STANDING COMMITTEE ON INTERGOVERNMENTAL AFFAIRS AND JUSTICE

Hansard Verbatim Report

No. 21 — March 15, 2023

Published under the authority of The Hon. Randy Weekes Speaker

Legislative Assembly of Saskatchewan

Twenty-Ninth Legislature

Hansard on the Internet

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STANDING COMMITTEE ON INTERGOVERNMENTAL AFFAIRS AND JUSTICE

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Regina Northeast

Mr. Travis Keisig
Last Mountain-Touchwood

Ms. Lisa Lambert
Saskatoon Churchill-Wildwood

Hon. Tim McLeod
Moose Jaw North

Mr. Greg Ottenbreit
Yorkton

[The committee met at 15:59.]

The Chair: — I'd like to welcome everybody here to the Standing Committee on Intergovernmental Affairs and Justice. I'm Terry Dennis, and I'll be chairing the meeting this evening. With us tonight we have Mr. Gary Grewal; Mr. Travis Keisig; we have Jim Lemaigre filling in for Lisa Lambert; Tim McLeod; Hugh Nerlien filling in for Greg Ottenbreit; and we have Nicole Sarauer sitting in for Erika Ritchie.

I want to welcome people here tonight watching the committee. This is your Legislative Assembly, so it's good to have everybody here tonight to observe the committee's work. I want to remind you that you are not a participant in the committee at work tonight.

Before we begin today's business, I would like to table the following documents: IAJ 10-29, Law Clerk and Parliamentary Counsel: 2021 bylaws filed; IAJ 11-29, Law Clerk and Parliamentary Counsel: 2022 bylaws filed; IAJ 12-29, Law Clerk and Parliamentary Counsel: 2021 regulations filed; IAJ 13-29, Law Clerk and Parliamentary Counsel: 2022 regulations filed.

Today we will consider two bills: Bill 88, *The Saskatchewan First Act*; and Bill 102, *The Constitutional Questions Amendment Act, 2022*, a bilingual bill. We'll break for a 45-minute recess.

Yes, Ms. Sarauer?

Ms. Sarauer: — Thank you, Mr. Chair. For your reference, I do have three motions that I would like the committee to consider prior to us discussing the substantive bill. I will move the first motion. And I do have copies for the minister as well.

My first motion, I would move:

> That the committee invite a representative from each of the following entities to present to the committee on the subject of Bill 88 at a future meeting of the committee:
>
> (a) the Federation of Sovereign Indigenous Nations;
>
> (b) the Métis Nation of Saskatchewan;
>
> (c) Agency Chiefs Tribal Council;
>
> (d) Battlefords Tribal Council;
>
> (e) File Hills Qu'Appelle Tribal Council;
>
> (f) Meadow Lake Tribal Council;
>
> (g) Prince Albert Grand Council;
>
> (h) Saskatoon Tribal Council;
>
> (i) South East Treaty #4 Tribal Council;
>
> (j) Touchwood Agency Chiefs; and
>
> (k) Yorkton Tribal Council.

The Chair: — Ms. Sarauer has moved the motion. Will members take the motion as read? Is that agreed? Take it as agreed. Is the motion agreed?

Some Hon. Members: — Agreed.

Some Hon. Members: — No.

Ms. Sarauer: — On division.

The Chair: — No, on division.

Ms. Sarauer.

Ms. Sarauer: — Thank you, Mr. Chair.

My second motion, I move:

> That the committee invite each of the following constitutional experts to present to the committee on the subject of Bill 88 at a future meeting of the committee:
>
> (a) Dwight Newman, Saskatoon, Saskatchewan;
>
> (b) Howard Leeson, Regina, Saskatchewan;
>
> (c) Merrilee Rasmussen, Regina, Saskatchewan;
>
> (d) Norman Zlotkin, Saskatoon, Saskatchewan;
>
> (e) John Whyte, Regina, Saskatchewan; and
>
> (f) Mark Carter, Saskatoon, Saskatchewan.

The Chair: — Ms. Sarauer has moved a motion. Will members take the motion as read? Agreed? That's agreed. Is the motion agreed?

Some Hon. Members: — Agreed.

Some Hon. Members: — No.

Ms. Sarauer: — On division.

The Chair: — No, by division. Denied by division.

Ms. Sarauer.

Ms. Sarauer: — Thank you, Mr. Chair. I have a third and final motion.

I move:

> That the committee recommends that the government refer Bill 88 to the Saskatchewan Court of Appeal under *The Constitutional Questions Act, 2012* in order to obtain an opinion regarding the bill's constitutionality.

The Chair: — Ms. Sarauer has moved a motion. Will members take the motion as read?

Some Hon. Members: — Agreed.

The Chair: — Agreed. Is the motion agreed?

Some Hon. Members: — Agreed.

Some Hon. Members: — No.

Ms. Sarauer: — On division.

The Chair: — Denied on division.

Bill No. 88 — *The Saskatchewan First Act*

Clause 1

The Chair: — We will now begin Bill 88, the Sask first Act, clause 1, short title. Ms. Eyre is here with her officials from the Ministry of Justice and Attorney General. I would ask the officials to please state their name for the record before speaking and do not touch the microphones. Hansard will turn them on and speak for you.

Ms. Eyre, please make your opening comments and introduce your officials.

Hon. Ms. Eyre: — Thank you, Mr. Chair. So with me, Kylie Head, K.C. [King's Counsel], acting deputy minister of Justice and Attorney General; Mitch McAdam, K.C., director, constitutional law branch, Ministry of Justice and Attorney General; and Darcy McGovern, K.C., director, legislative services branch, Ministry of Justice and Attorney General behind me. And my chief of staff, Ashley Boha.

So thank you, Mr. Chair, committee members, I'm pleased to offer opening remarks on Bill 88, *The Saskatchewan First Act*. And I was at the College of Law recently talking about the Act. And I was recalling how in the mid-'90s when I was a law student, the Quebec referendum of course had happened in 1995, the Charlottetown Accord talks of 1992 were still being processed, and the whole issue of how much provincial decentralization Canada actually should have. And it struck me that there are a number of variations on themes that we are still talking about which relate back or forward to the issues and themes around *The Saskatchewan First Act*, which of course I'm here to talk about today.

First off the question what this Act is. Is it constitutional? Yes, it is. The Act asserts Saskatchewan's exclusive jurisdiction over natural resources, namely the exploration, development, conservation, management, and production of those natural resources, including forestry, as well as facilities for the generation and production of electrical energy.

We felt that it was important to assert that jurisdiction within our provincial constitution and to enumerate core provincial powers, which we believe has real practical but also legal weight. Those core provincial powers include the regulation of all industries and businesses falling within Saskatchewan's exclusive jurisdiction. And we're seeing a lot of federal overreach in that area, Mr. Chair, and the regulation of fertilizer use in Saskatchewan, including application, production, quantities, and emissions, in other words the day-to-day business of farming. And that came up today at SARM [Saskatchewan Association of Rural Municipalities], a question from the floor: is the federal government coming after fertilizer?

Mr. Chair, we are amending Saskatchewan's constitution by virtue of section 45 of the *Constitution Act, 1982*, which provides that a provincial legislature can unilaterally amend its own constitution. And we are amending both the *Saskatchewan Act* and part 5 of the *Constitution Act, 1867*.

Keep in mind not all parts of the *Saskatchewan Act* are part of the *Constitution Act*. We can't, for example, under the *Saskatchewan Act*, unilaterally amend our provincial boundaries, but we could change our provincial seat of government. Not that we are intending to. The point is, each covers different areas. So we determined in the end that we would amend both.

And just for the record, in 2021 the Prime Minister explicitly stated that provinces have the power to unilaterally amend their constitutions: ". . . it is perfectly legitimate for a province to modify the section of the Constitution that applies . . . to them." Just as Quebec did.

We are not adding new powers to the legislature. In section 3 of our Act, we are merely asserting and enumerating the province's exclusive powers.

In terms of what the Act is not: it is not about separation; it is not about gratuitous fed-bashing. It's about being an honourable partner and being treated as an honourable partner by the federal government when it comes to protecting exclusive provincial jurisdiction, just as there is exclusive federal jurisdiction.

This Act is not about copying Alberta, which followed our Act and is in fact quite different. And importantly, it is not a violation of treaties or of duty-to-consult with our First Nations partners. There are amazing things happening in our First Nations communities in the energy sector, the forestry sector, the mining sector. No one wants to jeopardize any of that. We want to protect the work, this work, and what's happening in the First Nations communities across the province in these sectors.

In meeting with our Indigenous partners I have said, and I will continue to say, the fact that the provinces, all provinces, have exclusive jurisdiction is not our language. It is the language of the Constitution. It is the language of the division of powers. It is the same exclusive jurisdiction we fought the federal carbon tax over. It is what we're fighting Bill C-69 over.

These didn't formally trigger duty-to-consult either. Treaty rights are enshrined in section 35 of the *Constitution Act*, the same *Constitution Act* that enshrines 92A, the exclusive jurisdiction of all provinces over natural resources. In our case, 92A is important language when it comes to protecting economic growth and strength and fostering opportunity for everyone.

Let's also not forget that it was Allan Blakeney, with Peter Lougheed, who in 1981-82 pushed to have provincial exclusive jurisdiction over natural resources, that language inserted under 92A to begin with as a way to balance powers with the federal government. So the division of powers and the constitutional dance, if you like, has been going on for a long time.

If you disagree with the division of powers under the Constitution, the same Constitution that also protects treaty

rights, that is way beyond one province to address. That would be a very substantial constitutional issue.

So, Mr. Chair, what drives the Act? What's the why? Fundamentally the fact that the federal government continues to infringe provincial exclusive jurisdiction and hurt economic growth. The economic success that we've achieved in this province has been despite federal policies that have done real economic harm and risk doing much more. And the main point is that that economic harm is primarily being perpetrated on just one region of the country — the West.

Some examples. The federal government wants to transition to no fossil fuel-generated power by 2035 — literally impossible, according to SaskPower. As the head has said, we are going as fast as we can. There's not a lot of hydro in this province. SaskPower is implementing more wind and solar all the time. There's no doubt 2036 is going to be a chilly year, considering the city of Saskatoon, as just one example, is run by natural gas at the Queen Elizabeth power station.

[16:15]

Another example, the federal government's Bill C-69, which the Court of Appeal of Alberta called a wrecking ball to, again, exclusive jurisdiction under 92A of the provinces. Bill C-69 isn't just bad for pipelines and any interprovincial projects. It killed off the Saguenay liquid natural gas facility. Liquid natural gas which right now our democratic allies around the world need — Germany, Japan. Canada can't help them.

And then there's the carbon tax — exclusive provincial jurisdiction under 92A trumped by the federal power under peace, order, and good government — and it definitely causes economic harm. The federal parliamentary budget officer testified before a federal committee last year that as a result of the carbon tax, at least 60 per cent of Canadian households are financially worse off.

And of course the wider economy is impacted as indirect costs are passed on to people by businesses. The PBO [parliamentary budget officer] also reminded us that Saskatchewan producers will be paying $28 million a year in carbon tax for grain drying alone by 2030. And consider, producers are hit at every turn. Every farmer is paying carbon tax every time product comes onto their farm, but also when it's shipped out; on inputs during seeding, harvesting; drying the grain as I mentioned; shipping it; on utilities to process it; on transporting the grain or other product to a further-stage processor, a wheat miller, for example. Then on utilities for milling the wheat, delivering the flour to a bakery, on utilities at the bakery, and finally on delivering the bread to a grocery store.

Also this year, Mr. Chair, 2023, the federal government is introducing new fuel standard regulations. They've largely fallen under the radar, partly because they're regulations, not legislation, but they really are carbon tax number two. We predict, and the federal government has never contradicted us on this, that these regulations will have an impact of at least $700 million a year on both gas consumption and diesel consumption in our province. Just one set of regulations and a huge impact on retail, rail, the ag sector, trucking, manufacturing, and of course heating your home and fuelling your car.

The point is, all these federal policies hurt us and affect us economically. Our natural resources are one of the major reasons why Saskatchewan is weathering the economic recessionary storm being experienced elsewhere. That doesn't happen by accident. It happens when you have strong, competitive, transparent regulatory and royalty structures, and you pound the pavement trying to attract investment, as we have.

Economic success happens when you don't turn your back on workers in traditional sectors, when you build on those sectors and strengths and diversify and expand into new areas — helium, lithium, rare critical minerals. Economic success happens because you create a pro-business, pro-investment climate. This bill is about ensuring and protecting that.

In terms of other examples, of course we're also hearing about the new proposed federal just transition bill, except it's been renamed — sustainable jobs bill or something. We've also all heard about the 81-page report from the federal department of Natural Resources and how some 3 million Canadians in the industrial workforce — agriculture, food processing, oil and gas, mining, manufacturing, and transport — will face what they call in bureaucratic speak "significant disruptions," but only in three provinces: Newfoundland, Labrador; Alberta; and of course Saskatchewan.

The federal Energy minister has acknowledged that it's unfortunate that the focus has been on taking things away, as in jobs. His spin is that the just transition will create opportunities for energy workers. There are a lot of cynics in this province about that. The federal minister has compared just transition to the Industrial Revolution, but of course the Industrial Revolution wasn't about turning off the lights, turning off the heat, losing jobs, going backwards.

At the very least, Mr. Chair, I think we all have to be honest about the cost. In a recent RBC [Royal Bank of Canada] report called *The $2 Trillion Transition: Canada's Road to Net Zero*, it says:

> To have a 50% chance of meeting a 1.5°C warming target (the stretch goal for the Paris Agreement), the world will need to leave 60% of the world's remaining oil and gas, and 90% of its coal in the ground.

It goes on:

> The amounts needed [to transition] could be hefty: around $2 trillion in the next three decades. Based on our estimates, governments, businesses and communities would have to spend at least $60 billion a year . . . [which is about as far as we can get if we] cut Canada's emissions by 75% from current levels . . . as far as we can get with current technologies. That's a significant jump from the estimated $15 billion a year we currently spend.

TD Bank as well found a couple of years ago that any green transition that is carried out too quickly, and I would add, glibly, could result in 450,000 Canadian energy workers losing their jobs — not transitioning or not necessarily. Losing.

So, Mr. Chair, that's the why. Now what happens when the Act is passed? An independent economic tribunal will be established, to which we can refer federal policies to define, address, and

quantify their economic impact, put a dollar figure on them, which in turn could become evidence in a potential legal case, such as a reference to the Court of Appeal or an interlocutory injunction, one key test of which is irreparable harm.

This really is about, this bill is about core powers of the provinces versus the core powers of the feds, at its root. It's also though about arguments around interjurisdictional immunity, the idea that legislation enacted by one order of government cannot interfere with the core of any subject matter under the jurisdiction of another. In theory, interjurisdictional immunity is applicable to both federal and provincial laws, but it's only ever been used against provincial laws. But at its heart, as I say, Mr. Chair, this bill is about exclusive constitutional jurisdiction of the provinces, defending that and the economic potential of our provinces.

Finally I do want to add, since this bill was introduced it has generated considerable interest and discussion, and as a result I understand we will be proposing some House amendments here today. I also want to remind committee members that the opposition voted for this bill at second reading, in favour with us, and we do thank them for doing so. I'm happy to move to questions and discussion. Thank you.

The Chair: — Thank you, Minister. I'll open the floor to committee members now. Mr. Lemaigre, I recognize you.

Mr. Lemaigre: — Thank you, Mr. Chair. I want to inform the committee that I plan on moving an amendment to the bill. The amendment will read:

> Nothing in this Act abrogates or derogates from the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada that are recognized and affirmed by section 35 of the *Constitution Act, 1982*.

Mr. Chair, at the beginning of this afternoon I greeted President McCallum, and he presented a gift to me, this beautiful medallion that will be proudly worn in their legislature.

I have had conversations throughout the province. I have had people reach out to me. I recently spoke at the Indigenous Business Gathering in Saskatoon. Last year we hosted about 300 people at that gathering, and this year it was over 500 people. Now these are Indigenous-owned businesses that are relying on our economic growth and the partnerships that they're developing. And the energy was amazing. The sense of hope of what our future will look like in partnership, it was amazing.

I've had interactions with many of them throughout my visits in the province. And then I hear about the Métis communities, the First Nation communities, and many times I have questioned my role here as an elected official on this side of government. And I've sat in meetings where I had to wear the history of government.

And so with many discussions, it is my pleasure to put this narrative in the Act that will protect the rights under section 35 of the *Constitution Act*. We have the Métis community present here today, and I acknowledge them. I welcome them. And it is because I've heard what you had to say. I have heard what my First Nation communities have to say, and I have also heard from my constituents that have amazing economic opportunity in partnership of what they are able to do for our people.

So with that, Mr. Chair, I plan on moving this amendment. And thank you to the minister for allowing me the opportunity, under your guidance and leadership, that I'm able to do this. Thank you.

The Chair: — Minister, would you comment on this before we carry on with questions.

Hon. Ms. Eyre: — I'll simply say, Mr. Chair, thank you to the member for Athabasca. I do want to thank him, you, for your amazing, honourable engagement, support, collaboration as we have gone through these months together on this bill and on other issues. I think any way that we can reassure people, provide explicit clarity . . . As has been pointed out, treaty rights are already fully enshrined under section 35, under all provincial legislation. But as I say, if there can be any clarity or reassurance to even one community or one person, I'm absolutely thankful for the input and the proposed amendment.

The Chair: — At this point we will open it up for questions. Ms. Sarauer.

Ms. Sarauer: — Thank you, Minister, for your opening comments. Thank you, Mr. Lemaigre, for speaking and talking about your amendment that you will be introducing at a later time. We too have heard a lot of concerns about this legislation from people across the province, but in particular First Nations and Métis leadership across the province.

In particular, you know, Minister, what really matters is process and respect. And while this amendment is welcomed, this consultation process should have happened way before the bill was introduced. We have heard from many who wanted to speak with you, Minister, directly. We have heard many who've wanted to speak with the committee as a whole directly. The committee just voted against that motion to have those individuals speak and groups speak at this committee.

We have received — and I understand you as well have received — several letters, Minister, with respect to this legislation, expressing concern. Despite the amendment that will be moved, there is still substance here about consultation and respect for leadership that I think it's important to still read these into the record. And we've been requested to read these into the record, so I'm going to do that now and table them. And then, Minister, after if you want to respond at the end, you're welcome to.

First letter I have here is from Piapot First Nation, dated January 27th, 2023, regarding *Drawing the Line: Defending Saskatchewan's Economic Autonomy* and *The Saskatchewan First Act*:

> I am writing on behalf of the Piapot First Nation to express my Nation's great concern regarding the Saskatchewan Party's paper entitled *Drawing the Line: Defending Saskatchewan's Economic Autonomy* and the introduction of *The Saskatchewan First Act*.
>
> The Piapot First Nation declares that the Government of Saskatchewan does not have the legal authority to assert exclusive jurisdiction over the natural resources within the province. In 1930 the federal Crown unilaterally transferred

> the administration and control over the lands and natural resources to the provinces of Manitoba, Saskatchewan, and Alberta pursuant to the natural resources transfer Act, 1930 via the *Constitution Act*. First Nations have always maintained that this transfer was unlawful and it was done without the consent of, nor even consultation with, the First Nations.

[16:30]

> Further, First Nations have always maintained that we did not relinquish, cede, or surrender rights to the natural resources at the time of treaty negotiations. Rather we agreed to open up the land for settlement, sharing six inches into the ground, or plow depth, for agricultural purposes.
>
> *The Saskatchewan First Act* completely ignores my First Nation's inherent treaty and constitutional rights to the lands, resources, and waters in this province. There is no consideration of my First Nation's section 35 rights, nor does it mention the United Nations Declaration on the Rights of Indigenous Peoples or the treaties which are all legal documents that have been completely disregarded by your government.
>
> Much of Canada's economy has been built from the extraction of natural resources from our territories. Your government shares revenues from the natural resources with the provinces and municipalities, but none of the benefits come to the First Nations. Resource revenue sharing with First Nations must be implemented to ensure adherence to the treaties. It has been an accepted practice in other jurisdictions in Canada, and it must become the standard in Saskatchewan, Alberta, and Manitoba. Moving forward, resource revenue sharing must be a priority for our provincial governments.
>
> Enclosed is Piapot's historical and current traditional land-use study. We encourage all parties to immediately enter into negotiations with the First Nations rights holders of the land, resources, and waters of the province.

And this was signed by Chief Mark Fox of Piapot First Nation.

The second letter I have to read into the record and then table is from Little Pine First Nation, dated November 4th, 2022:

> Dear Premier Moe,
>
> I am writing on behalf of Little Pine First Nation in response to your recent public delivery in The Battlefords on October 11th, 2022. Little Pine First Nation is an adherent to Treaty 6 which we signed in 1879. By virtue of the 1930 natural resources transfer Act, Saskatchewan is our partner in treaty today. The same NRTA was the subject of your recently released policy paper *Drawing the Line: Defending Saskatchewan's Economic Autonomy*. As you have referred to this as a white paper in the press, I will use your language to refer to it here.
>
> First a note on your choice of words. We all understand that a white paper is a policy paper; however it is dishonest to ignore the impact of those words given that the memory of the 1969 White Paper lives on for every Indigenous person in Canada. The 1969 White Paper promised to eliminate the *Indian Act* and the distinct legal status of First Nations. Critically it also attempted to transfer management of Indian affairs to the provincial governments.
>
> Government policy and legislation continue to advance the erosion of rights and assimilation in hope of elimination of the Indian. We, the leadership and our Nation members, question why the Premier used the words "white paper" given your familiarity with history and Canadian politics.
>
> In response to the 1969 White Paper, the Indian Chiefs of Alberta drafted the Red Paper, demanding that the Crown continue to recognize treaty rights. Plainly a reminder on the message of the Red Paper is warranted today: "To us who are treaty Indians there is nothing more important than our treaties, our lands, and the well-being of our future generations." Mr. Moe, we are very concerned about the total disregard for our treaties, our lands, and the well-being of our future generations, evident in the white paper as well as in other legal and policy initiatives of your government.
>
> Your new white paper argues that Saskatchewan "secured constitutional authority" or control over natural resources in the province under the NRTA. It argues that federalism has held Saskatchewan back from reaching its fullest economic potential, in particular recent environmental regulations enacted by Canada. We will remind you that the protection of the environment is a responsibility we share as governments and a right and obligation under treaty. It concludes that federal environmental regulations will cost Saskatchewan $111 billion over the next 12 years. Other commentators have already noted that Saskatchewan's math does not add up. It is missing the economic benefits of the federal regime. This is not the most important omission in the white paper.
>
> The most important aspects left out of your white paper are First Nations and their rights to the lands and resources of this province. In essence the province's control over natural resources is subject to First Nations rights under treaty. Our treaty sets up a balance between the rights of the Crown to develop natural resources and the rights of First Nations to continue practising their rights, culture, and way of life.
>
> As BC's Supreme Court noted in 2021, "The balance is not struck by allowing the province in essence an infinite power to take up lands." The duty-to-consult is intended to help the province and First Nations achieve balance. Please explain why your white paper left out any mention of First Nations, treaty, and the province's responsibilities and obligations under treaty whenever it is making a decision that concerns natural resource development.
>
> In order to increase Saskatchewan's "autonomy," the white paper suggests provincial authority over immigration; taking legal action to maintain control of electricity, fertilizer, and oil and gas; and drafting provincial laws to clarify rights belonging to the province.
>
> We agree that actions are needed to restore balance to the exploitation of natural resources in this province. However

the balance is in favour of Saskatchewan at the expense of First Nations. Natural resource development is occurring rapidly at the expense of First Nations rights, culture, and way of life, with no meaningful benefits coming into our communities.

If you are concerned about the health of Saskatchewan's oil and gas industry, we do not share your concern. In fact the oil and gas industry is credited with turning Saskatchewan into a net contributor to federal equalization payments for the first time in 2008, after 50 nearly uninterrupted years of this province receiving federal funding to advance its economic interests, no strings attached.

Federal environmental regulations did not prevent you from toasting a $2 billion deal in our backyard in September. By contrast, our treaty rights, culture, and way of life are very much in danger as more and more lands in our traditional territories are taken up for development.

In a recent interview with CTV News regarding the white paper, Premier Moe, you asserted that "section 35 is a relationship between Indigenous folks and the [first] nation of Canada as opposed to the province." Please explain what is meant by that remark.

What is the relationship between the province and First Nations? What role does the province have in protecting First Nations rights, culture, and way of life? By refusing to mention treaty, is Saskatchewan saying that economic assimilation is the only option available to Indigenous peoples?

In order to better understand *Drawing the Line*, we request in the spirit of transparency, the following information from your government: (1) Consultation on the white paper. Where and when were meetings held to discuss it? (2) Indigenous participation in the white paper. Which Indigenous organization representatives were invited to participate in consultations about the white paper? Who participated?

As promised in the white paper, your government introduced *The Saskatchewan First Act* on November 1st. Legal scholars cited in the press have already noted the impotence of this legislation in effecting real change. It appears designed to send a message. Nevertheless it concerns us that Saskatchewan's message omits its partners in treaty.

As noted in the Red Paper, "Everyone should recognize that Indians have contributed much to the Canadian community." We continue to do so. Yet Saskatchewan is drafting law and policy in a way that completely ignores us. Mr. Moe, how does the province plan to implement its obligations under treaty? How can the province provide certainty and minimize risk to investors if the province does not demonstrate the barest knowledge or understanding of its obligations under treaty, especially when it comes to natural resource development as described in the white paper and *The Saskatchewan First Act*?

Premier Moe, have you been invited to visit a First Nations community? On behalf of the leadership of the Little Pine First Nation, we invite you to come to our community and meet with us, government to government, to discuss the challenges we face as Indigenous peoples in Saskatchewan, so we can work on building a better relationship for all. Please extend this invitation to the minister of your government that you would like to attend as well. Risk-managing Indigenous peoples rather than relationship-managing is not the way forward in building a safer and richer community, a more prosperous province, or a better country. Please have your staff coordinate.

In closing, we request your written response to the questions we have raised in this letter. We look forward to hearing from your office about a date for you to come visit our community.

And that was signed by Chief Donald Ironchild.

The next letter I have is from Onion Lake Cree Nation, dated December 9th, 2022:

Dear Premier Moe,

I write as okimâw of Onion Lake Cree Nation, within Treaty 6 territory and overlapping both the provinces of Alberta and Saskatchewan. As a Nation bound by Treaty 6 within the Crown, we are deeply concerned with your proposed Bill 88, *The Saskatchewan First Act*. We call for its immediate retraction and for you and Saskatchewan lawmakers to consult with us before enacting legislation that attempts any reconfiguration of Saskatchewan's partnership "within Confederation."

Our ancestors, the sovereign Makaoo and Seekaskootch peoples, made treaty with the Imperial Crown in 1876, nearly three decades before the Dominion of Canada created Saskatchewan as a province. Promises and undertakings made by the Imperial Crown in Treaty 6 continue to bind the Crown in right of Canada and each of the provinces. Your Saskatchewan first Act purports to "assert and confirm Saskatchewan's jurisdiction" without any acknowledgement whatsoever that, under treaty, you share the land and resources with our Nation and other Indigenous peoples who first made treaty with the Crown. Our elders consistently remind us that we never gave up our lands and resources. We only allowed for the Crown's subjects to use the land to the depth of the plow.

In particular, we note that there is nothing in *The Saskatchewan First Act* that acknowledges our treaty or other rights recognized and affirmed by the Canadian Constitution. Rather we see a clear reference to the Natural Resources Transfer Agreements that unilaterally abrogated our treaty rights and fundamentally reconfigured jurisdiction over the vast resources of our treaty territory, all without our free, prior, and informed consent.

Like the discussion of *The Saskatchewan First Act*, there was also a lot of talk about sovereignty and self-determination in those NRTA negotiations, but certainly not our sovereignty or self-determination. The "Crown lands and natural resources" that you reference have been since

> time immemorial the same lands and resources that sustain the lives and livelihoods of our people.
>
> As a people, we have knowledge of our own Indigenous nêhiýawak law. Of necessity we also have knowledge of Canadian and Western law. *The Saskatchewan First Act* as introduced is simply bad law. It fails to recognize or acknowledge our Nation's — or any treaty Nation's — inherent rights and jurisdiction that were never extinguished. We cannot be legislated away, either by act or omission.
>
> The reference to section 29A of the *Constitution Act, 1867* and to exclusive legislative jurisdiction indicates to us that you are trying to return to a watertight compartment model of the Canadian Constitution that has never been part of our Indigenous law, nor a durable way to live in confederation.
>
> Section 2 of your Saskatchewan first Act complains of unconstitutional interference by the federal government bringing uncertainty, disruption, economic harm. This is also our all-too-familiar experience as a treaty Nation. There is a better way forward for both our people and the people of Saskatchewan than posturing with bad law. We invite you to sit and discuss with us a better way along the path of treaty.

In the spirit of treaty, this is signed by okimâw Henry Lewis from Onion Lake Cree Nation.

Onion Lake Cree Nation recently released a press release that they've also asked us to read into the record and table. This is dated March 15th, 2023.

> We write/speak on behalf of the leadership and members of Onion Lake Cree Nation. We are a sovereign Nation that made Treaty 6 with the Imperial Crown, Britain and Ireland, in 1876 at Fort Pitt. Our Nation's lands now cross the boundary between the provinces of Alberta and Saskatchewan. Treaty 6 lands have sustained our ancestors for generations, and they continue to sustain our people.
>
> We have read Bill 88 and wish to make clear our opposition to *The Saskatchewan First Act*. Unfortunately the plain words of Bill 88 reference and repeat the failures of the Crown to honour and walk the path of treaty, failures both recent and from nearly a century ago. The preamble to the bill references the Natural Resources Transfer Agreement, 1930 as granting Saskatchewan full status within Confederation with autonomy over its Crown lands and natural resources.
>
> We have a much different recollection of the NRTA as an example of the unilateral derogation of our treaty rights to life and livelihood. Our rights to livelihood through harvest of those same natural resources were bargained away by the Dominion government without our consent. In fact during the same time the federal government amended the *Indian Act* to prohibit First Nations from hiring lawyers to pursue land claims and to advocate for our rights. Our rights to the commercial harvest in our traditional territory of our resources were extinguished by the NRTA.
>
> The autonomy that Saskatchewan claims in Bill 88 over its lands and resources came at the expense of our ancestors and our livelihoods. Our ancestors never gave up rights or access to our natural resources during treaty making. In fact oral histories by elders in our Nation tell us we were . . . only allowed the Crown's subjects to use our lands to the depth of the plow. We still retain full access, control, and jurisdiction over the natural resources in our territories and in what is now called Saskatchewan.
>
> Similarly Bill 88 references more recent changes to the Canadian Constitution in section 92A talking about jurisdiction over the exploration and production of natural resources. However Bill 88 fails to acknowledge that section 91(27) and section 35 remain part of the same Constitution that binds the Crown in right of Canada and the Crown in right of Saskatchewan. There is no non-derogation clause in the bill with respect to our treaty rights. There is no mention whatsoever of our treaty rights. Rather there are only assertions of Saskatchewan's exclusive jurisdiction, especially over natural resources.

[16:45]

> As our Nation includes lands in both Alberta and Saskatchewan, we have voiced our concern over and challenged similar legislation that was passed in Alberta last year as the Alberta sovereignty Act. That piece of legislation was introduced and then enacted wholly without consultation with us or with any other treaty Nation. It too purported to unilaterally reconfigure our treaty and constitutional relationship with the Crown.
>
> Bill 88 is less ambitious than the Alberta sovereignty Act, but the aim and reasoning behind Bill 88 still harms our Nation in specific and ongoing ways. Apart from the lack of consultation in the drafting and introduction of Bill 88, this legislation if passed will entrench the province's disregard for the duty to meaningfully consult and accommodate treaty Nations, especially when it comes to natural resource development.
>
> The passage of Bill 88 will clearly signal to treaty Nations that the province's inadequate consultation framework is the means by which Saskatchewan will purport to balance our treaty rights with the economic priorities of the province. The sections of Bill 88 describing the creation and powers of the "economic impact assessment tribunal" leave us no doubt as to whose fingers will be on the balance scale. Consultation will mean what the province finds it's convenient to mean. Accommodation will be a list of goodies co-drafted by bureaucrats and industry as the cost of doing business.
>
> Currently there are sales, leasing, and other dispositions of Crown lands that are the traditional lands of our and other Treaty 6 Nations. Those sales and dispositions have been made in the past, the very recent past, without notice, consultation, or accommodation. These dispositions take away our members' means of sustenance and livelihood. Similarly project approvals without economic benefit to our people amount to our members' loss of the use and sustenance of our traditional lands.

Whether it is a disposition or an approval, the province applies its own standard unilaterally to what the province figures is a potential infringement of a treaty right. These dispositions are just one example of the way in which the province is already showing us how *The Saskatchewan First Act* will work.

Our Treaty 6 is a treaty with the Crown. Whether it is the Crown in right of Alberta or the Crown in right of Saskatchewan, our treaty binds the honour of the Crown. We now hold the Crown in right of Saskatchewan to the same standard as that which we made treaty — our free, prior, and informed consent.

Bill 88 obviously looks backward in time to the decades following the NRTA and before the constitutional recognition and affirmation of our treaty rights. For us as treaty people, it is also an obvious step backwards as well.

This is signed by okimâw, chief, Henry Lewis.

The next letter I have to read into the record is from Moosomin First Nation, dated December 12th, 2022.

Dear Premier Moe,

I write as chief of Moosomin First Nation, located in Treaty 6 territory. As a Nation bound by Treaty 6 with the Crown, we are deeply concerned with your proposed Bill 88, *The Saskatchewan First Act*. We call for its immediate retraction and for you and your lawmakers to consult with us before enacting legislation that attempts to reconfigure or clarify Saskatchewan's partnership within Confederation.

Our ancestors made treaty with the Imperial Crown in 1881, 25 years before the Dominion of Canada created Saskatchewan as a province. Promises and undertakings made by the Imperial Crown in Treaty 6 continue to bind the Crown in right of Canada in this province. Your Saskatchewan first Act purports to assert and confirm Saskatchewan's jurisdiction without any acknowledgement whatsoever that, under treaty, you share the land and resources with our Nation and others who first made treaty with the Crown. Our elders consistently remind us that we never gave up our lands and resources. We only allowed for the Crown's subjects to use the land to the depth of the plow.

There is nothing in *The Saskatchewan First Act* that acknowledges our treaty or other rights recognized and affirmed by the Canadian Constitution. Rather we see a clear reference to the Natural Resources Transfer Agreement that unilaterally infringed on our treaty rights and purported to change jurisdiction over the vast resources of our treaty territory, all without our free, prior, and informed consent.

Like the discussion of *The Saskatchewan First Act*, there was also a lot of talk about sovereignty and self-determination in those NRTA negotiations, but certainly not our sovereignty or self-determination. The Crown lands and natural resources that you reference have been since time immemorial the same lands and resources that sustained the lives and livelihoods of our peoples.

As a people, we have knowledge of our own Indigenous nêhiýawak law. We also have knowledge of Canadian and Western law. *The Saskatchewan First Act* is bad law. It fails to recognize or acknowledge our Nation's — or any treaty Nation's — inherent rights and jurisdiction that were never extinguished. We cannot be legislated away, either by act or omission.

The reference to section 29A of the *Constitution Act, 1867* and to exclusive legislative jurisdiction indicates to us that you are trying to return to a watertight compartment model of the Canadian Constitution that has never been part of our Indigenous law, nor a durable way to live in confederation.

Section 2 of your Saskatchewan first Act complains of unconstitutional interference by the federal government bringing uncertainty, disruption, and economic harm. This is also our all-too-familiar experience as a treaty Nation. There is a better way forward for both our people and the people of Saskatchewan than posturing with bad law. We invite you to sit and discuss with us a better way along the path of treaty to ensure that the promises made in treaty last forever, as intended.

Moosomin First Nation joins other Saskatchewan treaty Nations in calling for immediate retraction of Bill 88.

This is signed by Chief Cheryl Kahpeaysewat from Moosomin First Nation.

I have a very similar letter signed by Lucky Man Cree Nation, dated December 13th, 2022, signed by Chief Crystal Okemow.

I have a letter from Ochapowace First Nation, dated March 14th, 2023, that we've been asked to read into the record.

To Premier Moe,

Further to my statement to you on December 16th, 2022, at the FSIN media press conference, I write to you today of great concern regarding your Saskatchewan first Act. Ochapowace Nation declares that the Government of Saskatchewan does not have the legal authority to assert exclusive jurisdiction over the natural resources within the province. In 1930 the federal Crown unilaterally transferred the administration and control over the lands and natural resources to the province of Saskatchewan pursuant to the natural resources transfer Act, 1930 via the *Constitution Act*. We have always maintained that this transfer was unlawful and it was done without the consent of, nor even consultation with, our people.

Further we have always maintained that we did not relinquish, cede, or surrender rights to the natural resources at the time of treaty negotiations. Rather we agreed to open the land for European settlement, sharing only the top six inches of the ground or to the depth of a plow for agricultural purposes.

The Saskatchewan First Act completely ignores my people's inherent treaty and constitutional rights to the land, resources, and waters in this province. There is no consideration of my Nation's section 35 rights, nor does it

mention the United Nations Declaration on the Rights of Indigenous Peoples or the treaties which are all legal documents that have been completely disregarded by your government.

Much of Canada's economy has been built from the extraction of natural resources from our territories. Your government shares revenues from the natural resources with the provinces and municipalities, but none of the benefits come to the First Nations. Resource revenue sharing with us must be implemented to ensure adherence to the treaties. It has been an accepted practice in other jurisdictions in Canada, and it must become the standard in Saskatchewan. Resource revenue sharing must be a priority for Saskatchewan moving forward.

It was encouraging to see you wearing an orange shirt and participating in a First Nation healing walk on September 30th, 2022 in recognition of National Day for Truth and Reconciliation. Your quote on Facebook — "Our government is committed to working with the Indigenous peoples of Saskatchewan on advancing cultural and economic reconciliation in our province" — led me to believe that your words portrayed a partner relationship moving forward with us. I was appalled to hear your announcement of Saskatchewan's plan for total jurisdiction over our natural resources.

I call upon you, Premier Moe, to uphold your words of economic reconciliation with our First Nations people. I also call on the province of Saskatchewan to repeal the introduction of *The Saskatchewan First Act* and immediately enter negotiations with us as the rights holders of the land, resources, and waters of the province.

This is signed by okimâw Margaret Bear.

The last letter I have to read in the record is from the Métis Nation of Saskatchewan.

Dear Minister of Justice and Attorney General Eyre,

I write to you today on behalf of the Métis Nation-Saskatchewan and our Métis citizens in response to your letter dated February 16th, 2023 and to reiterate our ongoing opposition and concern regarding *The Saskatchewan First Act*.

While the invitation to meet informally and discuss *The Saskatchewan First Act* is welcome, it should have come in advance of the Act's introduction. It is disrespectful to our internal governance structures when the terms and participants of a meeting are dictated to us. If there is interest in having a respectful discussion as government partners, I would be pleased to meet with you as your ministerial counterpart at the Métis Nation-Saskatchewan.

Your government's position demonstrates a persistent lack of regard and care toward building a productive and collaborative relationship with the Métis Nation. We feel this is damaging to the long-term interests of Saskatchewan as a whole and will have a lasting impact on our relationships, our economy, and our future as partners.

At the November 2022 Métis Nation legislative assembly, our government unanimously passed a motion rejecting *The Saskatchewan First Act*. This motion was passed through a democratic process and reflects the beliefs of our citizens. To reiterate the spirit of the motion, we view *The Saskatchewan First Act* as subversive toward our government and dismissive of Métis rights. The Act cannot stand.

We are deeply disappointed that we have not heard from your government on this matter until now. In the spirit of reconciliation and given Saskatchewan's constitutional obligation to consult with Indigenous governments, we expect the province to work with the Métis Nation to rectify the issues identified in the motion.

We are deeply concerned about your government's selective reading of the obligations set out in the *Constitution Act, 1982*. As one of the Aboriginal peoples whose rights are recognized and affirmed in section 35 of that document, we will not allow the provincial government to impede on our inherent rights by forgoing its constitutional obligations, including the honour of the Crown, and continuing down this dangerous path as set out by *The Saskatchewan First Act*.

Our government wants to see Saskatchewan and its people prosper, including the Métis Nation. However we firmly believe the denial of our inherent rights will impede any future prosperity of the province. We urge you to work with us and other Indigenous governments to build a Saskatchewan that benefits all residents.

Finally we have attached a copy of our Saskatchewan First position paper for your review.

This is signed by Michelle LeClair from Métis Nation-Saskatchewan.

I'm not sure, Minister, if you have any comment before I continue on with the questions. You're welcome to.

Hon. Ms. Eyre: — I do. And I would ask for a copy of the letters just to make sure we have all of them. Clearly a lot to, as they say, unpack from those. And I'll try to go through the notes that I made as I was listening to the reading into the record.

I will say on the policy paper that was referenced a few times, I would — and certainly I believe anyone in our government would — debate anywhere, any time, Oxford debate style, the numbers in that policy paper. It was the Ministry of Finance numbers, and they are solid. If anything they're too low.

And the critics that I have seen discredit that report or that policy paper say they are discrediting but not how. They do not line item or really go into any depth at all about the supposed flaws. So I do refuse to acknowledge things or flaws without proof of flaw. So that I would say off the top.

On the NRTA, the Natural Resource Transfer Agreement, this is in 1930. I wasn't born. Most of us weren't. It predates us legislatively. And certainly jurisdiction-wise it comes up as, certainly, a topic in a lot of the conversations that I've had with

Indigenous partners, certainly that the member of Athabasca and other members have had. It is certainly a key context for the views on what land means, what jurisdiction means, and I understand and respect that position and that opinion in that context, but it certainly predates and is completely outside the realm of this legislature or of I or the government to address.

So as I say, as we can't really get into the reality of why Allan Blakeney with Peter Lougheed in the early '80s pushed for the language "exclusive jurisdiction." As I said in my opening remarks, the view was that exclusive jurisdiction was explicitly called for to counterbalance federal powers. And there was reason for that, but it predates us.

And now that is the reality. It is in the Constitution. It is part of the division of powers, and what we are asserting is the meaning and significance of 92A and exclusive jurisdiction for the province of Saskatchewan.

[17:00]

The reality of course is we have section 35, as I said, enshrined in the Constitution, the same Act that enshrines 92A exclusive jurisdiction. And we also have to remember that under the provincial legislation Act, section 2-43, that also enshrines the protection of treaty rights in all provincial legislation. It is there. It was covered off in that section as a way of not having to reassert it in all pieces of legislation because it's there and enshrined. But as said too in response to the member for Athabasca's comments about his amendment, certainly if its being explicit here is of any comfort or reassurance or serves for additional clarity, explicit clarity, that is of course utterly acceptable.

The key point which I have raised with Indigenous partners as I have spoken with them — and I'll get to the meetings in a minute — is again, this is not our language. It is the language of 92A in the Constitution; namely, exclusive jurisdiction. That is something that has been of concern as if this is suddenly a new concept driven by this Act. It is not. It is a constitutional language reality.

Legally speaking, as I mentioned in my opening remarks, 92A, exclusive jurisdiction, was a key component of the carbon tax argument in terms of what was offered and put forward by the province of Saskatchewan and continues to be with Bill C-69, the federal environmental *Impact Assessment Act*.

As I also referenced, 92A was exclusively referenced by the Court of Appeal. That makes its way to the Supreme Court next week. I believe 10 provinces and territories are joining with Saskatchewan in a united view that section 92A means something in the context of coming up against that Act, and that the importance of exclusive jurisdiction under 92A is under attack by that Act. And that was agreed by the Alberta Court of Appeal which, as I said, mentioned its being, federal overreach being a wrecking ball, constituting a wrecking ball to 92A.

So to the point that — and I think it's an important point — that these are policies and federal legislation which, in arguing against them and for 92A, didn't trigger a duty-to-consult because of their policy nature, not perhaps project nature.

And the member also referenced legal scholars. I have a similar view on that to my views on the white paper. I have responded, we have responded, to those concerns. One of them was on the fact that we were supposedly adding new powers to the legislature through the Act. But as I said in my opening remarks, in section 3 of our Act, we are merely asserting and enumerating the province's exclusive powers.

That I know is one concern. Another was on the amendment. The argument was that this should be handled similarly to, for example, the CPR [Canadian Pacific Railway] case. However that was made under section 43 of the *Constitution Act, 1982* because it was an amendment affecting ". . . one or more, but not all, provinces . . ." Section 45 is for unilateral amendments, and that's what we are dealing with in this bill. So again, I have not seen any legal argument that holds a great deal of water in reference to this bill in terms of the constitutional aspect of it.

Interjurisdictional immunity is another issue which has been raised by legal scholars, and it's fascinating. And we hope that its time has come in terms of the province's ability to argue it.

And as I say, the hope is that the doctrine will make some headway. For example, in the case of PHS Community Services, the BC [British Columbia] Court of Appeal was ready to make a determination in favour of the protection of provincial interjurisdictional immunity over a safe injection site in that case. And the justice emphasized the dangers of so-called co-operative federalism having negative effects on provincial policies. It eventually went to the Supreme Court. There was much talk about delineating cores of provincial powers and the failure to do so in this case. But several scholars have supported the idea of provincial paramountcy. And we hope, as I say, that its time has come, Mr. Chair.

The federal government has acknowledged that the bill is constitutional. And of course, the opposition voted in favour of the bill, which as I say, thanked them for their support off the top.

At one point, the member referenced that this is somehow about ceding control — and I think I have covered that off — ceding control over natural resources. Carving out something new, is the implication. It is asserting what is already in section 92A, not creating new powers. And I think we've been quite clear on that.

In terms of consultation, listening, dialogue that I have had, and certainly I've been joined by a number of colleagues along the road, including the member for Athabasca, the Minister of Environment, the Minister of Government Relations, among others. And I have met with a number of groups over the last couple of months. I had a very cordial meeting with Chief Bobby Cameron, Chief Evan Taypotat, Chief Heather Bear.

Most recently, a couple of weeks ago, met with Meadow Lake Tribal Council. It was a productive dialogue. It was about listening. It was about getting across what the Act is — and I've gone through that a number of times — and what the Act is not. And how it is not a violation of treaty rights in any way, but how it does assert the powers we have as provinces against federal policies and legislation that hurt us economically and thwart our potential.

And I was disappointed that members of the Métis Nation of

Saskatchewan couldn't sit down with us recently. We had tried to arrange a meeting for a number of weeks, if not months, and that was cancelled. There was then an attempt to meet with regional members. There was no call, no cancellation. We, a number of us, were at the meeting and they didn't call or come. So that was unfortunate, but we will hope to certainly hold a meeting in due course.

P.A. [Prince Albert] Grand Council had a sudden conflict. We were set to meet with them. They were having to go to Edmonton, as I recall, and we're working to reschedule that meeting. Other meetings are being planned, including with Saskatoon Tribal Council. I know Chief Taypotat has reached out and asked for me to come to tour the community — there's a welding operation and so on — and we're working on dates around that. But really, frankly, Mr. Chair, whoever wants to meet, whoever wants to talk about this Act, we are happy to do it.

And we have nothing to hide, certainly. As partners really in the economy — has been the steady narrative, the steady message — we have everything to gain. And when I speak with members of these communities, what does the resource sector mean to you? The responses are poignant, and the responses are direct: an enormous, an enormous amount. It means an enormous amount to them.

I think of the uranium sector, for example. We know that Cameco, as just one example, has traditionally been the leading employer of First Nations in the country. In the forestry sector. You know, in the mining sector as a whole as critical minerals come on as important in our economy and in our province. There is such enormous contribution, such enormous momentum. And really at its root, this Act is about economic potential and protecting it. That is the key, and it is about economic potential and protecting it for everyone in this province. And that is the key.

The Chair: — Do we have any more questions? Ms. Sarauer.

Ms. Sarauer: — Thank you, Minister. Just one comment because you've mentioned it twice now. We voted to move this bill to committee so we could get the voices of First Nations and Métis leaders to this table to be able to speak to the committee and yourself about this bill. That's why we wanted this bill to committee. Your committee members have decided to vote no on that request, so we've read the letters into the record.

The concerns that I just raised were not the concerns of myself or the NDP [New Democratic Party]. They were the concerns of First Nations and Métis leadership in Saskatchewan, Minister. Specifically on that, and you've spoken about it a little bit, but I would like a specific list of who you consulted with, in terms of First Nations and Métis leadership, prior to the introduction of Bill 88.

Hon. Ms. Eyre: — Thank you, Mr. Chair . . .

The Chair: — I would like to caution people that are viewing this committee tonight that you are not to participate in the actions. It's just for committee members. So please respect the committee. And no clapping. Thank you.

Hon. Ms. Eyre: — Well thank you, Mr. Chair. I would first of all say that to the point raised by the member regarding the motivation for voting for this bill, there was a bill before the House yesterday on the marshal aspect of *The Police Act*, and that was voted against by the opposition.

I think we have to be clear that if the motive is about debating things at committee, that happens anyway, and it really is of no consequence whether, in terms of the ability to discuss or get into Acts further, that whether something is . . . The voting for it is not the point because the debate and discussion occurs in any case. And as I say, I would've thought that the bill that was voted against by the opposition yesterday would also have equal importance in terms of potential voices being heard, as will occur at committee as a matter of course.

In terms of the list of people whom we have spoken to, and communities and members of Indigenous communities and so on whom we have spoken with, I went through the list of meetings that I have had that we are working to set up and continue to set up. The listening certainly continues; the dialogue continues. In some cases the term "consultation" has been an issue, so I don't want to call it that. With respect, it has been more about listening and dialogue. And really I've gone through this now in terms of the intrinsic nature of treaty rights being protected under section 35. So in terms of the view we had going into this, it was very similar to the protection of exclusive provincial jurisdiction which we considered important to fight in the carbon tax or in the Bill C-69 case as an intervenor.

We felt it went without saying that because section 35 enshrines treaty rights and because treaty rights are enshrined in every piece of provincial legislation, that it was a very similar argument really on the exclusive jurisdiction side, to what we had gone through and continue to go through when it comes to asserting that exclusive jurisdiction, as I say, under 92A.

Strictly legally speaking — and the member did reference scholars — this Act is not a reconciliation or an accommodation agreement, so it doesn't legally on its face engage the proverbial honour of the Crown. And in the Courtoreille and Canada case, the Mikisew Cree Nation lost when they argued that there was a duty-to-consult on the development of legislation. The Supreme Court held that when ministers develop policy, they are immune, if you like, from judicial review, which is what the Mikisew brought an application for in this case.

[17:15]

But aside from that and the strictly legal view of this being called into play, really the sense was, the conviction was because it is simply intrinsic that section 35 enshrines treaty rights, same Constitution as enshrines exclusive jurisdiction over natural resources under 92A for the provinces in this country. And it is also intrinsic in all provincial legislation under section 2-43 of the provincial legislation Act.

So that was the feeling. The sense was that this was about protecting the economy. It was about policies that are either in the mix or to come, which could jeopardize everyone in the province, and that remains the driving motive, the driving narrative.

Ms. Sarauer: — So I'm going to ask the question again because

you didn't answer it. What specific consultations have you, Minister, had with First Nations and Métis leadership prior to the introduction of Bill 88?

Hon. Ms. Eyre: — I have answered that, Mr. Chair. And this creates no new powers. That was also key to consideration of how this goes forward. And the member has herself asserted that this creates no new powers. If it asserts what's already in the Constitution under section 92A — and we have fought a carbon tax over 92A, and we have fought as intervenors in the Bill C-69 case under 92A — it's about 92A, and it's not about carving out anything new. It's about asserting what is already in the Constitution and, as I say, section 35 also in the same Constitution. So really there is no question that treaty rights are in any way in jeopardy, because both are part of the Constitution of this country.

Ms. Sarauer: — Minister, this is a very simple and direct question, and it's a question that's asked often when we're at bill committee. I asked for a specific list of who did you consult with in terms of First Nations and Métis leadership prior to the introduction of Bill 88.

Hon. Ms. Eyre: — And I in turn will say that I use the term "consultation" very, very carefully because I have been asked to by First Nations partners whom I have spoken to that they are concerned about that language. They prefer it to be about listening. They prefer it to be about dialogue, and that these do not constitute formal consultations.

So I'm not going to say I engaged in formal consultations. In a loose sense, in a dialogue sense, in a conversational sense, of course those conversations go on every day in terms of what drives the province and what we feel is important to protect from an economic perspective for the province.

And that's what drove the bill. And so formal consultation I believe in the sense that the member means — as with the carbon tax, as with Bill C-69 — didn't occur because section 35 already enshrines it, and it is already enshrined in terms of protection of treaty rights under all provincial legislation. So this was already protected.

Ms. Sarauer: — Minister, I'll use a term that you prefer then. Who did you have a dialogue with about Bill 88? If the answer is no First Nations and Métis leadership prior to the introduction of the bill, could you provide a list of who you had a dialogue with about Bill 88 subsequent to Bill 88 being introduced?

Hon. Ms. Eyre: — Well the language around whom did I dialogue with or whom did we listen to, whom did we speak with, will have to be something that we present more formally to the member. I would worry about leaving anybody out.

Ms. Sarauer: — This is something, Minister, that often your officials keep track of. At least in previous bill committee debate, there's usually a list that has been compiled that can be provided to the committee at committee night. Is that before you today? If not, why not?

Hon. Ms. Eyre: — Again I say, Mr. Chair, that I use the language "consultation" very carefully because I have been asked to. So I'm not going to presume to say that I had formal consultations, because I have been asked to not use that language by Indigenous partners whom I have spoken with, that this is about listening and it's about dialogue. And if we get into creating a list of whom we, as a province, listen to and dialogue with, what timeline do we employ?

I guess I would say that in terms of lists, I can list scores of people whom I have met with from Indigenous communities who have talked about the importance of natural resources to them and their communities. And so I count that as part of what drove this Act, is the economic protection of everyone in this province. And so as it came to be in development in terms of what it meant to the province and what it meant to the economy, that list of course includes everyone in the province.

And so I think I hesitate to say a formal list of consultation, when treaty rights are already intrinsically protected under section 35 in all provincial legislation. Because we do that in order ensure that that is clear, made even clearer, I hope, by the member for Athabasca and his amendment this evening.

Ms. Sarauer: — Minister, I'm giving you a very specific timeline and on a very specific topic, and again if you prefer the word "dialogue," I'm happy to use that. Who have you had a dialogue with in terms of First Nations and Métis leadership since introducing Bill 88 about Bill 88? This is not a trick question.

Hon. Ms. Eyre: — Nor do I take it as a trick question. But this is not a trick answer. When concerns were raised, when concerns were raised about the connotations of the Act, the meaning of exclusive jurisdiction — which as I've said is not our language; it's the language of the Constitution — broad concerns about the Natural Resources Transfer Agreement, which of course has nothing to do with the language of this Act and so on, we endeavoured to meet with and listen to First Nations and Métis partners and stakeholders, and we did that.

And in terms of, for example, the meeting with Métis Nation which was cancelled, that was weeks in the works, as I say, if not months, that when those concerns began to be raised . . . And again we had felt going in — truly I can say because protected under section 35 and intrinsic in all provincial legislation and because those same arguments had been used with, for example, the carbon tax case — that that was a given. That was a given that that was protected, and that they were protected, which of course it is and they are.

But once concerns were raised about some of the implications or potential implications, we immediately endeavoured to set up dialogue sessions, if you like, with those who were concerned. And we continue to do that, and that work goes on. It's disappointing that having asked to meet, having been asked to meet and then endeavouring to establish a meeting, that that was cancelled with no explanation. And I'm speaking specifically in this case about Métis Nation, but also unfortunate with P.A. Grand Council.

Things happen. People are busy. I do understand. But we are continuing to endeavour to set those meetings up to really walk through everything that I have, namely that there's nothing new that is created, only established, which is asserted. And I think that's very important, and really the message that we are all in this together.

Ms. Sarauer: — I mean, I think they would take issue with you saying that we're all in this together, especially when you can't even tell us who you've dialogued with, met with, listened to. These are Nations that deserve and want to be consulted, dialogued with, met with, listened to not after the fact but prior to introduction of legislation like this.

Hon. Ms. Eyre: — May I just say, Mr. Chair, as I've said . . . I mean, prior to the fact, as I've mentioned a number of times — because section 35 enshrines treaty rights and it is enshrined in all provincial legislation under section 2-43 — we felt that it was a given. But once concerns were raised, there was then an undertaking to meet with those who were raising concerns.

And I have listed them: Chief Bobby Cameron, Chief Evan Taypotat, Chief Heather Bear. Two weeks ago, two and a half weeks ago or so, members of Meadow Lake Tribal Council. Certainly I can provide the full list. There was a group of about 10, I would say, members there on that occasion. And certainly I can endeavour to get the full formal list, which I don't have in front of me, and read it into the record after our break.

There were council members also at that meeting from Meadow Lake Tribal Council and subsequently had set up, I believe for the next day, a meeting with Métis Nation, which was cancelled; with then regional members, which was cancelled. P.A. Grand Council, we had intended to meet the same day. We were going to meet with Meadow Lake grand council. They were called to Edmonton. Saskatoon Tribal Council, there's been some back-and-forth in terms of dates that work better for them. And that is being set up.

And as I say, I'm happy to . . . I've indicated to Chief Taypotat that I'm happy to come. I know there's an election in the mix toward the end of this month, is my understanding. So to work to meet with him and tour the community and talk about the Act or whatever's on his mind and the people of the community's mind when that works for him and them. And so it goes.

I think that the real focus has been on clarifying to them, but also to the chamber of commerce, the College of Law, the Canadian Bar Association, SARM, what the Act is and what it is not. And very similar, really, to what I stated in my remarks at the beginning, which is, I think, important to clarify.

Ms. Sarauer: — Minister, you've just mentioned meeting with leadership of the FSIN [Federation of Sovereign Indigenous Nations]. As you know, there are 11 First Nations that are not members of the FSIN. Did you meet with, listen to, dialogue with any of those First Nations, either prior to or after the bill was put forward?

Hon. Ms. Eyre: — I have met with those whom I have listed. In some cases there was a certain amount of leaving it to them in terms of who was invited or whom they wanted to be there. So certainly we were willing to work with them on that. And as I have said a number of times, whoever wants to meet, wherever they want to meet, whenever they want to meet, we are happy to meet. And that has been the message.

In a few cases, as I say, meetings were cancelled or called off at the last minute. That's unfortunate, but we have also indicated that we are happy to move forward and have these discussions. I know one of the things that Chief Cameron mentioned to me was that it was a shame I couldn't spread the word to 70 other chiefs in that case. And I said, whenever it works for them and whenever it works for you I am happy to do that. And so it goes.

I think that has been clear in terms of certainly what has motivated me, which is to clarify what's in the Act and the whys of the Act and to address concerns. And as I said, when those concerns were made, I think there were certain things, for example, around the NRTA, the Natural Resources Transfer Agreement, which . . . It had to be clarified that it's just not within the ambit, if you like, of this bill and certainly predates it and is a reality separate from it. And so this really is just about asserting exclusive jurisdiction under 92A for the province.

[17:30]

Ms. Sarauer: — Minister, there are many people who are listening to this committee this afternoon and many who feel very disrespected by the way this bill has been introduced and by the way the dialogue around this bill, both prior and subsequent, has been handled. In the time of reconciliation, this was absolutely the wrong move by this government and sends a pretty stark message to First Nations and Métis leadership throughout the province. Minister, what do you have to say to them?

Hon. Ms. Eyre: — Well as I say, I think it's been incredibly important that since concerns have been raised, that listening and dialogue occurs and has occurred, and I have taken that very seriously and certainly have treated the concerns seriously that emerged. I think that the amendment by the member for Athabasca this afternoon, certainly the intention is to, as I say, reassure, and clarify. And if it serves as a reassurance for one person, one community, that's important. Or any clarity. Again, it is already enshrined in section 35 and all provincial legislation in terms of the protection of treaty rights. So this merely reasserts that explicitly. But again, I think that in terms of what message it sends, I hope it sends a positive one.

I think sometimes lost in the mix a little bit again is really the motivation for the Act, which is the protection of economic potential for everyone, including First Nations and Métis in this province. And I came across the other day an article by Stephen Buffalo. He is the president and CEO [chief executive officer] of the Indian Resource Council. And he talked, among other things, of some of the . . . of precisely the issues that we have been touching on, and I touched on in my opening remarks, which is really economically harmful policy.

And, I mean after all, it was the auditor, by the federal government, and it was the Canadian Auditor General who concluded last April that Indigenous groups are disproportionately — as it was put — burdened by carbon pricing, for example. And you know, that's the same carbon pricing that we've been referencing in terms of 92A and what we advanced in the carbon tax case. And the quote was, in one headline: "The carbon tax policy hurts community, region, and northerners." In another one, and this was Stephen Buffalo's line: "Life on reserve is already unaffordable. The carbon tax makes it worse."

And that really is what drives this in terms of, yes, Indigenous communities, yes, northern communities, all communities are

impacted by some of these policies. And so it's really, what I talk about, including to First Nations, when I talk about the need for *The Saskatchewan First Act* to assert ourselves against economically harmful federal policies. That really is the core. And so the sense was that this really would be something that was necessary to protect economic potential.

That's been the message all along, and if it is of comfort that it be explicit that this has importance in terms of the language of, for example, the amendment, then I think it is, it is necessary to reassure. That has been the effort all along since concerns were raised — to reassure.

Ms. Sarauer: — Minister, you and the committee have chosen not to refer this bill to the Court of Appeal. A reference case could provide some certainty into the constitutionality of the legislation, which you've expressed already this afternoon confidence that it is constitutional. Certainty, as stated in section 2 of this bill, is described as one of the reasons for this bill. As a result, why not send it as a reference now, understanding that it's likely to be challenged?

Hon. Ms. Eyre: — Well we feel very secure in the constitutionality of the Act, and certainly Mitch McAdam can elaborate as he sees fit on that. I think interestingly, I mean in terms of raising the Court of Appeal, I mean one of the reasons for the economic tribunal, which will put a dollar figure on economic harm by federal policies, is to gather important evidence, if you like, for a potential reference to the Court of Appeal. And in terms of some of the thresholds that we've seen around, you know, a necessary injunction, for example, on that side of things, as I stated earlier, one of the . . . It's a very difficult threshold for an interlocutory injunction.

One of the tests however or thresholds is irreparable harm, and so we felt that it's an important component. It's something we maybe haven't talked about at great length so far this evening, but on the economic tribunal side and the purpose of it, which is established of course under this Act, to put a dollar figure on some of these policies.

And as I say to Mr. Buffalo's point about the economic impact on northerners and on reserve, for example, of the carbon tax, you look at . . . You know, the federal fuel standard would be another one. I mean there's a direct component of diesel, cost on diesel, cost on gas, cost on fuel, cost on heating, which for all people in this province would constitute economic harm.

So to the point about the Court of Appeal or reference or, to my mind, an interlocutory injunction, I think one of the important things about the dollar figure on some of these economic policies would be for precisely that reason: to buttress a legal case on that side of it, which is on the economic harm side.

In terms of the constitutionality, we are very confident that it is constitutional for all the reasons that we have gone through a number of times.

And certainly, Mitch, you can elaborate if you'd like to add anything.

Mr. McAdam — It's Mitch McAdam from the constitutional law branch at the Ministry of Justice. I think what I'd like to say to start with is it's really been a fascinating experience to work on developing this legislation. We're not asked very often in the constitutional law branch to work on amendments to the Constitution or, in particular, amendments to the provincial constitution. So it's been a really interesting task.

But I think when it comes to the question of whether it's constitutional or not, the starting point has to be section 45 of the *Constitution Act, 1982*. And section 45 very clearly says that the province can unilaterally amend the terms of its own constitution. So in our view there's really no question that the province can amend its constitution to put in a statement like that Saskatchewan has autonomy over all of the matters falling within its exclusive legislative jurisdiction under the *Constitution Act, 1867*.

That is simply a statement saying we have this exclusive jurisdiction. It's not an attempt to change the division of powers that's set out in section 91 and 92 of the *Constitution Act* of 1867. It's simply a statement asserting that the province has certain jurisdiction, and you know, we are confident that the province has the authority to do that under section 45 of the *Constitution Act, 1982*.

Ms. Sarauer: — Thank you for that. What does asserting jurisdiction do legally?

Mr. McAdam — Well when we've asserted jurisdiction vis-à-vis the federal government, I think you've heard the minister speak very clearly about the concerns with federal inroads into matters of provincial jurisdiction. It was certainly a matter that led to the carbon tax challenge.

Again in the constitutional law branch, we don't do many reference cases to the Court of Appeal. We haven't challenged federal legislation very often in the 30 years that I've worked in that branch. But the government felt strongly enough about the carbon tax and the *Greenhouse Gas Pollution Pricing Act* that we were instructed to take a reference case and to argue that that legislation was unconstitutional because it encroached on matters of provincial jurisdiction.

And as you know, ultimately we lost that case. The Supreme Court said that the legislation was valid. But the thing that I like to point out to people when I talk about that case is the federal government had to resort to the peace, order, and good government clause in the Constitution in order to have that legislation upheld. And that's basically arguing for a constitutional amendment that's recognized by the courts, as opposed to proceeding through the amending formula set out in the *Constitution Act, 1982*.

So we had that concern. We went to court with respect to the carbon tax. We ultimately lost. And I think the minister has elaborated on other issues, other initiatives that the federal government is taking that cause similar concern. So what we've done in the Saskatchewan Act is we've asserted that we have jurisdiction. We're not trying to change that jurisdiction. It's just, in my view, it's a drawing the line in the sand and saying this is where our jurisdiction is, and we're going to defend that jurisdiction.

And so that's part of the Act, and then other parts of the Act like

the sections dealing with interjurisdictional immunity sort of expand on that. And as the minister has pointed out, we believe that those provisions will have some impact if and when we end up in court arguing about these matters again in the future.

Ms. Sarauer: — I hear you, Mr. McAdam, and I will never pretend to understand the Constitution better than yourself, sir. But what does asserting jurisdiction in provincial legislation actually do legally in terms of legal weight you've mentioned, previous reference cases, and such?

Mr. McAdam: — The way I view it is it's a statement by the provincial legislature of the significance of the jurisdiction and the concern about the federal inroads. As I said, it's not an attempt to change the jurisdiction. It's not an attempt to amend section 91 or section 92 of the *Constitution Act, 1867* to give the province more jurisdiction. It's just saying, we're serious about the jurisdiction that we have, and we're going to protect it.

Ms. Sarauer: — Sure. But what does a statement in legislation do? And do you have any jurisprudence for ways that's happened that's been successful in the past?

Mr. McAdam: — Well as I said at the outset, this has been a novel exercise. And it's been an interesting exercise, and it's not one that other provinces have embarked on. So there aren't a lot of precedents for us to follow. So I can't point you to any case law that's considered a clause like this where a judge has looked at it and said, this is what it means or this is what it doesn't mean.

But as I said before, we think it's an important statement for the legislature to make about the importance of provincial jurisdiction, about the importance of the exclusivity of that jurisdiction, particularly with respect to section 92A and natural resources, given the history behind that amendment, and the minister has already alluded to that.

So that's the way we view the amendment as that sort of important statement by the legislature about what our jurisdiction is and an indication that we're prepared to defend it.

Ms. Sarauer: — Just to be clear, you're not changing . . .

Hon. Ms. Eyre: — Sorry, if I might add . . . I might just add, Mr. Chair, too, I think it's also important, I mean in terms of the weight of this — and it's one of the things I talked about in my opening remarks — about how we feel that enumerating core provincial powers within the context of 92A has practical weight, but it also can potentially have legal weight.

And one of those was around regulations, for example, and infringement which we see federally in the actual weeds of specific equipment that can be used, for example. We see that one of the reasons that we are intervening in the plastics case, which of course was argued last week in federal court, is around again jurisdictional infringement and the fact that the federal government is not allowed — and that has been established by courts — to infringe in provincial regulations of specific industries. That's not said in the carbon tax decision; that's not said anywhere.

It is something which is increasingly happening. We see it in the methane space, is another example where the federal government is saying you can use that kind of equipment and you can use that kind of equipment. Not something they can do jurisdictionally, and that is an infringement. And that is a constitutional infringement.

So we feel that, for example enunciating, elucidating what, for example, regulation is part of that 92A core exclusive power. And it is, and that's established as such, as something new about that. So again I think that was very important, and we feel that that was quite . . . It was certainly bold to assert within the provincial constitution and also to enumerate those core powers.

[17:45]

And as I said previously, in terms of that unilateral amendment under section 45 which Mitch has referred to, Quebec did it. And so again, section 45, unilateral amendment, Quebec did it. The Prime Minister said it is absolutely legitimate, "perfectly legitimate for a province to modify the section of the Constitution that applies specifically to them . . ." Different reasons for assertion in terms of Quebec, different things that drives their cultural and other narrative, if you like. But for us, 92A, protection of natural resources, exclusive jurisdiction, of prime focus and importance to us. And so again I think really the question of the constitutionality is not a question. It isn't in question.

Ms. Sarauer: — Okay but, Minister, on what basis do you think that this statement will have legal weight?

Hon. Ms. Eyre: — Well for all the statements we've been really making for almost two hours now. And I don't mean to be glib. I mean there are, you know, not only the assertion of 92A, but the amendment of the Constitution under section 45, the fact that we feel that it bolsters interjurisdictional immunity points and arguments, that there is emerging jurisprudence in that area emerging, which we hope could be of weight, legal weight, in terms of saying Saskatchewan amended its Constitution under section 45.

It asserted exclusive jurisdiction under 92A. It enumerated its core powers and listed such things as regulation within those because that is being infringed. And that potentially, if it comes to a Court of Appeal reference or an interjurisdictional immunity argument, all of that is bolstered by the economic tribunal and putting a dollar figure — sole remit — dollar figure on some of these economic policies.

I think that is . . . really not been questioned that to, for example, achieve interlocutory injunction, which can be very challenging to do, and one of the tests of which is irreparable harm . . . How do you prove irreparable harm? In this case, you discuss it economically in terms of economic harm.

And so I think that taken all together, even within for example, the federal paramountcy argument, which has also been raised, well the province, you know, it'll all get struck down anyway because of federal paramountcy. And I mean, if you have competing federal jurisdiction, provincial jurisdiction . . . You know, there are some people who have said, and there are some courts which have held that federal paramountcy, you know, is paramount. But there is equal emerging jurisprudence which shows and holds that federal paramountcy cannot be used as a

hammer, and that there is also provincial paramountcy.

And we see that with 92A. And so I think all of this goes to the buttressing on a number of fronts, clear buttressing within clear powers to making the case. And I mean, I believe the member has said on certain days, this really is nothing new. I don't agree with that. But it certainly isn't carving out new powers.

Ms. Sarauer: — A lot to unpack there. I'm going to focus on Mr. McAdam specifically talking about the novelty of this. And you yourself, Minister, said that you disagreed with me saying that there is nothing new in this legislation.

Oftentimes when there's uncertainty about legislation, in particular when it's dealing with the Constitution and division of powers and the like, governments will refer bills or legislation to the Court of Appeal for a reference, understanding that perhaps another organization will seek to do something similar perhaps if only for expediency sake, perhaps to allow organizations to save money in having to file their own application. Why won't this government refer this bill to the Court of Appeal?

Hon. Ms. Eyre: — Well I'll answer first and certainly then Mitch can go from there. I mean, to quote the member, she wasn't quite sure what there is to review. In one comment she made that there . . . She felt that, as I say, there wasn't anything new in this because it asserts what's already in the Constitution. And forgive me, I don't have the exact quote, but that was certainly the premise.

When I say that I don't . . . that I disagree with the fact there's nothing new, it is only because of first of all the fact that it is a new thing, certainly within Saskatchewan, to amend the Constitution by virtue of section 45 of the *Constitution Act*. But as Mr. McAdam has stated, that provides explicitly that a provincial legislature can unilaterally amend its own constitution, and that in turn gets back to Prime Minister Trudeau's quote and the fact that Quebec did it. So that's established.

I think what's new is the economic tribunal. That is a major component of this, which is that, as I've said, an independent tribunal will look at federal policies and put a price on them. And that flows from this Act. That is new. The enumeration of core powers is, we felt, important and it's explicit and it's within the Act. So it's not just stating, you know, restating 92A. There are components of it: the enumeration of core powers, the amendment of course allowed under section 45 of the provincial constitution, and the flowing from the Act of the economic tribunal.

So that's what I mean when I say I don't believe it's simply already existing. It is, in the sense of 92A, but we go beyond that into enumeration of core powers and the economic tribunal and have also amended our constitution unilaterally, so there are new components.

And so to the member's previous comments that, you know, she wasn't — I know in one case — a constitutional expert and didn't feel there was anything new in the Act, I would simply say that there are components and elements of the Act which are . . . which make explicit certain things and do certain things, such as the unilateral amendment under section 45, that are, I believe, bold but not carving out of any new powers.

Mr. McAdam, do you want to add anything?

Mr. McAdam: — The only thing I would add, Minister, is what I said earlier. I think we're very confident that the province has the authority under section 45 of the *Constitution Act, 1982* to make an amendment to the province's constitution to assert its jurisdiction over matters that fall within section 92A, the non-renewable natural resources.

So I think we're very confident that that jurisdiction exists. I know that one of the other questions that was asked is, well what effect will that have? And we do think that it will have some effect, that it's something that judges can look to as an interpretive tool? And when you're arguing a constitutional case in front of a judge, we for the province will argue this is why we think this is important for provincial jurisdiction. This is why we think that the inroad or invasion of jurisdiction by the federal government is significant or serious. And, of course, the lawyers for the federal government will argue the opposite.

And when you're making those sorts of arguments, it's always difficult to know exactly what to say. You look at constitutional principles. You look at history. I know in cases that we've done, we've gone back and referred to the constitutional debates from the 1860s and tried to glean something from them that might be relevant to the case today. So we think that having an amendment like this put into the province's constitution is something else that we can point to in those cases, and that it is something that judges can rely upon as an interpretive aid, and that it will make some difference in those future cases.

Hon. Ms. Eyre: — And I will just add, Mr. Chair, I know one of the questions that came up last week even around the plastics intervention was, was this about plastics. And aside from the factual policy arguments around it — and there are some interesting ones. I mean for example, that you know, one could say it's not appropriate to lump in, you know, plastic to toxic substance list set by the federal government, which includes asbestos and mercury. Or the fact that as you ban plastics, some of the substitutes for plastics end up actually creating more of a carbon footprint in the landfill and other situations.

All those things aside, one of the key points here as in so many cases, has been infringement by the federal government in provincial areas of jurisdiction: plastics; methane; electrical vehicles; the clean electricity regulations, which will state by 2035 no fossil fuel-generated power. If anyone is in any doubt that that has an economic impact, let alone a social impact, let alone an impact for the North and for all communities across the province, let they make that argument because that's extremely challenging, let alone the . . . To the point about the white paper, or the policy paper, the dollar figure . . . How do you put a dollar figure on no fossil fuel-generated power by 2035? I mean these are massive and have massive significance for the province.

So you can say, well your number is this or that. But you start to hammer those things out and you start to look at that infringement again and again and again of federal policies — clean fuel standard, as I say, methane regulations — into the economic realities of this province, and you have an issue in terms of jurisdictional infringement.

And I think, to Mr. McAdam's point, I mean if you look at the Bill C-69 case, Court of Appeal of Alberta as I've said, said that the federal government with its environmental *Impact Assessment Act* had taken a "wrecking ball" to 92A, provincial exclusive jurisdiction.

What are all the things that one could then argue as a province going forward with, confronted with some of these policies? And again how do you put a dollar figure on no liquid natural gas in Canada, shutting down Saguenay? How do you put a dollar figure on that for us, for the whole country, for Germany, for Japan? I mean this thing becomes . . . Some of these policies have global scope.

So I think part of the thing is buttressing. When we say buttressing, we mean as some of these policies roll forward and become realities — and we see that with the federal fuel standard, as I say, into 2023 — this year, what are all the things we can argue? And we can argue politically, but we can also argue potentially legally, that we amended our constitution unilaterally under section 45, which we are allowed to do under section 45, to assert our constitutional jurisdiction over 92A, which is right there in the Constitution fought for by Allan Blakeney and Peter Lougheed, 1981-82, as a counterbalance to federal overreach. How prescient; how prescient.

And as a result of those important arguments — interjurisdictional immunity, countering the idea of federal paramountcy, obtaining an interlocutory injunction potentially over some of these policies coming through — that was attempted previously with the carbon tax. And it's extremely hard threshold to achieve.

So again, one of the tests is irreparable harm. We feel that establishing economic harm could potentially prove irreparable harm. All of this goes to addressing harmful federal policies. And the dollar figure is significant for the province but also for the country.

The Chair: — Thank you. It now being 6 o'clock, we will recess till 6:45 and reconvene at that point.

[The committee recessed from 17:58 until 18:45.]

The Chair: — Good evening, I'd like to welcome everybody back. And we will resume consideration of Bill 88, *The Saskatchewan First Act*, clause 1, short title.

I will open it up for questions. Ms. Sarauer.

Ms. Sarauer: — Thank you, Mr. Chair. Minister, will this bill, and if so how, will this bill alter thresholds that allow industry and other sectors to have their projects expedited without consultation?

Hon. Ms. Eyre: — As I said previously — thanks, I just was waiting to see if there was more to the question — the purpose of this bill is not about projects per se, which has been another important, I think, point to clarify and often comes up in the context of duty-to-consult. It's not a project-by-project bill. It's a policy-, regulations-, legislation-addressing bill in the sense that, and we went over that a little bit before the break, just some of the policies that we're seeing. And we've never really said anything otherwise.

It's always been very clear that whether it's the carbon tax, whether it's the environmental *Impact Assessment Act*, whether it's methane regulations, whether it's clean electricity regulations, whether it's EV [electric vehicle] regulations, again — and we touched on this a little bit before the break too — the federal government, and courts have held this, does not have the right to specifically regulate specific industries. And that has been held consistently, and certainly Mitch can get into that in greater detail.

We discussed this certainly in the context most recently of the plastic intervention at the federal Court of Appeal, where again the federal government is getting into an area of provincial jurisdiction on regulation, namely our environmental regulations in the province. It will create bureaucracy. It will create red tape. It will create cost. It will create duplication. But there are also very clear constitutional reasons jurisdictionally why that's an infringement.

And so the answer really to the question — is this a project-by-project thing or response? — it's more in relation to policy and cost, economic harm of policies, and infringement constitutionally when it comes to legislation by the federal government of provincial jurisdiction.

So I mean obviously projects become by-products of policies in the sense that . . . And I've mentioned the Saguenay liquid natural gas facility which was a direct casualty of the environmental *Impact Assessment Act*. Also Quebec was not in favour ultimately, although certainly certain communities were. But Bill C-69 came into that.

Obviously we've seen the impact of federal policies on pipeline expansion and so on. So there are project by-products of federal policies, but the response of *The Saskatchewan First Act* is to assess the economic harm of federal policies, legislation, regulation, and their economic impact on the province, which is — as we've stated a number of times — substantial.

Ms. Sarauer: — Minister, in your perspective, how do treaties fit into the Saskatchewan constitution?

Hon. Ms. Eyre: — Sorry, I didn't hear that. How do treaties . . .

Ms. Sarauer: — How do treaties fit into the Saskatchewan constitution?

Hon. Ms. Eyre: — Well, I think we've been over this a number of times, and certainly happy to repeat the fact that of course within the *Constitution Act, 1982* section 35, absolutely enshrines treaty rights in the Constitution, and within provincial legislation, section 2-43 of the provincial legislation Act does the same. It basically ensures and enshrines that treaty rights are intrinsic to all provincial legislation.

As I've said, certainly the sense was and the legal reality is, the legislative reality is, that it is also enshrined in this one. In *The Sask First Act*, we saw an amendment earlier this afternoon by the member for Athabasca, an effort to, having listened to concerns and heard those concerns, to absolutely clarify, absolutely reassure. But legally, in terms of the significance of

treaties and their intrinsic presence both in the Constitution under section 35 and under provincial legislation, that's never been in question.

Ms. Sarauer: — Minister, Indigenous rights existed before treaties were signed and predate the Constitution, as I'm sure you know. Section 35 of the Constitution does not give the rights to Indigenous people; it acknowledges the existence of those rights. Does this bill interfere with that?

Hon. Ms. Eyre: — No. And minister . . . Mr. McAdam, minister by default, would you like to weigh in on that further?

Mr. McAdam: — Thank you for the promotion. The minister's answer is absolutely correct. This bill doesn't interfere with Aboriginal or treaty rights at all.

As has been discussed earlier today, those rights are protected by section 35 of the *Constitution Act, 1982*. And as you point out, that gave those rights constitutional status, but those rights existed prior to that time and were protected by the common law. So this bill doesn't purport to affect those rights at all.

When I'm discussing the bill with people, I describe it as a bill that deals with federal and provincial matters as opposed to dealing with Aboriginal and treaty rights. And as the minister has pointed out numerous times already today, those rights are protected by section 35 of the *Constitution Act*. There's nothing in this bill that takes away from those rights, and because they are constitutionally protected, nothing in the bill could take away from those rights.

And in addition to the protection that those rights have from section 35 of the *Constitution Act, 1982*, they're also protected by *The Legislation Act* in Saskatchewan, section 2-43. And as the minister has indicated, there will be a similar provision put into the bill pursuant to the amendment that was announced earlier today. So in our view there's nothing in this bill that takes away from those rights at all.

Ms. Sarauer: — Thank you. Minister, I'm going to quote from an op-ed that you wrote in the *Leader-Post* on November 20th, 2022. You stated:

> Contrary to Leeson's assertion, we are not "adding new powers to the legislature of Saskatchewan." In Section 3, we are merely asserting and enumerating the province's exclusive powers.
>
> Sometimes, as Quebec policy analyst Michel Kelly-Gagnon recently wrote, a provincial government gets the powers it dares to take, not just the powers that are handed to it.
>
> In Saskatchewan, with our Saskatchewan First Act, we have chosen to undertake that dare.

Minister, which one does this bill do? Getting "the powers it dares to take, not just the powers that are handed to it"? Or as you stated, "we are not 'adding new powers to the legislature of Saskatchewan'"?

Hon. Ms. Eyre: — Well we are not adding new powers to the legislature of Saskatchewan as I stated in the op-ed and I've stated now at least two times this evening around that point specifically raised that I was responding to. And I have said and said then, we are not adding new powers to the legislature in section 3. We are merely asserting and enumerating the province's exclusive powers. And we've gone over those a number of times.

I think in terms of Michel Kelly-Gagnon's point and the quote you just read, he was referring to Quebec, and he was referring to the boldness that Quebec takes. And I think that's an interesting question. If we're going to talk about listening, and listening to all people in the province, one of the things that we hear the most is we should channel our inner Quebecer and our inner Quebec.

And I think one of the reasons that people say that is because, I mean not only did Quebec unilaterally amend its provincial constitution — and we've talked about that a number of times as well that Prime Minister Trudeau acknowledged that's a right provincial governments have — but it was Quebec that did it. And I think that one of the most intriguing things about Quebec's positions on these things is that it can fundamentally agree with federal ideology and policy, but it'll always come down hard on exclusive jurisdiction for the province.

And we get this a lot. I mean I think it's fair to say . . . I believe the member has raised similar points along similar veins, variations on themes, you know, why do you take on the federal government? Why do you bother? And certainly the implication is always — and I resist this with every fibre of my, certainly of my political being — that somehow it makes one a bad Canadian if one challenges things, for example around exclusive provincial jurisdiction and . . . it's distracting with talking going on, Mr. Chair. I just . . . yeah.

So in response to the quote, I think it's important context that what I was really getting at when I stated or re-stated the quote, which is back on November 1 when we introduced the Act, it was about asserting. It was about asserting, which is exactly what we're doing, and it's what Quebec does all the time.

And you know, the implication about, for example, the province of Quebec's raising some of these exclusive jurisdictional issues — and they raise them across the board — they are generally not accused of being bad federalists, whereas the West routinely is. And I mean it happened as recently as the plastics intervention. It's why would you ever bother doing it? Why would you bother asserting your exclusive provincial jurisdiction over these things?

Because it matters. Because it matters when there's infringement on provincial regulation that in turn impacts us, business, everyone in the province, and actually our own environmental stewardship which we're very proud of and which we regulate. And so once you allow that to happen across the board, and the federal government to get into those spaces, in regulation for example, it's worth, we feel, taking a stand.

That's what this Act does, and that's what I was getting at when I quoted Mr. Kelly-Gagnon. It's in that spirit that we hope the time has come to look at the core powers of provinces. And Mr. McAdam went into that a little bit before the break, the fact that this is about legally buttressing arguments around jurisdiction.

And so in terms of channelling an inner Quebecer, I think it's really about saying these things matter and we're going to take a stand when it gets into infringement.

Also around interjurisdictional immunity, it's a reality. It's an argument. It's something worth fighting for when it comes down to the economic potential of the province and the harm done when there is continual infringement and overreach. So that's what I was getting at when I quoted Mr. Kelly-Gagnon.

Ms. Sarauer: — Minister, do you think the province can define the meaning or interpretation of the Constitution in legislation?

Mr. McAdam: — What I would say in response to your question is it's our opinion that the legislature can express its views on the meaning of terms in the Constitution and, as in this legislation, can express its views on matters like interjurisdictional immunity and what are the core powers of the province and what aren't the core powers of the province.

Now in our country and under our Constitution there is a division between the legislative branch and the executive branch and the judicial branch. So ultimately on questions of interpretation of the Constitution, it is the judicial branch that has the final say. And in our country that's the Supreme Court of Canada. So ultimately it's the Supreme Court that will define the terms in the Constitution.

But as I said before supper, we think that this Act does make a valuable contribution to the debate and that it shows that, you know, the elected representatives of the province of Saskatchewan in this legislature have set out their views with respect to the importance of provincial jurisdiction over things like non-renewable natural resources, the generation of and production of electrical power, those sorts of things. And we do think that that's something that courts can and will take into account as an interpretive aid.

[19:00]

So ultimately, yes you're right. The decision lies with the Supreme Court of Canada, but we still think that it's completely constitutional and valid for the legislature to express its views on those important issues.

Hon. Ms. Eyre: — And I'll also mention if I can, Mr. Chair, I think just to go to the idea of the economic tribunal, which is an important offshoot of this Act, whether it always ends up in the legal framework — and again, I mean, with the carbon tax we've been down that road and are intervening in other cases — but I think it's extremely important for people to realize and for it to be trumpeted to the province, the country, the federal government what the cost impact is of some of these policies. They are not theoretical abstracts. There is a cost impact.

And so in terms of the economic tribunal, you know, based on this evaluation, this independent assessment and evaluation of cost, what then is, quote unquote, done with that information? And we've been over this a number of times. It could serve, you know, toward an interjurisdictional immunity case. It could serve as a reference to Court of Appeal. It could merely serve as information to the public.

And I think that that is important to raise awareness about every day. I think it sends a very strong message that the number of provinces and territories are intervening in the Bill C-69 case are again not always provinces that disagree with the federal government ideologically. So why are they doing it? Because they feel that constitutional jurisdiction and exclusive core powers of the provinces matter. That's not just Saskatchewan, but I think we're part of an important team when we raise some of these things.

I think if we live in this federation we've done this dance for many decades around division of powers, and I mentioned before the break Peter Lougheed, but also Allan Blakeney. It's been raised by the members opposite a number of times, when the bill was originally introduced that actually it was Allan Blakeney who played a part in this in terms of asserting exclusive jurisdiction under 92A. And I credit him for that. As I said, it was prescient because it was seen as a counterbalance to federal power, to federal overreach. And never have we seen the federal overreach that we see now.

People can say, well that's fed bashing. But the point is, we feel that it's important to raise the dollar figure-harm of these policies and also raise the very serious issue of constitutional overreach. These are serious, grave issues with serious, grave impacts. And it would be irresponsible in our position to not raise awareness with every tool at our disposal — factual, legal, in this case constitutional — to sound the alarm about the impact of some of this. As I say, they are not abstract threats. They are real economic threats.

Ms. Sarauer: — Taking it back to my question, Minister, I would like to quote a paragraph from the Supreme Court decision Vavilov, and I'd like your comment on that. Of course we all know Vavilov, but it's 2019 SCC 65, and this is at paragraph 56:

> The Constitution — both written and unwritten — dictates the limits of all state action. Legislatures and administrative decision makers are bound by the Constitution and must comply with it. A legislature cannot alter the scope of its own constitutional powers through statute.

How do you think this legislation fits in with that?

Hon. Ms. Eyre: — Well, again on that, I'll let Mr. McAdam weigh in. But again, I would bring it back to section 45 and the explicit right under section 45 for provinces to unilaterally amend their constitutions. It's in black and white. It's been acknowledged, as I say, by the Prime Minister that this is possible, and Quebec has done it. It wouldn't be in section 45 if it weren't possible. It's constitutionally enabled, and we did it.

And in terms of the broader interpretation of what you touch on, again I think to Mr. McAdam's points earlier: it all comes down in the end to, you know, judicial interpretation of course if it goes down that road. And we've seen that in a number of cases. We'll see where the environmental *Impact Assessment Act* case goes one way at Court of Appeal. We'll see where it goes at the Supreme Court.

I think though that we've been pretty clear, you know, throughout the afternoon and into the evening now about what we hope will be weighed in terms of legal interpretation, judicial interpretation

of where federal paramountcy is going in jurisprudence, where interjurisdictional immunity, we hope, might go. And I cited a case from the BC Court of Appeal where it went pretty far in terms of a provincial enabling of interjurisdictional immunity.

And really, the word we've used a number of times is this "buttressing," that we hope that in doing what we've done, there will be increased legal weight to achieving something such as an interlocutory injunction if and when necessary when we deem necessary. So it all goes into the legal, you know, jurisprudence package, but I think one case may say that, other cases weigh differently. Mr. McAdam.

Mr. McAdam: — What I would say is, to start with, the Vavilov case is an administrative law case, not a constitutional law case. So I'm not as familiar with it as I should be. But as far as the statement that you read out of paragraph 56 that says a legislature can't expand its own powers, I completely agree with that. And I don't think that this legislation is offside with that at all.

We've said earlier this afternoon, and I think again after supper, that this Act doesn't purport to create any new powers for the province. It simply is asserting the jurisdiction that we already have under the *Constitution Act, 1867*, and in particular the powers under section 92A of the *Constitution Act, 1867*. And the other thing that I would say is that the Act is really trying to defend those powers from inroads by the federal government.

And I know I mentioned the carbon tax case a little bit earlier, but I'll go back to it as an example of the type of legislation that hopefully this legislation can provide some assistance in dealing with in the future.

When we started off with the challenge in the carbon tax case, the federal minister of Environment and Climate Change was saying that the federal government had jurisdiction to pass that Act because it had jurisdiction over the environment. And of course the lawyers in our branch all gave the opinion, well no, the federal government doesn't have jurisdiction over the environment. They can't pass laws simply because they affect the environment. The Supreme Court had said a number of times that jurisdiction over the environment is divided. So when it deals with a matter within federal jurisdiction, the federal government can pass environmental laws. But when it deals with matters within provincial jurisdiction, the province can pass those environmental laws.

But then we found, as the carbon tax case wound its way to court, that what the federal government was arguing was not that they had jurisdiction over the environment, or not that this fell under the criminal law power or the trade and commerce power or their taxation power or any other federal head of power. Instead they relied on the national concern branch of the peace, order, and good government power. And I've described that clause before as one that basically allows the federal government to amend the Constitution by going to court and getting the Supreme Court to agree with them.

And their argument in that case was, yes we agree that applying something like a carbon tax would ordinarily fall within provincial jurisdiction when it's applying in local markets, when it's applying to local businesses, that sort of thing. But their argument was because of climate change, this is elevated to such an importance that we're now asking the court to recognize that the federal government has jurisdiction over those things.

So I described the carbon tax case as very much taking away powers that the province had prior to the *Greenhouse Gas Pollution Pricing Act*. So again, that is the type of action by the federal government which hopefully this bill can provide some assistance in dealing with in the future. So it's not about creating new powers for the province, but it's about trying to defend the powers that we already have.

Hon. Ms. Eyre: — And I'll add if I may, Mr. Chair, I know that there have been a number of times that that has been raised, that somehow the decision in the carbon tax trumps all of our efforts to assert provincial jurisdiction, including under this Act. And I think Mr. McAdam can certainly elaborate on that further but has already said as much really, that there's nothing in the carbon tax decision which suggests that, says that in any way. It was a very narrow decision on price stringency. But in no place in that decision does it say that the federal government, for example, can continue to infringe on specific industries and provincial regulation and provincial regulation affecting specific industries. That's very important.

And again, I think partly to this point about, you know, the economic tribunal and putting a dollar figure on some of these things, and then what one might do with that in terms of . . . I mean, there's been some speculation around what are the federal policies, regulations, legislation that might make their way through the tribunal. And I think, if anything, you know, and I hate to say this, but we're spoiled for choice.

And at some point when it comes to the methane regulations, for example, and the federal government prescribing equipment, and some of the other instances that I have cited, if we were to, for example, put through a number of these at one time, get a dollar figure amount on the harm and then take that to interlocutor injunction, Court of Appeal reference, etc., at some point, one has to hope that — in light of the fact that the carbon tax decision was extremely narrow and really around the price stringency and, to Mr. McAdam's point, ultimately POGG, peace, order, and good government — at some point a judge would have to say this infringement, over and over and over, matters. It has an impact and it can't be done.

And it's been something that the courts have held consistently, for example around the criminal law powers, on infringing on specific industries and specific regulations with industries. They've been consistent in that. And that was one of the things I raised last week around the plastics intervention. It matters. These things matter. I believe they matter to the people of Saskatchewan, that where there is infringement, where there is living within a federation, working within a federation, being integrated within a federation, what's in the Constitution matters. And it makes us Canadian. Doesn't detract from being Canadian. It makes us Canadian. And certainly legally it has import, that it can't continue to be this infringement over and over. It has too much effect.

Ms. Sarauer: — Let's talk briefly about the carbon tax reference case, since you had mentioned it. Minister, do you believe that this legislation would have changed the outcome of the carbon tax reference case?

Hon. Ms. Eyre: — I'll certainly let Mitch weigh in on this. I think that it might have helped. It might have helped. I think that, seen through the prism exclusively of 92A, and that "exclusive," and it's been pointed out not only by me, I mean, a number of constitutional scholars have pointed out that the language "exclusive" is not by accident.

And so if we had been able to suggest that in light of 92A, exclusive provincial jurisdiction and all the powers that if you . . . you know, not only what section 92A encompasses, but if we had been able to enumerate the core provincial powers that flow from that — which we have in this bill — and if we had then gone to interlocutory injunction and said, this is what we expect the harm will be and we know what the harm is proving to be, and if we could have speculated that forward and, as I say, by independent assessment said, this is what we think this will lead to in terms of economic harm.

And again earlier I cited, you know, parliamentary budget officer — 20 million a year in grain drying alone. And so it goes. And it keeps going up every year. If we had been able to say to a court, could you please consider this under 92A but also in terms of irreparable harm, I think that we might have improved the chances of its being seen through that prism at any rate.

And again, I mean one of the things in terms of economic harm . . . And I mentioned, you know, Mr. Buffalo earlier, Stephen Buffalo, and talking about the impact of the carbon tax on northern and Indigenous communities.

And in light of that, I mean he talks about the tax exemption on reserves and that the federal government is of course, you know, continuing to say that people get the carbon tax back. But of course most people living on-reserve are exempt from paying income tax, so there are no rebates. So really, and this is to quote him, "those who can least afford to pay the carbon tax are most likely to be excluded from the rebate." Economic harm. Economic harm to First Nations communities, northern communities.

[19:15]

And then there's the federal fuel standard and its impact on diesel. You know, driving conditions in remote communities require all-wheel drives. There are no EV charging stations. Economic harm. Electricity and heating — and Mr. Buffalo points this out — have become very expensive. On-reserve people have no control over whether their energy comes from diesel or natural gas or coal-fired plants. Bills have doubled and even tripled. That's not I saying that; it's Stephen Buffalo. Economic harm.

So there is an impact on federal policies on affordability of life and on our economy, you know, period. And that's really what the Act is about addressing. So to the question about, could this have been laid out . . . You know, in arguing the carbon tax, I think now we look back and we say to a certain extent we feel that it was the great impetus or one of the great impetuses for where we find ourselves today.

Mr. McAdam: — What I would add to what the minister has said is, I don't think this legislation would necessarily have changed the outcome in the carbon tax case, but I share her optimism that it might have helped a little bit.

But maybe more directly to your question, there is nothing in this bill that purports to repeal or amend or change the federal government's power under the peace, order, and good government clause of the Constitution or the POGG power. So that power will continue to exist and the federal government can choose to rely upon it in a future case if they choose to do so.

Now in the carbon tax case, the Supreme Court was very careful in saying that is an exceptional power and that it should only be resorted to in exceptional cases. And they drew lines around it, and very much circumscribed it, and I think, gave clear signals to the federal government it's not something that should be resorted to often or willy-nilly or anything like that. It's a very serious power to resort to because of its impact on our constitution.

The only way that the POGG power could be changed or eliminated from the Constitution would be an amendment that would require the consent of the federal government and 7 of the 10 provinces having at least 50 per cent of the population of Canada. So that's under a different provision of the *Constitution Act* of 1982. So this bill doesn't propose to do that at all.

But one of the other things that I would add where I think that this bill could have some impact on a case like the carbon tax in the future . . . a carbon tax case in the future, is you know, I think we've learned some lessons from that case. And one of them was we treated the case very much as a legal case, as a case that raised a question of law. And we very much tried to focus our arguments on the federalism aspect of the case. In our view, it wasn't about the environment or what needs to be done to combat climate change or who's doing enough or who's not doing enough. In our view, it was about federalism.

And so we went into the case with the approach, this is a pure question of law. We're going to come in with our legal arguments. The federal government will come in with their legal arguments and the judges will make their decision. So we didn't file any evidence with the court initially. The federal government then filed extensive evidence and a lot of it was about climate change and the harms that will come from climate change. And a number of the intervenors in the case — and there were a lot of them — also filed a lot of evidence about the impact that climate change will have on their communities. And then we filed some evidence in reply after that evidence had been filed, talking about the cost of the carbon tax on people and businesses in Saskatchewan, but we hadn't done that initially as part of our case.

And I think that one of the things that this bill does by establishing the economic assessment tribunal is it gives us a venue to go and seek that kind of economic assessment and get that sort of evidence. And as the minister has outlined, once the tribunal makes a decision, that decision can be used for a variety of things. I mean it could be used for purely political purposes to go back to the federal government and say, you know, here's why our tribunal has said, how are you going to amend or alter or respond to what's been said. It could also be used to bolster an application for an interlocutory injunction or it could be filed as part of a reference case.

So I think we have learned some lessons from the carbon tax

case, and one of them is that we do need that kind of evidence if we're going to go to court again in the future and challenge federal legislation. And I think the tribunal will assist with that.

Hon. Ms. Eyre: — And I'll just add if I may, Mr. Chair, very briefly, I think on the economic tribunal side of it, I mean as I've said, independent assessment, federal government would be asked, invited to submit information as well. One of the most curious things, and if we're going to really talk about making your case, making your argument, which I guess would suit our case or argument quite well, is that consistently where we say that the cost of a certain federal policy will be in the hundreds of millions, they often say it'll be higher. Federal fuel standard, classic instance.

We filed, when I was minister of Energy, numerous letters outlining the cost as we saw it. And the provincial government . . . I believe the latest number is 700 million or so, and I believe that was in the policy paper that's been referenced a number of times in the fall. And the federal government has actually come out a number of times in various contexts and suggested it could be much higher, as I've said.

And again, this just transition report leaked about the impact, you know, from the federal department of Natural Resources and about how 3 million Canadians in the industrial workforce, as I have mentioned — agriculture, food processing, oil and gas, mining, manufacturing, and transport — will face what they call "significant disruption." The whole purpose of this report to the federal minister of energy was to outline potential cost, and clearly it was significant.

And so I think that to Mr. McAdam's point about what the economic tribunal would achieve, what its goal would be, its goal would only be to put the dollar figure on some of these policies. But I think in many cases where you have the one who'd be arguing against you saying it would actually cost the province more, legally, surely that has some significance.

Ms. Sarauer: — Minister, section 3 attempts to give the Saskatchewan government exclusive control over regulating greenhouse gas emissions. How does that interplay with the carbon tax reference decision?

Mr. McAdam: — What I would say to that question is, I mean this bill can't undo a decision that the Supreme Court has come down with. But the bill can state the views of the Legislative Assembly with respect to the jurisdiction that the province has. And as I indicated before, prior to the *Greenhouse Gas Pollution Pricing Act* and prior to the federal government relying on the peace, order, and good government clause of the Constitution to basically take powers away from the province, the province clearly had that jurisdiction.

So as I say, it doesn't undo the decision. The legislature can't undo a decision of the Supreme Court of Canada, but it does set out certainly what the case was before that decision and it sets out the legislature's view on what we think is a very important topic.

Ms. Sarauer: — Minister, you mentioned at length the economic impact assessment tribunal and how it would work. Can you explain why this process would be more beneficial than the traditional process of expert witnesses that you would normally gather to present evidence in due course?

Hon. Ms. Eyre: — Well because, I guess, expert witnesses suggest that by default it would automatically go to a legal process or a court process, which it wouldn't necessarily. And as I've said a number of times, I think the important thing about the economic tribunal is that that's its sole remit to put a dollar figure on federal policies, and then what is done beyond that is potentially legal but also informational. Again I mean with the policy paper before this bill came out, certainly there was an attempt — and in that case by Ministry of Finance officials — to peg cost on some of these harmful policies. And as I say, I would take on anyone to suggest that those policies don't have that economic arm attached to them. I say, bring that on.

But be that as it may, the role of the independent economic tribunal will be to assess, let's say, the proposed production caps on oil put forward by the federal government, still not really gazetted or clear. There are some however that are gazetted and clear, one of which is the federal fuel standard which is going forward this year. The methane regulations, we have methane equivalency or equivalency with the federal government on our methane regulations.

As that comes due, what they are actually envisaging will come with severe economic harm. One of which, and then I've mentioned this a number of times, so Saskatchewan was publicly congratulated on its methane reduction by 50 per cent last December by Minister Guilbeault. The federal government then turned around and said, well you know, we see your 50 per cent. Let's make it 60 or 75 or whatever it's now become. That's not partnership. That's not collaboration. That's clearly economic harm.

And one of the things that we've mentioned a number of times, and certainly I did, including to my federal counterpart, was the lack of data. Again we're often told we should collaborate more with the federal government. I always say in counter to that, well we do certainly where we can. But where the federal government does not provide simple data on how it is assessing us on things such as methane reduction . . . That was acknowledged; that was not not acknowledged by my federal counterpart. In fact he acknowledged that it made sense to ask for data if we're going to be working together.

So I guess the point about the economic tribunal, that would be another thing that perhaps one could . . . well one would certainly raise. You know, we were congratulated for the 50 per cent methane reduction; then they raised it to 65. Now it's at wherever it is. We don't have any data, or we get little shadows of data, around how we're supposed to accomplish this. And the economic harm we see as this, plus we have the federal government jurisdictionally infringing in provincial regulations, which clearly courts have said they cannot do, to follow on everything Mr. McAdam has said. And then we come out with a dollar figure on the other end of it.

It's not an easy task, but it's certainly doable. And then what we do with that information is potentially legal, potentially factual, potentially policy driven, potentially many things. But it isn't only a legal process.

Ms. Sarauer: — Minister, the Constitution at 92(3) states:

> Nothing in subsection (2) derogates from the authority of Parliament to enact laws in relation to the matters referred to in that subsection and, where such a law of Parliament and a law of a province conflict, the law of Parliament prevails to the extent of the conflict.

How does this legislation interplay with that?

Hon. Ms. Eyre: — I'll certainly let Mr. McAdam elaborate on that. But again — and we've touched on this a number of times I think, how there are certain doctrines that have come to pass, including federal paramountcy, where there are also suggestions in the jurisprudence that it has gone too far — that federal paramountcy, when you have a conflict between the two jurisdictions, cannot be a hammer against provinces.

And I think that as Mr. McAdam has pointed out, I mean, the federal government did bring out the proverbial big guns when they brought out peace, order and good government to trump provincial jurisdictions. So I'll let him elaborate further on the interplay, but it's certainly been a bit of a dynamic situation.

Mr. McAdam: — Thank you, Minister. I think the short answer to your question is that this bill doesn't affect the doctrine of federal paramountcy at all. And again that's a constitutional principle that couldn't be amended as part of changes to a province's constitution. And that's what we're talking about here, is changes to the provincial constitution. So again, federal paramountcy is something that this bill doesn't purport to deal with and simply couldn't deal with.

Ms. Sarauer: — Minister, you mentioned in your opening comments, and you've done a few times in the past as well, natural gas is the next federal government attack, threats to our ability to use natural gases as a source of fuel and energy. Can you explain to the committee when the federal government said they planned to shut this down?

[19:30]

Hon. Ms. Eyre: — They said it in the clean energy regulations that are currently in draft that there'll be no fossil fuel-generated power by 2035. The details of that are still forthcoming, but they are documented and known that that has been the intention. And that has certainly been the intention that has been signalled.

I mean, we're waiting on the regulations. We're waiting on the explicit, you know, line by line, as I say, stipulations under the clean electricity regulations. But in light of what we have heard and what we have been told and what we understand, that was certainly one of the overriding intentions. And again that poses grave concern to us of course in light of our power mix and the fact that, for example, as I said in my opening remarks, you know, natural gas powers the city of Saskatoon. We don't have that much hydro.

The transition, if one wishes to call it that, between you know, fossil fuel generation backfilled by wind and solar, awaiting SMRs, for example, small modular reactors, there is a gap. And as I say, the SaskPower president has said that non-fossil-fuel-generated power is literally impossible by 2035, so that's what I'm basing it on. And a number obviously have weighed in, including SaskPower, on the potential ramifications of the clean electricity regulations.

Ms. Sarauer: — Thank you. I'd like to ask some questions about the *Saskatchewan Act* amendments specifically. Can you explain what these amendments have the effect of doing?

Hon. Ms. Eyre: — I'll let Mr. McAdam start. I'm certainly happy to . . .

Mr. McAdam: — I'm sorry, can you repeat the question?

Ms. Sarauer: — Sure. The specific amendments to the *Saskatchewan Act*, what do they have the effect of doing?

Mr. McAdam: — The amendment to the *Saskatchewan Act* is an amendment to the province's constitution. So as I said earlier, we were very clear in saying that the province has jurisdiction under section 45 of the *Constitution Act, 1982* to amend its own constitution. So the question then became, well what is the province's constitution? And the obvious thing that we looked at there was the *Saskatchewan Act* of 1905.

The *Saskatchewan Act* is a federal statute. It's the statute that created the province of Saskatchewan. But I need to be clear that the parts of the *Saskatchewan Act* are also parts of the Constitution of Canada. There are things in there that the province could not unilaterally amend, things like the borders of the province, the representation of the province in the House of Commons, things like that.

But there are other parts of that statute that we believe are part of the constitution of the province and things that this legislature can amend unilaterally, on its own, without needing to go to Ottawa to get its consent.

Now an example of an amendment that was recently made with consent was the amendment last year to do away with the perpetual tax exemption of the Canadian Pacific Railway company, and that was an amendment that was done bilaterally. It was done with the consent of the federal government. But in that case we were dealing with a contract that had been entered into by the federal government, in fact by the government of Sir John A. Macdonald back in the 1880s, that granted the CPR this tax exemption.

So it was our view that that wasn't . . . Because it was a federal contract that was the basis for the tax exemption, we couldn't unilaterally amend that provision. But when it comes to other parts of the *Saskatchewan Act*, it was our view that those are part of the constitution of the province, and the province can unilaterally amend them.

So what the amendment then says is, you know, what we've talked about already. It asserts that the province has autonomy with respect to the matters that fall within our jurisdiction under the *Constitution Act* of 1867, where it sets out the division of powers between the federal and provincial government, with federal powers in section 91, provincial powers in section 92 and section 92A.

And I think how I described it a little bit earlier, it's sort of

drawing that line in the sand. And it's trying to protect the jurisdiction that we have as opposed to creating new jurisdiction. So that's what I would describe as, sort of, the background to why we're amending the *Saskatchewan Act* of 1905 and what the effect of the amendment is.

Ms. Sarauer: — So I fully want to understand the difference, and why the process is different here than it was, as you mentioned, with the other provision that was recently changed. This one does not require, in your opinion, consent of the federal government because it's only affecting Saskatchewan. Is that accurate?

Mr. McAdam: — Yeah, and it doesn't affect those contractual rights. And there's other provisions in the *Saskatchewan Act*. Like the boundaries is the easy example that we refer to. Saskatchewan couldn't unilaterally amend its boundaries because you would be affecting Manitoba or Alberta or the territories. So that's something that obviously you would need the concurrence of the federal government and the other provinces to do.

But the amendment that's been included in *The Saskatchewan First Act* simply asserts that we have autonomy with respect to the matters that are already under our jurisdiction under the *Constitution Act, 1867*. So we're not affecting federal powers. We're not affecting rights of an individual under a contract. The Hudson's Bay Company has rights under the *Saskatchewan Act,* as well as the CPR used to. But we're not affecting any of those rights. We're simply making an assertion with respect to the province's jurisdiction, so we don't feel we need the consent or the concurrence of the federal government to make that kind of an amendment.

Ms. Sarauer: — Right. So that's because we already have autonomy with respect to all of the matters falling under its exclusive legislative jurisdiction pursuant to the Act?

Mr. McAdam: — Well I mean, as we've said, we're not purporting to give the province new powers. We're simply staking out the jurisdiction that we already have under the *Constitution Act, 1867*. And I'm not going to repeat myself with the discussion that I had earlier about the carbon tax case, and how in that case the federal government actually took powers away from the province. That was the effect of the decision in that case. So as they say, I see it as a bit of a drawing the line in the sand.

Ms. Sarauer: — Thank you. If the feds disagree with this assertion and your assertion on how this amendment has been presented, what is the advice that you've received on the success of that challenge?

Hon. Ms. Eyre: — Sorry. As I've said a number of times, Mr. Chair, that the federal government has acknowledged it's constitutional. I know Minister Wilkinson has. I believe there was another minister who said it as well. And as I've said, in 2021 the Prime Minister explicitly stated that provinces have the power to unilaterally amend their constitutions. And I've quoted the Prime Minister a number of times.

It's perfectly legitimate for a province to modify the section of the Constitution that applies specifically to them. There was quite a lot of speculation at the time — or depending on whom you ask, fixation, puzzlement — because perhaps people didn't . . . there wasn't quite the recognition that this was something in provinces' powers to do. But Quebec did it, and it was acknowledged that they could do it. And there really has been no commentary by the federal government, to my knowledge, that this wasn't within our power to do. That's been broadly and largely acknowledged.

Ms. Sarauer: — Minister, how would this provision stop the federal government from enacting valid federal legislation that would not be paramount in case of conflict?

Hon. Ms. Eyre: — It doesn't prevent them from enacting anything. It is a tool at our disposal to challenge what they are enacting based on constitutional overreach and economic harm. And as I said, I mean federal fuel standard would be one example, set to come into effect this year: $700 million impact at least, arguably more according to the federal Energy minister, and huge impact on agriculture, mining, fuelling your car, heating your home, retail, transport sector, and of course with all the trickle-down, if you like, impacts of the carbon tax.

And we've outlined that a number of times, you know, about all the hits at all the levels in the supply chain. You know if this is, and it has been called, carbon tax number two, you know, here we sort of go again. So they can gazette it, do it, as they continue to do many things. But the quandary for provinces is whether it's the environmental *Impact Assessment Act* and as I've said, you know, 10 provinces and territories joining us, and down the line there are many of these policies which have economic harm. It provides an opportunity for the province to assert the fact that exclusive jurisdiction under 92A actually means something, and to try to counter that infringement which is frankly unconstitutional.

But when we get into areas, you know, the number of policies that we're seeing . . . And it's interesting. I mean one of the things that came up today at SARM, and a number of us were there of course, we heard the gentleman on the floor asking about, you know, is the federal government coming after fertilizer next?

And it's interesting because people say well, you know, that's enumerated in the bill in terms certainly of historical significance to the province. But it's actually interesting from a constitutional perspective too because, you know, the day-to-day business of farming, use of fertilizer, have been traditionally, you know, under the provincial realm or so held to be.

And so when the federal government comes along — and again it's in a long litany of examples — they said, "oh, it's all going to be voluntary with the sustainable agriculture policies," and you know, "don't worry, nothing to see here," all through the summer. And then right before Christmas there was this intriguing line which I'm sure members will be aware of, where I believe it was the federal Agriculture minister, that there was a discussion paper that was put out. And in the discussion paper it said explicitly that actually we could come after specific agricultural practices. And it's right there in black and white, right in the discussion paper.

So I guess, you know, that signals and symbolizes why this Act is important. Because it might provide an opportunity to say, here

we go again, what does that mean, what is the economic harm, what does that mean to producers, and yes, there's a concurrency over agriculture between the federal and provincial, but in light of day-to-day business of farming, you know, and fertilizer use, you can't do this. An important tool to that end among many other policies that we see which are harmful.

Ms. Sarauer: — Minister, I want to ask a few questions around the provisions around interjurisdictional immunity. Can you explain how you believe the province can enact provincial interjurisdictional immunity in legislation, as interjurisdictional immunity is a constitutional doctrine?

Hon. Ms. Eyre: — Well again, certainly Mr. McAdam can weigh in. It's not enacting interjurisdictional immunity. It's mentioning it, along with core provincial powers are sort of woven into the Act, if you like, as terms which we felt, based on the jurisprudence, were important to integrate into the language because of some of the emerging jurisprudence around interjurisdictional immunity, the use of the word "core" in consideration by judges of exclusive jurisdiction.

And I mentioned earlier that the hope perhaps is that the doctrine will make more headway. I referenced the case of PHS Community Services earlier, where the BC Court of Appeal was ready to make a determination or signalled a readiness to make a determination in favour of the protection of provincial interjurisdictional immunity. And there was an emphasis in that case by the justice over the dangers of so-called co-operative federalism, which we certainly hear a lot about, you know, having negative effects on provincial policies.

That's pretty intriguing legally and that's interesting, certainly when it comes down to this concept of exclusive jurisdiction, but also what maybe interjurisdictional immunity could come to mean within that. And so that's why it was inserted. It was for the purposes of, we hope, legal weight around terms such as "core powers" and "interjurisdictional immunity."

Mr. McAdam: — What I would add to the answer given by the minister is, you know, I think in order to answer the question, you really need to understand what interjurisdictional immunity is all about under the Constitution. And interjurisdictional immunity is one of the more obscure principles of the Constitution, and it's certainly one of the more difficult principles to understand. I know I've been to the law school a few times talking to law students, and I've said if you can understand interjurisdictional immunity, you will pass constitutional law with flying colours.

[19:45]

So I think to give a bit of background on interjurisdictional immunity and what it's all about, you have to kind of understand the division of powers generally. And so under the *Constitution Act, 1867*, it says the federal government has certain powers and the provinces have certain powers. And the federal powers are primarily set out in section 91, provincial powers set out in section 92 and 92A.

And the other thing that kind of gets overlooked sometimes in the discussion is that both section 91 and 92A talk about those powers being exclusive. And I think in the early days of Confederation, back when the Privy Council was the final court deciding on issues with respect to the Constitution, exclusivity played a much bigger role. And the Privy Council would take an approach that basically there's a dividing line, and things are either within federal jurisdiction or they're within provincial jurisdiction. And that came to be referred to as the watertight compartments doctrine: what's in federal jurisdiction always is in federal jurisdiction and what's in provincial jurisdiction is always in provincial jurisdiction.

But over time that's changed. And I think, particularly after the Supreme Court of Canada became the final court of appeal for Canadian constitutional issues — in 1949, I believe it was, maybe '47 — the court began to recognize more and more that there were areas where jurisdiction was overlapping, where both the federal and the provincial governments could legitimately pass legislation dealing with essentially the same thing.

And I mean, a good example of that would be the criminal law with respect to drinking and driving. That's clearly something that the federal government can pass laws about under the criminal law power, but the courts have recognized provinces have jurisdiction over highways, provinces have jurisdiction over property and civil rights, they can license drivers. And the provinces can suspend drivers if they're driving while impaired. So it's an area where you have both federal and provincial laws that can apply at the same time.

And I know that you asked a little bit earlier about the doctrine of federal paramountcy. And that's where that doctrine comes in; where you have both federal and provincial laws applying, there needs to be some rule to deal with conflicts, that you can't have a provincial law saying do one thing, and a federal law saying do something else. That simply, you know, is unworkable.

So we have the doctrine of federal paramountcy. So it means that where there are those conflicts, the federal law prevails and the provincial law becomes inoperative. But the Supreme Court has always defined the type of conflicts that will invoke the doctrine of paramountcy really narrowly. So it has to be something that's black and white. One law says yes, the other law says no — something like that.

So you had this development or sort of evolution in the constitutional law, and we got to the points where courts were recognizing more and more overlapping powers. And then the courts started to develop this doctrine of interjurisdictional immunity, and it basically says there are certain things with respect to the heads of power. Initially all the cases dealt with federal powers so they were all under section 91: there are certain things with respect to these federal powers that are so important that provincial laws shouldn't be able to affect them or touch them, even if there isn't a contradictory federal law that could be relied on for the doctrine of paramountcy.

Then the earlier cases dealt a lot with federal works and undertakings, and you know, the application of provincial occupational health and safety laws, provincial labour laws, where you maybe had federal legislation but it didn't cover the whole field. And the court said, well no, it's interjurisdictional immunity. It's either a federal law or no law.

And then in recent years, the courts have recognized that

interjurisdictional immunity should apply to provincial powers as well. And the minister has referred to the one case where the Supreme Court explicitly said that, the Insite case. But that was a case that dealt with provincial jurisdiction over health, and the Supreme Court said, well health is such a broad and amorphous topic, how can you decide what's sort of the core or what's the key part of that jurisdiction for interjurisdictional immunity to apply to?

But I think they've clearly left the door open for interjurisdictional immunity to apply to other more narrow and discrete provincial powers. And one of the powers that we think is a really good candidate for interjurisdictional immunity is section 92A and natural resources, electricity generation, and those things because it is more narrow and discrete.

And then the next part of it that I think led to the bill dealing with interjurisdictional immunity, comes back to something we talked about a little bit earlier, about like how do you argue a constitutional case? And I was asked, well how do you go in and argue interjurisdictional immunity? How do you say, well this shouldn't be part of the core of that power, this should be part of the core? And again, those are hard arguments to make in court. We look at, you know, history. We look at principles. And you try to make an argument the best you can based on those sorts of tools.

But at the end of the day, it comes down to it's either me standing in front of a judge, telling the judge, well you know, I think this is why you should consider this to fall within the core or why it shouldn't, or me or one of the other lawyers from my office. But it's just the lawyer in there saying that.

So I think that this bill, by having the legislature of Saskatchewan saying, we think these are important topics — we think these things fall within the core of provincial jurisdiction, we think interjurisdictional immunity should apply — gives the government's lawyers, when we're in court, something to point to and say, you know, it's not just me saying this. It's the legislature of Saskatchewan saying this.

And so, you know, like what we talked about earlier, we think it's an aid to interpretation. I mean at the end of the day, ultimately judges will make the decision about what falls within interjurisdictional immunity and what doesn't. But we see the bill as helpful as an aid to interpretation, as something that will be of assistance when we have to argue these cases in the future.

Ms. Sarauer: — Thank you for that. Again I go to the next question, which is, but is there any precedent for using this type of thing as an aid for an argument like this?

Mr. McAdam: — Yeah, as I said earlier, this is new and this is novel. And I can't point to any precedents where another province has done this or a court has issued a judgment saying yes, this sort of clause can be used and relied upon.

But that's sort of one of the things that's made this project really fun for the lawyers at the Ministry of Justice because we are being creative, and we're trying to create something new, something that no one's done before. And you know, based on first principles and based on our understanding of constitutional law, the advice that we've given is that, yes this is constitutional. This is something that is going to be helpful and, in our view, it's something that should be done.

Hon. Ms. Eyre: — And I will add if I could, Mr. Chair, too, just strictly speaking, we're talking on the interjurisdictional immunity side of things being, you know, a creative, somewhat new frontier. I mean, obviously not 92A and those arguments.

But I found it interesting. I mean, the PHS Community Services case that we've referenced a few times, again eventually went to the Supreme Court. But there was a lot of talk about delineating cores of provincial powers and the failure to do so in that case. And I think that's interesting and hopeful from our perspective.

And the number of legal scholars who have supported the idea of provincial paramountcy in the sense of something to explore, to delve into, to begin to look at in light of some of the things that Mr. McAdam has also raised, which is that perhaps the view is emergingly — or somewhat between the lines, but emergingly — that perhaps the time has come to relook at federal paramountcy as that hammer that it has been sometimes used as.

And so for, you know, if we're going to look at exclusive jurisdiction under 92A, which is established, which is core, which is . . . the language is explicit for a reason to that end. As Mr. McAdam has said, you know, interjurisdictional immunity perhaps buttresses that.

The emerging view around federal paramountcy, core powers, enumerating what they are — all of this leads to trying to develop and enhance what exclusive jurisdiction means. Not that it really should need it, but it does. And I think that is important to have done with this Act.

Ms. Sarauer: — Minister, I'd like to read an excerpt from a Supreme Court decision, and I'd like your comment on it and how it interplays with the legislation. This is the *Reference re Genetic Non-Discrimination Act*, 2020 SCC 17, at paragraph 22.

> This Court's approach to the division of powers has evolved to embrace the possibility of intergovernmental co-operation and overlap between valid exercises of provincial and federal authority. In keeping with the movement of constitutional law towards a more flexible view of federalism that reflects the political and cultural realities of Canadian society, the fixed "watertight compartments" approach has long since been overtaken and the doctrine of interjurisdictional immunity has been limited. Indeed the more flexible principle of "co-operative federalism" and the doctrines of double aspect and paramountcy have been developed in part to account for the increasing complexity of modern society. The modern view of federalism "accommodates overlapping jurisdiction and encourages intergovernmental co-operation."

Hon. Ms. Eyre: — Well again I'll certainly ask Mr. McAdam to weigh in. I mean I found it interesting that on co-operative federalism . . . And that does come up, I mean, obviously in the context of discussion around something such as this, I mean in the PHS Community Services case, 2010 — and I've raised this a number of times — the dangers of so-called co-operative federalism having negative effects on provincial policies was raised.

So I think, you know, we can debate all night. Certainly we can banter back and forth around who has said what at what time around co-operative federalism, interjurisdictional immunity, core powers, federal paramountcy. But as I've said, I have found it interesting along this legal journey to explore and delve into what scholars are actually saying about federal paramountcy.

The PHS case, the fact that co-operative federalism in its concept can be harmful to provincial policies, the fact that there has perhaps come to be a realization that federal paramountcy can be a hammer, that interjurisdictional immunity can also apply to provinces — I think these are things that certainly, where we're talking about exclusive provincial jurisdiction under 92A, have relevance. And I think that, I mean we're clear on the fact surely that exclusive jurisdiction exists under 92A. This Act asserts that, and other arguments that we can make and use are strengtheners and potentially buttress cases. But I think that that core remains of exclusive jurisdiction under 92A, and all that that symbolizes and signifies for us economically and for us as a province and for us within the federation and for us constitutionally.

So again, anything you want to add on that?

Mr. McAdam: — Well the decision from the Supreme Court in *Reference re Genetic Non-Discrimination Act* is an interesting decision, and the Attorney General of Saskatchewan intervened in that case. It was a case that deals with federal regulation of the insurance industry and the regulation was justified as a matter of criminal law. It was our position that this represented federal overreach and that it was really simply an attempt to regulate the insurance industry and that's a matter that falls within provincial jurisdiction.

So it was a reference case that was initiated in Quebec. The Quebec Court of Appeal ruled in favour of the province and held that the Act was unconstitutional. They wrote a very short, very strongly worded judgment that said to the federal government, you've overstepped your constitutional bounds with this legislation. The case got leave to appeal to the Supreme Court and we intervened. And as I said, our argument was that this legislation overstepped federal bounds and should be struck down.

[20:00]

I can tell you I was surprised at the Supreme Court's decision in this case. I was surprised that they found that the criminal law power extended to regulating insurance when they've been saying for a century that it doesn't. But the one thing that we've learned in constitutional law over the years is there's sort of a pendulum that swings back and forth over the decades from a court that is more favourable to federal jurisdiction versus more favourable to provincial jurisdiction. So you see swings in the cases, and you see cases that were unpredictable, and I think this one was unpredictable.

The other thing that I would say about the court's comments about flexible federalism and co-operative federalism and recognizing that there are broad areas of overlapping jurisdiction, and that that's absolutely consistent with what the court has said for a number of years. But the concern that we have with that is if you recognize that everything is concurrent, and the environment is a perfect example, if the federal government has jurisdiction to enact any law that it wishes because it deals with the environment, and you say, well it's all concurrent power, ultimately the federal government has the trump card. And that trump card is the doctrine of federal paramountcy.

So the more you recognize overlapping or concurrent powers, ultimately at the end of the day the federal government gets to call the shots because their legislation will prevail in the case of any conflict. So one of the things that we argued in the *Genetic Non-Discrimination Act* case was that the courts did need to remember that those powers in section 91 and 92 are exclusive. And you know, I don't think we're advocating that we go back to the 1920s and have the judicial committee of the Privy Council as our final court of appeal anymore, but there were some things that they said about exclusivity of provincial powers, exclusivity of federal powers that we still think have some validity today.

So our concern is that, you know, if you see everything under the Constitution as concurrent or overlapping, then ultimately that's going to lead to centralization and it's going to lead to a detraction in provincial powers and provincial jurisdiction because of that doctrine of federal paramountcy.

Hon. Ms. Eyre: — And if I might add, Mr. Chair, I think from perhaps slightly more of a political lens but also of an economic reality lens, I mean if we let that be the determining factor that, you know, federal paramountcy has been held to be, and that that means collaborative federalism is what has been defined as being and one can never push back and never challenge based on the exclusive jurisdictions we do have, I don't see how that's tenable in light of some of the infringements that we are seeing. That in other words, it's not worth it if that's in anyway the suggestion, that because it's been held at some point or considered, surprisingly or not, that this impacts co-operative federalism or federal paramountcy applies, and so therefore we should just basically not challenge these things whether legally or politically or economically is the definition surely of defeatism.

And there's a lot of effort to . . . I think that the most frustrating thing is this discrediting without factually outlining, and I don't mean so much on the legal side, I mean perhaps more on the, you know, policy paper side or even on the constitutional side. Things are thrown out there and, you know, there's no factual outlining of the points. You can discredit easily if you don't say what you're discrediting and how and why. And so I think, just as a conundrum, as an existential issue as a province, you know, yes on the legal side but also on the economic impact side of these policies.

It's called, you know, I hate the phrase, but "every tool in the toolbox" and I think that's what we're really looking at here. And I think this is solid, that the bill is solid, in all that it does constitutionally and asserts constitutionally but also in every other aspect. We are left in a position where we simply must do everything we can to address this on an economic basis. And this is a means to that end. One means to an end being, you know, interjurisdictional immunity and leaving that language in and core powers and enumerating core powers and asserting the core powers and the exclusive jurisdiction and amending the constitution. Really in many ways, there's not a lot more we could do to address this as an economic threat to the province. And that's truly I think where we have to keep coming back to.

Ms. Sarauer: — I'm not entirely sure, Minister, what you're referencing in regard to pulling things out of thin air. I was quoting a decision of the Supreme Court of Canada. And just to confirm, I very much appreciate your background on that particular decision, Mr. McAdam.

But just to confirm, there is an understanding that the Supreme Court has been moving toward federal flexibility and the degree of overlapping jurisdiction, I'm seeing that that was also quoted, not just in that decision with the Supreme Court, but also the greenhouse gas decision as well.

Mr. McAdam: — Yeah I think as I indicated earlier, decisions in the Supreme Court are often hard to predict, and you can see trends over time where things swing back and forth between a more pro-provincial approach to a more pro-federal approach. Over the last 20 or 30 years, you have seen the Supreme Court advocating for overlapping powers, co-operative federalism, the things that you've talked about.

But it's not universal or consistent. And I've said earlier that the decision in the genetic non-discrimination reference case was a real surprise to me. And it was a case that was based on the federal government's criminal law power.

And I'm not sure exactly how many years prior to that, probably seven or eight years prior to that, the Supreme Court had issued a decision in a reference case dealing with genetic reproduction, which was another federal bill that relied on their criminal law power to deal with a lot of matters that ordinarily would be seen to fall within provincial jurisdiction over health. And the Supreme Court struck that law down and said, well no, this law has gone too far. You're encroaching on provincial jurisdiction. This is no longer valid criminal law.

So I viewed that case as a narrowing of the federal criminal law power. So that's why I said I was surprised with the decision in the *Genetic Non-Discrimination Act* case, because it seemed to me to be a little bit out of step with their previous jurisprudence on the criminal law power. Now whether it's a one-off or whether it signifies a shift in that pendulum is hard to tell.

And the other thing that I would say about the decision in *References re Greenhouse Gas Pollution Pricing Act*: it's a real unique and special decision because it turned on the POGG power, the peace, order, and good government power.

There's a case, and the minister has alluded to it already, that's going to the Supreme Court next week dealing with the *Impact Assessment Act*. And it's a reference case out of Alberta. And the argument that Alberta made was that the new federal legislation dealing with environmental assessments was too broad, that it deals with matters falling within provincial jurisdiction.

And again I've said before, the courts have recognized that jurisdiction over the environment is divided. The way I've described it in court before, you need a hook to hang your hat on. So if it's a federal law with respect to an interprovincial pipeline, absolutely they can deal with the environmental impacts of that. But in our view, the *Impact Assessment Act* goes far beyond that.

And one of the things that the Act brings under federal jurisdiction is any provincial highway that's longer than 50 kilometres in length. So if the province decided we were going to build a new highway between Saskatoon and Regina, it would have to undergo a federal impact assessment. And you know, that's whether it impacts, you know, migratory birds or fisheries or other things within federal jurisdiction. Simply because it's a road that's more than 50 kilometres long, the feds have said, we have jurisdiction. And so the position that we're taking in that case is no, that's an overreach. You're overstepping your bounds.

If it was just dealing with things like interprovincial pipelines or airlines or banks and post offices and military bases, all the other things within federal jurisdiction, it would be fine. But we've said there's overreach in that case. And as the minister alluded to, the Alberta Court of Appeal, in pretty strong language, found that the legislation did overreach. So I think that that case is going to be a much better indicator of sort of trends in where the Supreme Court is going on these things, and the federal government is not relying on the POGG power in that case. It's a much more conventional argument based on the enumerated power set out in section 91 of the *Constitution Act* of 1867. So I think the case next week that Tom Irvine from our office will be arguing will be a much better indicator of those trends.

Ms. Sarauer: — Thank you for that. How does this legislation demonstrate bargaining in good faith with the federal government to address issues of common concern, intergenerational concerns, like climate action?

Hon. Ms. Eyre: — Well that's a big question, but I'll begin to answer it. I guess in terms of . . . if the question is about collaboration with the federal government in the environmental context, I've referenced a number of times . . .

And first of all, let me say and we say this often, and there was evidence of that last week in the discussions with the federal government on bail reform. The provinces had been united in their call to reform bail, to ask for reverse onus in certain cases based on the Premier's letter. They were absolutely united in terms of those efforts and that letter and that call, and that was followed up last week by the provinces being united in turn and going to Ottawa and saying, you know, we need bail reform for all the reasons that have been gone through, including too many repeat violent offenders being released and some of the tragic cases we've seen around that in the country and following on that.

And the federal government came to the table and the federal minister came to the table with a commitment to undertake serious bail reform, to amend the Criminal Code, and acknowledge that this was an effort by all levels of government to get to that point. And that is significant. And so collaboration happens, and coming to the table happens.

In terms of, on the environmental side, again if the suggestion is how does this signal good faith in terms of how we work with the federal government, I mean I've talked about this a number of times. A good example is methane. We negotiated for two years with the federal government on equivalency for our methane action plan. And again, good faith. And we achieved equivalency in 2020 around our plan. So equivalency as in approval of our plan by the federal government. And the efforts that we've demonstrated around methane reduction have been significant, they've been noted, and I referenced earlier the public

congratulation by the federal Environment minister on our efforts achieved without assistance by the federal government, just on our own plan. And again had, as I say, worked in good faith in collaboration with them to achieve equivalency on the methane action plan. And then as I said earlier, there was a sort of turning of the tables in terms of, you know, thanks for the 50 per cent, but now let's make it 75, and so on.

And I guess I would say again good faith doesn't only go one way, as in us to them. It goes the other way as well. And one of the examples I've raised, and I've raised it a number of times including earlier this evening, is around the data side of something such as methane. You can't say to a province with whom you're hoping to work with honourably as a partner, you know, do this and do this but we won't share any of our data with you, or we'll share very little, or we'll be very selective. That's not co-operative federalism in the non-legal sense or in the political sense.

And we see that so often. We see the rules being changed, the expectations being changed, the boundaries being changed, and the implications of what co-operation means, which gets into, okay well if you co-operate, then we're going to impose this, this, this, and this on you, and without real true collaboration.

So I guess the Act . . . and we've talked about this throughout the evening as well. I mean Quebec, if we're going to talk about what Quebec does and how it amended its constitution unilaterally and was acknowledged it could, it often collaborates with the federal government as a province. It often ideologically agrees with the federal government, and yet feels it's very important to assert its exclusive jurisdiction and jurisdiction in other areas as well.

[20:15]

And again I don't think doing so makes you a better Canadian or a worse Canadian. I think it makes you Canadian. And certainly within the context of the Constitution it's important, but also within the context of working together — provinces and the federal government — it has to be in good faith.

And as I say, I think that the recent . . . And there have been a number of successes out of federal-provincial-territorial meetings in recent days, and I think the bail reform meeting was a noteworthy one from my perspective because there was good faith and there were solutions that were offered and efforts to work together that were extended. And that's important of course.

But I don't think, nor has the federal government really suggested that this Act is some kind of salvo that perhaps they weren't expecting. I mean I think based on the interventions that we've made legally, but also interventions we've made politically around concerns we have on federal policies and economic impact and so on of those policies, I don't think it can be a terrible surprise that we're going down this road or that we're exploring what we can do, you know, within the legal context for example, or constitutional context. Because we've certainly signalled certain frustrations in, you know, in other areas. But it doesn't diminish the opportunities where there are such to collaborate, of course including on the environment.

And we would say and we often have said, if you as a federal government want to, if it's very important to you, for example, to go down the critical minerals road, because lithium is important for electric vehicles and the world of critical minerals is opening up. And we don't want jurisdictions around the world who have fewer regulations than we do, you know, fewer standards around the economy, around labour, around, you know, so many things that are transparent and strong and robust.

We have said to the federal government, if some of these are areas that you're looking at exploring from your perspective economically, then you have to look at what Saskatchewan has to offer in terms of environmental sustainability, for example. I mean our potash mines emit, what, 50 per cent fewer emissions than any competitor globally. That should matter. All of it should matter.

And so I think that this certainly doesn't undermine anything we're doing on the environmental stewardship side, and as I say, I mention methane as one example. Nor does it undermine the potential for future collaboration where we can act as honourable partners with each other. But it does signal, as Quebec has signalled, that exclusive jurisdiction matters and infringement happens and it has an effect.

Ms. Sarauer: — I'm going to ask some questions around the tribunal specifically. Could you explain how the members of the tribunal will be selected?

Hon. Ms. Eyre: — Well that's something that will be undertaken in the next few months. In terms of best qualified people for that job, for that role, I have some in mind I think would be excellent. Whether they would be interested is the question, and there will be a process, of course, around that.

I think as we've signalled, independent and, you know, in terms of the assessment of dollar figure of some these federal policies. And when I say I think of people who could be excellent, I think of people who would be extremely specialized and knowledgeable about some of the areas that are impacted. So for example, methane or in the federal fuel space or, you know, agricultural sector potentially depending on the Acts that we . . . or the federal policies or regulation or legislation that actually end up going through the tribunal. Whether it would be one, whether it'll be three, whether it'll be . . . That's all still to be determined, I think, in the next few months.

So based on that, and then the specialization that would be required to assess economic harm of those federal policies, obviously there'll have to be a nimbleness in terms of who would be best placed to look at the dollar figure evaluation of say, you know, methane regulation overreach, or federal fuel standard, or sustainable agriculture policy, or electric vehicles, or federal, you know, clean electricity regulations. You have to have someone, obviously, who has high specialization in power generation, so it'll depend a bit on the Act that goes . . . rather the policies that go through the tribunal, and will become more clear, I think, as the policies that we put through the tribunal are determined, and how we do that, and which go through first, and whether, as I say, it's one or a number.

Ms. Sarauer: — Sorry. Are you saying it's one or a number policies that you're going to be putting forward through the tribunal, or one or a number of groups that will form the tribunal?

Could you clarify that?

Hon. Ms. Eyre: — One or a number of policies that will go through the tribunal is still to be determined in terms of . . . I mean, for example, around the clean electricity regulations, it's, and I hate to say it, but you know, pretty outstanding candidate, if in fact it ends up being clarified explicitly what no fossil fuel-generated power by 2035 could mean. So if that becomes gazetted, if the regulations are released, then it becomes much more of a tangible thing to potentially consider for the tribunals. So no, the question would be more around whether it will be one or a number, and then based on that decision or determination, then who would be best placed to evaluate and assess dollar figure on that said policy or policies moving through the tribunal.

That is still to be determined, largely because it's still to be determined exactly which federal policies would move through for consideration.

Ms. Sarauer: — How many members would be appointed to the tribunal?

Hon. Ms. Eyre: — Again that would depend on the policies that we decide to have the tribunal here. So that will be something that will be determined in the next few months, in terms of, as I say, whether it would be one, and so the specialization that would be required with that. Obviously, there would be a Chair. More or less, the idea would be a Chair and then perhaps two members who would be probably always present, or one would think for sort of the stability of the structure, you know, permanent in that sense. And then potentially some with specialized knowledge, expertise in the area, being considered. So as I say if it were methane, it's different than power generation. So that has to be determined in terms of what policy we move through first.

Ms. Sarauer: — Pursuant to the legislation, the tribunal members would hold office for a term not exceeding three years. I'm just trying to understand how, if you're going to have to . . . how far in advance you're going to have to know which policies you've planned to have looked at by the tribunal to be able to make up the proper amount of types of experts that you're going to want to be able to do this type of work.

Mr. McGovern: — Thank you, Mr. Chair. Darcy McGovern. And to the member, I think the model that we're looking at in the structure that you've mentioned, the chairperson presides over all meetings of the tribunal and is able to form a panel from a pool of people who have been identified. The three-year term, which of course allows for reappointments for additional terms if necessary, shouldn't be an impediment in that regard because we're talking about order in council appointments. So the minister has indicated that having identified experts in a particular subject matter area, those individuals could be appointed, and depending on the subject matters of the matters referred, might be used again, might not be particularly used again, depending on which matters come forward.

Ms. Sarauer: — Thank you. Who's doing the identification of these individuals to be appointed to the tribunal?

Hon. Ms. Eyre: — I'll just start and then certainly you can add anything. Again it will depend now on once the Act is passed, the work on the tribunal begins. So there'll be work done on structure, on candidate selection based on, as stated previously, the topic of the policies that are decided will go through for consideration by the tribunal. And so that work will now begin and then will be subject obviously to ultimately cabinet decision in terms of firstly, what policies will be considered, and how and when, and then how we go about finding very specialized people who can assess the dollar impact of the federal policies.

Ms. Sarauer: — Just to clarify, just to reiterate what you just said, Minister, cabinet will be deciding both what policies will go forward and how, as well as who will comprise the membership of the tribunal?

Mr. McGovern: — So the federal initiatives are identified in the process for referral as set out in section 6. It defines federal initiatives. It is referred under the terms of section 8 to the tribunal. As a separate function, of course, the tribunal is appointed by the Lieutenant Governor in Council, like the Farm Land Security Board, like the Labour Relations Board, like any number of boards within government. That's the appointment process used to establish these.

Your comment in terms of who these individuals might be, I think the minister has indicated it'll be affected by the subject matter, and of course both through stakeholders and through the expertise of the various ministries who have been involved in these areas. We feel those areas will be obvious pools for helping with the identification of individuals who can best serve in this capacity.

Hon. Ms. Eyre: — And clearly, if I might add, I mean obviously on the constitutional side . . . I mean that would be an obvious proverbial skill set in terms of, you know, what this means from, you know, in terms of understanding. Not so much weighing in, of course, on constitutional questions but understanding what exclusive jurisdiction within the context of some of these natural resources and regulations and impacts of federal infringement on certain provincial regulations might mean, coming from that perspective, and what's been perhaps found and looked at in other areas of the country and so on.

So I think that would be helpful, but the hyper-specialization of some of these areas is formidable. And I think that will take a little bit of time to establish in terms of, again depending on the policies that we put through and that are decided that we put through, and in what order and how. This has something to do in some cases with timing federally.

I mean if you look at, as I say, the discussion paper around the sustainable agriculture side or potential, it's established only in a discussion paper at the moment. Some are very established, such as the federal fuel standard, and some of what we're facing, for example in the methane space, is very established. Others such as the clean electricity regulations have been signalled but aren't specific.

So some of it in the next few months I think will be determined by that, you know, federal timing, federal clarity in terms of what actually is being proposed on the dotted line. And there are moving parts to some of these things in a number of areas, in terms of what the feds have signalled and what they actually then might do, you know, regulations-wise or legislatively and otherwise. But I think it's not to be underestimated.

I mean when you get into evaluating the impact of something such as the oil production cap that was signalled by the federal energy minister at COP [Conference of Parties] in Glasgow. There were extensive committee hearings — when was it? — last fall, federally. And no expert could agree what the impact would be. I mean it went on and on and on. I mean the transcripts are fascinating. They had academics and economists and all kinds of experts, and in terms of everything from cost to timelines, no one could settle on what this would mean.

So obviously an existential threat to the energy sector if these were brought in. But even the federal government doesn't seem to know how this will work, when it'll come in, who's going to do it, and of course, then all the jurisdictional issues with that. So again we have said the oil production cap's a huge economic threat. But would it go through the tribunal in its very amorphous, vague form at the moment? Remains to be seen, I suppose to a certain extent on what the federal government reveals in the next little while.

[20:30]

But I think when you come to analyze economic harm of such things, you need very specialized people. You need very, very specialized people who . . . I mean I've seen that done by certain people in my former ministry, and you know, when you start getting into impacts of . . . I mean it can get into impacts of individual wells and geology, and it's extremely specific, complicated work. So it requires very specialized people, and we want to make sure that they're chosen, you know, correctly and appropriately for the task at hand which will be to evaluate economic harm.

Ms. Sarauer: — Minister, you've mentioned a few times that this tribunal will be independent. Can you explain how you intend on ensuring that the tribunal is in fact independent?

Hon. Ms. Eyre: — Certainly I can. And, Darcy, if you want to add anything. I think that once the appropriate people are put in place and the policy is provided for consideration — as I say, let's say the federal fuel standard, as an example — independent means independent.

So it means that those people who are chosen to be on the tribunal . . . We can submit all kinds of numbers. We have for example on the federal fuel standard — and it's evolved and will have evolved I'm sure by that point — but we have pegged it at $700 million a year impact at least on the provincial economy.

And we would invite . . . It would be then signalled that certainly whatever they need and certainly would be open to them presumably to invite the federal government for their numbers and whatever they would need to economically assess the impact of, let's say as one example, the federal fuel standard. And then they would put a dollar figure on it, and we would see what they would say in that regard in terms of the assessment and evaluation to their mind of what this would cost the provincial economy. And that would be its remit.

It's simple. But it's also complicated work, and so obviously that would have to be undertaken within the outlines of time and otherwise that we've put in the Act. But it would have to be considered carefully and, as I say, independently. And that would be the absolute understanding.

Mr. McGovern: — And I think to add to what the minister's indicated from a structural perspective, I'd draw the member's attention to 11(1) of the bill, you know, which does specifically provide that the tribunal is going to determine its own process, make its own rules to supplement the process, have the decision in terms of, you know, considering the referral with written or oral submissions or both.

It also goes on at 11 to provide for certain powers in terms of the production of evidence, as well as the ability to enforce its functions through the contempt under the public inquiries approach, if necessary.

So those are the structural elements that you typically provide for an appointed tribunal to be able to operate independently, set its own rules and procedures, and then perform within its remit, as the minister has outlined.

Ms. Sarauer: — I appreciate that, but there is actually no independence in terms of who will form the tribunal. Why hasn't the minister put provisions into the legislation that would allow for independence at that stage as well?

Hon. Ms. Eyre: — In terms of who will form the tribunal? Well I mean the tribunal is a creation, if you like, of the bill. And so the appointment of the individuals, and as I say, the goal will be to . . . In terms of some of the people, for example, who I think would be very excellent, I can't think of more independent people.

And so I think, I mean the goal here is not to, would never be to subvert anything. It would be actual curiosity, genuine curiosity about what the dollar figure would be that would be landed on.

I mean I can say, for example, on the federal fuel standard that we have a very clear idea of what the dollar figure is, and in fact the federal government has said it will be higher, as I've referenced. So I mean if they came out and said, well actually there isn't going to be economic harm, that would be part of the fact-finding.

But I do think that as per the OC, order in council, process, it's not certainly uncommon. And I think that in this case it would be to put the players in place for the tribunal, and then there are certain discretionary things that they then have beyond that. But certainly that which is fact-finding is up to them and their determination and discretion.

Ms. Sarauer: — Thank you. And the reason why I raise that in particular is because you've mentioned this evening, Minister, that the findings in this tribunal will not necessarily simply be used just for perhaps evidence in a legal action, but it could be used for political purposes. And that's why the independence of this, and I would argue also the independence of those who are appointed to the tribunal, is incredibly important.

We're actually among the worst in the country in terms of — across the board — independence of tribunal appointments. We're a bit of an anomaly in that regard. So again would the minister entertain . . . And I guess I'm sort of alluding to the amendments that I have, that I will put before the committee,

mostly are provisions that we feel would provide for a bit more of an independent tribunal process, in particular around the appointments.

And again I would ask why the minister chose not to put anything in this legislation at this time that would ensure a more independent tribunal appointment process.

Hon. Ms. Eyre: — Well I guess I would say to that, that when I said that it might not necessarily be used in a legal argument sense, I think that was to the member's question about why wouldn't it only be a legal context in which these things would be argued. So again it's been a number of contexts this evening.

But my point was not that it would politicize the tribunal. My point was that there would be a determination. And I think that's only responsible. I mean I think that if the tribunal came out with a determination — that the federal fuel standard, for example, would be a cost of 1.2 billion to the provincial economy — my point was that there would be an evaluation at that stage about what we next do with that information.

And I only mean to suggest that it might be of factual relevance and information merely. Whether it would then necessarily lead to a reference case, the Court of Appeal, whether it would necessarily lead to an application for interlocutory injunction would be determined, and I think that's only fair. I think that the people of the province also don't expect that, by its very nature, it will go to a legal consideration every single time.

And in fact I've had to answer many times, you know, do you see this only as all next steps being legal? And I've said no, I think that in some cases it will be important to say, this policy — clean electricity regulations, for example — it has been found or released or reported that it will cost X amount. And at the very least, the people of province can take that on board and analyze it and discuss it and call for action or not.

I think that the dollar figure could be eye-popping, but I think that that is up to the tribunal to put a dollar figure on, and that's its sole remit. And beyond that, as I've said, it could serve, in terms of a interlocutory injunction for example, which is very difficult to meet. And I've said that a number of times, and we've said this a number of times, but one of the thresholds or tests is irreparable harm. And irreparable harm is hard to prove, but I think that it could serve as that.

But the purpose of the tribunal is only to come up with an objective finding about dollar figure or economic impact. And as I've said, that can be challenging. It requires specialization but obviously also independence. And beyond that then, the determination would be potentially to, as I say, get the word out even to the federal government about what the impacts are of some of these things on the provincial economy, on working together and so on. So the range is only meant as a suggestion that there would be options that would be looked at, and that it wouldn't necessarily only go down a legal route.

Anything you want to add, Darcy or Mitch?

Mr. McGovern: — Again just on the structural side, in terms of what we set up, if we look at section 10, what does provide an additional level of independence within the structure of the piece itself is that it's the chairperson who appoints the members of the tribunal to form a panel.

And the member's of course aware that that's a structure that's used in other bodies — for like the Labour Relations Board, for example, or the Highway Traffic Board — where you have a number of individuals that are appointed as members, and then you have a panel that's formed by the chairperson, not by the order in council. The order in council doesn't say, here's the panel; instead it establishes a panel of experts within an area. And then a particular referral, it may make sense from the chairperson's perspective who's going to be on the panel, whether it's to reflect certain skill sets in that regard.

So you know, within that structure, and it's a common structure — within highway traffic, farm land, surface rights, workers' comp — to have these boards that we expect and watch operate independently, that they're appointed through the Lieutenant Governor in Council, order in council process. And certainly in this regard, nothing unusual is occurring in this case.

Ms. Sarauer: — Does the minister have in mind a person who will be appointed as the chairperson?

Hon. Ms. Eyre: — I have some people in mind who would be excellently suited. But there is a process obviously which we will have to undertake in terms of not only willingness of course but a decision by colleagues and by cabinet, ultimately, about who will serve on the tribunal.

As I say, I can think of some who, if one were to state their names, their qualifications would be beyond reproach — and that's the goal — who would be, could be absolutely deferred to and excellent if they were to undertake this in terms of simply the specialization that's required. Because as I say, it is a very difficult undertaking and a very extensive one and requiring of high specialization.

Ms. Sarauer: — What is the expected annual budget of the tribunal?

Mr. McGovern: — Well I think it's difficult, and I think the minister has outlined some of the concerns. And you've heard me at this stage in the process before indicate that it's difficult to anticipate what a budget would be when you have such a range of how specific a particular referral might be versus how broad and how many there might be in a particular year.

I think what's fair to say, you know, the reimbursement and remuneration for this group will be standardized. It'll be the PSC [Public Service Commission] reimbursement rates. And as far as what they may, on an annual basis, be budgeted, it's a bit early to say because we're not really clear, as the minister has indicated, how many of these would occur. But what we can say, I think, is that you know, it's clear that this is viewed as a priority and that it's important to be able to have a flexible process that can accommodate these types of steps.

Ms. Sarauer: — Thank you. And just so I know where to watch, will this budget be a line item that would come out of the Ministry of Justice?

Mr. McGovern: — I think that's always something that's going

to be determined through the cabinet process yet. But certainly the minister has carriage of the bill at this point.

Ms. Sarauer: — So that hasn't been decided yet?

Mr. McGovern: — Not that I'm aware of.

Ms. Sarauer: — Will the tribunal only be looking at economic harm?

Hon. Ms. Eyre: — Yes, economic harm and economic impact, as I've said, putting a dollar figure on the federal policy before it.

Ms. Sarauer: — Why didn't you, Minister, consider expanding the scope to include other types of harm beyond economic?

Hon. Ms. Eyre: — Because fundamentally this Act is about protecting the economy, and at its Act it's about precisely that — the dollar figure impact of federal policies.

[20:45]

And as I say, when I referenced earlier certain comments that were made by the member about the policy paper, I mean it's the Ministry of Finance. So if we're talking about, you know, again I think an unfair discrediting of those figures and reference to discrediting by others without, again, a real analysis back on where the federal . . . where the Finance ministry, sorry, actually didn't outline things as they should, I think it was if anything, and has been stated, it could be much, much higher an impact.

So the point of the policy paper was to attempt to put a dollar figure, certainly preliminarily, on the impact of some of these policies that were before us at the time. And some of them were valuated according to dollar figure. Others are still to come, and still policies that, as I say, have yet to be gazetted, have yet to have regulations surrounding them and so on.

So that, you know, will be part of the work of the tribunal, not only to look at in some cases the numbers that have already been applied to some of these federal policies, but to potentially look at new dollar figures for new federal policies.

But really, I mean we've been consistent all the way along with the purpose of this bill, is about preserving and protecting economic potential, economic growth, and really the economic breadth of the province.

And so we felt that it was very consistent within that to say that a dollar figure and an economic financial impact assessment of policies would be of value in terms of what we were hoping to achieve, which was potentially challenging some of these based on exclusive jurisdiction, under 92A and other areas, but really to have a very clean goal, as it were, of economic harm and economic impact.

And that's really always been part of what the bill was about, identifying and in turn protecting when it came to infringement by the federal government. So that's always been a part of the tribunal, as it's always been explained and envisaged.

Ms. Sarauer: — To correct you yet again, Minister, the comments that were made at the beginning about the white paper were from letters that I had read into the record from Indigenous leadership.

Hon. Ms. Eyre: — No, I'll interrupt there, Mr. Chair. The comments made about the policy paper, and I don't know the exact quote, it was that basically it's been discredited or something to that effect. And it was not a read-in quote. It was a comment by the member.

And I guess I would just say that, and I've said a number of times throughout the evening, I mean I would be certainly . . . I think that those numbers are absolutely defendable. And where they have been questioned, it hasn't been explained why in any detail, certainly in any equivalent detail.

And I think though, that to the question about, you know, why the economic assessment of the tribunal and economic impact assessment of the tribunal, it really builds on that work and that assessment that has already been done. And so certainly from the provincial perspective, it would be, you know, take said policy . . . The white paper, policy paper has put a dollar figure of this on that policy. Subsequently we have found this, or outlined this, or found this.

Federal government would be invited obviously to also submit its information, and I think then hopefully we could come to a broader established understanding of the dollar figure. But the importance of it, I think, speaks for itself, that really this is about economic harm and putting a dollar figure on it.

Ms. Sarauer: — Again those were literal letters I was just reading into the record, and if you have an issue with the content in any of those letters, I hope you do take it up with those Indigenous leaders directly.

Minister, many will say that there is also an economic impact to doing nothing, especially in terms of climate change. Will the tribunal also be assessing that?

Hon. Ms. Eyre: — No.

Ms. Sarauer: — Minister, will the tribunal have the necessary funding to investigate all aspects of any issue referred to it?

Hon. Ms. Eyre: — Well I think we've answered that in terms of . . . I mean first of all we have to determine what policies will be put through the tribunal, and so we've talked a bit about that. And I think in terms of resources available to the tribunal, of course we want to make sure that for the research that members of the tribunal have to do in regard to the micro details around costing some of these federal policies, of course what they need in that regard. And that will involve primarily, you know, research abilities, opportunities for those tribunal members.

I mean in terms of information that's required, we will provide certainly all the information from our perspective about economic impact that, you know, and the study of that that we have done, and I've outlined that in a number of ways a number of times this evening. I mean the federal fuel standard for example. And that work has been done. It hasn't been contradicted. In fact we know the federal government has said it could be higher.

So that's the sort of information, the record that we can provide in terms of the ways the ministries have delineated and outlined the cost of some of these programs — Finance, Energy, Environment, and others. And so all of that will be of course provided, and anything that can be done in terms of assistance for, you know, further information. Of course we know we want to make sure that there's that full ability for the tribunal and its members to do their job. And that will of course be honoured and undertaken.

Ms. Sarauer: — Mr. Chair, I really hate to do this, but this is the part of the evening where the time of night and the dryness of the air starts to really do a number to my eyes. Can I have a quick five-minute recess?

The Chair: — Yeah, we will take a five-minute recess and be back.

[The committee recessed for a period of time.]

The Chair: — Okay. I'd like to welcome everybody back, and we will go back to questions again. Questions, Ms. Sarauer?

Ms. Sarauer: — Thank you. Thank you all for indulging me. Back to the tribunal. Will members of the public be able to make submissions to the tribunal?

Hon. Ms. Eyre: — Well I think that remains to be seen. And as I've said a number of times, I think this is now the next stage and obviously a very important stage and one we take very seriously in terms of how this will now develop coming out of the Act as it is, as I say, a very important component of it.

I think the plan as it currently stands is that specialized members of the tribunal will take a very detailed look — you know, given those specializations — at economic harm and the dollar figure of federal policies. And again it is speculative because we have to still decide what policy or policies will go through and in what order and, as I've said, when and how.

[21:00]

But if for example you're looking at, and again, as I say, I emphasize the speculativeness of this, but if you are to look at EV regulations for example, and the potential impact on the actual sale of those in the province — so again, a specific sector, if you like, or section of the economy which is being directly impacted — it would be up to the tribunal presumably to canvass those who are on the ground in that area. And as I say, that would be, you know, one potential thing.

And again, I say it again, it's very speculative. But I think the technical nature of some of these areas, you know, if it's on the clean electricity regulations side and a move to no fossil fuel-generated power by 2035, it's going to be different experts, different voices, different specialization than, you know, EV regulation.

And so I think there will be a certain amount . . . I think the main goal really is to make sure that members of the tribunal have every means at their disposal to make the dollar figure determination. And I think that's very important, you know, to their work and to their determination. So I think if that would be necessary and that's what they would need to do, you know, in terms of canvassing players in certain sectors — for example, for canvassing of economic impact — then I'm sure that would be something they could do and would want to do.

But as I say at the moment, because we still have to determine to a certain extent, you know, the policy or policies that move through, I think some of those things will become a bit more established as the policy or policies goes forward in terms of what the tribunal will need. I mean again, I think it can be, you know, relatively simple in terms of structure.

I mean in an ideal world, if you can spend the number of weeks required to do the work required to establish the dollar figure, you don't need particularly fancy structure to do that. I mean the work is very analytical and very in depth, but very concrete and meat and potatoes in the sense of establishing the dollar figure, so it would be what would be necessary to do that work. But you know, if we look at, for example, the policy paper of last fall, I mean that was undertaken by Ministry of Finance officials. And you know, they did that in the context of their work, of their work description and of their workplace.

And so in this case while it isn't a ministry undertaking it, we would, you know, want to make sure that obviously they have what they need, but that it really is a matter of the facts at hand and establishing the facts at hand. That would be the remit.

Ms. Sarauer: — Who will be notified of what topics the tribunal is looking into?

Mr. McGovern: — I think once there's a referral made, you know, that's one of the benefits I think of this process, is that it is a public process. An order in council is a public document. It is routinely made public. Where there's a referral to the tribunal, who gets appointed to the tribunal, those will be a matter of the public record. And that'll form part of what everyone's aware of in trying to make these assessments with respect to the economic impact.

Ms. Sarauer: — So the public will be aware of what work the tribunal is doing, but it'll be up to the tribunal to decide whether or not the public can engage in that process. Is that correct?

Hon. Ms. Eyre: — Well more or less, I mean in the sense that obviously it will be public what policy we're putting to the tribunal. I mean, as Mr. McGovern said, it's subject to OC as well as the appointments. And so you know, once it's determined that it's X policy that's going to be referred to the tribunal, it'll be very clear that the remit of the tribunal, within the time frame that they have, is to put a dollar figure on said federal policy. And I'm sure there will be some discussion about said federal policy in terms of, you know, different perspectives on economic impact and dollar figure.

Again coming back to the federal fuel standard, 700 million at least from a provincial perspective, that's been documented. I mean it's been publicly documented. We have sent public letters, when I was Energy minister, to Minister O'Regan saying, you know, here's the provincial impact, here's the dollar figure, you know. Could you pause this so we have some established infrastructure in place that we're not just importing product, biofuel from the US [United States] for example.

But obviously we have infrastructure coming online in terms of, you know, projects that have been announced that will be very active in this space. So you know, there are things that are happening and ways we can accommodate policy and even ways that some industry players have already moved to do that.

But my point is that it's all been very public in terms of what we feel the economic effect of some of these policies are. And in some cases — particularly maybe in established areas such as the federal fuel standard — the tribunal might be able to say, well actually we think it's going to be much more or less depending on when the infrastructure comes on within the province and the supply chain.

But in an emerging area, such as the clean electricity regulations or methane, if we don't achieve equivalency with the federal government, for example, I think there is a real role to establish a dollar figure. And that's very important work because that genuinely will assist us in terms of, you know, assessing impact of these policies.

Ms. Sarauer: — What requirements will be prescribed for an economic impact assessment?

Hon. Ms. Eyre: — Solid numbers. Solid numbers. As I say, that's been the remit. We've said that all the way along. I've said it all the way along from literally day one when we announced this in November that the role of the economic tribunal would be to put a dollar figure on the federal policy. And it's not an opinion in terms of speculation or theoretical, it's a dollar figure.

And as I say, the white paper did do evaluations, very thorough evaluations of some policies at the point they were at, at that point. And you know, by its very nature, these things have to be snapshots. But on the other hand if you're looking at no fossil fuel-generated power, for example, by 2035, that's a snapshot, but the snapshot includes of course some degree of estimating and some degree of looking at what an estimation means, because if the transition to small module reactors, as you know, there's an attempt to backfill, there is significant harm. And so I think it would be informational certainly to have that assessed. And I think that's of value to us; it's of value to the people of the province. Potentially it's of value to the federal government that that's the cost of some of these policies.

And I say, one of the most alarming things has been that around some of these policies, the signal has been what's going to be actually much, much, more expensive. And that I find alarming. And when it comes to, for example, the just transition, the vagueness but at the same time the specificity of 3 million impacted, I mean, that's the natural resources number. That's not Saskatchewan or the Ministry of Finance or I saying it. It's Natural Resources Canada saying it, briefing a minister.

So I think that there's a real need for clarity, and I think there's a real need for specificity. And that's going to be the role of the tribunal to look at a policy and do everything it can to provide all of us with the economic impact of those policies.

Ms. Sarauer: — Minister, what sort of rule-making powers are intended to be provided to the tribunal pursuant to section 13?

Mr. McGovern: — And you're referring in 13 to (e) and what's looked at there. One of the things that we've been thinking about in that regard is that the report and the recommendations be subject to public disclosure, and so that having a report that has financial information that's considered confidential for example, that the purpose of this process is very much to have a recommendation and a report that can be used as part of the public process. And so for example one of the things that we might look at there is to say that the tribunal, in preparing its report and its recommendations, should be mindful of it being a report that can be disclosed publicly.

Ms. Sarauer: — That was my next question, was whether or not these reports would be disclosed publicly?

Mr. McGovern: — I think the intention of the process is very much along those lines, whether there's elements of the assessment that can't be because of, you know, the confidential financial information, but I think that's the general idea. But certainly the report itself and the recommendations in general would be. And that's one of the things that the minister's been very clear on, that this is intended to be a public process to help with the public debate.

Hon. Ms. Eyre: — Right, and certainly I mean, you know, in terms of evaluating dollar figure to Mr. McGovern's point, I mean there are companies whose financials obviously, while they might be canvassed and provide information, I mean there are always issues around some of that especially when it gets into, you know, specific financials for specific companies.

I mean there are companies, and you know, areas of some of the resource sectors which have made significant investments to attempt to accommodate federal policy. And again that's, you know, a reality of some of the realities of the policies but also of the direction of federal policy. And I think that one of the things that's very important, is to not have members of sectors feel that they are being drawn into anything other than factual establishment of snapshot reality, you know, impact to a given sector to a certain direction based on federal policy at a given time.

And I think that's important because it makes the process very, you know, impartial and objective. If, for example, in evaluating an oil production cut, I mean that gets pretty involved and in the weeds. And you know, we've encountered this, for example, during COVID when companies had to go into negative production and so on.

I mean when it really gets into these assessments, as I've said, they're very, very detailed, but if it would be of assistance, for example, to the tribunal to presumably ask certain industry players about direct economic impact, it would be up to them I suppose to evaluate how they want to best do that. But I think there have to be certain, you know, considerations, and this is something we'd have to evaluate as the process works through given the policy that's being considered. But I think there'd have to be some awareness that some information is, you know, confidential, so it'd have to be within that realm to the end of producing a dollar figure.

Ms. Sarauer: — Just to clarify, is it mandated pursuant to the legislation that the reports will be made publicly available, or is that a commitment from you, Minister?

Mr. McGovern: — The report that's set out, it provides that the report of the tribunal is admissible as evidence. It doesn't speak specifically to the release point, so I think the minister's commitment with respect to how the report and recommendation is received has been stated.

Hon. Ms. Eyre: — And I believe certainly in terms of, you know, the dollar figure, the considerations, my only caution would be . . . And as I say there would be no reason for it not to be public, because we would all want to weigh in and discuss and analyze it and assess it. But my only rider would be on, for example, confidential business statements, financial statements and so on, which one would have to be cautious about saying yes, that will be revealed. There are considerations to take into account there, and we'll have to weigh that as we move into this process.

But I think as I say the ultimate goal is dollar figure. And again it's not as if this has not been done. It has been done, I mean, around the federal fuel standard. The Ministry of Energy and Resources as one example has done extensive work and that has never been debated or disputed including by the federal government.

[21:15]

So the goal would be taking all of that such information into account, presumably with the help of ministries of course because a lot of this work's been done. So we don't have to, you know, in some cases reinvent the wheel. But I think that obviously that the ministry has had, you know, information and been privy to information around specific industry players, and there are frameworks around how they deal with that and what they release publicly as ministries.

And so we'd have to take those sensitivities into account. But aside from that, the dollar figure, and you know, the process as much as possible and certainly the outcome should be known and discussed for all the reasons that we've talked about this evening, which is that it's of value to know what is arrived at for the purposes of evaluating the impact of these policies.

Ms. Sarauer: — Thank you. I do have a few more questions in light of . . . but being cognizant of the time, before I move away from the conversation around the tribunals, I do have three amendments that I intend to move at the appropriate time that I'm just going to mention briefly now because they deal with the tribunal in particular.

I will intend on moving an amendment that would amend clause 10 and it would require the LG [Lieutenant Governor] to appoint one member who is nominated by the Federation of Saskatchewan Indigenous Nations, and one member who is nominated by the Métis Nation of Saskatchewan.

My second amendment will be around witnesses and public input. So it would be amending clause 11 by requiring that witnesses that would be summoned, assuming they would be summoned, would be treated the same as witnesses under section 10 of *The Public Inquiries Act*. And that the tribunal must allow for public input as set out in sections 5 and 8 of *The Public Inquiries Act*. And it would also strike out "with the approval of the minister" in section 11(4), just for the hope and desire of creating a bit of a more independent process.

The third and final amendment that I will move at the appropriate time would be to amend clause 14 by adding the following after "Council":

> "after consulting with the Indigenous peoples of Saskatchewan in accordance with the Province's constitutionally mandated duty to consult requirements".

I just mentioned those now because we were on the topic of tribunals, but I do have a few more questions about a few other topics before I conclude.

Minister, what do you say to those that feel the proposed Act ignores the fact that environmental regulation in Canada has historically been a matter of shared jurisdiction between the Government of Canada and provincial governments?

Hon. Ms. Eyre: — I truly believe, Mr. Chair, that I have answered that extensively this evening. I can certainly go over it again in terms of collaborative efforts that we have made with the federal government and how our record stands. I'll go over it again.

I mean, as I say, I've used the example of methane, where we negotiated for two years with the federal government to achieve equivalency. We achieved it; we reduced methane by 50 per cent. We were congratulated, as I've said, by Minister Guilbeault on our feat. And the next move was to, you know, have us reduce it still further.

We've had major challenges with obtaining data from the federal government with which we can establish where these reductions are supposed to come from, from their perspective. And so I guess nothing in the Act, and there's so many other areas, but nothing in this Act undermines either efforts on the provincial side to be environmental stewards — again, you know, as one example the methane reduction of 50 per cent last year — or areas where we can collaborate with the federal government not only in the environmental sphere but also in other areas. And I mentioned, you know, for example, around bail reform just last week where it was the federal minister who said that this was a group effort by all levels of government to get to this point.

So those efforts happen. They continue to happen. There are challenges. There are some twists and turns certainly depending on the area. But nothing in this Act undermines in any way, as I've said, either our efforts around environmental stewardship — and they are documented whether in methane, you know, the regulatory side is solid. It's robust and is acknowledged as such — and the broader record of entire sectors such as, you know, 50 per cent fewer emissions generated by the potash sector than any global competitor. And there are other areas.

I mean Natural Resources Canada itself acknowledged that emissions from the oil and gas sector had been relatively flat for 20 years. That was about a year ago. And so again we would say, and we said at the time, if you are going to then cut oil production, how can you cut, what by your own acknowledgement, is flat?

And so it goes. I mean these are challenges that are raised and

discussed, and I've raised this with federal counterparts, and they in turn raise things with me, with the government. But I think there is, you know, at its root . . . And I've said it a number of times this evening. This Act is about protecting environment, protecting environmental and economic potential of the province, but at its root, exclusive jurisdiction over the enumerated powers under 92A which, you know, go to our provincial jurisdiction to allow our economy to grow for everyone.

And I think that has always been the intention. And that which relates to other, you know, attendant areas such as the environment, the undertakings remain the same: to be as robust and strong and sustainable as we've been and continue to be. It's well documented and the record is well documented. So it doesn't undermine any of that and in fact is I think very clear on what provincial regulation means in an area such as methane, for example, where it's been very, very strong and very, very successful. So you know, it's at its root really an economic protection bill.

Ms. Sarauer: — What do you say to those who are concerned that this Act is an attack on greenhouse gas emission reduction policies?

Hon. Ms. Eyre: — I would say that's simply not the case.

Ms. Sarauer: — Do you feel the federal government should be shut out of regulating greenhouse gas emissions?

Hon. Ms. Eyre: — Again, Mr. Chair, we have canvassed that so repeatedly this evening. I think there are really complex, you know, really nuanced arguments that have been raised for example around the carbon tax decision and under what auspice it was argued and the fact that, you know, there was really an attempt by the federal government to infringe on provincial jurisdiction through regulation that they pulled out a peace, order, and good government, and you know, that subsequently there are other considerations in other Acts, most notably the environmental *Impact Assessment Act* which we feel is destructive and damaging. But again, I . . . I frankly forget the question. Would you like to continue?

Mr. McAdam: — Well I think what I would say in response to the question is we wouldn't suggest that the federal government has no role to play with respect to environmental regulation. We accept that it's a matter of shared jurisdiction. And I think I talked earlier about the federal government can control the environment with respect to things that fall within section 91 of the *Constitution Act, 1867* and the province gets to control the environment with respect to those things that fall within section 92 of the *Constitution Act, 1867*.

So I think what we're really asking here is that, you know, the federal government keep to their lane and that we'll keep to our lane. And I'm a bit reluctant to go back to the carbon tax case again, but you know, I really do think that's a good example of a lack of co-operation by the federal government with respect to environmental protection issues and the regulation of greenhouse gases in particular. And I know that our minister, our current minister, was not the Minister of Justice when that case was initiated and therefore is probably not as familiar with the details as some of the other folks.

And there had been the pan-Canadian framework that had been agreed to by most provinces. There were discussions between the federal government and the provinces about how to achieve certain goals for reducing greenhouse gas emissions. And the understanding was that different provinces would be able to adopt different approaches. Each jurisdiction would be able to achieve those goals in ways that satisfied its own local needs.

And if you'll recall, the minister of Environment at the time, who's now Premier Moe, was at a meeting with his provincial colleagues in Quebec or some place down east when the federal government unilaterally announced what was referred to as the backstop at that time. So they said every province has to have a carbon tax. It has to be the same as British Columbia's carbon tax so it has to apply to the same items. It has to be the same amount or the same stringency. And what they also said is that if you don't do it, we'll impose it on you.

And I remember when we were first asked about that in the constitutional law branch, that was shocking that the federal government was going to impose a carbon tax on provinces that didn't follow their backstop. And if you'll remember, when we initiated the carbon tax case, the backstop was only going to apply in Saskatchewan. We were the only province at that time that this legislation was going to apply to.

So I was reminded as we talked tonight — and you've referred a few times to co-operative federalism — I remember one of my colleagues who was working on the carbon tax case with me coined the phrase "this is coercive federalism; it's not co-operative federalism." So I mean yes, we certainly recognize that the federal government has jurisdiction with respect to the environment, but our concern is in that example, in that case they overstepped that jurisdiction. And I think that this bill is intended to try to provide some assurance that that doesn't happen again in the future.

Ms. Sarauer: — I'm going to conclude my questions. I have a couple of comments and I'm sure, Minister, you'll have a few closing comments as well.

Before I get started on those — so I don't forget — I just want to take a moment and thank you, all of the officials, you three in particular, for being here this evening and helping answer the questions tonight. I very much appreciate it and very much appreciate all the work that you do every day within the Ministry of Justice. Thank you so much for your service.

I wanted to flag, first of all, one particular person I forgot to mention who's spoken up about this bill that deserves mentioning, who I missed in my initial remarks, which is the Assembly of First Nations national chief, RoseAnne Archibald, who back in December said she supports First Nations leaders in their calls for a resolution to reject both *The Saskatchewan First Act* here and then the sovereignty Act in Alberta. And she said, "These two Acts are really seeking to extend provincial authority into federal and treaty jurisdiction and therefore are interfering with treaty lands."

We've had extensive conversations about a lot of things with respect to this legislation this evening, and I do appreciate the time to have those conversations. As is mentioned a few times tonight, this bill is a statement. Its legal weight at this point in

time is unsure at best. There's no real precedent for this. This is very novel.

The concern is that this has been sold as something much more substantial to the public than what it is in reality. We are very much in favour of asserting ourselves and our constitutional rights as a province, but we are not in favour of PR [public relations] stunts. If the minister feels that a federal policy or legislation infringes on the Charter, then they should challenge it like the ministry has always done.

Saskatchewan people, workers, producers, and manufacturers want to see a government that both protects our natural resources while ensuring we are doing our part to preserve our planet for future generations. This bill does neither.

[21:30]

What this bill has done, however, is reverse the clock on reconciliation in Saskatchewan. It has offended Indigenous and Métis leadership throughout the province and damaged their trust and relationship with this provincial government. To not bother to even reach out to First Nations and Métis leaders, when contemplating introducing a bill that could affect the Constitution, prior to the introduction of the bill is and was both disrespectful and arrogant, which left them feeling like an afterthought.

As a result, although we will be proposing amendments to the tribunal and we do appreciate Mr. Lemaigre's, sorry, the member from Athabasca's amendment — apologies; it's very late — which we will support, we will not be supporting this bill because of that.

The Chair: — Thank you for your comments, Ms. Sarauer. Any closing comments on Bill 88, Minister?

Hon. Ms. Eyre: — Sure, thank you, Mr. Chair. And I guess I would say, I think that if the last five hours show anything — and some of the nuance, the knowledge that Mr. McAdam, for example, has brought to the perspective of some of the underlying issues of this constitutionally, whether we've talked about interjurisdictional immunity, core powers, what 92A means, what exclusive jurisdiction means — that is not a stunt. That is substantive.

And I will say I was Energy minister of course for four and a half years, and it was something I will always remember as extremely valuable and certainly an honour. And I heard all the time about the importance of the resource sector for First Nations, for the province but for First Nations. And to claim, as has been claimed at least once this evening, that there is no benefit to these communities from the approach that we undertake to take in terms of valuing those sectors is, you know, certainly regrettable.

I think top of mind it really is all about working with First Nations communities to create opportunities for growth, for economic well-being. And we've talked about a lot of things this evening but I think of, you know, having been with MLTC, Meadow Lake Tribal Council, a few weeks ago, you know, the biomass project. And I mean that again is an example of, you know, some federal components of course but also a climate provincially and a partnership and incredible potential and potentially incredible impact.

And so when we talk about the importance of these things, it is not glib and it is not a stunt. It is fundamental to our economy and to our identity economically as a province. And those opportunities of course are not only in the energy sector. They're in forestry. They're in mining, and we've talked about some of them. There are emerging areas coming on board. And I think of, and I've quoted him before, Chief Sheldon Wuttunee, who said that we're not, quote, against development because we understand many of our people make their living from the resource sector. And they do.

And when I testified before the Senate a few years ago on the environmental *Impact Assessment Act*, Bill C-69, and its impact to the province, I emphasized the importance to senators of mining, for example, to the North. And I told the council of chiefs conference on energy in 2019 — it was just before COVID — that it is our First Nations communities who hold the key to the success of pipeline and other resource projects. And we see that again and again. And the theme of that conference was how energy projects can defeat . . . First Nations and on-reserve . . . policy can defeat First Nations, rather, on-reserve poverty. And I certainly agree with that.

And we'll just say that when you look at the natural resource sector, the mining and oil and gas sectors combined employed about 2,000 First Nations people last year, 9 per cent; forestry, 30 per cent or upward of that. There is so much opportunity, there is so much promise ahead.

And I think intrinsic to all of this that we've talked about tonight is that section 35 explicitly enshrines treaty rights. So does all provincial legislation. So does this. And the amendment brought forward a few hours ago now, certainly if it reassures and clarifies then absolutely it is welcome, more than welcome. But it is already something that has been enshrined.

So I think that, you know, it's been a discussion certainly in high detail about constitutional and other aspects to this, but they are real and they are substantive.

And certainly I'm proud of the bill and would like to also thank officials, of course Mr. McAdam, in particular because he's always front and centre with me on this. And it is, I think, a very, very solid attempt by us as a province to address that which needs to be addressed for the protection of the economy of this province. Thank you.

The Chair: — Thank you, Minister. We'll now move on to Bill No. 88, *The Saskatchewan First Act*. Clause 1, short title, is that agreed?

Some Hon. Members: — Agreed.

Some Hon. Members: — No.

Ms. Sarauer: — On division.

The Chair: — Carried on division.

[Clause 1 agreed to on division.]

Clause 2

The Chair: — Clause 2. I recognize Mr. Lemaigre.

Mr. Lemaigre: — I have an amendment for clause 2:

Amend Clause 2 of the printed Bill:

(a) in the heading by adding "**and non-abrogation**" after "**Purpose**";

(b) by renumbering it as subsection 2(1); and

(c) by adding the following subsection after subsection (1):

"(2) Nothing in this Act abrogates or derogates from the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada that are recognized and affirmed by section 35 of the *Constitution Act, 1982*".

I so move.

The Chair: — Okay. Mr. Lemaigre has moved the amendment to clause 2. Do committee members agree with the amendment as read?

Some Hon. Members: — Agreed.

The Chair: — Carried. Is clause 2 as amended agreed?

Some Hon. Members: — Agreed.

Some Hon. Members: — No.

Ms. Sarauer: — On division.

The Chair: — Carried on division.

[Clause 2 as amended agreed to on division.]

Clause 3

The Chair: — Clause 3, is that agreed?

Some Hon. Members: — Agreed.

Some Hon. Members: — No.

Ms. Sarauer: — On division.

The Chair: — Carried on division.

[Clause 3 agreed to on division.]

Clause 4

The Chair: — Clause 4. I recognize Mr. Lemaigre.

Mr. Lemaigre: — I have an amendment for clause 4.

Amend Clause 4 of the printed Bill:

(a) by adding the following after "**section 3 of the *Saskatchewan Act*:**":

"**(a) in the English version:**"; and

(b) by adding the following clause (a):

"**; and**

(b) in the French version:

'Autonomie de la Saskatchewan

3.1(1) La Saskatchewan jouit d'une autonomie en toute matière relevant de son champ de compétence législative exclusive en vertu de la *Loi constitutionnelle de 1867*.

(2) La Saskatchewan est dépendante, comme depuis toujours, de l'agriculture ainsi que du développement de ses ressources naturelles non renouvelables, de ses ressources forestières et de la production d'énergie électrique.

(3) La capacité de la Saskatchewan de contrôler le développement de ses ressources naturelles non renouvelables, de ses ressources forestières et de la production d'énergie électrique est cruciale pour le bien-être et la prospérité futurs de la Saskatchewan et de sa population**'**.

I so move.

The Chair: — Mr. Lemaigre has moved the amendment to clause 4. Do committee members agree with the amendment as read?

Some Hon. Members: — Agreed.

The Chair: — Carried. Is clause 4 as amended agreed?

Some Hon. Members: — Agreed.

Some Hon. Members: — No.

Ms. Sarauer: — On division.

The Chair: — Carried on division.

[Clause 4 as amended agreed to on division.]

Clause 5

The Chair: — I recognize Mr. Lemaigre.

Mr. Lemaigre: — I have an amendment for clause 5.

Amend Clause 5 of the printed Bill:

(a) by adding the following after "**section 90Q.2 of the *Constitution Act, 1867*:**":

"**(a) in the English version:**"; and

(b) by adding the following after clause (a):

"**; and**

(b) in the French version:

‘7. - SASKATCHEWAN

90S.1(1) La Saskatchewan jouit d'une autonomie en toute matière relevant de son champ de compétence législative exclusive en vertu de la présente loi.

(2) La Saskatchewan est dépendante, comme depuis toujours, de l'agriculture ainsi que du développement de ses ressources naturelles non renouvelables, de ses ressources forestières et de la production d'énergie électrique.

(3) La capacité de la Saskatchewan de contrôler le développement de ses ressources naturelles non renouvelables, de ses ressources forestières et de la production d'énergie électrique est cruciale pour le bien-être et la prospérité futurs de la Saskatchewan et de sa population.**’** ".

I so move.

The Chair: — Mr. Lemaigre has moved an amendment to clause 5.

Do committee members agree with the amendment as read?

Some Hon. Members: — Agreed.

The Chair: — Carried. Is clause 5 as amended agreed?

Some Hon. Members: — Agreed.

Some Hon. Members: — No.

Ms. Sarauer: — On division.

The Chair: — Carried by division.

[Clause 5 as amended agreed to on division.]

[21:45]

Clause 6

The Chair: — Clause 6, is that agreed?

Some Hon. Members: — Agreed.

Some Hon. Members: — No.

Ms. Sarauer: — On division.

The Chair: — Carried on division.

[Clause 6 agreed to on division.]

Clause 7

The Chair: — Clause 7, is that agreed?

Some Hon. Members: — Agreed.

Some Hon. Members: — No.

Ms. Sarauer: — On division.

The Chair: — Carried on division.

[Clause 7 agreed to on division.]

Clause 8

The Chair: — Clause 8, is that agreed?

Some Hon. Members: — Agreed.

Some Hon. Members: — No.

Ms. Sarauer: — On division.

The Chair: — Carried on division.

[Clause 8 agreed to on division.]

Clause 9

The Chair: — Clause 9, is that agreed?

Some Hon. Members: — Agreed.

Some Hon. Members: — No.

Ms. Sarauer: — On division.

The Chair: — Carried on division.

[Clause 9 agreed to on division.]

Clause 10

The Chair: — Clause 10.

Ms. Sarauer: — Mr. Chair?

The Chair: — Ms. Sarauer.

Ms. Sarauer: — Thank you. I'd like to move an amendment:

Amend Clause 10 of the printed Bill by adding the following subsections:

(2.1) The Lieutenant Governor in Council shall appoint one member who is nominated by the Federation of Saskatchewan Indigenous Nations.

(2.2) The Lieutenant Governor in Council shall appoint one member who is nominated by the Métis Nation Saskatchewan.

The Chair: — Ms. Sarauer has moved an amendment to clause 10. Do committee members agree with the amendment as read?

Some Hon. Members: — Agreed.

Some Hon. Members: — No.

Ms. Sarauer: — On division.

The Chair: — This amendment is defeated. We will continue with the original clause 10. Is that agreed?

Some Hon. Members: — Agreed.

Some Hon. Members: — No.

Ms. Sarauer: — On division.

The Chair: — Carried on division.

[Clause 10 agreed to on division.]

Clause 11

The Chair: — Clause 11. Ms. Sarauer.

Ms. Sarauer: — Thank you. I'd like to:

Amend Clause 11 of the printed Bill:

(a) **by adding the following after "*The Public Inquiries Act, 2013*" in subsection 11(2)**:

", and witnesses summoned under the powers of section 11 will be treated the same as witnesses under section 10 of *The Public Inquiries Act, 2013*".

(b) **by striking out "**, with the approval of the Minister**" in subsection 11(4)**:

(c) **by adding the following subsection after subsection 11(4)**:

"(5) In addition to the powers conferred on it by the Act, the tribunal must allow for public input as set out in sections 5 and 8 of *The Public Inquiries Act, 2013***"**.

So moved.

The Chair: — Ms. Sarauer has moved an amendment to clause 11. Do committee members agree with the amendment as read?

Some Hon. Members: — Agreed.

Some Hon. Members: — No.

Ms. Sarauer: — On division.

The Chair: — The amendment is defeated. We will continue with the original clause. Clause 11. Is that agreed?

Some Hon. Members: — Agreed.

Some Hon. Members: — No.

Ms. Sarauer: — On division.

The Chair: — Carried on division.

[Clause 11 agreed to on division.]

Clause 12

The Chair: — Clause 12, is that agreed?

Some Hon. Members: — Agreed.

Some Hon. Members: — No.

Ms. Sarauer: — On division.

The Chair: — Carried on division.

[Clause 12 agreed to on division.]

Clause 13

The Chair: — Clause 13, is that agreed?

Some Hon. Members: — Agreed.

Some Hon. Members: — No.

Ms. Sarauer: — On division.

The Chair: — Carried on division.

[Clause 13 agreed to on division.]

Clause 14

The Chair: — Clause 14, coming into force.

Ms. Sarauer: — Mr. Chair?

The Chair: — Ms. Sarauer.

Ms. Sarauer: — Thank you, Mr. Chair. I'd like to:

Amend Clause 14 of the printed Bill by adding the following after "Council":

"after consulting with the Indigenous peoples of Saskatchewan in accordance with the Province's constitutionally mandated duty to consult requirements".

I so move.

The Chair: — Ms. Sarauer has moved an amendment to clause 14. Do committee members agree with the amendment as read?

Some Hon. Members: — Agreed.

Some Hon. Members: — No.

The Chair: — The amendment is defeated. We will continue

with the original clause. Clause 14, is that agreed?

Some Hon. Members: — Agreed.

Some Hon. Members: — No.

Ms. Sarauer: — On division.

The Chair: — Carried on division.

[Clause 14 agreed to on division.]

The Chair: — His Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: *The Saskatchewan First Act*.

I would ask a member to move that we report Bill No. 88, *The Saskatchewan First Act* with amendment.

Mr. Grewal: — I move.

The Chair: — Mr. Grewal has moved. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

Bill No. 102 — *The Constitutional Questions Amendment Act, 2022/Loi modificative de 2022 sur les questions constitutionnelles*

Clause 1

The Chair: — We will move on to the next bill, Bill No. 102, *The Constitutional Questions Amendment Act, 2022*, a bilingual bill. We will begin with clause 1, short title. Minister, you may make your opening comments, please.

Hon. Ms. Eyre: — Thank you, Mr. Chair. I'm pleased to offer opening remarks on Bill 102 as stated, *The Constitutional Questions Amendment Act, 2022*.

This bill amends *The Constitutional Questions Act, 2012* to ensure that the Attorney General receives notice of a challenge being made to a provincial law under *The Saskatchewan Human Rights Code 2018*. Currently where a provincial law is challenged for its constitutionality, the Attorney General is given notice pursuant to this Act. However where the validity of a provincial Act is challenged under *The Saskatchewan Human Rights Code, 2018*, notice is not provided to the Attorney General. Mr. Chair, the proposed amendments will ensure that the Attorney General is given notice, the opportunity to make submissions, and standing where an application is made under section 52 of *The Saskatchewan Human Rights Code, 2018*.

This bill will also update language in the Act to remove pronouns and refer instead to the title of the official.

And with these opening remarks, Mr. Speaker, I welcome questions respecting Bill 102, *The Constitutional Questions Amendment Act, 2022*.

The Chair: — Thank you, Minister. Open for questions. Ms. Sarauer.

Ms. Sarauer: — Thank you, Mr. Chair. And thank you, Minister, for your opening remarks. Just a few questions on this. Why didn't this provision exist before?

Mr. McGovern: — It's more a matter of it simply hadn't been coming up. In 1982 with the Charter, of course the Charter became what was commonly pled. It was usually what was raised in court, and the Bill of Rights wasn't raised as often. More recently this was brought to the attention of the constitutional branch that there were people who had based their claim on the Saskatchewan human rights Act, which could invalidate an Act.

And therefore, of course we don't take the invalidation of an Act passed by this Assembly lightly, and it's something that's appropriate for notice. So it was more a matter that it hadn't been included at the time of 1982, and it simply hadn't been identified as a problem. Once it was, the constitutional branch indicated we should step forward.

Ms. Sarauer: — Just to clarify what you've just stated, I believe what triggered this was the constitutional law branch became aware that there had been some instances where legislation had been challenged, but they hadn't been given notice.

Mr. McGovern: — It was being raised as an issue and they became aware. There wasn't actually a case that went through, as much as it was that it was avoiding that surprise in the future and avoiding that problem.

Ms. Sarauer: — So this is a proactive response?

Mr. McGovern: — It is a preventative measure.

Ms. Sarauer: — Okay. Thank you. I have no further questions.

The Chair: — Thank you, Ms. Sarauer. We're going to move onto clause 1, short title. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

[Clause 1 agreed to.]

[Clauses 2 to 10 inclusive agreed to.]

The Chair: — His Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: *The Constitutional Questions Amendment Act, 2022*, a bilingual bill.

I would now ask a member to move that we report Bill No. 102, *The Constitutional Questions Amendment Act, 2022*, a bilingual bill, without amendment.

Hon. Mr. McLeod: — Mr. Chair, I so move.

The Chair: — Mr. McLeod moves. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried. That completes our committee business for tonight. I'd like to thank, myself as Chair, I'd like to thank the minister and her help today for all the work they've done. The opposition minister . . . member, sorry. Look at that, I gave you a promotion, too. And to all committee members, thank you for all your work today.

Any closing remarks by the minister?

Hon. Ms. Eyre: — Thank you, Mr. Chair. It's been a relatively long evening . . .

The Chair: — Opposition member, not minister.

Ms. Sarauer: — Just an echo of thanks to everybody who made this committee possible today.

The Chair: — Thank you. I'd ask a member to move a motion of adjournment.

Mr. Keisig: — I so move.

The Chair: — Mr. Keisig has moved. All agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried. The committee stands adjourned to the call of the Chair.

[The committee adjourned at 21:57.]

CORRIGENDUM

On pages 377 and 378 of the November 30, 2022 verbatim report No. 20 for the Standing Committee on Intergovernmental Affairs and Justice, remarks attributed to Ms. A. Ross should instead have been attributed to Hon. Ms. L. Ross.

The online transcript for November 30, 2022 has been corrected.

We apologize for the error.