

Bill C-47 (Northern Jobs and Growth Act)

March 4, 2013

Dennis Bevington MP Western Arctic:

Mr. Speaker, I rise today to speak to **Bill C-47, An Act to enact the Nunavut Planning and Project Assessment Act and the Northwest Territories Surface Rights Board Act and to make related and consequential amendments to other Acts**. I will not use the wildly inaccurate short title the Conservatives have dreamed up for this bill, because this is a bill that speaks to more than simply job creation.

The bill affects two regions of the country that are moving toward more self-determination at all times, two regions of the country that are settling their land claims in a good fashion with the opportunities that come with settled land claims.

We have a situation in the Northwest Territories where aboriginal governments and public governments have to get along. We have to learn how to get along and how to work together.

In Nunavut there is a single government that represents all the inhabitants of Nunavut, one land claim. Its job is slightly less complex than that of the Northwest Territories, but both are working very hard to achieve unique and satisfactory arrangements between the constitutionally entrenched rights of first nations and Inuit and the rights of public government that are held by all of us.

Bill C-47 was shown in committee to be very flawed. The Conservative member for **Mississauga South** said about it at committee, "No one got exactly what they wanted from this legislation". None of the people in the north who wanted to see the legislation go forward got what they wanted.

The bill is so flawed that the Conservative member for **Palliser** said, "None of the stakeholders involved in the development of the Nunavut Planning and Project Assessment Act got everything they wanted in the bill".

Why is that? This is a bill for those people. This is a bill for the people of Nunavut to deal with their rights going forward. Why did they not get what they wanted? What was the problem?

This is a bill so poorly executed that the Conservative member for **Desnethé-Mississippi-Churchill River** said, "Nobody, including industry, got everything they wanted in this legislation".

The bill is going forward in a flawed fashion. It is an essential bill. It is a bill that is needed by Nunavut, especially, for its requirements for the legislation from this Parliament. It needs this. It has been waiting for this for a long time.

Committee witness after committee witness brought forward numerous mistakes Conservatives made in developing the bill, but they chose to ignore those. They chose not to address amendments. They simply voted them down, one after another.

As Chief Roy Fabian of the Kátl'odeeche First Nation in the Northwest Territories said of the process used to develop this legislation, "It is extremely frustrating to attend meetings and express concerns, provide recommendations to address the concerns, and then see that input ignored". Who knows better what is good for the north than those who reside in the Conservative headquarters in Ottawa?

Because the bill was so badly drafted, the opposition put forward 50 amendments to fix these mistakes and 49 of those amendments were recommended by various stakeholders. The 50th, which was another one, was based on wording from the parliamentary secretary who attended meetings in Yellowknife, substituting the word "and" for "or" in the legislation when he talked about the use and the understanding of traditional knowledge by those who were to be appointed to the board. We wanted to clarify that, but the Conservatives would not accept that either.

Let us look at some of the amendments we have put forward. There were two amendments that would ensure the Nunavut Planning Commission would hold public hearings as part of its review of an application. This amendment was requested by Nunavut Tunngavik Incorporated. It provided for transparency of process, which would make the commission more accountable. What is wrong with that?

There was an amendment making clear that projects approved under one land use plan would be grandfathered and would remain unaffected by changes or amendments to a land use plan. This amendment was requested by the NWT & Nunavut Chamber of Mines. People in the industry wanted assurance when they went forward with a project that they would not be blind-sided later on by changes to any land use planning. Why would the Conservatives turn this down?

There are amendments replacing the vague word "opinion" with the word "determined". These changes would have strengthened the language of the act. The amendment was requested by Nunavut Tunngavik Inc., the land claims group that worked so hard to establish its homeland in Nunavut. Its ideas for the bill were turned down.

There was an amendment that would require the board to have a participant funding program. By providing participant funding, the review process would be more efficient and economical. This amendment was requested both by NTI and by the Nunavut Impact Review Board.

We all know that in the north, communities that want to talk about projects that are going forward on their land are separated by large distances. It is very expensive to travel. The ability to get expert witnesses in front of a board to deal with these issues is absolutely imperative for these communities so that they can deal with the difficult questions that come out of projects of the magnitude we have seen proposed in

Nunavut. This amendment would have guaranteed participant funding for those groups. It was turned down as well.

Another amendment from the NWT & Nunavut Chamber of Mines would require that the act be reviewed by a committee of Parliament five years after it came into force. This was pretty straightforward. If 50 amendments came forward to us on the precise nature of the changes required to make the act work better, and all of them were rejected, would one not think it would be appropriate to provide a review process after five years? I sat on the Mackenzie Valley Environmental Impact Review Board when it was first set up. It was quite clear within two or three years of being put into practice what changes to that legislation were required.

We have a situation such that we will not have a review. The review is not going to take place. This legislation is going to be stuck. The opportunity to bring it back to Parliament will require political support from whatever government is in power at the time. It will have to be put back on the agenda to get some changes made. That is really not very good.

There was the amendment restricting the NWT surface rights board's jurisdiction to lands outside municipal boundaries. It provided certainty to municipalities that have planned for land use inside their own communities. This amendment was requested by the NWT Association of Communities and also by the non-governmental organization Alternatives North. It was a simple amendment that would have allowed municipalities to deal with their land in an appropriate fashion without having the strange situation that can come up when there are mineral claims within municipal boundaries.

Finally, and this is not finally in terms of all the amendments made but is the final one I am going to talk about, there was an amendment giving authority to the NWT surface rights board to require financial security to ensure compliance with its orders. This amendment was requested, once again, by Alternatives North. This comes from the practices we have had over the years. We have seen the results if we do not insist on financial security on behalf of the companies that want to use the land. We do not have to be told that this is a bad idea. This is a good idea. This would give certainty to everyone involved in the process.

All of these amendments went down and continue to go down. Discussion by Conservatives on the committee was practically nil. They did not want to talk about it. They were not instructed to talk about it. It really is an unfortunate fact of this legislation.

I could go on and on about these amendments, but I will now move on to the bill itself. Parts of the bill implement long-standing commitments Canada has made under land claims agreements, most of them signed in the 90s, some under the Mulroney government and some under the Liberal government. It should really have been the Liberals who developed the legislation as part of the land claims implementation process. However, like so many other things, the Liberals just did not get around to it. When they did produce drafts, as the minister has pointed out, they were not

successful. Because of the Liberals' failure to complete their work in Nunavut, the land use planning process has been muddling on for 20 years.

Meanwhile, on the other side, in the Northwest Territories, the lack of a surface rights board has had absolutely no impact. In the absence of a surface rights board, an ad hoc system of arbitration panels was set up to deal with land access issues. In their 20-plus years of existence, only one application to resolve an access dispute has been filed, but it did not even proceed. In fact, even with this legislation in place, it would be unlikely that the board would be used. As the Minister of Aboriginal Affairs said to the committee: “[I]t probably won't be asked to do very much”.

To paraphrase Norman Snowshoe, vice-president of the Gwich'in Tribal Council, testifying at the committee on the bill, what is the rush? Where is the problem? In fact, Mr. Snowshoe went on to say that they could have said more about the bill, but they do not have the resources to do a proper job of analyzing what the government is up to. Most of the other land claims groups and the groups in unsettled areas simply do not have the time to put into the kind of consultation required to determine whether this is in their interests or not.

The government's response is that we need to get this done for devolution. Devolution is an important aspect of moving forward in the north. There is no doubt about that. Certain agreements have to be in place. However, we have time.

The Conservatives chose to lump these two bills together. The surface rights board act probably should have been brought forward at a later time, when more aspects of the devolution deal were fully understood by northerners.

There has been very little public input, to this day, about devolution. When we talk about a bill that has to be done before devolution, we are talking about something that actually impacts on how devolution is going to turn out. Why do we have this rush now to put this in before devolution? Really, it should be part of the devolution discussions. It could have been put into any of the other amendments that are going to be required for devolution at the time devolution comes forward. If the government is serious about devolution and is serious about moving it forward, as it has said, then certainly, the NWT surface rights board act could have been dealt with at that time. It could have been part of that package.

We are really talking about a bill that is dealing with two regions of the country: NWT and Nunavut. If the bill was for these two regions of the country, why did the Conservatives consistently, and without any discussion, ignore all the recommendations for amendments that came forward from the legitimate groups that were witnesses in front of these committees? These were simple amendments. These people were not against the bill. They wanted to ensure that the bill would work correctly and would work for them and their interests. Surely, in this country, we can understand that.

Should the Conservative MPs not have been saying how the people of the north got what they wanted from the legislation rather than that no one got what they wanted? I learned a long time ago that if no one is happy with the job one has done, one has done a poor job.

This legislation for Nunavut is required. It is part of what has to happen in Nunavut. The fact that so many of the amendments came from Nunavut says that people in Nunavut are not going to be satisfied in the end with the job the legislation does.

NWT is close to a devolution agreement, according to press statements, but not according to any public process we have been able to identify that allows people in the Northwest Territories to understand what devolution actually is. However, Nunavut is still a long way from an agreement.

Given these differences in where each territory is in the devolution process, why did we bundle the two acts together, implementing vastly different land claims requirements?

As Kevin O'Reilly, of Alternatives North, submitted at committee:

[W]e do not believe that placing several different implementation provisions in one bill is a proper approach. This makes amendments and meaningful debate difficult at best. We would have preferred for separate bills for each land claim area to allow for better consultation and opportunities for improvement.

That is precisely why the government bundled these two acts together. It does not want to hear from Canadians. The Conservatives have an assumption that they are right, that they are the ones in charge, and that their rightness is self-evident. Therefore, every act they have put forward in this new Parliament, with their shiny new majority, is perfect, and anyone who says otherwise is not really a good Canadian. As a northerner and a person who listened to the northerners, I would say that we did not get this bill completely right. We have not dealt with what the northerners want in it.

We have a requirement for this bill, and it will move forward. What gives me hope is that the other day, the Premier of the Northwest Territories indicated in a northern newspaper article that he was under the understanding that the surface rights board act would become NWT legislation after devolution. If that is the case, and it does become legislation that the Northwest Territories legislature can amend, then that act will only be imperfect for as long as the people of the north decide it is. That is a positive aspect. If the devolution agreement goes as the premier said, and the legislation will actually be transferred to the government of the Northwest Territories, then it will be our responsibility to make it work right. I have no doubt that we will do that.

Unfortunately, the same cannot be said for Nunavut in the future. We have no devolution agreement in principle. It is my understanding that a negotiator has been appointed for devolution. That is a good sign. However, there was a negotiator appointed for devolution in the Northwest Territories probably a dozen years ago or more. That is not a hopeful sign for Nunavut. Nunavut needs its say over the legislation it uses in its territory. Let us hope that Nunavut can move forward with devolution as well so that it can make the choices it needs to make for itself.