that you had been honest. I suppose not only scandalous behaviour, but total incompetence would be grounds for removal. But it's not specific to this act. There are any number of situations where these words could apply, as indeed they would in the rest of society. Is that a fair representation of the case?



Mr. Robert Winogron: I think the incompetence part might go to a cause, but essentially, yes, that is the case.



The Chair: Mr. Pallister.



Mr. Brian Pallister: So we could take from this that the purpose, then, would be to give greater assurance of independence for this officer, greater assurance that the officer could not be removed for frivolous reasons, or simply due to bias that might be felt by the government of the day because the officer made a decision counter to what the government's point of view in the case might have been. Is that a fair observation?

Also, then, would it be fair to observe that if one wanted true independence, they might also share in the responsibilities of appointing the officer, not totally take those unilaterally onto their side?



Mr. Robert Winogron: It could also be observed. It's one argument to be made.



The Chair: Mr. Proctor.



Mr. Dick Proctor: I wonder if our experts could tell us precisely what's the difference. The proposed bill we have, before Mr. Finlay's amendment, says the chief executive officer may be removed for cause by the governor in council, and Mr. Finlay is saying "during good behaviour". Could the experts here tell me the difference between the two?

   (1550)

 

Mr. Gilles Binda: How can I explain it to you? It removes the power of government to remove a person, as somebody pointed out, just at pleasure. "Good behaviour" means he has to do his job well, and he would have to do something contrary to what he was appointed to do to be not in good behaviour, or again, he would have to do something that's for cause.

 

The Chair: Mr. Loubier, you get the last word.

[*Translation*]

 

Mr. Yvan Loubier: Getting back to Mr. Proctor's question, the following is noted in clause 8: "The Chief Executive Officer may be appointed to hold office for a term of not more than five years", which is clear, but "may be removed for cause by the Governor in Council". This means that Cabinet could decide to remove the Chief Executive Officer for cause. There is no need for an additional provision respecting good behaviour. The Governor in Council may decide to remove the Chief Executive Officer for cause. Why talk about good behaviour then? You still haven't convinced me.

[*English*]

 

The Chair: We'll go to Mr. Proctor, Mr. Finlay, unless you have the answer.

 

Mr. John Finlay: Well, I would like to point out to everybody that the requirement is now present in the French version. We're trying to correct the English version, which doesn't have the same meaning.

 

The Chair: Colleagues, the point has been made that it's in the French version and this is a correction to the translation.

Are there any other comments on this?

Mr. Finlay, you have the last word on your amendment.



Mr. John Finlay: Mr. Chairman, just looking at it now, it says the chief executive officer may be appointed to hold office for a term of not more than five years and may be removed for cause. I think our experts have indicated that if a person holds office during good behaviour, he cannot be removed willy-nilly for some cause or other. It would probably have to be something that didn't have to do with the job, like consorting with a Russian spy. That goes back to the Second World War.



The Chair: This was the last speaker on this issue, other than the department to help clarify the issue.

[Translation]



Mr. Gilles Binda: I'd like to respond to Mr. Loubier. In the French version of the bill, we have “*nommé à titre inamovible*”. We want the English version to be amended to read “during good behaviour”, which is the equivalent of “*à titre inamovible*”. The equivalent of “removed for cause” is “*révocation motivée*”. We merely need to add the English equivalent of “*inamovible*” which does not appear in the English version.



Mr. Yvan Loubier: I won't belabour the point, but I find that...

[English]



The Chair: There's no more debate from members. We're ready for the question. If you're not ready for the question, you just tell me and a majority vote will reopen the debate. You run the procedure on this committee.

(Amendment agreed to)



The Chair: This addition to the main motion becomes the main motion as amended.

We go to CA-2, an amendment by Mr. Vellacott, keeping in mind what the main motion says.

Mr. Vellacott.



Mr. Maurice Vellacott: I assume this is 8-1 that we're dealing with now?



The Chair: It's CA-2, on page 6.

  (1555)



Mr. Maurice Vellacott: Okay.



Mr. John Finlay: Excuse me, Mr. Chair.



The Chair: Mr. Finlay, tell me what you want. Is it a point of clarification or a point of order?



Mr. John Finlay: Well, I'm back on page 4.



The Chair: We're not on page 4 any more.



Mr. John Finlay: Oh, all right. We haven't been on page 4.



The Chair: Oh, my God. I'm told there are two binders. Let's make sure we all have the same binder. Don't feel bad; I had the old binder when I showed up this afternoon too. Just take the new binder.

Okay, it doesn't matter which binder you have, we are on CA-2. That is the same.

Mr. Vellacott, on your amendment.



Mr. Maurice Vellacott: I'd like to have that withdrawn, Mr. Chair, in view of the defeat of a previous motion.



The Chair: Okay, I need 50% plus one in favour of withdrawing.

For clarification, CA-2 has been withdrawn. We're at G-3, still on clause 8.

Mr. Finlay.



Mr. John Finlay: I would like to move that Bill C-6, clause 8, be amended by replacing, in the English version, line 31 on page 4 with the following:

sioner of the commission.

This amendment clarifies that the chief commissioner referred to in this clause is the chief commissioner of the commission, consistent with other provisions in the bill.



The Chair: Do we agree on that? I don't think there's a problem there.

(Amendment agreed to)

(Clause 8 as amended agreed to)

(On clause 9--*Deputy head*)

The Chair: Next is G-4, Mr. Finlay.



Mr. John Finlay: I think this one was done the other day.



The Chair: Okay, G-4 has been dealt with and BQ-2 has been withdrawn.

On NDP-2--



Mr. Maurice Vellacott: I don't see it in here. I'm not sure what happened or where it is now.



The Chair: We have a point of information. If it's important, we'll deal with it.

An hon. member: It's bound to be important, Mr. Chairman.

The Chair: Which clause does it affect? Clause 8? We just passed it. Let's see what it says.

Could you explain that?



Ms. Susan Baldwin (Procedural Clerk): Mr. Vellacott, unfortunately we can't put this one to the committee because we've already amended the same lines. We can only amend the lines once, at one stage.



Mr. Maurice Vellacott: Did you know that before the books were put together?



Ms. Susan Baldwin: I did not see this one before. I don't know why I never had it.



The Chair: Are you okay with that, Mr. Vellacott?



Mr. Maurice Vellacott: This is the committee's reference number from last time, not mine. It wasn't anything that I...

  (1600)



The Chair: I could seek unanimous consent to reopen, if you think you could get it passed.



Mr. Maurice Vellacott: That's fine.



The Chair: Thank you for your cooperation.

(On clause 20--*Composition*)

The Chair: Mr. Proctor is next on NDP-2.



Mr. Dick Proctor: The proposal here is that the divisions of the centre consist of a chief commissioner, a vice-chief commissioner, and up to five other commissioners, to be appointed by the governor in council on the recommendation of the minister.

We're recommending that it be a joint recommendation of the minister and the Assembly of First Nations.

The purpose of that is to ensure that the commission appointments are also based on joint recommendations between the AFN and the minister or the department. I so move.



The Chair: Mr. Finlay.



Mr. John Finlay: Thank you, Mr. Chairman.

This is similar to a previous amendment we had that was turned down. The minister has committed that he will seek first nations input. He has the responsibility and wishes to retain that. This is consistent with other governor in council appointments to boards and commissions.



The Chair: Mr. Pallister.



Mr. Brian Pallister: I'd like to speak in support of Mr. Proctor's amendment, and I would hope that the government members would seriously consider supporting it as well. It may be consistent with other methods of government appointments, but if we leave this unamended, what it is inconsistent with is the word of the government. In its own campaign literature for the 1993 election, including the red book itself, it made a commitment to this, as did the previous minister. If the government is going to oppose this motion at this point in time, then it risks breaking its word. I think that's an important consideration here.

This is not something that should be given lightly. The assurances were made. They were taken to be serious by the other partner in this issue. To back away now, after these repeated assurances have been given, strikes me as a serious departure and a serious violation of good faith.

I would not like to see government members oppose this amendment based simply on the very superficial argument that in other departments appointments are made by the minister. In other departments there was no commitment made by a minister to take another approach. There was no commitment made by the government to take another approach. There was here. The government gave its word that this process would be as the amendment would create it. The government should stand by its word. To back away from that at this point in time is, I think.... I have serious misgivings about it personally.

I hope that other committee members will support this amendment.

[*Translation*]



The Chair: Mr. Loubier.



Mr. Yvan Loubier: I concur with my colleague. When the Minister testified before the committee, he stated on three occasions that he would be holding consultations. He maintained that the Assembly of First Nations was a genuine partner in the process. Why then not formalize what the Minister said last week?

The Minister also said he wasn't surprised because the Assembly of First nations rarely agreed with a government initiative. I understand that. It's a question of attitude. The success of this type of approach hinges on being able to establish a partnership with first nations as equals. If we continue to adopt a paternalistic approach, to insist on handling appointments and on having the minister make decisions, instead of taking a collegial approach, any negotiations are likely to fail. Either we choose to maintain a confrontational attitude with First Nations, or we decide to strike joint committees, for example, that will make recommendations and oversee appointments that are acceptable to both parties within the framework of first nation agreements. At some point, confrontation...I abhor confrontation. I'm extremely uncomfortable with this paternalistic attitude that persist even 130 years after the passage of the Indian Act.

If, at the very least, we could have joint recommendations for appointments made by First Nations and the Minister, that would be a truly remarkable achievement.

[*English*]



The Chair: Mr. Chatters.



Mr. David Chatters: In support of what the previous two speakers have said, I think this particular clause goes to the heart of the problem in the relationship between Indian peoples and the Government of Canada for 130-plus years. A minister of the crown makes a promise and then reneges on that promise. That has happened over and over again, and it appears that it's about to happen here again. I don't think that in any way lives up to the word of the then minister and to the promise she made in the red book, as a matter of fact, to approach aboriginal relations in a different way. I think this is a pretty serious issue.

  (1605)



The Chair: Mr. Godfrey.



Mr. John Godfrey: I'm going to be supporting the opposition amendment for many of the reasons that were put forward, in the same spirit in which I proposed that for certain pieces of legislation this committee consider the Penner model involving aboriginal people and the determination of their own destiny. I cannot see the downside in terms of getting a lesser-quality person if there's a two-key system that involves both the minister and the Assembly of First Nations. I see a huge upside in terms of mutual respect. I don't see that having the AFN have a say in appointments will bankrupt the government or anything else. It just means that we'll get a class of people in there who will have the respect of the two principal players in the discussion, which is the aboriginal community and the government. So I'm supporting it.



The Chair: Mr. Finlay.



Mr. John Finlay: Mr. Chairman, the AFN is not the only group representing first nations, as everyone on this committee knows. The minister has committed to seeking input from first nations generally. We all heard the former grand chief when he reported to us on the current specific claims commission, of which he happens to be the commissioner.

Nobody has written this out of the bill. It wasn't written in the bill. It wasn't negotiated in the bill. If we're going to have a standoff on who's going to be the commissioner, it's going to take a long time to get this thing moving.

In listening to the people from the Yukon in our video conference this morning, I think we learned—at least I did—that there are chiefs of first nations who realize they need these changes, and that they need them incrementally, not all at once. I can tell you that I'm not at all comfortable putting someone who's not responsible for the money, not responsible for the program, and not responsible for all Indian and aboriginal groups, in a position where they're going to decide things as far reaching in importance for a native band as specific claims.

So I'm going to vote against it.



The Chair: Colleagues, we have a serious problem. I've just been informed there are 15 amendments from the Canadian Alliance, which were not forwarded to our legal assistants by an employee of the House. Mr. Vellacott did present them in time, but they got lost somewhere. A number of them address clause 20.

We are in the process of trying to get copies. Can we suspend for 10 minutes?

So be it.

  (1609)

  (1623)



The Chair: Colleagues, it's very important that we follow very closely. We are now going to page 10, I think. Please go back to page 10. Is everybody on page 10? Now we see the page number. At the top left-hand corner of your page there's a reference number. So to make sure we are all on the same page, I will also call the reference number. Page 10 is reference 595717. That amendment is on the floor at this time. We will deal with it.

But before that, we'll make sure we have the other pages in order. Page 11 is PC-1, reference 593963. Are we okay? Next page is CA-3, page 12, 585174. Next page is NDP-3, page 13, 595719.

Now you will take one of the four pages you just received, reference 604511, top right-hand side. You will name that CA-3.1. Top right-hand side is Canadian Alliance amendment 3.1. Mr. Finlay needs to write that in there. That is page 13(a).

Next page is CA-4, page 14, reference number 585181.

Then you will find another one of your four pages, reference number 604536. We're now going to name this. Call it CA, we won't number it, but it's page 14(a). Are we all on track?

Then we have CA-5, page 15, 588271.

Then you take the next of the four pages, reference 604558. We'll call it CA amendment, and the page number is 15(a).

   (1625)

 

Mr. David Chatters: What was the reference number?

 

The Chair: Just CA. Oh, reference--sorry--558.

Now the next page you have of the four pages is reference 603441. We'll call that a CA amendment, page 15(b). We'll continue with clause 20. Page 16 is also clause 20.

Now we're going back to page 10. We've had debate on this, except that Mr. Proctor didn't get the last word on it, and he has the last word now.

 

Mr. Dick Proctor: Thank you very much.

I would just say as my wrap-up, Mr. Chair, that in Mr. Finlay's opening comments explaining why he was going to vote against the bill, he said the minister is going to consult with the Assembly of First Nations anyway. I would simply say, respectfully, across the table, through you to Mr. Finlay, that if he's going to do that, why don't we simply put it in the legislation and have it done that way, rather than just some kind of commitment that he will. If he's going to do it, let's put it in the legislation. Thank you.

 

The Chair: Are you ready for the question?

(Amendment negatived—See *Minutes of Proceedings*)

 

The Chair: We are now on page 11, amendment PC-1.

Mr. Mark.

 

Mr. Inky Mark (Dauphin—Swan River, PC): Thank you, Mr. Chair.

John, this one is for you. Anyway, this is about inclusion. This is it. So if you want to believe what we say and do what we say we're going to do, then I would ask for your support to pass this amendment.

(Amendment negated—See *Minutes of Proceedings*)



The Chair: We are on page 12, CA-3.

Mr. Vellacott.



Mr. Maurice Vellacott: Again, it pretty much speaks for itself. It's approved by both the minister and the Assembly of First Nations. It's to assert a little more independence for the body itself. This has come around before, at least the tone of it. Again, if this is about independence for a body, which we insist it is or claim it is, we're just trying to insert that at this point.

(Amendment negated—See *Minutes of Proceedings*)



The Chair: If you don't raise your hands, I don't count your votes, colleagues.

We're on page 13, NDP-3.

Mr. Proctor.



Mr. Dick Proctor: It's the same argument I made in the previous one, Mr. Chair. It should be a joint recommendation of the minister and the Assembly of First Nations.

(Amendment negated—See *Minutes of Proceedings*)



The Chair: We're on page 13(a), CA-3.1.

Mr. Vellacott.



Mr. Maurice Vellacott: The effect of this particular amendment would be to require the agreement of the minister and the Assembly of First Nations in the decision to increase or decrease the number of commissioners. If, for example, in the view of the minister or the department, one of their appointees was slipping sideways and not necessarily coming down on the side they preferred, the minister could theoretically decide that he is going to increase the body. So this is basically to say that we don't want that kind of scenario necessarily, but it would be an agreement between the minister and the Assembly of First Nations to increase or decrease, as the case might require.

(Amendment negated—See *Minutes of Proceedings*)

   (1630)

 

The Chair: We're on page 14, amendment CA-4.

Mr. Vellacott.

 

Mr. Maurice Vellacott: We are withdrawing this one.

 

The Chair: CA-4 on page 14 is withdrawn.

Page 14(a).

Mr. Vellacott.

 

Mr. Maurice Vellacott: Again, this amendment would require the agreement of the minister and the Assembly of First Nations in a decision to remove that chief commissioner or vice-chief commissioner from their post. So it's a mutuality, a sense of independence. If there's going to be respect for this body and justice is seen to be done, I think the first nations people need to be factored into critical and crucial decisions as to the chief commissioner and the vice-chief commissioner. We're wanting to assert the independence of this body again by this amendment.

 

The Chair: Are there comments? Are we ready for the question on amendment CA on page 14(a)? I will put the reference number to this. It's 604536.

(Amendment negated—See *Minutes of Proceedings*)



The Chair: By the way, colleagues, when I give the floor to a person, I'm accepting that the person is moving that amendment, rather than asking every time if we have a mover. Are we okay to function this way?

Some hon. members: Yes.

The Chair: Thank you.

Amendment CA-5, page 15, reference number 588271.

Mr. Vellacott.



Mr. Maurice Vellacott: I'd like to withdraw this one. If the minister has sole discretion in terms of appointment, why would I want them to be in for such indefinite or lengthy times? I simply see no point in having it, in view of the other defeats of prior amendments.



The Chair: Amendment 588271 is withdrawn.

Page 15(a), 604558. Mr. Vellacott.



Mr. Maurice Vellacott: Again, this amendment would require the agreement of the minister and the Assembly of First Nations in a decision to remove commissioners, other than the chief commissioner or the vice-chief commissioner, from their posts. Again, it's a mutuality, a sense of greater independence by way of an agreement to remove, if it came to that.

(Amendment negated—See *Minutes of Proceedings*)



The Chair: I don't think Mr. McCormick has been signed in. Is that correct? We don't have ten members on the government side.

Next is reference 603441, CA amendment. Mr. Vellacott, that is your page 15(b).



Mr. Maurice Vellacott: This again would require the agreement of the minister and the Assembly of First Nations in the decision to reappoint commissioners, not only in terms of the

initial appointment. We didn't want that to slip through. That is the intent of this amendment before us now.

(Amendment negated—See *Minutes of Proceedings*)



The Chair: Next is page 16, PC-2, reference 593966. Mr. Mark.



Mr. Inky Mark: Thank you, Mr. Chair.

This just broadens the base to make sure all the aboriginal communities are involved in time to do the right thing.

(Amendment negated—See *Minutes of Proceedings*)

(Clause 20 agreed to)

  (1635)



The Chair: Colleagues, I have a request from Mr. Vellacott, and if I had the power to grant it I would do it on my own. He had an amendment for clause 8, which we have dealt with, but this is one of the amendments that was lost in the pile.



Mr. Maurice Vellacott: I have two of them. I guess everybody has them. They are 603429 and 603343.



The Chair: First of all--and a chair doesn't usually do this--I urge your cooperation. Will you give Mr. Vellacott unanimous consent so we can deal with these.

Some hon. members: Agreed.

The Chair: Thank you very much. I appreciate that.

(On clause 8--*Term and tenure*)

The Chair: I'm told by legal counsel that amendment 603343 cannot be put. Do you need an explanation, Mr. Vellacott?



Mr. Maurice Vellacott: Yes, just very quickly. That would help.



Ms. Susan Baldwin: It's because we've already amended that part of the bill, and we can only amend the same line once at a stage in a bill.

The Chair: Mr. Godfrey.



Mr. John Godfrey: Just out of curiosity, we amended without knowing this motion was in place. Had we known it, how would we have dealt with two amendments on the same line, if we'd had both in front of us?



Ms. Susan Baldwin: There are two methods. You can choose between them, or, on occasion, it's possible to move one as a subamendment of the other.



Mr. John Godfrey: I guess the problem, in all fairness to Mr. Vellacott, is we could not have made either of those choices because we didn't have perfect information, which would have been required to make those choices.



Mr. Maurice Vellacott: Have you considered, in this instance, changing the line with a subamendment, and then going to a vote?



The Chair: It has been recommended to me that we take 603343 and add to subclause 8(1) "during good behaviour", which means it would be dealt with as a subamendment of the other. If this is acceptable, I can put it to....

We shouldn't operate on gut feelings. I suspect they won't pass. I'm tempted to ask you for permission to put the question to you, and if it passes.... An employee of the House, who is not here, caused this problem, so we would let the Speaker solve it.

What do you think?

Mr. Proctor.

   (1640)

 

Mr. Dick Proctor: To assist me, at any rate, could you read it as it's now being proposed--

The Chair: The suggested change?

Mr. Dick Proctor: Yes.

 

The Chair: It's being rewritten.

Mr. Dick Proctor: I see.

The Chair: Go ahead.

 

Ms. Susan Baldwin: On the last line it should read:

Officer shall hold office during good behaviour for a term of not more

That's where it would be added.

 

The Chair: And is Mr. Vellacott okay with this?

 

Mr. Maurice Vellacott: Yes.

 

The Chair: This is an amendment to clause 8 as amended, which we passed before.

Is there any debate?

 

Mr. Maurice Vellacott: Again, it's not rocket science here, but it would require the agreement of the minister and the Assembly of First Nations in both the appointment and the removal, should it become necessary, of the CEO of the centre. Again, that's consistent with the theme

we've been promoting throughout here--some independence, some unanimity, if you will, and mutuality, so there's real integrity in this claims centre.



The Chair: Thank you. Are there other comments?

(Amendment negatived—See *Minutes of Proceedings*)

The Chair: I shouldn't take sides, but I'm relieved, Mr. Vellacott. I can imagine the problem I'd have in the House explaining that.

Now we're on reference 603429, clause 8.



Mr. Maurice Vellacott: This amendment requires the agreement of the minister and the Assembly of First Nations in the consideration to reappoint the chief executive officer to another term. So that's consistent with other amendments we've had in.



The Chair: Is there any more debate?

(Amendment negatived—See *Minutes of Proceedings*)

(Clause 8 as amended agreed to)

The Chair: Let's try to get back to clause 22. Correct? Or did the Canadian Alliance have anything before 22?



Mr. Maurice Vellacott: I don't know if you're taking the one on clause 18 later or...



The Chair: We're taking them in order, right? Clause 18 has already been carried. We did that last week.

At the end, when we've completed all clauses, Mr. Vellacott, you may ask your colleagues if they give you unanimous consent to reconsider 18.



Mr. Maurice Vellacott: Fair enough.



The Chair: We have done 20, right? Now we are on clause 23. Clause 22 carried last time.

So, Mr. Proctor, if you wish to deal with NDP-4, at the end, you will have to ask your colleagues to give you unanimous consent to reopen clause 22. The reason for that is because we voted on it last Thursday.



Mr. Dick Proctor: I'll withdraw.



The Chair: Page 17 has been withdrawn.

(On clause 23--*Functions*)

The Chair: PC-3, Mr. Mark.

  (1645)



Mr. Inky Mark: This is to expand the role of the commission, I believe, so that it's very clear in terms of what it should do in terms of the distribution of educational materials.



The Chair: Are there other comments? Is the committee ready for the question?

(Amendment negated—See *Minutes of Proceedings*)

The Chair: We'll turn now to NDP-5. It's on clause 24, which has already carried. Again, you would need unanimous consent to reconsider the clause. Do you wish to hold off till the end to do that, or withdraw it? This is page 19.



Mr. Dick Proctor: I'll withdraw.



The Chair: Page 19 is withdrawn; that's reference 595905.

Colleagues, on clause 23 I asked if you agreed with the amendment and you said no. We now have to vote on the main motion. Shall clause 23 carry?

(Clause 23 agreed to on division)

(On clause 26--*Admissible claims*)

The Chair: Pages 20, 21, 22, and 23. Do we deal with them individually?

The Clerk: The first two, yes.

The Chair: Okay. NDP-6, reference 595945, Mr. Proctor.



Mr. Dick Proctor: Thanks, Mr. Chair. This concerns the provision of lands or other assets. You'll recall that when the Assembly of First Nations was before us last week it argued strongly that the term "unilateral agreement" was included in the joint task force report and therefore should remain as part of the definition. This would compel the crown to honour long-standing promises not made in the context of a treaty or agreement.

The proposal here is that we amend clause 26 by replacing line 12 with the words "other assets and that arise from a unilateral undertaking by the Crown or from an".



The Chair: Are there other comments? Mr. Vellacott.



Mr. Maurice Vellacott: What does that mean? Can they give us a specific example of how that might affect--



The Chair: Are you asking Mr. Proctor or the legal counsel?



Mr. Maurice Vellacott: I'm asking legal counsel, yes.

The Chair: From the department.

Mr. Maurice Vellacott: I don't understand the full impact of it.

The Chair: Did you understand the question?



Mr. Robert Winogron: I didn't understand the question, sir.

The Chair: Please ask it again.



Mr. Maurice Vellacott: In terms of Mr. Proctor's amendment, I'm not comprehending its meaning. Maybe Dick wants to explain more, but when it says "other assets and that arises from a unilateral undertaking by the Crown or from an", can you give me an example of what that would involve or give me some further clarification of that? Do you want to see it in writing here?



Mr. Robert Winogron: Well, no. I understand what you're saying. I'm not proposing this. Mr. Proctor might be better able to answer what he's proposing.

The Chair: Mr. Proctor.

Mr. Dick Proctor: You'll recall that when the Assembly of First Nations was before the committee last week, Mr. Vellacott, it made the point that the changes that were made around the Primrose air weapons range...they couldn't come back for any legal fairness on that. We're attempting to deal with their concern that was raised in this particular clause.



The Chair: Mr. Finlay.



Mr. John Finlay: Mr. Chairman, according to what I have here—a case law from the Supreme Court of Canada—fiduciary obligation may arise in several ways, including from a unilateral undertaking by the crown.

As this is covered off in paragraph 26(1)(a), the proposed amendment is unnecessary.

(Amendment negated)

  (1650)



The Chair: We're on page 21, reference 595981.

Mr. Proctor.



Mr. Dick Proctor: We're asking that we amend the bill by replacing line 15 on page 11 with the following words: “(ii) under any legislation or proclamation—pertaining to”.

When the Assembly of First Nations was before us, they argued that the definition in Bill C-6 does not refer to pre-Confederation statutes by the U.K., or to royal proclamations. The phrase “Legislation...of Canada” could well exclude pre-Confederation proclamations of the U.K. Parliament.



The Chair: Other comments?

Mr. Finlay.



Mr. John Finlay: Mr. Chairman, the term “administration” in subparagraph 26(a)(iii) already does that.

The Chair: Could you read it?

Mr. John Finlay: Beginning at subclause 26(1), it reads:

Subject to subsections (2) and (3), a first nation may file with the Commission a claim based on any of the following grounds, for compensation for its losses arising from those grounds

—then continues with subparagraph 26(a)(iii)—

that arises out of the Crown's administration of reserve lands, Indian moneys or other assets of the claimant:

Administration is a broader term than the term proposed here. Therefore, the amendment is redundant and unnecessary.

The purpose of referring to the proclamations is to cover off that period in history prior to the passage of the Indian Act in 1876. As I say, subparagraph 26(a)(iii) already covers off that possibility, because it says “administration of reserve land”, which is what the Indian Act was all about.



The Chair: Thank you.

Any other comments?

Mr. Proctor, last word, if you wish.

(Amendment negatived)

The Chair: We are on page 22, reference 595442.

Mr. Proctor.



Mr. Dick Proctor: Mr. Chair, in essence, the argument here is that the Assembly of First Nations not only disagreed with the narrowing of the current definition of specific claims, but also argued that these changes go far beyond anything the federal government had developed and disclosed when it was explaining its unilateral changes to the joint task force report of last year. As late as the end of last year, the federal government appeared to be accepting the JTF definitions. So this proposal, if accepted, would reinstate that.



The Chair: Thank you. Other comments?

(Amendment negatived)

The Chair: We are on amendment PC-4, reference 593986.

Mr. Mark.



Mr. Inky Mark: Again, it just deletes that exception based on a time limitation of 15 years.



The Chair: Are there other comments?

Mr. Vellacott.



Mr. Maurice Vellacott: I have a question for our legal counsel people or maybe a member across the way. Why do we have this limitation on fifteen years if it's wrong and it's going to be validated? Why would we eliminate the last fifteen years? I don't quite understand. Maybe there are some historical or other reasons why that has been the case. Can perhaps one of our legal counsel people give me some background on that?

  (1655)



The Chair: Who will handle that?



Mr. Maurice Vellacott: Is this just a pro forma thing that's always been done, or is there someone on the government side who can tell me why?



The Chair: Can somebody answer that question?

Mr. Mark.



Mr. Inky Mark: It says in the binder that the specific claims policy was set up as a remedy for historical grievances under that section.



Mr. Maurice Vellacott: So sixteen years is historical, but fifteen isn't. I'm history then, I guess.



The Chair: We are allowed to have a little bit of fun.



Mr. Maurice Vellacott: Exactly.



The Chair: Are there other comments?



Mr. Maurice Vellacott: I would be supportive of this amendment, because I can't see the harm in this. It seems somewhat arbitrary to me, frankly, and I would think we should include the last fifteen years.



Mr. John Godfrey: Does legal counsel have anything to add on this point?



Mr. Robert Winogron: It's not a legal question. There's no legal requirement to have a fifteen-year rule.



The Chair: Thank you.



Mr. Gilles Binda: It has been correctly portrayed. The specific claims policy was set up as a remedy to historical grievances. By putting in the rule, it ensures that it does not displace the government's ability to deal with current issues with first nations as part of ongoing business.



The Chair: Are there other comments?

Mr. Finlay.



Mr. John Finlay: I want only to say that the purpose is to get rid of the accumulated backlog, and if you start doing claims that are only ten years old and not those that are fifty years old, you're not doing that.



The Chair: Mr. Mark, did you wish the last word on this?

Are you ready for the question?

Mr. Vellacott.



Mr. Maurice Vellacott: In response to the comment by Mr. Finlay, I would think then it's an issue of resourcing this whole thing. Backlog is maybe not the big issue, but rather are we going to put in enough resources to deal with these things or not? I don't understand why, because of a backlog, we're going to cut it off at fifteen years. Anyway, that's my comment.



The Chair: Thank you.

Now, Mr. Mark, do you wish the last word?



Mr. Inky Mark: I would just say that this should be based on validity and not time.



The Chair: Thank you.

Are you ready for the question?

(Amendment negatived)

(Clause 26 agreed to on division)

(On clause 28--*Initial meeting*)

The Chair: We are now going to page 24, clause 28, reference 592217. This will be dealt with by the Bloc. It has been withdrawn. All the Bloc motions have been withdrawn. But I should mention, just to give us a little break, that Mr. Proctor is filling in for someone else. He's doing all the NDP motions and the Bloc motions.

I think you're doing a pretty good job really as a replacement.



Mr. Dick Proctor: You can see by the results how many we're winning.



Mr. Maurice Vellacott: But you're in the game.



The Chair: Amendment CA-6, reference 588324, page 25.

Mr. Vellacott.

  (1700)



Mr. Maurice Vellacott: This particular amendment is that:

All preparatory meetings shall take place within six months of the claim being filed unless the claimant agrees

in writing that they may continue beyond this period. After this period has elapsed, if there's no such agreement, proceedings in relation to the claim shall be deemed to be suspended while the claim is under the consideration of the Minister for the purposes of section 30.

This has the effect of keeping the claim process going by eliminating the government's ability to delay and stall through an excessive appeal to so-called preparatory meetings.

We're trying to keep the process moving, get some timelines on it, so it can't delay indefinitely and just stall off for whatever reasons--if the minister doesn't have the resources or enough lawyers or researchers. We think the process needs to have definite timelines in place. That's the intent of this particular amendment.



The Chair: Thank you, Mr. Vellacott.

(Amendment negatived)

(Clause 28 agreed to on division)

(On clause 30--*Process suspended for Minister's decision*)

The Chair: Now clause 30 at page 26, and I don't have copies of the other CA amendments. The next one is for clause 32, but there are none for clause 30.



Mr. Maurice Vellacott: No.



The Chair: This one has been withdrawn. It's a Bloc Québécois amendment. We're on page 27. It's not being accepted as an amendment because the request should be to defeat a clause, not to delete it. We don't have the power in committee to delete a clause. So I will not accept that as an amendment.



Mr. John Godfrey: But we have to vote on it.



The Chair: No. It's not received by the chair, so it's not on the floor.



Mr. John Godfrey: Did we already vote on clause 30?



The Chair: We still have to vote on clause 30.



Mr. John Godfrey: In which case we could vote against it, which would have the effect of deleting it. That's how we delete it. We defeat it.



The Chair: You're right. At one point we have to vote on it, and if you vote against it, you're deleting it.

We're on page 28, PC-5, reference 593987.

Mr. Mark.



Mr. Inky Mark: Thank you, Mr. Chairman.

Any time a minister makes a decision, he should give a written reason for that decision. That's the addition to the clause. To me it makes sense. So I ask for your support.



The Chair: Are there any other comments?

(Amendment negatived—See *Minutes of Proceedings*)

The Chair: I just want to remind you, colleagues, that if your hand is not up, I will not count it. It doesn't matter which side it is. Every hand was up, but reluctantly. I just want to warn you that once I count, I stick with my count.

Next is CA-7, reference 585029.

Mr. Vellacott.



Mr. Maurice Vellacott: This amendment actually works in conjunction with the very next one, 585037. It would give the minister a year to decide whether or not to negotiate a claim. This amendment replaces the current perpetual, you might call it, six-month provision with a single

one-year provision. With the other way they can keep on going six months, six months, six months, until eternity. We say that a single one-year provision is probably time enough. The essence of this particular amendment is to get a timeline such that there can't be indefinite stalling on it.

(Amendment negatived—See *Minutes of Proceedings*)



The Chair: We're now on page 30, CA-8, reference 585037.

Mr. Vellacott.



Mr. Maurice Vellacott: Whereas currently the minister is permitted to seek six-month extensions to his time for considering whether or not to negotiate a claim, this amendment would give him one year to decide. If at that time he hasn't made a decision, he has to apply to the commission for an extension. The commission has to give consideration to the claimant's concerns when considering the minister's request for this extension. If the commission refuses to grant an extension or if the minister fails to comply with the terms provided by the commission, the minister will be deemed as having decided not to negotiate the claim. That provision enables the claimant to move to the next step in the process in order to keep the process going. In other words, no response is not a way of tying them up indefinitely. They can decide to go on to the next step if there's this continuous delay. That's why we propose this particular amendment, again getting a timeline so that this is a body that's really going to get some work done.

(Amendment negatived—See *Minutes of Proceedings*)



The Chair: We're on page 31, CA-9, reference 588343.

Mr. Vellacott.

  (1705)



Mr. Maurice Vellacott: This amendment would require the minister to report the progress in deciding whether or not to negotiate the claim to both the commission and the claimant. Currently, he is required only to report to the commission. I think that in any proper law process you have to do that so that the other party is aware of the status of the matter. To that end we propose this particular amendment.



The Chair: Is there any debate?

Mr. Godfrey.



Mr. John Godfrey: I'd like to ask the parliamentary secretary why one wouldn't want to report back to the claimant. It doesn't seem to be asking for much.



The Chair: I will allow questions from individual members, but I will not impose a responsibility to respond. You can respond if you want.



Mr. John Godfrey: Or from anybody else...



The Chair: Well, from our advisers from the department...



Mr. John Godfrey: It seems pretty basic.



The Chair: Mr. Finlay, do you wish to respond?



Mr. John Finlay: This is clause 30. I read that one earlier.



Mr. John Godfrey: Perhaps I can redirect my question to the legal counsel, if you wouldn't mind. That is to say, under general principles of law, is it as Mr. Vellacott suggests, that you normally tell both sides what the results are?



Mr. Robert Winogron: I'm not in a position to give the committee legal advice, but I can tell you that the thinking with this piece of legislation is that it's more properly the function of the commission to communicate that position.



The Chair: Mr. Finlay?



Mr. John Finlay: Yes, it's the commission's role to act as an impartial third party at this stage and to provide the claimant with ongoing information as part of its facilitative role. If the minister says this is what's in dispute, or this could be improved, they can pass that on to the claimant.



The Chair: Mr. Vellacott.



Mr. Maurice Vellacott: Well, I would wonder, with that, then, if he decides he's going to dead-pan it and not respond in any way at all, where does that leave them? What are they reporting back?



Mr. John Finlay: But the whole purpose of this bill is to get the claims settled; it's to keep the information flowing; it's to carry the thing forward. The commission has that responsibility. That's what they're charged with doing.



Mr. Maurice Vellacott: But he can ask for extensions without any substantive reasons, and that can go on indefinitely--like I said, almost to eternity.



The Chair: I will not allow debate between two members, but I will not prevent you from giving opinions more than once. So who wants the floor?

Are you ready for the question on the amendment?

(Amendment negated—See *Minutes of Proceedings*)

The Chair: On amendment CA-10, on page 32, reference 588365, Mr. Vellacott.



Mr. Maurice Vellacott: This amendment eliminates the phrase “if applicable”. So it requires the minister to give reasons in all cases when he seeks an extension to the time period to examine a claim in order to decide whether or not to negotiate it. I just find it so offensive that, in effect, he doesn't have to give any reasons. They can be pretty flippant reasons if he chooses. Really, I think it's an insult and an offence to all fair-minded people. But if it's defeated, then I guess that's in effect what the position of the government is. It would be regrettable.



The Chair: Is there any debate?

(Amendment negated—See *Minutes of Proceedings*)

The Chair: On amendment CA-11, on page 33, reference 585052, Mr. Vellacott.



Mr. Maurice Vellacott: This passage eliminates subclause 30(4), which reads:

No passage of time in relation to the decision on whether to negotiate a claim may be considered as constituting a decision not to negotiate the claim.

So this is where I've said, not facetiously but pretty literally here, that it can be an indefinite to eternity virtual delay, as things stand. Without getting an amendment of this nature here, deletion of the lines, then in effect he can carry it out indefinitely, just by this time delay.

   (1710)



The Chair: Is there any debate on the amendment?

(Amendment negated)

The Chair: We're now on the clause, because we didn't agree to any of the amendments.

(Clause 30 agreed to)

The Chair: I get in the habit of saying “defeated”. I have to think now before I speak--not a bad idea.

We're on a new clause, clause 30.1, amendment CA-12, on page 34, reference 585391.

Mr. Vellacott.



Mr. Maurice Vellacott: This amendment requires the minister to provide a thorough or comprehensive explanation for any decision not to negotiate a claim. It also gives the claimant the option to request the commission to investigate the decision and issue a non-binding report on its findings. Again, it's just a very simple, basic thing to move it forward. In fact, if it were an investigation, it would be a non-binding report. It's not binding, but it would be at least a statement as to the claim itself.

We're trying to make this a body that has something of value. Frankly, with the way the defeat of the amendments has gone, it's going to be a pretty useless, toothless group, unfortunately. Again, this is to actually give it something of validity and some integrity. That's the intent of most of these amendments.

(Amendment negated—See *Minutes of Proceedings*)

(On clause 31--*After decision not to negotiate*)



The Chair: The one from the Bloc on page 35 is withdrawn.

NDP-10, reference 595469, is out of order. It's inadmissible, as the proper course of action in committee is to vote against a clause to delete it. I will not accept NDP-10, reference 595469. The way to deal with it would be to vote against the clause when we get to the last product.

Do we have another one on clause 31?

Now PC-6, page 37, reference 593989.

Mr. Mark.



Mr. Inky Mark: Again, it's too reasonable to expect reason from the minister, so we know it will be defeated.

(Amendment negated—See *Minutes of Proceedings*)

(Clause 31 agreed to on division)

(On clause 32--*Referral to tribunal*)

  (1715)



The Chair: On page 38, it's withdrawn. This is from the Bloc Québécois.

Page 39, NDP-11, reference 595878. You have before you CA amendment 604429. It's page 39(a). Also, 604441 is a CA amendment, page 40(a).

We're on page 39, NDP-11, reference 595878. Mr. Proctor.



Mr. Dick Proctor: Thank you.

Here we're requesting that we replace lines 36 to 43 on page 14 and lines 1 to 8 on page 15 with the specific wording:

validity of a specific claim to the Tribunal.

The argument here again is that following the joint task force report this amendment would allow a claimant to ask the commission to refer a claim directly to the tribunal after one meeting with the federal government. A first nation would probably not take this step because it risks losing everything if the tribunal rules against it.

The prospect of a binding tribunal decision would give the federal government an incentive to negotiate in earnest. The JTF model didn't say the commission must be satisfied that the alternative dispute resolution has been exhausted. A party to a negotiation is in the best position to judge whether the other side is negotiating in a serious way. That's the rationale for this proposal, Mr. Chair.

(Amendment negatived)



The Chair: Page 39(a), reference 604429, CA amendment.

Mr. Vellacott.



Mr. Maurice Vellacott: Bill C-6, as it presently stands in its unamended form, requires the claimant to demonstrate that all matters of fact and law on which he relies have been fully identified and adequately researched. It's an unusual threshold, I guess we'd say, to meet, and one which could be used by the minister or the commission to prevent the claimant from moving the claim to the tribunal. So we're trying to moderate that somewhat. This applies just to the validity stage of the process.

(Amendment negatived—See *Minutes of Proceedings*)



The Chair: Page 40, amendment CA-13, reference 588313.

Mr. Vellacott.



Mr. Maurice Vellacott: I'm sorry. Which one are we at?



The Chair: We're on page 40, CA-13, 588313. No, that's one in the book.

  (1720)



Mr. Maurice Vellacott: This eliminates paragraph 32(1)(c), the obligation of the claimant to waive any compensation for the claim in excess of the cap prior to the tribunal's agreement to hear the claim for the purpose of determining validity.

This amendment would allow any claim to go before the tribunal, regardless of value, at the validity stage of the process. So we're saying there is some merit to having this body. It can't actually give some binding decisions in terms of the payout, but it can actually make decisions on the validity of it. That's what we're asking, and I think that's in line with JTF as well.

(Amendment negated—See *Minutes of Proceedings*)



The Chair: Page 40(a), reference 604441, CA amendment.

Mr. Vellacott.



Mr. Maurice Vellacott: This one again is really pressing a whole lot here in requiring the claimant to use all--underline “all”--appropriate dispute resolution processes before being granted the right by the commission to take its claim to the tribunal. It's a very high and unusual threshold to meet and one that could be used by the minister or the commission to prevent the claimant from moving the claim to the tribunal stage. So this amendment would moderate that requirement somewhat. This again applies to the validity stage of the process.

(Amendment negated—See *Minutes of Proceedings*)

(Clause 32 agreed to)

(On clause 33--*After favourable decision on validity*)



The Chair: Page 41 is a Bloc Québécois and is withdrawn. Pages 42 and 43 have been withdrawn.

We are on page 44. Those motions are all on clause 33, and the only ones on clause 33. We can deal with clauses 33, 34, and 35.

(Clauses 33 and 34 agreed to on division)

(On clause 35--*Referral to tribunal*)

The Chair: I understand I have amendments for clause 35. Reference 604476 on page 43(a) and 604496 is on page 43(b). We are dealing with page 43(a). This is a CA amendment, reference 604476.

Mr. Vellacott.



Mr. Maurice Vellacott: Again, we object to the absolute nature of the language here in requiring a claimant to demonstrate that all matters of fact and law on which he relies have been fully identified and adequately researched. This is a very high and unusual threshold to meet and one that could be used by the minister or the commission to prevent the claimant from moving on to the tribunal. This amendment, again, would have the effect of moderating that requirement. It applies to the compensation stage of the process.

(Amendment negated—See *Minutes of Proceedings*)



The Chair: Page 43(b), reference 604496, CA amendment.

Mr. Vellacott.



Mr. Maurice Vellacott: This one again is requiring the claimant to use all appropriate dispute resolution processes. In effect, one could be going through these hoops and could technically get through it, but could use up a lot of time in the process, and that would all have to be done before being granted the right by the commission to take the claim to tribunal. Again, this very high and

unusual threshold could be used to delay and prevent the claimant moving on to the tribunal. This would moderate that. This again applies to the compensation stage of the process.

(Amendment negated—See *Minutes of Proceedings*)

(Clause 35 agreed to)

(On clause 41--*Composition*)

   (1725)

 

The Chair: We are on clause 41, page 44, PC-7, reference 594006.

Mr. Mark.

 

Mr. Inky Mark: Well, again, the intent is to make the recommendation an inclusive one to include all the other aboriginal communities.

(Amendment negated—See *Minutes of Proceedings*)

 

The Chair: We have more amendments. We'll be here for a while.

We are on page 45, CA-14, reference 590031.

Mr. Vellacott.

 

Mr. Maurice Vellacott: This amendment would require the minister to work with the Assembly of First Nations to develop a list of acceptable people from which to choose the chief and vice-chief adjudicators for the centre. Again, that mutuality and working together, such that at the end of the day, whatever decisions are made, we have to have people respecting these decisions. If there's not any significant input at this stage, then we feel it's pretty much a lost cause.

(Amendment negated—See *Minutes of Proceedings*)

 

The Chair: Page 46 is withdrawn.

We are now on page 47, NDP-12, reference 595741.

Mr. Proctor.



Mr. Dick Proctor: Well, this amendment brings us back to where we were at the outset.

Mr. Chair, it's simply calling for more inclusiveness—for the Minister of Indian Affairs and Northern Development to include the Assembly of First Nations.

(Amendment negatived—See *Minutes of Proceedings*)



The Chair: We are on page 48, PC-8, reference 594012.

Mr. Mark.



Mr. Inky Mark: It is the same amendment as last time, making this more inclusive.



The Chair: Mr. Finlay.



Mr. John Finlay: It's just a typo, but I think we should fix it.

I move that clause 41 of Bill C-6 be amended by replacing the English version, line 31 on page 18, with the following: “The chief adjudicator... shall hold office during”.



The Chair: Mr. Finlay, that will be on page 50, the next page.

Mr. Proctor.



Mr. Dick Proctor: Again, it's simply a joint recommendation of the minister and the AFN.

(Amendment negatived—See *Minutes of Proceedings*)

   (1730)

 

The Chair: Now, Mr. Finlay, we are on page 50, government amendment 5.

Mr. Finlay.

 

Mr. John Finlay: Yes, sir.

I move that clause 41 of Bill C-6 be amended by replacing in the English version at line 31 on page 18 the following: “Chief adjudicator”.

 

The Chair: So it's just language?

 

Mr. John Finlay: Yes. It has an “s” on it now, but there's only one adjudicator.

(Amendment agreed to)

 

The Chair: We are on page 51, CA-15, reference 585207.

Mr. Vellacott.

 

Mr. Maurice Vellacott: Mr. Chair, because I'm inclined to think a minister should not make arbitrary appointments—or appointments at his own discretion—of that length, I am withdrawing that particular amendment.

I also want to get CA-15, reference 588295, on page 51, off the table, before I have a Liberal colleague on the other side voting in support of it.

Some hon. members: Oh, oh!

 

The Chair: Reference 585207 is withdrawn. Is that agreed?

Some hon. members: Agreed.



The Chair: Also 588295, page 52, is withdrawn.



Mr. Maurice Vellacott: That's right, yes.

Some hon. members: Agreed.



The Chair: Now you have before you reference 604585, a loose sheet. Page 51(a), reference 604585, a CA amendment. Are we all on the page?

Mr. Vellacott.



Mr. Maurice Vellacott: This amendment would require the agreement of the minister and the Assembly of First Nations in a decision to remove the chief adjudicator or the vice-chief adjudicator from his or her post.

(Amendment negatived—See *Minutes of Proceedings*)



The Chair: Page 52(a). This is another loose page. Reference 604630, a CA amendment.

Mr. Vellacott.



Mr. Maurice Vellacott: This amendment would require the agreement of the minister and the Assembly of First Nations in a decision to remove adjudicators other than the chief adjudicator or vice-chief adjudicator from his or her respective post.

(Amendment negatived—See *Minutes of Proceedings*)



The Chair: On 52(b), another loose page, reference 603459, a CA amendment.

Mr. Vellacott.



Mr. Maurice Vellacott: This amendment would require the agreement of the minister and the Assembly of First Nations in the decision to reappoint adjudicators. It's to kind of carry on that mutuality over future years.

(Amendment negated—See *Minutes of Proceedings*)



The Chair: Page 53, PC-9, reference 593972.

Mr. Mark.



Mr. Inky Mark: Again, it's an inclusive approach on reappointment.

(Amendment negated—See *Minutes of Proceedings*)

(Clause 41 agreed to on division)



The Chair: Yes, Mr. Proctor.



Mr. Dick Proctor: On a point of order. This meeting was called for 3:30 to 5:30 and we've now gone past that. There are quite a number of amendments left to do.

  (1735)



The Chair: My directive was not to put an ending time on it, but let's look at it.



Mr. Dick Proctor: The notice I received said 3:30 to 5:30.



The Chair: Well, we did get a directive in our meeting that there would be no ending time on this meeting. Was there an ending time on your agenda?



Mr. Dick Proctor: There was indeed.



Mr. Maurice Vellacott: I have a supper engagement I have to get to and I have to be there by 6:30.



The Chair: I have a problem because I did say it publicly during the meeting that there would be no ending time, but in all fairness, I'll have to put it to a vote of the assembly.

It's past 5:30, majority vote, and the question will be, do you wish to continue and complete or adjourn?



Mr. Maurice Vellacott: Could we put a compromise in there of, say, until 6 o'clock or 6:15?



The Chair: If we don't complete it today, it doesn't matter when we finish. It's a matter of House work, because next week they need some material in the House.



Mr. David Chatters: They've needed that for a long time.



The Chair: That's right, since June.

I'll put the question, do we continue? Those in favour of continuing, please raise your hands.



Mr. Maurice Vellacott: Are you meaning to continue indefinitely? Is that what you're saying?



The Chair: Until somebody jumps in and asks that we put it to a vote to adjourn. Every time you ask it I'll put it to a vote without debate.

Those in favour of continuing, raise your hands.

We will continue. As I said, within reasonable time, if you wish for us to suspend until the next time, I'll put it to a vote.

Another solution would be to convince your chair to go faster. I can accommodate.

(On clause 45--*Powers of the Tribunal*)

The Chair: Page 54, amendment 585328.

Mr. Vellacott.



Mr. Maurice Vellacott: This amendment adds some clarity to disclosure requirements to ensure that both parties and not simply the claimant are obligated to provide full and fair disclosure of their material that is related to issues before the tribunal. As it is right now under the bill that's not the case, but we think in fairness there should be that.

(Amendment negated—See *Minutes of Proceedings*)

(Clause 45 agreed to)

(On clause 53--*Hearing and decision*)



The Chair: On page 55, reference 585284, CA-18.

Mr. Vellacott.



Mr. Maurice Vellacott: Again, by saying a “place that is suitable for all parties, into the issue in respect of which the panel” meets, it's providing some greater mobility for the tribunal, making them actually take into account all the parties and not simply the tribunal panel, or their convenience, which may involve a great inconvenience to some not able to come to these particular hearings. So we think there should be that onus on them to make an arrangement so that the location could be acceptable to all parties involved.

(Amendment negated)

(Clause 53 agreed to)

(On clause 56—*Basis and limitations for decision on compensation*)



The Chair: On page 56, amendment PC-10, reference 593988, Mr. Mark.



Mr. Inky Mark: This amendment PC-10 is to amend the \$7 million cap. That's what it does.

(Amendment negated--[See *Minutes of Proceedings*])



The Chair: Page 57 has been withdrawn.

Page 58, CA-19, reference 584926.

Mr. Vellacott.



Mr. Maurice Vellacott: This is pretty basic and to the point. I think from all the testimony we heard, although there were maybe some slightly different figures used by some, for the \$7 million cap, which is clearly at this point already well within the jurisdiction of the minister, we're saying if this is to be a body that really deals with claims and gets some of those dealt with and resolved, we should move it up to \$25 million. It would sweep in and take in a whole lot more if we have a competent body of people there. Had we gotten some independence where there's real integrity in this body, then this could be a very good thing.

So our point is simply to move it up to \$25 million. Some have suggested figures slightly lower than that, but I don't know that you would necessarily want to do the sky's the limit. I think this is fair and reasonable, and I would simply appeal to members on the government side that they might give a fair consideration to this if this body is meant to be of effect and not a waste of our time in committee to even put this thing together.

Again, it's just moving the cap up from \$7 million to \$25 million.

(Amendment negated—See *Minutes of Proceedings*)

  (1740)



The Chair: On page 59, amendment NDP-14, reference 595525.

Mr. Proctor.



Mr. Dick Proctor: Thank you.

Even though I voted with Mr. Vellacott on the last one, I really think it would be better if there was no cap whatsoever, and that again is in accordance with the wishes of the Assembly of First Nations and the independent claims commission. They argued when they were here that this would deny access to the tribunal to all claims over the cap. The joint task force said no limit on the size of individual claims that could be brought before the tribunal.

Only 3 of the 120 claims that the ICC has overseen have been valued at less than \$7 million, and this amendment, it would seem to me, provides access to the tribunal to a greater amount of claims and would provide the tribunal with an option of adopting innovative and fair approaches that are not necessarily considered or adopted by the federal courts.

(Amendment negatived—See *Minutes of Proceedings*)



The Chair: We're now on page 60, amendment PC-11, reference 594007.

You have the floor, Mr. Mark.



Mr. Inky Mark: This one basically allows two or more specific claims to be treated as one. If you look at the rationality of claims, if they're similar, there's no reason they shouldn't be treated as one.

(Amendment negatived—See *Minutes of Proceedings*)

(Clause 56 agreed to)

(On clause 58—*Acting after termination of appointment*)



The Chair: We're on page 61, amendment G-6.

Mr. Finlay.



Mr. John Finlay: I move that Bill C-6, in clause 58, be amended by replacing, in the English version, line 10 on page 25....



The Chair: I'm told we have done that on clause 58. That was done the other day. Amendments G-7 and G-8 are done.

(On clause 71--*Judicial review*)

The Chair: We are on clause 71, amendment CA-20, on page 65, reference 588385.

Mr. Vellacott.



Mr. Maurice Vellacott: This amendment simply adds clarity to ensure that both parties have recourse to judicial review of a decision brought down by the tribunal. So if there is any ambiguity, this makes it very plain that they do have that recourse.

(Amendment negated—See *Minutes of Proceedings*)

(Clause 71 agreed to on division)

(On clause 73--*Payment of award*)

  (1745)



The Chair: On page 66, amendment CA-21, reference 585241.

Mr. Vellacott.



Mr. Maurice Vellacott: Again, it's kind of in the spirit of a number of other amendments that the Canadian Alliance Party has proposed here; that is, we want some expeditious dealing with claims and settlement, and some just dealing with these. So the amendment would prevent the government from unnecessarily delaying its payment of a settled claim by its use of the provision to stretch out payments over a five-year period. This is asking the government to move on it and be responsible in that aspect.

(Amendment negated—See *Minutes of Proceedings*)



The Chair: On amendment CA-22, reference 588383, I'm advised--

Mr. Maurice Vellacott: I withdraw it.

The Chair: You've just saved me the explanation. Thank you very much.

(Clause 73 agreed to)

(On clause 76--*Review*)



The Chair: We're on page 68, clause 76, amendment CA-23, reference 584794.

Mr. Vellacott.



Mr. Maurice Vellacott: This amendment, together with the next one, would require the government to include the Assembly of First Nations in the three-year review process for the centre.

Unless you do something like this, it's just kind of a self-congratulatory inside job, if you will. If you want to get a sense of what is working or not--and that's the whole point of a thorough review of this--then I think you'd want to include those who are most affected by it, and obviously it's first nations themselves. So I think this is pretty basic again, it would seem, in terms of fundamental justice here, to include the Assembly of First Nations in that very critical and important three-year review.

(Amendment negated—See *Minutes of Proceedings*)



The Chair: We're now on page 69, NDP-15, reference 595647.

Mr. Proctor.



Mr. Dick Proctor: This is a very likely amendment. The short form is that this amendment assures the participation of the AFN in all aspects of this review.

(Amendment negated—See *Minutes of Proceedings*)



The Chair: We're still on clause 76. Next is CA-24, reference 584856, on page 71.

Mr. Vellacott.



Mr. Maurice Vellacott: Again, this amendment would require the government to include the Assembly of First Nations in the three-year review process for the centre. But I think I see the writing on the wall with regard to this one.



The Chair: So I shouldn't call for debate then.



Mr. Maurice Vellacott: No, we'll still go around and have it confirmed in spades.

(Amendment negated—See *Minutes of Proceedings*)



The Chair: We're now on page 72, PC-12, reference 594033.

Mr. Mark.



Mr. Inky Mark: This one is really rational. It says that the recommendations and the report should come before this standing committee. So I'm sure you all support it.



The Chair: Mr. Vellacott.



Mr. Maurice Vellacott: I think this makes a lot of sense. I would definitely support my colleague, whether it came from the opposite side or any other member, because it's another good example of accountability to Parliament. I commend the member for a very good move in terms of this amendment.



The Chair: Mr. Godfrey.



Mr. John Godfrey: I'd like to challenge my colleagues on this side of the table as to why we can't at least do this. What other committee do you want to send it to?



The Chair: Is there any more debate?

Mr. Mark, you get the last word.



Mr. Inky Mark: It's too rational to vote against. I know we're a room full of rational people here.

(Amendment agreed to—See *Minutes of Proceedings*)

(Clause 76 as amended agreed to)

  (1750)



The Chair: On page 73 we have CA-25, reference 588321, new clause 76.1.

Mr. Vellacott.



Mr. Maurice Vellacott: This is a kind of grandfathering, if you will, so that things don't fall between the cracks. This amendment would ensure that claims currently filed with the Indian Claims Commission would be accepted by this new body under the bill even if they would not otherwise be accepted due to the more restrictive definition of a hearable claim being imposed on the new body. So in effect it's bringing those in so they don't get lost. Those would be the last that would be received in that manner, of course, because there are new exclusion conditions under the bill. But it would at least deal with those and not let them just drop off the globe.



The Chair: Mr. Godfrey.



Mr. John Godfrey: I'd be interested in hearing why we shouldn't put this in. In other words, it seems like a perfectly rational way of making sure there's continuity and that things don't fall down. Is there any argument against this?



The Chair: Is there any other debate?

Mr. Vellacott gets the last word.



Mr. Maurice Vellacott: That would be my question: why not deal with them in this way for the purpose of continuity, as my colleague indicated, and then move to the new stricter exclusions, if that's the intent of the government there?

(Amendment negatived—See *Minutes of Proceedings*)

(On clause 77--*Regulations*)



The Chair: We're on page 74, PC-13, reference 594037.

Mr. Mark.



Mr. Inky Mark: Again, Mr. Chair, here's another rational way of looking at things. Some committees in this House--actually, very few--are already looking at regulations before they get gazetted. Maybe this committee can take a forward-looking approach to regulations concerning this piece of legislation.



The Chair: Mr. Vellacott.



Mr. Maurice Vellacott: I would say this is another example of accountability to Parliament and indirectly to this committee here. I can't see the harm of it because the government of the day, were that to be our party at that time, could vote down or vote for, whatever the case is. I'm not sure the Liberal government would have anything to fear from this because you can always deal with it by strength of numbers at that time. It's a good accountability measure and it gives something of an actual proper role and position, I guess, for this committee too.



The Chair: Mr. Godfrey.



Mr. John Godfrey: Again, I can't see why any member of the committee who's here normally would want to decline the authority to review things that fall under our domain. It seems to me a perfectly sensible thing to do.



The Chair: Mr. Finlay.



Mr. John Finlay: Thank you, Mr. Chairman. As per the regulatory process, there are numerous opportunities for review and comment, as members are aware. We already have parliamentary scrutiny through the Standing Joint Committee for the Scrutiny of Regulations, which monitors the exercise of regulatory powers on behalf of Parliament. Moreover, regulations are pre-published in the *Canada Gazette* for a period of usually 30 days and there is a consultation period on regulation development.

I don't think we need to do further duty that the House is already doing, Mr. Chairman.



The Chair: Is there more debate? Mr. Mark.



Mr. Inky Mark: Well, in my own experience on the immigration committee--



The Chair: Just a moment, Mr. Mark. You will get the last word.

Mr. Vellacott.



Mr. Maurice Vellacott: I was just going to say that unfortunately, in my busy life, there are occasions when my nighttime reading hasn't involved the *Canada Gazette*, so I've unfortunately missed some of that. This would be a more specific and explicit way of bringing it before this astute body for examination and some perusal. It should be supported, in the view of our party.

  (1755)



The Chair: You will note that I've allowed you to speak twice on that.



Mr. Maurice Vellacott: Thank you very much, Mr. Chairman. You've been most kind.



The Chair: I feel so generous. It's the Christmas season.

Mr. Mark, final word.



Mr. Inky Mark: Well, scrutinizing the regulation doesn't oblige the minister to accept the recommendations of the committee. All it does is give this committee the opportunity to look at the regs and write a report. We do that in the immigration committee. We've done that with the regs in the bill. We've done it with the safe third country agreement. So it's not new. It may be new to this committee, but maybe it's time to do something new with this committee.



The Chair: Are we ready for the question on amendment PC-13, reference 594037?

(Amendment negatived—See *Minutes of Proceedings*)

(Clause 77 agreed to on division)

(Schedule 1 agreed to)

(Clause 1 agreed to)

The Chair: Shall the title carry?

Some hon. members: Agreed.



Mr. Maurice Vellacott: Can we come back to clause 18?



The Chair: You can ask me now.



Mr. Maurice Vellacott: I think most of us have probably received--

The Chair: Without debate.

Mr. Maurice Vellacott: Without debate, we can dispense it quickly. It's 603463.

The Chair: We passed it last time.

Mr. Maurice Vellacott: Yes. It's asking for unanimous consent to bring it up.



The Chair: Mr. Vellacott is asking for unanimous consent for you to reconsider clause 18, which we did not deal with today. We dealt with it last week.

Do I have unanimous consent to reopen clause 18?

An hon. member: No.

The Chair: We don't have unanimous consent.

Shall the bill carry?

Some hon. members: Agreed.

The Chair: In case I didn't do it, shall the title carry?

Some hon. members: Agreed.

The Chair: Shall I report the bill with amendments to the House?

Some hon. members: Agreed.

The Chair: Thank you very much, and I'll see most of you tomorrow afternoon.

The meeting is adjourned.