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Chair

Mrs. Deborah Schulte

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● (1105)

[*English*]

The Chair (Mrs. Deborah Schulte (King—Vaughan, Lib.)): Welcome everyone.

I want to start the session, because we have two panels and we want to make sure we give as much time as we can for questioning, because I know there are lots of interesting questions that people want to delve into.

I'd like to introduce our three panel groups. We have, from the Nunatsiavut Government, Andrea Hoyt, Environmental Assessment Manager with the Department of Lands and Natural Resources. From Makivik Corporation, we have Mark O'Connor, Resource Management Coordinator, Resource Development Department. We have two witnesses on teleconference for the Inuvialuit Regional Corporation, speaking from Inuvik, Northwest Territories. We have Kate Darling, General Counsel, and we have Jennifer Lam, Resource Management Coordinator, Inuvialuit Game Council.

It's always a challenge for us to remember that there are those on the telephone. We tried to do it by video link and the quality wasn't good enough to be able to have a decent picture, so rather than having the disruption of that cutting in and out, we decided we would just go with a teleconference. Why don't we start off with the teleconference, if that's okay? We always worry about technology failing us and we want to make sure we get their testimony in.

Who would like to start? Can you please introduce yourselves when you're talking on the phone, so we know who's talking? We'll get used to who's talking once we recognize your voices, but if you could introduce yourselves before you speak, that would be great.

Thank you. The floor is yours.

Ms. Kate Darling (General Counsel, Inuvialuit Regional Corporation): Thank you, Madam Chair.

Good morning—I think it's still morning there—to the members of the committee and our fellow organizations who are there with you today.

My name is Kate Darling and, as you mentioned, I am General Counsel for the Inuvialuit Regional Corporation. I'm joined by my colleague Jen Lam from the Inuvialuit Game Council.

IRC and IGC represent the rights of the Inuvialuit under the Inuvialuit Final Agreement. We are here speaking today in representation of those rights.

We do apologize for joining you only by phone this morning. We recognize that it's very difficult to communicate complex ideas over the telephone. We did work with your logistics team to try for a video conference, but our upload speed is too slow here in Inuvik still. As you probably have heard from other participants in the past in your committee work, connectivity is a constant frustration for us here in the north.

Our disembodied voices are but one demonstration of how many of our Arctic communities are both geographically and technologically a fair way from the capital. Nevertheless, thank you for giving us the opportunity to present the perspectives of IRC and the game council on Bill C-69 today.

I'd like to start by providing a brief bit of context for our comments. We'll then lead you through the key issues that the Inuvialuit want to see addressed through this legislation. Then you'll hear from me briefly again at the end.

I should say that we both feel that this bill is an opportunity and that the review process was a thorough one, which brought together many ideas that we hope will see the light of day in the legislation that is ultimately passed. For context, the Inuvialuit settlement region is located in the western Arctic segment of Inuit Nunangat or the Inuit homeland, which includes the land, ice, and waters of the Mackenzie Delta, the Beaufort Sea, and the Arctic Ocean.

The Inuvialuit initiated land claim negotiations with the Government of Canada in the early 1970s. The Inuvialuit Final Agreement was given effect on June 25, 1984. It is a modern land claim agreement within the meaning of subsection 35(3) of the Constitution Act 1982.

The massive effort of connecting remote communities and settling the land claim came in response to increasing and relatively unfettered development activity in the Inuvialuit settlement region and the permissive federal policies that supported this kind of activity in frontier land, at the time. The agreement that resulted, as IRC chair and CEO Duane Ningaqsiq Smith regularly reminds us, belongs not just to Inuvialuit, but also to Canada. Each party carries a—

● (1110)

The Chair: Hold on a moment, please.

Go ahead, Mr. Godin.

[*Translation*]

Mr. Joël Godin (Portneuf—Jacques-Cartier, CPC): Madam Chair, since the interpreter is having trouble understanding the witness, he has not been able to interpret her testimony into French.

I don't know how we could improve the communication. No doubt the interpreters are doing their best, but there is a communication problem. This violates my rights as a parliamentarian.

[*English*]

The Chair: I understand. Maybe we can slow down a bit. It means the testimony will go a little bit longer, but I think we can accommodate this problem. I'm hoping that slowing it down a bit will give the interpreters a chance.

Can we just give it a try at a slower pace to see whether that might work better?

You can let us know very quickly whether it's helping or not.

Mr. Joël Godin: For my own part I don't have a problem, but I invite you to ask the translator what the solution is, for the best translation.

The Chair: I can't communicate with them. I'll suspend and see what we can do with the translation.

Mr. Joël Godin: No, it's okay. Try for the best.

The Chair: Going forward, let's slow it down and see whether our translators can keep up.

We will resume.

Ms. Kate Darling: In a nutshell, what I'd like to convey with the context is that the Inuvialuit Final Agreement was negotiated in response to the very thing that part 1 of Bill C-69 seeks to address. While it was negotiated some 34 years ago, it remains relevant to the same forces at work today.

The IFA or Inuvialuit Final Agreement is structured on principles of sustainability. The stated objectives of the IFA are to preserve Inuvialuit cultural identity and values in a changing northern society, to enable Inuvialuit to be equal and meaningful participants in a northern and national economy and society, and to protect and preserve the Arctic wildlife, environment, and biological productivity. In other words, the very purposes outlined in proposed paragraphs 6(1)(a) and (b) in part 1 of Bill C-69 are those that were incorporated in the final agreement in 1984.

To achieve these goals, and recognizing the development to which Inuvialuit needed to respond at the time, the IFA established, in section 11, an impact assessment system that is triggered at a low threshold. As Jen will explain now, it has worked.

Ms. Jennifer Lam (Resource Management Coordinator, Inuvialuit Game Council, Inuvialuit Regional Corporation): Thank you, Madam Chair, for the opportunity to present. Thank you to the committee members.

My name is Jen Lam, as Kate mentioned, and I will be making remarks on behalf of the Inuvialuit Game Council.

As Kate mentioned, the IFA sets out a robust and inclusive impact assessment process, which has proven to be effective since it was enacted in 1984. The IFA's environmental impact screening committee and environmental impact review board processes support the purposes and objectives outlined in the proposed act.

Canada's interests have been and will continue to be fully represented through membership and appointment of chairs at these boards, as well as through the authority of the relevant government body to approve or reject a proposal. The Inuvialuit Game Council feels that the existing IFA processes have established a comprehensive and robust environmental impact assessment framework that represents both Canada's and Inuvialuit's interests. The IFA processes also have the confidence of the Inuvialuit that they will appropriately consider and incorporate their views into the assessment.

Under CEAA 2012, unnecessary complication and duplication of processes were put into place. Inuvialuit Game Council on a number of occasions voiced their concerns to the government at the time. The council hopes this review will address the issues of duplication and provide clarity and recognize the processes established under the IFA as the appropriate processes for assessing effects of proposed development in the Inuvialuit settlement region.

I'll turn it back to Kate.

● (1115)

Ms. Kate Darling: Thank you, Jen.

What we're trying to convey here today is that parallel impact assessment systems, both of which involve federal representatives, are a recipe for confusion, delay, and expense. They violate the “one project, one review” principle that has been accepted by Canada.

More fundamentally, though, the imposition of a second system inevitably undermines the screening and review process that Canada and Inuvialuit promised to uphold at the beginning. This is because when you have duplicate systems and they are working their way through the process, there is a potential for differing outcomes, differing recommendations, or differing timelines. If a recommendation is coming from a process based on land claims, and alternatively from an agency-based process, then the ultimate decision-maker has to decide which one to accept, if both systems are undertaken.

Likewise, our feeling is that a proposed substitution option, under proposed section 31 of the proposed bill, which leaves substitution to the discretion of the minister on a case-by-case basis, introduces uncertainty and likely delays for the proponent, for the stakeholders, and for the regulators, as the substituted process may take time to commence.

Looking at the issue holistically, having competing processes is not conducive to effective review or responsible development. However, we see that proposed section 4 of the proposed bill may offer a solution for us, and I will allow, of course, my fellow Inuit organization colleague to speak to their views and their specific situation with respect to the provisions of the bill. But for Inuvialuit, proposed section 4 may hold a clue. However, in its current form, this clause, for the ease of the group, refers to the non-application of the act, which is something that both IRC and the game council have been advocating for some time.

Currently the provision states, “This Act does not apply in respect of physical activities to be carried out wholly within lands described in Schedule 2.”

What we would recommend is some additional text that specifically identifies the non-application of the act to jurisdictions as defined in the proposed bill, where a designated project is subject to a process established by a land claims agreement for assessing impacts of that project.

In a nutshell, that's what Inuvialuit have been advocating for. It's relatively simple.

We will leave it there and open it up for questions now or at the end.

● (1120)

The Chair: Thank you very much.

What we're going to do is hear from all the witnesses, and then we'll open it up to questions.

For those who are in the room, I have some helpful tools. When you have about a minute left, I'll put up the yellow card. It just gives you a sense of where you're at. When I put up the red card, it means you are out of time, so just wrap up your thoughts as quickly as you can, please.

Thank you.

Who would like to go next?

Ms. Hoyt, the floor is yours.

Ms. Andrea Hoyt (Environmental Assessment Manager, Department of Lands and Natural Resources, Nunatsiavut Government): Thank you, Madam Chair.

Thank you very much for inviting us here today to discuss Bill C-69.

I would like to start by recognizing that we are on the traditional territory of the Algonquin Haudenosaunee and Anishinabek peoples.

My name is Andrea Hoyt. I'm the environmental assessment manager with the Nunatsiavut government, and I work out of our Makkovik office.

The Nunatsiavut Government is the regional Inuit government established through the Labrador Inuit Land Claims Agreement. The Nunatsiavut Government is currently in the midst of a general election. That is why our minister cannot appear before you today and has sent me in his place. The Nunatsiavut Government has jurisdiction in relation to the environmental assessment of projects on Inuit-owned lands in northern Labrador and a role to play in environmental assessment of projects in the Labrador Inuit settlement area, outside Labrador Inuit lands, as well as projects that occur outside our settlement area that have impacts on our rights and territory.

We have participated in the processes and procedures leading up to the introduction of Bill C-69, including providing comments on the Government of Canada's discussion paper in response to the final report of the expert panel on the review of environmental assessment processes.

The Nunatsiavut Government's understanding of Bill C-69 leads us to believe that we have not been heard or that the Government of Canada has not accommodated our concerns. I am here today because the Inuit of Nunatsiavut believe that you will hear them and amend this bill in order to do what is right.

Our greatest concerns, and those on which we focused our written submission, include the necessity to provide for free, prior, and informed consent of indigenous peoples for projects that affect them; mechanisms for harmonization to achieve the goal of one project, one assessment; sustainability and how that ties to the public interest; and the way that the legislated planning phase is articulated or not in the act.

The Nunatsiavut Government wants to be clear about the importance of indigenous consent at critical decision points in the impact assessment process under the bill. Perhaps the best way to explain the importance of consent is with the following statement.

It is an offence, under proposed section 144, to contravene proposed section 7 of the impact assessment act, which prohibits a proponent from doing anything that might impact the physical or cultural heritage of the indigenous peoples of Canada or cause a change to the health, social, or economic conditions of the indigenous peoples of Canada. Under proposed subsection 7(3), the proponent can do things that impact the physical or cultural heritage of the indigenous peoples of Canada or cause change to the health, social, or economic conditions of the indigenous peoples of Canada, under authorization of the agency, under proposed section 16(1) or a ministerial statement under proposed section 65. As the indigenous peoples do not participate in a decision referred to in proposed section 16(1) or leading to a ministerial statement, a proponent can impact their physical or cultural heritage or their health, social, or economic conditions without their consent and without committing an offence.

It is difficult to understand how the federal government finds this acceptable. To be blunt about it, this bill continues the practice of using the power of laws to license the slow and steady genocide of Canada's indigenous peoples in the name of the public interest. We are asking you to stop that, here and now, in this bill.

The provisions in the bill to harmonize impact assessment processes are deficient. There are limited options in the tool box and co-operation appears to be limited to reacting to proposed projects rather than taking a proactive approach. The principle of one project, one assessment should be clearly articulated as a guiding principle for intergovernmental co-operation and must be addressed at two general levels.

The first is the establishment, through intergovernmental agreements, of co-operative frameworks that harmonize assessment, independent of any project, with a view to minimizing, if not avoiding, process overlaps, duplication, and multiple assessments.

The second requires, in a project-specific context, interjurisdictional arrangements to co-operate in a project assessment, usually currently framed as an intergovernmental agreement establishing a joint review panel.

The impact assessment act does not address the first level and that is a fundamental failure. The second is inadequately addressed, largely through the offers to co-operate with other jurisdictions, which are made by the agency during the planning phase. A “tick in the box” offer can effectively download the responsibility to others.

Substitution appears to be considered the apex of co-operation in the act, but the impact assessment act does not provide a coherent and transparent process for its accomplishment, nor are there provisions for securing indigenous consent on the substitution of an impact assessment process affecting indigenous rights.

Canada has repeatedly stated its commitment to sustainability, including in the preamble to the proposed impact assessment act. The Nunatsiavut Government agrees that sustainability has to be a core principle of good impact assessment decisions, but of equal importance, indigenous peoples have to be recognized as integral to sustainability.

● (1125)

Parliament has an obligation to ensure that indigenous peoples and indigenous communities are sustainable. Our rights and cultures are not to be sacrificed to sustain others. The sustainability question must require that decision-makers identify how a project will promote the environmental, health, social, cultural, and economic sustainability of affected indigenous peoples. The definition of sustainability in Bill C-69 is insufficient, and we have proposed other language in our written submission.

The decision at the end of an impact assessment process must truly acknowledge trade-offs and justify decisions. The concept of sustainability includes indigenous peoples, and decision-makers must account explicitly for the substantive effect of authorizations on indigenous peoples, their rights, and their future generations.

Decision-makers must be required to justify any trade-offs between factors deemed to be in the public interest and impacts on indigenous peoples or their rights. Recent experience, particularly with respect to the Muskrat Falls project, is that political decision-making occurs in a black box, and the result is decisions that sacrifice our rights and interests, accompanied by a bare assurance that indigenous rights and interests were considered.

Assurances are unacceptable. Decisions under the act should explain how the minister accounted for all the proposed section 63 factors, including explicitly for any substantive effects the determination may have in relation to an affected indigenous group. The minister must be required to explain any trade-offs between impacts that the designated project may have on an indigenous group or their rights. The minister must also be required to specify which monitoring measures and aspects of follow-up programs must be designed so as to prevent or mitigate impacts that the designated project may have on an indigenous group or on indigenous rights.

In regard to the planning phase, the expert panel's report, “Building Common Ground”, had a well-articulated planning phase, which was designed to build consensus on how the impact assessment would be undertaken, including consent of indigenous peoples. This planning phase was to bring people together early in project planning to share knowledge and agree on what does and does not require future detailed assessment in the impact study.

The planning phase was seen as providing an opportunity for indigenous groups and other governments with impact assessment responsibilities to agree on a specific process adapted to the particular project with its potential impacts, while also accounting for the various assessment regimes that would apply.

The planning phase in Bill C-69 in the impact assessment act proposed sections 10 to 15, falls far short of this vision. There are no details on the process, products, or parties. There's no requirement to develop an impact assessment plan, a conduct of assessment agreement, a public participation plan, or tailored impact assessment guidelines. In fact, there are no clear deliverables from this process, and there is no requirement to seek agreement of affected indigenous peoples.

Nunatsiavut Government has been involved in the legislative and regulatory reviews for Canada's environmental legislation over almost two years. Our messages have been very consistent. This is not a time to tweak legislation that doesn't work, but an opportunity to create something that truly works toward reconciliation, while helping Canada move toward an economy that meets the needs of the current generation without compromising future generations' ability to meet their own needs.

The legislation must integrate free, prior, and informed consent in order to work toward reconciliation with Canada's indigenous peoples. The legislation must allow treaties and land claim agreements to be respected and fully implemented.

Indigenous peoples have a tradition of sustainable, respectful development and use of the land and resources in their traditional territories. For the federal government to fully partner with indigenous peoples, there must be a shift from mitigating the worst negative impacts toward using impact assessment as a planning tool for true sustainability.

We have made several specific recommendations in our written submission, proposing amendments we think will strengthen the act and improve impact assessment in Canada.

Thank you very much for the opportunity to appear before you today. I would be happy to answer any questions you might have, either about what I have just said today or about what we put in our written submission.

● (1130)

The Chair: Thank you very much for that.

We will hear from Mr. O'Connor, and then we will go to questions.

Mr. Mark O'Connor (Resource Management Coordinator, Resource Development Department, Makivik Corporation): Madam Chair, honourable members, I thank you for the opportunity to be here today and hope that my input will be useful in your deliberations.

I'm here representing the Makivik Corporation with regard to BillC-69, and particularly with regard to the impact assessment act included therein.

Makivik Corporation is the birthright organization established in 1975 to represent Nunavik Inuit ethnic rights, pursuant to the James Bay and Northern Quebec Agreement. It was the first modern land claim agreement in Canada. Makivik, in Inuktitut, means “To Rise Up”, which was a very fitting name for the organization mandated to protect Nunavik Inuit rights, interests, and financial compensation that were provided by the James Bay and Northern Quebec Agreement.

Most recently, Makivik also signed the Nunavik Inuit Land Claims Agreement, which has been in effect since 2008. Through this agreement, Makivik, on behalf of the Nunavummiut, the residents of Nunavik, own 80% of all of the islands, including both the surface and subsurface rights in the Nunavik Marine Region, the region defined under the land claims agreement.

Because of habit I will clarify now that the JBNQA is the James Bay and Northern Quebec Agreement, and NILCA is the Nunavik Inuit Land Claims Agreement, and I usually use the acronyms so there's a chance they'll slip out.

I am a resource management coordinator for Makivik in the resource development department. I've been entrusted by the Inuit of Nunavik to speak here on their behalf and when it comes to environmental issues and their potential impacts on Inuit rights. I am not here today to provide an in-depth review of the proposed legislation or its potential impacts on Nunavik Inuit, but instead will speak to you about the core concepts about which our understanding of the impact assessment process are based.

Nunavik Inuit are not opposed to development. They recognize that large-scale development projects can represent significant economic potential for our regions and our communities. However, we also recognize that even the smallest projects can have significant impacts on the environment and on the Inuit way of life. This is especially true when we consider the fact that Nunavik is one of the most pristine areas in Canada, and that wildlife harvesting is still a major component of food security.

Because of this there is an expectation within our communities that development projects will not be allowed to proceed unless every precaution has been taken to ensure that they are compatible with our understanding and respect for the environment, and that they uphold the maintenance of Inuit livelihoods, traditional practices, and the cultural identity.

As you know, I represent a region where governments have historically taken a top-down, colonialist approach to determining what is in the public interest. Of course, I am referring to events such as the High Arctic relocation, residential schools, and the dog slaughter, all of which were seen by governments at the time as being a benefit to Inuit. It's safe to say that Nunavik Inuit do not generally trust southerners and governments to determine what is in their best interest. The assurance that impact assessments will be conducted by people who are familiar with the region, the people, their culture, and their day-to-day reality is therefore critical.

For this reason the James Bay and Northern Quebec Agreement and the NILCA have laid a framework for environmental, social, and impact assessments to be conducted by bodies whose members give Inuit a direct role in the assessments. These bodies are essentially tasked with applying federal laws of general application in a manner that is consistent with the particularities of our region, and in a culturally appropriate way. It's critical that the provisions and spirits of these agreements be upheld by any federal legislation that's put in place by the government, including Bill C-68 and BillC-69.

Last week you heard a similar message from Mr. Bill Namagoose, who was here representing the Crees of Eeyou Istchee. He provided you with a relatively detailed overview of the federal social environmental assessment regime that was included in section 22 of the James Bay and Northern Quebec Agreement. Mr. Namagoose correctly explained that under this regime the COFEX should be the sole body responsible for federal assessments on the Cree territory of the JBNQA.

I assume that you're already familiar with the JBNQA, but I will nonetheless take the opportunity to remind you that section 23 of the agreement is actually essentially a carbon copy of the regime that Mr. Namagoose presented to you, the main difference being that the body responsible for assessments is called the COFEX-North and applies to the Inuit territory.

● (1135)

The COFEX-North's membership is composed of representatives who are appointed by the Inuit and by the federal government.

Similarly, under the Nunavik Inuit Land Claims Agreement, the Nunavik Marine Region Planning Commission and the Nunavik Marine Region Impact Review Board were created to oversee the impact assessment process in the offshore region. For each of these bodies, half of the members are appointed based on nominations put forward by Nunavik Inuit through Makivik Corporation, and the other half are appointed by governments.

In either case, the impact assessment regimes that are included within our land claims agreements are the outcome of extensive and careful negotiations. They are sensitive to the particular circumstances of the region and have been constructed with the rights of Nunavik Inuit in mind. Perhaps more importantly, they are relevant to and trusted by Nunavik Inuit. There is no need to add another layer of federal assessment to them.

The written submission we have provided to you outlines a number of inconsistencies between the text of Bill C-69 and the provisions of our land claims agreement. These relate to matters such as the project screening phase, the impact assessment agency's role in impact assessment, legislated timelines, and so on.

A relatively straightforward example of that is the fact that, under the JBNQA, a project screening committee was established to determine whether or not to assess projects that are not automatically subject to or excluded from review. Within the proposed act, this would fall upon the agency to do. There are some inconsistencies, and you'll understand that we can't support the creation of federal law and legislation that conflicts with the provisions of our constitutionally protected rights and processes.

Although we acknowledge that the proposed impact assessment act includes provisions that allow for substitution or harmonization, we are concerned that they won't be implemented to their full potential, leaving us with an extra layer of federal impact assessment.

Mr. Namagoose proposed last week that the new legislation allow for a carve-out of the JBNQA's section 22 process as it applies to the Cree territory. I will repeat his request today and ask that the process for federal environmental and social impact assessments that was described in section 23 of the James Bay Northern Quebec Agreement and the process defined in sections 6 and 7 of the NILCA be recognized explicitly in the act. Failing that, it is critical that negotiations to establish the appropriate regulations or agreements be initiated such that the direct participation of Nunavik Inuit in all impact assessment decisions is retained.

I won't venture too far into the debate about consent at this stage. I recognize it's an issue that was debated at length here, in other forums, and in our written submission to this committee. However, I will note that we are troubled by the fact that the proposed legislation does not require the minister—or the agency, as the case may be—to obtain the consent of indigenous groups before authorizing works to proceed.

We certainly agree that the proposed early engagement phase will be beneficial towards obtaining the consent, but as Andrea outlined, we are worried that the act will allow for unilateral decisions by the minister that can affect the constitutionally protected rights of indigenous peoples without needing to obtain their consent.

Finally, I wish to draw your attention to another organization that was born out of the James Bay and Northern Quebec Agreement—the Kativik Environmental Advisory Committee. The committee is composed of equal representation from the Inuit, the Quebec government, and the Government of Canada. Within the act, the advisory committee is defined as a consultative body to responsible governments and is the preferential and official forum for responsible governments concerning their involvement in the formulation of laws and regulations related to the environmental and social protection regime. It is mandated to oversee the administration and management of the regime through the free exchange of respective views, concerns, and information.

While Makivik Corporation has been actively engaged in this file for some time now, it appears that the Kativik Environmental Advisory Committee has been greatly underutilized by the Government of Canada throughout this process. I must therefore stress the importance that you take the necessary steps to engage with them before the new legislation is adopted. They have been involved in the implementation of the JBNQA impact assessment regime for over 40 years and have tremendous insights to offer.

● (1140)

More importantly though, their participation is required through the James Bay and Northern Quebec Agreement.

Thank you for your time.

The Chair: Thank you.

Ms. Linda Duncan (Edmonton Strathcona, NDP): Madam Chair, before we proceed to questions, I'm concerned that we don't have the briefs yet for any of these witnesses. I imagine they're going through translation.

The Chair: Yes.

Ms. Linda Duncan: It's going to be very difficult for us to submit any necessary amendments based on what they're asking for if we can't have those well in advance, because then we have to go through the drafters, and then it has to be translated, and then submitted. I'm wondering if we could have some kind of idea of when we're going to have these briefs and if it's not by tomorrow, I think we need to extend the deadline to submit amendments.

The Chair: I know that they are working diligently to get them to us as fast as possible, and you are seeing them coming through. My understanding is that it's their expectation that they should be to us before the end of the week, or by the end of the week.

Ms. Linda Duncan: By the end of the week is not adequate, so I am asking that the deadline for submission of the amendments be extended because I want to give due consideration to the recommendations, and I don't feel that I can until I actually see what's proposed in their briefs.

The Chair: We are having quite a few witnesses in front of us, so obviously we're getting it first-hand to be able to hear and speak with them directly, and the briefs will be following up. I'm asking for a bit of an update here on when we can get them, and I'll work on that with the clerk.

Ms. Linda Duncan: That's not the answer to my question. I'm asking that the deadline for the submission of amendments be extended to a later date.

The Chair: We have agreed on a process on dates and how we're going to be.... The most important part is obviously hearing from everybody, getting those briefs. My understanding is that you will get those briefs before the deadline, and we'll have the weekend. Monday until four o'clock I think is when we have to get them in, so there will be some time.

Let me continue to discuss this with the clerk and get the dates so that I can inform the committee better about when we'll have all the briefs in front of us. Then we can talk about that.

Our first questioner is Mr. Fisher.

Mr. Darren Fisher (Dartmouth—Cole Harbour, Lib.): Thank you, Madam Chair.

Thank you very much for being here today. Thank you to the folks on the phone for being here and being so patient.

I'm going to go first to Ms. Darling and Ms. Lam, and thank you again for being here.

I wasn't certain exactly who was speaking when you were speaking, so feel free to answer, whoever feels like answering this.

By incorporating indigenous knowledge into the process with Bill C-69, do you feel that this is going to create a better relationship between government, the proponents, and indigenous groups?

● (1145)

Ms. Jennifer Lam: This is Jen Lam speaking.

It's already been shown in the past reviews that have been done in this area that the inclusion of Inuvialuit knowledge in the process has created a great amount of buy-in in the process itself. Our past review processes have included a lot of input from the communities. The screening committee and the Environmental Impact Review Board, along with the government members, of course also have Inuvialuit members. Those offices also have a fairly close communication link to our communities' hunters and trappers committees. There's already a very strong relationship with Inuvialuit people, and Inuvialuit people trust this process.

Ms. Kate Darling: I would add to that, just from a perspective of mutuality, which reconciliation requires, it's essential for a decision-maker to not only ensure that stakeholders understand what's at stake, but also that the decision-maker understands the perspective and the views of those who may be adversely impacted, and specifically rights holders. If there isn't an appropriate venue for sharing that understanding, in other words, unless there's a mechanism for knowledge flowing in both directions, the process is invariably incomplete.

Mr. Darren Fisher: I had the opportunity to sit around a table with some Nova Scotia chiefs on the weekend, a round table, and it wasn't about this bill, but they did lament the historical issue with interdepartmental coordination. Do you think the things that are in Bill C-69 will improve interdepartmental coordination, that whole-of-government consultation with indigenous groups?

Ms. Kate Darling: I think that remains to be seen, to a certain extent.

I'm sorry, was that question directed to me?

Mr. Darren Fisher: It was for either you or Jennifer.

Ms. Kate Darling: Thank you. I'll take it first.

Some of it remains to be seen in the implementation of the resulting act. Certainly funnelling consultation efforts through an agency that has an obligation to perform those functions would be of assistance. The provisions obliging departments to provide their expertise to the review process will be of assistance. What we don't see in the consultation provisions is a very clear standard that the consultation has to meet. While the agency must offer to consult, there isn't an express obligation to complete consultation of any kind of quality.

To your question, while I think there are provisions that do support better interdepartmental coordination, it will remain, I think, for the managers within departments to give their staff the authority and the resources in order to do it. At the end of the day, the quality of the consultation has to be something that can be evaluated and mindful of the recent jurisprudence out of the Supreme Court of Canada.

Mr. Darren Fisher: Jennifer, you said that the 2012 legislation provided some unnecessary complications, and that you voiced your concerns at the time. Does Bill C-69 solve any of those unnecessary complications that were in the 2012 legislation?

Ms. Jennifer Lam: I think under the new proposed act there is some language that provides some clarity. However, I don't think it is strong enough to be able to provide the certainty that the Inuvialuit are requesting.

Mr. Darren Fisher: Ms. Hoyt, you said something that I thought was really interesting. You said that Bill C-69 seems like it's reacting to projects rather than being proactive. I hadn't really thought about that. Perhaps you can finish off the time on that topic. Is it possible to be proactive when we're dealing with a project that comes forward by a proponent?

● (1150)

Ms. Andrea Hoyt: I think there are a couple of problems around the projects with Bill C-69. One of the problems is that we don't know what projects we're talking about. There is a project list, but we don't know what it covers. There are not clear stopgaps to let us know what we're even going to be assessing and what designated projects are, and for things that are not designated projects, what level of screening or consideration by the federal government there will be. So that's a problem.

I think I'm out of time.

The Chair: Sorry. I'm sure we'll explore that a little further.

Next up is Mr. Fast.

Hon. Ed Fast (Abbotsford, CPC): Thank you very much to all of our witnesses for appearing here today.

My question is for all of you, because all of you referenced the right to substitute that is articulated in proposed section 31 of the bill. You have already noted that it's actually the minister's discretion on whether a substitution will be permitted. A number of your organizations already have agreements in place that have been there for quite a number of years. You've been operating under those. Now there's another process that you're being expected to accommodate somehow.

I believe either Ms. Darling or Ms. Lam referred to “parallel” systems. You have the Inuvialuit Final Agreement in place. Now you have Bill C-69 also, running parallel to that process. I believe one of you articulated that you're concerned that this was a discretionary power on the part of the minister whether to allow the local process to substitute for the impact assessment process set out in Bill C-69.

My first question is for all of you. In your consultations with the government leading up to Bill C-69, did you apprise them of this concern, and did they acknowledge that this was an issue that needed to be dealt with? Second, can you more broadly comment on how this parallel system is still going to challenge your ability to have, effectively, a full say in what kind of development happens in your region?

The Chair: Who is going to start?

Hon. Ed Fast: We'll start with Mr. O'Connor and Ms. Hoyt, then Ms. Darling and Ms. Lam.

Mr. Mark O'Connor: The provisions in this bill that render substitution or harmonization possible aren't completely new. Historically and to this day, there have been parallel processes going on. Of course, we've asked for that to be simplified and to have one process throughout this and previous reviews to the legislation. Similar requests have been made by the Kativik Environmental Advisory Committee that I spoke about.

I understand that the provisions that are in the act now leave the door open for that to happen. The case of northern land claims is different because they are established, because they have processes that are working and are going to be happening. Whether or not the James Bay and Northern Quebec Agreement regime will be applied to a project isn't a question. It will be, and the same is true for any development in the offshore area through the NILCA processes.

The question is, do we need another layer on top of that? Personally, I think no. Nunavik hasn't been a region where there have been a lot of major development projects that have been assessed. The last one was in 2012. It was a mining project that was assessed, and at that time the federal agency, the CEAA, applied to the region, so we had three ongoing review processes for the same project. One of them was led by folks who were completely unfamiliar with the region and depended on the communities for logistics. In fact, they depended on the communities for everything, essentially, and it was a bit of a frustrating experience for everyone involved.

Hon. Ed Fast: Unfortunately, we're a little short on time, so I'm going to quickly ask the other three to also comment on my question and whether their fix for this is to remove the minister's discretion, so that it would become automatic that substitution takes place.

● (1155)

Ms. Andrea Hoyt: The Nunatsiavut Government is in a slightly different position from the other two—or three—Inuit regions, in that we do not have a harmonized environmental assessment process in our land claim agreement. Our environmental assessment chapter lays out different regimes, depending on where in the settlement area the project ends up.

If it's a project that goes on Inuit private land and provincial crown land and is also on a federal designated project list, we currently have the potential under CEAA 2012 and we will continue under Bill C-69 to have the potential for at least three environmental assessments to happen concurrently. The problem is not solved here because we don't have a harmonized process to substitute.

Hon. Ed Fast: Was that brought to the government's attention in your consultations?

Ms. Andrea Hoyt: Yes. We've been very clear and consistent in our messaging, all of the Inuit regions, on that throughout.

Hon. Ed Fast: I have to be quick. I have to go to Ms. Darling and Ms. Lam yet.

Ms. Kate Darling: Thank you.

To answer the question you just posed with respect to removing the minister's discretion and whether that would resolve the issue, it would, to a certain extent. That's why we were looking at proposed section 4 as a bit of a carve-out along the lines that Mr. O'Connor mentioned during his presentation.

One of the things we proposed in our written submissions to this committee was to include a substitution process that is automatic. In reverse, a jurisdiction could request that the minister exercise his or her authority to substitute the federal process if it was found that there were capacity issues or something like that, to allow the development of the capacity within the region.

This is like the substitution provision that's recommended in the bill in proposed section 31, but in reverse.

The Chair: Thank you very much.

Ms. Duncan.

Ms. Linda Duncan: Thank you very much.

The testimony of all of you is really important and I very much look forward to seeing your briefs, as I want to have time to consider the specific amendments you're proposing.

As you know, we heard from Mr. Namagoose and he made the same type of proposal about a carve-out. One thing that puzzles me is, having heard your testimony, is why in Bill C-69 we only somewhat carve out the Mackenzie Valley Resource Management Act, completely ignoring all the other first nation self-government and land claim agreements and impact assessment processes of the north.

Perhaps it was Ms. Darling and Ms. Lam who spoke about this. I wonder if you could clarify something. There is added confusion because not only do we not know the project list, we don't know what's going to be on schedule 2. If your entities are included on schedule 2 so that you have a carve-out, or some such thing, we would probably have to remove section 40, which allows the minister to exercise her discretion and impose her system instead.

I hope that your briefs will resolve that. Are you looking for more specific measures in Bill C-69 that clearly state a carve-out? If you want a carve-out whereby your processes apply instead because there's greater confidence of the peoples of your region, do you have sufficient resources in all cases to deliver that, or do you need some type of provision in here where the federal government could assist with funding?

That question is for each of the three of you, maybe first to Ms. Darling and Ms. Lam.

Ms. Kate Darling: Thank you very much for that question. It is insightful.

First, just for clarity, the Mackenzie Valley Resource Management Act does not apply to the Inuvialuit settlement region.

Ms. Linda Duncan: You're saying that this is the only one that's carved out right now.

Ms. Kate Darling: That's right. We made a note of that and wondered why or how it came to be.

With respect to your question, a specific carve-out is what Inuvialuit has been advocating for. Just recall that the system in the Inuvialuit settlement region is based on co-management, so the federal government is at that table and is active in the process. With respect to capacity, capacity issues do abound, but they aren't going to be assisted in any regard by applying a parallel process that undermines the land claim process.

When I was thinking through our comments this morning, one thing I wanted to put to the committee was the consideration of a recommendation that gives the agency authority to provide capacity support for a land-claims-based impact assessment body upon request by a jurisdiction as defined in Bill C-69 under proposed section 2.

● (1200)

Ms. Linda Duncan: Thanks.

Ms. Hoyt.

Ms. Andrea Hoyt: As I said, we have a slightly different situation in that we do not have a co-managed EA process. Substitution is an option for us, but it's not as clear because we don't have a process where the different governments are represented collectively.

Resources are always a challenge. We're a small government, and when we have a big project proposed and there are three or possibly more processes.... In the worst case scenario, there was a project proposed two years ago. We spent 18 months trying to negotiate a harmonization agreement with the provincial and federal governments. We were unsuccessful. Without a harmonization agreement, it would have been subject to five simultaneous environmental impact processes. The proponent then rejigged their project to avoid us, to reduce the number of EA processes they would have to go through, and then ultimately went bankrupt. That's not an efficient way to do it. The resourcing for us to contribute to five processes is very challenging.

Ms. Linda Duncan: Mr. O'Connor.

Mr. Mark O'Connor: Very much along the same lines as Kate mentioned, there would need to be, obviously, some type of capacity. Our regional assessment processes currently don't have staff capacity. The NILCA board has one employee working both the impact review board and the planning commission, so yes, certainly there would need to be provisions that allow agency staff to provide the support that they would otherwise be providing to it.

Ms. Linda Duncan: I wonder, Ms. Hoyt, if you'd like to speak to your call for a non-derogation clause and free, prior, and informed consent.

Ms. Andrea Hoyt: I can speak very quickly to the non-derogation clause. I didn't realize you guys hadn't seen our submission, so you haven't seen the amendments we propose in there yet.

The non-derogation clause that's in the current bill is very minimal, and we've proposed language that is a bit more generous and is in line with what the Senate committee proposed when it reviewed non-derogation language. We suggest, “This act shall be construed so as to uphold existing aboriginal and treaty rights recognized and affirmed under section 35 of the Constitution Act, 1982, and not to abrogate or derogate from them.” It's just a bit more generous language.

The Chair: Thank you very much.

Mr. Amos.

Mr. William Amos (Pontiac, Lib.): Thank you, Madam Chair.

Thank you to our witnesses from afar. I appreciate that it is such a challenge, sometimes, to provide such testimony, but it is clearly heard and appreciated.

I want to direct my initial line of questioning to the representatives of the IRC. By way of context, I want to get into a specific example because I think it might be helpful to examine that circumstance, that example in the IRC's territory, to inform this process. Prior to becoming a politician, I represented a conservation organization that was involved in an environmental assessment process that was being undertaken by the National Energy Board. The project has since been withdrawn. It was in relation to deepwater drilling 100 kilometres or so off the coast of Tuktoyaktuk. Obviously the IRC was going to be a key participant in that process, and there was going to be an integration of some nature.

I want to know what you liked and what you didn't like, more importantly, about that process, and how you see the bill that is being proposed as materially changing the way that process might have been undertaken, in a positive way.

● (1205)

Hon. Ed Fast: That was a leading question.

Mr. William Amos: It could be rejected.

That's directed to Ms. Darling, please.

Ms. Kate Darling: Thank you. This is Kate speaking.

Unfortunately, I don't have first-hand knowledge of that experience. Jen was around at that time, so I'll let her share her thoughts, as they may be relevant.

I will note one thing about this bill that is positive and would be of assistance: the early engagement provisions within it. This is certainly something that Inuvialuit and our Inuit colleagues from across Inuit Nunangat argued for in the Clyde River case and supported in our submissions to the expert panel and then again to this committee.

The importance of the pre-planning phase and early engagement is fundamental to ensuring that any kind of delay and duplication isn't experienced with new processes. Again, we have to underscore that the preference is to not have a duplication of processes but rather one robust system that's adequately supported and is consistent with the promises made in the Inuvialuit Final Agreement.

I'll pass this to Jen.

Ms. Jennifer Lam: Thank you.

Understand that the deep offshore drilling proposal was a very massive review to take on. Much as Kate mentioned, there was a lot of work done prior to the proposal even coming forward, not only from governments but also from industry. Industry was up in the ISR. They had liaisons in the community. There was an ongoing conversation with both the Inuvialuit Regional Corporation and the Inuvialuit Game Council to get a better idea of what they should be bringing forth in terms of the proposal, what concerns they should be addressing from a community level. There was an ongoing slew of workshops that industry worked with the game council and IRC on before it even developed its proposal.

That kind of speaks to the depths of relationships that the Inuvialuit have been able to build, not only with governments but also with industry. They've created a very strong relationship with both government and industry. At the end of the day, the Inuvialuit offer sustainable development and they understand the need for all this work on the front end in order to create a proposal for development where there are fewer hiccups and challenges down the line. I think that's part of the strength of the IFA.

Mr. William Amos: Okay. I appreciate that the IFA essentially imposes constitutionally protected obligations to consult, so this kind of behaviour is to be expected and anticipated. But was the IRC comfortable with undertaking that environmental assessment, which would have been a process, as I understand it, driven effectively by the National Energy Board at the time, and was the IGC comfortable with that situation?

Ms. Kate Darling: What I remember is that at the time, because the review board was also starting its process, there was confusion and a lack of communication about how those timelines and processes were going to be implemented and whose spot was going to table which issues. Unfortunately, when the review process was paused, I think many stood back and were wondering how, if this were to have gone ahead, it would go through. There was still a lot of confusion about the roles of the various boards, including the NEB, and about how they were going to talk to each other.

● (1210)

The Chair: Thank you very much. I'm sorry that we've run out of time on that line of questioning.

Monsieur Godin.

[*Translation*]

Mr. Joël Godin: Thank you, Madam Chair.

I want to thank the witnesses for taking part in this exercise. It is informative for us. We are in a rush to assess a bill that is 400 pages long and we need your help. I am no expert, so your comments are very relevant and very helpful to us in our work as parliamentarians.

I will now turn to Ms. Lam, who is on the other end of the line.

In your presentation, you said that you support the bill's objectives. I have a very simple question for you: are we taking the right steps to achieve those objectives?

[*English*]

Ms. Jennifer Lam: The spirit of the bill I think moves in the right direction. At least for the game council, the manner in which the government went about consulting and working with the land claim groups, striking the expert panel, and building an understanding of what they were trying to do sounded very promising. The intent of the bill I think is on the right track. The purpose is to foster sustainability and protect the environment, then the health, social, and economic conditions. That is all hand in hand with the land claim.

For Inuvialuit, I think the main point we wanted to put forth was what we've provided this morning to you all: to provide clarity and certainty for the land claim groups as well as for industry and government.

[*Translation*]

Mr. Joël Godin: Thank you, Ms. Lam.

From your answer, it seems we are on the right path, but you did not reassure me that these are the best steps to achieve the objectives. That is what I understand and I see things the same way as you do.

My second question is for you, Ms. Darling. You have concerns about section 31, which pertains to substitutions. You also have doubts about schedule 2 because it is not clearly defined. What could we do to allay your concerns?

Ms. Kate Darling: Thank you very much.

I do not understand. Which concerns are you referring to?

Mr. Joël Godin: You talked about section 4 and the fact that schedule 2 is not clearly defined. You have concerns about the definition of projects to be included in schedule 2.

[*English*]

Ms. Kate Darling: Thank you.

Proposed section 4 of the bill is a very broad non-application clause. It's unclear, because schedule 2 has yet to be defined, whether this would remedy any of the concerns that Inuvialuit have brought forward on the issue of the application of the act to this region. Instead of applying to jurisdictions, which is what Inuvialuit have over their land and region by virtue of the IFA, this clause applies simply to land.

The text we're recommending is to improve the clarity of that clause in order to provide for a carve-out, as Mr. O'Connor called it, or a non-application to those jurisdictions that have land claim agreements that have impact assessment systems within them.

● (1215)

[*Translation*]

Mr. Joël Godin: Thank you, Ms. Darling.

My third question is for Ms. Hoyt.

I will summarize your comments briefly, but I do not want to put words into your mouth. I understood that you are concerned that the projects to be assessed will not take into account the viability and public interest of your indigenous group.

Based on what you said, is it true that this bill could gradually eliminate rights and the viability of various indigenous groups?

[*English*]

Ms. Andrea Hoyt: It's not that this bill specifically will eliminate the rights of indigenous groups, but overall the federal laws have tended in that direction. We are concerned that this law does not move in the opposite direction, as it could.

[*Translation*]

Mr. Joël Godin: In other words, it does not improve the situation as to your rights. Is that correct?

[*English*]

Ms. Andrea Hoyt: Yes, that's our concern. By not seeking consent, it continues to allow the federal government to have power over the indigenous groups.

[*Translation*]

Mr. Joël Godin: Thank you, Ms. Hoyt.

Thank you, Madam Chair.

[*English*]

The Chair: I know six minutes goes very quickly.

At this point I am going to thank our guests very much for their time. Your testimony has been incredibly helpful to us. You're on the ground, you're dealing with this daily, and your advice is welcomed.

The reason I am stopping now is that we do have another panel. I want to make sure we're fair to both panels and give each panel 45 minutes, because we will have to close the meeting just before two o'clock to be able to get over to the House in time for QP.

Thanks again to our guests.

We're suspended.

● (1215)

(Pause)

● (1225)

The Chair: We're going to resume. Thank you very much. We're going to introduce our witnesses for the second panel.

We'll start with the Canadian Environmental Law Association, and we have Richard D. Lindgren, Counsel. We have the Métis National Council, with Kathy Hodgson-Smith, who's a Barrister and Solicitor at Hodgson-Smith Law. We have the Mikisew Cree First Nation with Melody Lepine, who is the Director of Government and Industry Relations. We have Mark Gustafson, who is an Associate at JFK Law Corporation. We have the Tsleil-Waututh Nation with Chief Maureen Thomas, and John Konovsky, who is a Senior Adviser.

Welcome to all of you. I'm just trying to figure out who might like to start with us. You'll have 10 minutes.

Mr. Lindgren, the floor is yours.

Mr. Richard Lindgren (Counsel, Canadian Environmental Law Association): Thank you, Madam Chair.

Good afternoon, members of the committee. The Canadian Environmental Law Association welcomes this opportunity to speak to the impact assessment act.

As you may know, CELA is an Ontario legal aid clinic. We've been around since 1970. We specialize in environmental law, and on behalf of our clients, we've been involved in federal EA proceedings under the EARP guidelines, CEAA 1992, and CEAA 2012.

It is on the basis of that experience that we have assessed and evaluated the impact assessment act, and in our conclusion, the act is inadequate and incapable of regaining public trust in the federal process.

I've set out the detailed reasons for that conclusion in our written submission that I filed with the clerk and that I provided to each member of this committee. I'm not sure if you've had a chance to read it or whether it's caught up with you yet. I should say at the outset that I apologize for the length and complexity of those written submissions. I don't get paid by the word. I'm just simply trying to identify all the things in the act that need to be fixed, and frankly, that's a long list.

In our written submission we've also offered 35 different recommendations in relation to the act. You'll be relieved to hear that I don't intend to go through all 35 this afternoon. I don't have the time, in any event. I thought it might be more helpful and perhaps more efficient for me to simply highlight the top five concerns that we have about the bill.

In my respectful submission, the problems with the act really arise from the unfortunate decision to use CEAA 2012 as the starting point for the act, as opposed to beginning with a clean slate and drafting a whole new statute. In my respectful submission, it's obvious and regrettable that the basic architecture of CEAA 2012 has been carried forward into the impact assessment act, subject only to a handful of new provisions that, frankly, do not fully fix the problems and the weaknesses associated with CEAA 2012.

In my view, replacing one deficient law with another deficient law will not do the trick if we're serious about sustainability and about restoring public confidence. If anything, the act as drafted will continue or compound the many problems we see right now in recent CEAA cases.

What are the major concerns? I've boiled them down to five overarching concerns.

Number one, the act creates excessive discretion at virtually every assessment stage and every decision point under the legislation. You've heard that concern from several other witnesses, and I fully agree with them. Now, in making that submission, I recognize that giving broad discretion confers maximum flexibility to federal officials, but at the same time, it significantly diminishes the certainty and the predictability that proponents, members of the public, and others are asking for in the federal process.

Number two, the act fails to establish an independent quasi-judicial authority for gathering information and making credible, evidence-based decisions. This was one of the most important and far-reaching recommendations of the expert panel, yet the proposed impact assessment act does not reflect it at all. Instead the act simply retains political decision-making on the basis of some vague considerations. That's not a new and improved regime; that's essentially same old, same old. In this regard, I concur with Mr. Northey's testimony last week, when he strongly endorsed the need for an independent body or a tribunal to make decisions under this act.

Number three, the act fails to entrench meaningful public participation in all key phases of impact, regional, and strategic assessments, as well as in the self-assessment process that's been outlined for projects on federal lands. In short, too many critical details for public participation have been left out of the act, or have been left to unknown future regulations or undrafted guidance materials. That's not good enough.

● (1230)

Number four, the act fails to limit or prohibit life-cycle regulators from being members or even chairs of review panels under the act. This represents another key recommendation from the expert panel that has not been implemented in this legislation. To be clear, CELA does not object to having life-cycle regulators participate in the review panel process, but regulators should not be leading or co-leading the impact assessment for the reasons offered by the expert panel.

Finally, number five, the act fails to include mandatory triggers or clear procedures for the conduct, content, and outcome of regional and strategic assessments. Again, several other witnesses have noted this, and I concur with their submissions.

In conclusion, I urge the committee to take a hard, long look at the proposed act. If you agree with CELA and many other witnesses that there are fundamental problems with the act as proposed, that seems to leave this committee with very few viable options. Given its fundamental flaws, the whole act really should be rewritten in its entirety. That's certainly my preference, and that would be my primary recommendation to this committee.

However, given the committee's rather compressed timeline for reviewing Bill C-69, a complete do-over of the impact assessment act does not appear to be a realistic option for this committee to undertake on its own in the time frame. That leaves us with one other potential option, which is to try to patch up this act with a series of piecemeal amendments here and there. However, to me, that seems like putting band-aids on a patient who really needs major surgery, so that piecemeal approach will not work.

From a public interest perspective, CELA submits that it's far more important to get this law right than it is to rush things and get a bad law passed. In my view, the expert panel report gave all of us an excellent blueprint for constructing the new impact assessment law, so if this committee is inclined to amend the legislation, then let's use the expert panel report, not CEAA 2012, as the starting point for doing what's right.

Subject to any questions, Madam Chair, those are my submissions.

The Chair: Thank you very much.

What we'll do is hear from all of the panel members and then go to questions.

I'm wondering if Ms. Hodgson-Smith would like to go next.

Ms. Kathy Hodgson-Smith (Barrister and Solicitor, Hodgson-Smith Law, Métis National Council): Thank you very much.

I'm hoping my voice maintains, my apologies.

On behalf of the Métis National Council president, Clément Chartier, I thank the committee for its important work and study, and for creating space for the Métis Nation in this important dialogue.

The Métis people, as you know, constitute a distinct indigenous people based in western Canada who ground their assertion and nationhood in well-respected international principles, with a shared history, culture, language, and traditional territory that spans the prairie provinces and goes into parts of Ontario, British Columbia, Northwest Territories, and the northern United States.

We have had a long legal struggle to find a place constitutionally, and a lot of political struggle to find our way into recognition under section 35, through the decision of the Manitoba Métis Federation case where the issue of relationship to land and outstanding historical grievances was before the Supreme Court. Most recently we have the decision of the Supreme Court in Daniels, which has clarified the issue of jurisdiction in terms of the Métis under section 91(24).

We have experienced significant isolation and exclusion in the absence of clarity under section 91(24). With this recent clarification it has brought us to this table to make comment on federal legislation while still having a significant bundle of outstanding grievances, including rights of authority over territory, lands, resources, and without having developed robust relationships with industry or government over the last number of years.

I was reflecting on the submissions of the Inuit recently, of their success stories. I reflected upon the success of co-management under parks, where part of that success grows out of long-standing, historical relationships, where people, together, have looked at, for example, environmental assessment over a 30-year period.

For the Métis Nation we are embarking on negotiations under section 35, and the design of what we hope to be parallel systems of engagement with the Métis Nation on environmental impact. In the absence of that, we have been looking at existing structures to see what works. Where does this particular piece of legislation create the space for what could be negotiated, and does it close doors on opportunities?

Canada has made commitments to fully implement the UN declaration on a principled basis, to address the needs of the Métis Nation, and to implement obligations under section 91(24). It has committed to protecting section 35 rights.

The bill, as it's currently proposed, lacks those commitments front and centre, not just in a preambular kind of way but in a way that decision-making mechanisms and processes could reflect and do reflect a genuine implementation of jurisdiction and authority of indigenous peoples over particular lands.

This is the context in which we have come to look at Bill C-69.

When I look, for example, at the issue of decision-making, one of the questions we had was to try to flow chart out when and where indigenous authorities would make decisions. At what point in the process is an indigenous consideration considered? It was an impossible flow chart to draft. Therefore, we recommend clarity and reconsideration around the decision-making structures.

● (1235)

I think that there are several triggers of the Métis in Cumberland House who are dealing with the changing water flows of the dam, and are seeing cumulative effects and buildup and saying, “What's the trigger? How do we trigger an environmental assessment on this?”

I then go to the legislation and say, “Where would that trigger be?” However, I don't see that trigger. I don't see where the inclusion of the indigenous peoples in decision-making is for determining what the effects are, whether we have done sufficient research and analysis to know the effects—is the evidence sufficiently long—what the effects are on indigenous rights, or real clarity on what the public interest test is?

I'm reminded of the recent Supreme Court of Canada comments on balancing the public interest, where they said:

> The public interest and the duty to consult do not operate in conflict here. The duty to consult, being a constitutional imperative, gives rise to a special public interest that supersedes other concerns typically considered by tribunals tasked with assessing the public interest. A project authorization that breaches the constitutionally protected rights of Indigenous peoples cannot serve the public interest.

Therefore, a review of the decision-making points is important. What gets on a project list? What's on schedule 2 remains a mystery.

The other, broader lens, in terms of the promises of government and the path forward that I think indigenous peoples have felt will be an effective one, is the nation-to-nation and government-to-government approach. However, that approach is really not here either. There is a generic category of indigenous group, community, or people, but how the relationship unfolds, in terms of reconciliation moving forward, is an important consideration.

If there is a recognition of a nation-to-nation relationship, there is then, in the implementation of the legislation, a clarity on appropriate representatives, with appropriate and effective investments in capacity, which are crucial, and which need to be ongoing and substantive. For the Métis Nation, without any capacity, when you're standing still, it's a very huge job to get the momentum going.

Also important is determining effective partnerships, clarifying when consent is achieved or what mechanism is best placed to advance consent, and in that way, legal certainty, and ensuring the proper protection and use of indigenous knowledge. I use that as a broader category than traditional knowledge, in the sense that, in this country, we don't have protections for indigenous knowledge. That's left for indigenous people to manage on their own. Once it goes into the public realm, where does it go? How is it used? What is the mechanism around that? That is unclear, but perhaps subject to a guideline or a schedule yet to be determined.

I think it would also allow the indigenous peoples' expertise on sustainability to have a meaningful influence on decision-making. There are many strengths to this piece of legislation, including early engagement and other mechanisms. With a bit more focus on the indigenous peoples, I think you could have a much stronger piece of legislation that meets a lot of needs, including those of industry and more broadly, other Canadians.

● (1240)

The Chair: Thank you very much.

Chief Maureen Thomas, would you like to go next?

Chief Maureen Thomas (Tsleil-Waututh Nation): Thank you, Madam Chair.

I would like to acknowledge all the committee members who are here today to listen to us and to thank you very much.

I would also like to acknowledge that we are on the Algonquin territory and thank them.

I have a scripted thing in front of me, but I'm never very good at using one, so I would like to just speak.

My ancestral name is Si’lhe-Ma’elWut. It comes from my Si’lhe-Ma’el family. I'm a part of the Tsleil-Waututh Nation now, which is located in North Vancouver along the north shore.

Tsleil-Waututh is a community on the north shore, but at one time our ancestors inhabited the whole of the north shore. We are very central to a highly urbanized region, and we are a tiny little piece of property there. We are so impacted by the human element, by industry. There are so many things that impact our well-being and the well-being of the whole of the city of Vancouver. Today we are going to be talking, therefore, about the impact assessment part of Bill C-69.

The other key component I've been noting this morning or this afternoon is that there is a lot of discussion about indigenous jurisdiction. I think that's where I will focus.

John Konovsky is here with me, and he will speak to some of the detail. He's better at it than I am.

When you think about indigenous jurisdiction, I know right away when I look at all of you here that all sorts of red flags are going to go up. You immediately are going to look at all the risks and what they are going to mean to Canada. Someone said to me that relationships are important. When I look at you people—you're the Liberal, you're the NDP, and you're the Conservative—you're here for Canada. You have to have a relationship. You don't always have to agree, but that relationship among you to run this country is important. Without each other, you cannot do it. You bring a balance.

That's how I perceive first nations and the jurisdiction that we have and, I'm going to say, that I have for my community. It's inherent. It's within us to be stewards of our land. We're here to protect it. We're here to ensure that it's there for our grandchildren down the road. There is nothing that is going to stop us from protecting it. When you.... I don't want to say “you”; I'm sorry. When things come into our territory, we have to ensure that what is brought there doesn't leave a lifelong risk that is going to extinguish our being on that territory for my children and grandchildren down the road.

I appreciate your looking at this act with the idea that the existing one is inadequate. I also want to acknowledge how important it is for all of you to get it right, how important it is for Canada.

I know he wants it all rewritten. I know that is going to be challenging. For me, every little bit of improvement along the way is all we can truly ask for. If there is improvement, if there is a true desire for reconciliation.... All these words mean nothing to me in the sense that they're words from here. It's when you start living those words that I can truly come to this table and work with you to find a way to improve all of our living and well-being, for today, tomorrow, and well into the future.

● (1245)

That's what Tsleil-Waututh is about. We're not about taking anything from you. We're not about making life difficult for you. We're here to help you. We're here to work with you. Without that ability to do it, we're going to fail. If we're not allowed this freedom and these rights to protect, you're going to fail, and we don't want that.

You don't have to be afraid of us. Sure, you're going to have communities, and everybody is at a different level across Canada, including your constituencies. First nations are no different. We're all at a different capacity. We live in different regions. We have different strengths and weaknesses, but in our hearts and souls, we're all the same, including you. You want to protect what we have, and I know you guys can see the damage to this global world of ours that's going on.

That is what we're here for. We're not here saying let's fight with the Liberals, let's fight with the NDP, or let's ignore the native people. It's not about that. This whole process, this document, is about the environment and how we're going to protect it and how we're going to move forward into the future.

I can honestly tell you from my perspective, I care about each and every one of you. I care about your well-being. That's who we are. We're not here to fight with you. We're not here to cause problems for you. I know it's seen that way, but you always have to look at the bigger picture. That's how I approach everything. That's why I have no idea what's in this document.

Thank you.

● (1250)

The Chair: Thank you.

Mr. John Konovsky (Senior Adviser, Tsleil-Waututh Nation): I hesitate to follow up on that with some technical details.

Thank you, Chief Thomas.

We have submitted a number of recommendations in our written submission, and I will refer you to those. There are a number of ways that the bill could change, but we have tried to identify some key things that we think need to happen.

The first really relates to what Chief Thomas said. There needs to be a way to self-identify as a jurisdiction in the bill. We have submitted in our written testimony an additional definition of a "jurisdiction" under proposed section 2 that allows self-identification. Of all the things we could possibly say, that's the key issue that Chief Thomas just raised. We can't have a system where we have to go through another process to be identified as a jurisdiction. It needs to be consistent with the Prime Minister's commitment to recognition and implementation of an indigenous rights framework, so the amendment that we have proposed is really key.

I agree with the panel members on another issue, that the bill provides wide discretion for the minister. If the discretion remains in the act, Tsleil-Waututh requires some type of safety valve to address disputes. In particular, Tsleil-Waututh is concerned that the act in general makes no mention of an appeals process in the event of a disagreement. While the act provides an opportunity for indigenous groups to participate as jurisdictions, it falls short of true decision-making. We therefore believe a dispute resolution process is necessary.

One option is the tribunal idea that was floated at the panel. We would be supportive of that idea, but if that doesn't sit well with the committee, we would, at a minimum, request that there be an automatic right of appeal included directly in the legislation.

Our preference is to broadly construe that right of appeal, and we have provided language to this effect in our written testimony. Stepping back a bit more, when you look at the factors in proposed sections 16, 22, and 63, we see that indigenous communities are subsumed under factors to consider. We really assert that the constitutionally protected rights of indigenous communities are different from the other factors on that list. At the barest minimum, there needs to be an automatic right of appeal should there be infringement or the threat of infringement on indigenous rights. That's really the other key thing that we want to drive home here for the committee today.

With that, I will let the written testimony speak to the rest of our comments. Thank you.

● (1255)

The Chair: Thank you very much. I'm sure we'll be getting into some of it with the questions as well.

Next up is Ms. Lepine.

Please go ahead.

Ms. Melody Lepine (Director, Government and Industry Relations, Mikisew Cree First Nation): Good afternoon, Madam Chair and committee members. It's an honour to be on Algonquin territory today. Thank you for the invitation to speak.

I hold the position of director of government and industry relations with the Mikisew Cree First Nation. I'm joined today by Mark Gustafson. Mark is a legal counsel who is assisting me on numerous regulatory files and will be helping me answer some of your questions today.

Mikisew has prepared a written brief. That brief contains detailed legislative amendments that we ask you to consider.

The Mikisew Cree is the largest Treaty 8 first nation within the Athabasca oil sands region. Our office has been reviewing numerous environmental impact assessments for the last 17 years and has directly participated in about eight joint regulatory hearings, raising environmental concerns and concerns about impacts upon our culture and way of life.

Our traditional territory houses a convergence of federal interests. It is home to Canada's largest national park, is a world heritage site designated under UNESCO, is inclusive of transboundary waters, provides one of North America's most important migratory bird pathways, and is home to such iconic species as woodland caribou and wood bison.

Recently the UN's world heritage committee sent experts to review the state of Wood Buffalo National Park, after we raised concerns that Canada is not doing enough to deal with downstream impacts from hydro dams and oil sands development. Those experts found that Canada is failing the park and the indigenous people within it. Flaws in Canada's environmental assessment process played a role in this embarrassing outcome for Canada. The 2017 IUCN World Heritage Outlook says that the park is now of significant concern and shows a trend of deteriorating.

I cannot stress enough how important federal assessments are to creating better relationships with industry and government, building healthy communities, and protecting federal environmental interests. That's the lens we have used to review Bill C-69.

For us, the most disappointing part of Bill C-69 is that it likely means that the federal government is abandoning the best tool it has to protect Canada's largest world heritage site from the very activities that have put the national park on the verge of being added to the list of world heritage sites in danger.

It is also abandoning a key tool for respecting the Migratory Birds Convention, abandoning a key tool for protecting iconic federally recognized species at risk and for reaching Canada's greenhouse gas goals.

It is also abandoning the best tool available to us in implementing UNDRIP and recognizing our right to take part in making decisions that affect our livelihood.

How have we come to that view? It comes down to triggers and what is happening in the oil sands. As the bill is currently drafted, federal assessments will only happen if an activity is on the project list or if the minister makes a discretionary decision to require it. We agree that both have a place in the bill, but they aren't enough for the federal government to protect its interests.

First, the project list is a blunt tool. It's meant to capture megaprojects—and it's useful in that regard—but it isn't flexible enough to be responsive to key areas of federal jurisdiction, such as world heritage sites, species at risk, or transboundary waters. It has been our experience that the project list excludes many of the activities that have been shown to directly and cumulatively impact species at risk and the Peace-Athabasca delta. As it stands, the project list means that you will likely never see another federal assessment in the oil sands region.

Let me repeat that. Even though industrial activities are putting a national park, woodland caribou, and bison at huge risk, there may never be another federal assessment as this bill is currently drafted. This is because the future of oil sands is the expansion of countless smaller projects that are less capital-intensive but equally problematic for federal environmental interests.

Second, while there is a process for updating the project list under way, not a single request we have ever made for an activity to be added to the project list or its predecessor has ever been accepted.

Third, discretionary decisions to require assessments are inherently hard to deal with, and they don't provide certainty to anyone. They also leave that important decision up to political lobbying campaigns that, in the end, undermine the very trust in the system that you are trying to restore.

● (1300)

Fourth, on many occasions we've requested a federal assessment because a project could impact federal matters and our rights, and the answer has been no. From that perspective, the new criteria guiding discretionary decisions isn't likely to make a difference. Where does this leave us? We believe there is a path forward that will allow you to be responsive to core federal jurisdiction without upsetting the structure of the bill.

Our proposal would provide greater certainty to Canadians that key federal matters are being properly assessed. At the same time, it would easily merge with the new planning phase to ensure the assessment matches the size and complexity of the proposed activity. In other words, it won't create delays. You'll find our solution on page 7 of our brief.

First, it entails creating a modest, third way to trigger assessments. This category is tightly scoped to core matters of federal jurisdiction. Second, we've also proposed that the minister develop sub-regional regulations with new assessment triggers where a regional assessment has determined an area that is experiencing a high degree of cumulative impacts. This flows from normal impact assessment practice. Once thresholds are exceeded, even a small impact can have serious consequences.

Next, I will highlight a few other proposals in our brief that connect with questions the committee has asked over the last few weeks about what the bill means for achieving indigenous consent.

In my experience, when there is a federal assessment, we have a better chance of getting the information we need to make informed decisions and getting us on a path to consent. The same cannot be said for provincial regulatory processes. The Alberta regulatory process creates a loss of trust, animosity, and in the end, legal and investment uncertainty for proponents. If the government is serious about getting first nation consent in a timely and effective way, the key starting point is improving the triggers for when assessments take place.

Another way to advance this goal is to make sure that the act works for indigenous consultation. We have proposed a few modest changes on pages 8 and 9 of our brief for improving how timelines are calculated and how the agency works with us to improve our chances of getting to consent.

Next, there a few inconsistencies in the bill that we have identified in terms of criteria for decision-making and tracking through the improved language around traditional knowledge. We've proposed solutions for these on page 9 of our brief.

Before I make my closing comments, I want to highlight that our brief also covers the navigable waters act. The key issue we have brought to your attention is that the act needs a key tweak to enter the 21st century.

If you come to our territory, you'll hear everyone talk about impediments to navigation, but the huge impediments we are facing are barely covered by the act because it is primarily focused on physical barriers. Activities that change the flow of rivers is what impacts navigation most heavily in our region. There are a couple of new sections in the act that start to get at this issue, but they are essentially inadequate. If you want to make a difference to our way of life and inland navigation, fix these provisions.

I want to leave you with a quick snapshot of our proposal.

First, take federal jurisdiction seriously. When you do, you protect Canada's international standing, respect indigenous people, and build a stronger economy. All that is needed is to add a small list of legislative triggers to provide a backstop to the project list. Those are in our brief. We are confident that Canadians and industry would support reviews for projects that could impact nationally important species like caribou and bison, and Canada's world heritage sites.

Second, recognize and respect your treaty partners. As the Supreme Court said, consultation with indigenous peoples is always in the public interest. That can start to be achieved if you adjust the wording around timelines and better incorporate the UN declaration. We've given you a few recommendations to get there.

Finally, make the space for certainty and good decision-making. That means fixing the triggers for assessment and clarifying the considerations for decision-making.

Bill C-69 is far from perfect and less than we expected to see after months of engagement on EA reform, but it can be improved.

Thank you for your time.

The Chair: I thank all of you very much for the very detailed recommendations that you've made. We don't have all of your briefs yet in front of us.

I think your brief came in just after the deadline, but because you're one of the groups that we had identified we wanted to hear from I authorized quite a few briefs that came in late, so they're in translation right now. We should be getting that by the end of the week, just so you know that we don't have it in front of us.

Starting up is Mr. Bossio.

● (1305)

Mr. Mike Bossio (Hastings—Lennox and Addington, Lib.): Thank you, Chair.

I thank all of you very much for being here today.

Rick Lindgren, it's great to see you, sir.

Rick and I have worked together for 20 years where he represented a community organization that I was a part of. We've gone through one full environmental assessment—we are in the process of another environmental assessment—a judicial review, and an environmental review tribunal together. We have a lot of experience.

Going through that process creates a lot of concerns for me around meaningful public participation and the importance to both proponents and the public of an appeal mechanism that upholds accountability and oversight.

If you could, please, I'd like you to highlight for us some of the areas in the bill that could be improved to ensure that we have meaningful public participation, and the importance of having an appeal mechanism like an environmental review tribunal.

Mr. Richard Lindgren: In my view, meaningful public participation is the condition precedent to informed decision-making and to restoring public confidence in the process.

The problem with the bill as drafted is that it provides few, if any, details as to how public participation is going to be provided under this bill, particularly in relation to project-level assessments. For example, I draw your attention to proposed section 27 of the bill, which says that when conducting an assessment, the agency shall provide an opportunity for the public to participate.

That's it. There is no indication of how, when, through what mechanism, or when participant funding will be provided. Is it going to be provided in the planning phase? Those essential requirements are wholly absent from the bill. That's regrettable, because that's exactly the same provision that was in CEAA 2012, the one that was found to be wholly deficient by the environmental assessment expert panel. I would have expected further and better details about public participation in this bill, the proposed impact assessment act, yet they are almost wholly absent.

To fix that, do you want the long list or the short list? At the very minimum I would expect to see a good definition of meaningful public participation. I provided one in my submissions. The preamble and the statement of purposes should be expanded to breathe some life into the concept of meaningful public participation. Then, at each and every stage of the impact assessment process, there should be explicit requirements in terms of access to information, reasonable notice, and the ability for people to call and cross-examine witnesses. Those are the kinds of procedural safeguards that I say are essential to the timely, effective exercise of public participation rights. If you don't have those safeguards built into law, those public participation rights are hollow.

In terms of the preference for a tribunal, I've been practising environmental law in this province for over three decades. I've spent a lot of time before this province's environmental tribunals. I say to you, if you really are interested in having meaningful public participation, you want procedural fairness, and you want accountable, evidence-based decision-making, the tribunal route is the way to go. If you want over-politicized, highly controversial backroom deal-making, go the route of this act. You can't pretend to be restoring public trust by avoiding the public scrutiny of a tribunal and leaving it ultimately to the minister and/or cabinet to make a decision at the end of the day.

If this bill is passed intact without any amendments, I would be hard-pressed to advise a client to participate in the impact assessment process. I'd say, “Why bother? Why spin your wheels? Why spend literally months or years raising funds, making submissions, and doing everything you need to do at the agency level or the review panel level only to have that mean little or nothing when the decision actually gets to the decision-maker?”

That's why I strongly support the principle. There should be an administrative tribunal that's fully equipped and properly resourced to make the decisions. They hear the evidence; they can assess the credibility of the witnesses; they observe the demeanor of the witnesses. They're in the best position to make the decision. Unfortunately, that process is not reflected in this bill.

● (1310)

Mr. Mike Bossio: How do you see the role of the Federal Court system in this, in comparing the tribunal process to the court system?

Mr. Richard Lindgren: In theory, the courts are there to ensure compliance with statutory requirements. That's their traditional function on judicial review. The courts are there to provide some level of judicial oversight. The problem is that when you leave these things in very vague terms, the courts are reluctant to intervene.

I can tell you this because I've been chewed up and spit out by the Federal Court a few times on these kinds of issues. Where on behalf of our clients we've gone to court and we've indicated to the court that there was little or no evidence to support a finding or a conclusion, the court said, “You know what? They've mentioned the word 'need', or 'purpose', or 'alternatives', so at least they've cast their mind to that issue. They've given it some consideration, so we're not prepared to intervene.” That, unfortunately—

Mr. Mike Bossio: Would you agree, though, in regard to the tribunal, that the importance of it is the fact that you have a panel of experts in all the different areas of sustainability that are supposed to be the purpose of the law?

Mr. Richard Lindgren: That's the whole purpose of a specialized administrative tribunal in modern-day Canada.

Mr. Mike Bossio: Thank you, Mr. Lindgren.

The Chair: Thank you.

Mr. Sopuck.

Mr. Robert Sopuck (Dauphin—Swan River—Neepawa, CPC): Thank you very much.

One of the things that puzzled me about all the testimony today from both our panels was that little or nothing was said about jobs, economic development, and the importance of people having incomes.

I used a phrase in the last meeting that if someone has a livelihood, they have a life. I think it's important that we focus on jobs and economic development, but all done in an environmentally sound way.

Just for the panels' benefit, I'm a fisheries biologist and spent my whole life and career involved in environmental assessment and conservation. However, I represent a natural resource constituency and again, just for review, the natural resources sector—I'm quoting from a study here—“accounts for 13 percent of gross domestic product (GDP) and 50 percent of exports. When spinoff industries are added, the contribution of natural resources to GDP jumps to nearly 20 percent. About 950,000 Canadians currently work in natural resource sectors, and another 850,000 workers, spread across every province and territory.... Combined, this amounts to 1 in 10 jobs in Canada. In addition, the energy, mining, and forestry industries provide over $30 billion a year in revenue to provincial and federal governments,” providing all of us with the public services that we so greatly need.

My first question is to you, Ms. Lepine. We had testimony from Fort McKay Chief Jim Boucher. I should let you know I spent time in the oil sands, I worked on the Kearl project close to Fort McKay. It was pointed out in this article that Fort McKay has a zero unemployment rate with members enjoying average annual incomes of $120,000 and financial holdings in excess of $2 billion thanks to its willingness to do business. Also, the Mikisew Cree, I guess, have just purchased 15% of a Suncor facility.

Isn't this a major success story to be celebrated by your community? I think you've done remarkable work here based on these numbers.

Ms. Melody Lepine: Absolutely. Our community has celebrated that success story.

I want to also note that the livelihood that you mentioned refers to a way of life and cultural intactness in which we do need, I think, an environment that supports that way of life and that livelihood as well. We should not restrict those members of our community who choose to have the ability to have those meaningful livelihoods, not only for today but for future generations.

Good projects come from good assessments. Good assessments come from ensuring that a healthy environment and healthy community, who advance the economic opportunities that are provided to us, are very important. However, without proper assessments and assessing impacts to rights and impacts to our way of life, our culture, and to our social well-being, you can have all of the opportunities in the world provided to indigenous communities, but if they're not ready and if they're not provided the ability to participate in federal assessments in a meaningful consultation process, then those opportunities mean nothing to us.

Mr. Robert Sopuck: Obviously, good environmental assessments are important. Industry has never said that they want an easy way out, but again, what happens far too often is that you get endless process and market opportunities are missed.

One of my first careers was working on a pipeline assessment in the Mackenzie Valley and I came across an article, from December of last year, that the Mackenzie Valley pipeline is now off the books completely. One of the aboriginal people, who is the mayor-elect of Tuktoyaktuk, said, “We had a lot of high hopes. We even built a new hotel...in Inuvik in the hopes the pipeline was going to take off.”

What they're really saying is that these are communities that have lost a major economic opportunity. The other thing is that we had a very interesting testimony from Chief Ernie Crey from the Cheam First Nation. He's one of 43 first nations who have mutual benefits agreements with Trans Mountain, reportedly worth more than $300 million and he talked about how excited his constituents were to receive the training that they were going to receive from Trans Mountain.

I'm going to ask you, Chief Thomas, since you're from British Columbia as well, should Chief Ernie Cray be excited about the development of the Trans Mountain pipeline, given the benefits that he sees for his people?

● (1315)

Chief Maureen Thomas: You can look at it from that perspective.

Mr. Robert Sopuck: Sorry. These are his words. They're not mine.

Chief Maureen Thomas: No, but I mean you can look at it from his perspective of how important this economy is to each first nation that has signed on. I will never take away anything, in that context, from the way they feel and how they want to conduct their way of life.

I think, however, that if you truly look at that statement, you should look deeper. Look at these communities, the first nations across the country, and see how isolated they all are and how everything for them becomes 10 times harder because of the situations the Europeans have placed them in and placed on these reserves, and how confined they are, and how restricted they are in trying to generate a way of life for their being. They can no longer live the life they at one time did, and not every community have the opportunity to generate an economy because of their location and what surrounds them.

I can truly see the importance to them, but what are we trying to achieve here? It's about the protection of the environment and how we're going to do it. I appreciate the challenge you're faced with, because you have to look at all those components and analyze the whole to come up with the right decisions. I don't envy you one bit.

The Chair: I'm sorry; I let that go over because I wanted to hear from the chief, but we have gone past time.

Mr. Robert Sopuck: Thanks very much.

The Chair: Ms. Duncan.

Ms. Linda Duncan: I want to thank all of you for your very important testimony.

I raised this concern to the previous panel. As we have not received most of your briefs yet, I think we're going to need more time as a committee, if we're going to come up with recommendations for amendments that reflect your testimony, which is the whole purpose of this study.

My first question would be for Ms. Lepine. Thank you for your brief.

I know you have recently had experience with a strategic assessment, because you intervened with UNESCO. They have now directed that Canada and Alberta have to come up with a strategic assessment.

Can you share with us your experience with that process as to how well you feel your nation or any of the other nations and Métis in the area are being engaged, whether you think the bill as written is going to enhance or improve the conditions for when you can call for a regional or strategic assessment to deal with the cumulative impacts, and whether or not the bill adequately gives you the right to participate in those strategic or regional assessments?

Ms. Melody Lepine: I will ask Mark to add in any details I might miss.

Yes, the strategic environmental assessment was triggered out of our UNESCO petition. We had to go to the international community to call for an assessment on a world heritage site downstream from the oil sands. It's quite unfortunate that we had to go that route because of the failures of environmental assessments in our region.

The way the bill is drafted right now clearly doesn't give us the certainty that these will continue. Many projects, including the Site C B.C. Hydro project on the Peace River fail to assess, in this case, the dam's impacts on the Peace-Athabasca delta. We still to this day do not understand how a major hydroelectric project was approved without properly assessing what it means for impacts upon a world heritage site.

Having triggered an SEA through that process, we're quite fortunate that the SEA has been undertaken by Canada, but we have had to force it to happen. If the bill could allow for the certainty of these strategic and regional assessments' happening, that would provide greater confidence in local communities.

Mark, would you like to add anything?

● (1320)

Mr. Mark Gustafson (Associate, JFK Law Corporation, Mikisew Cree First Nation): The only thing I would add is the question, “So what?” If you do a strategic regional assessment, the act isn't clear on what happens next. Those assessments have to mean something. There are things communities have been calling for, in Mikisew's case for 30-odd years. They had to go to the international community, and now we're getting an assessment. It's still not clear, in that process or under this bill, where it's going to lead.

The Chair: I'm sorry, we lost the translation. Let's have you go back and redo that last bit.

Mr. Mark Gustafson: The fundamental point is that regional and strategic assessments have to mean something. They have to lead to some type of change in decision-making and process if that's what the outcome of the assessment suggests. One of the ways we've suggested dealing with that, in the Mikisew Cree brief, is by creating a power so that if a regional or strategic assessment finds that there is a high level of cumulative effects in a region, there would be a process to create new triggers for new assessments that are reflective of that situation.

Ms. Linda Duncan: Chief Thomas, thank you very much for your remarks. A number of other indigenous leaders have come forward and called for not only section 35 to be mentioned in the bill, but also the United Nations declaration.

There is a lot of debate about, “Well, if 40 of 100 chiefs have signed on and they support a project, isn't that enough?” I wonder if you could speak to this. It's my understanding that under the UNDRIP there isn't a quota system. I think you said very clearly that, for the definition of jurisdiction, you want the ability to self-identify and self-determine.

Am I correct in understanding that you're saying the bill should reflect the fact that each individual indigenous community should have the right to self-determine?

Chief Maureen Thomas: We know we have the jurisdiction. We believe that in our heart, in our being. The question is, how is the government going to recognize that? That's the challenge, because if it's going to be going through so many hoops within the act, you defeat the purpose. That's where I want to talk again about the relationship and being able to have a relationship with different communities.

Every community is at a different level, and every community might want to participate at a different level at a different time. That's what should be flexible within the act, that it's not so prescriptive that you're going to leave somebody out when they're ready. Not everybody is at a point of moving forward in doing these assessments and having that understanding, or these things might never travel through their territory, where they're going to need to do this.

I really appreciate the challenge you're faced with, but it should be up to the government to have the ability to recognize the jurisdiction, because we believe we have it. We have that stewardship, that jurisdiction. We're not here, again, as I keep saying, to cause problems. We want to work with you, and we have done so many successful projects working with different governments, whether it's in the ocean or on land, or whatever.

That respect of each other is what's going to bring us to that parallel where we can work together and not have these problems, if you want to call it that.

● (1325)

The Chair: Thank you very much.

Churence.

Mr. Churence Rogers (Bonavista—Burin—Trinity, Lib.): Thank you, Madam Chair, and welcome to the panellists. Certainly we've heard from a lot of different groups with very strong feelings and perspectives on this legislation.

I have a couple of questions for Mr. Lindgren. As we struggle with, of course, the issue of judicial panels and all the other things in terms of the role of government, in your view, is there a real way to depoliticize the process without taking away a democratically elected government's ability to make decisions for which they will be held accountable by Canadians?

Mr. Richard Lindgren: Yes, and the expert panel gave you that very recommendation when they said to create an independent authority with a limited right to appeal to cabinet. Therefore, the answer is staring us all in the face. That's the provision you can use to get away from over-politicized decision-making and have it decided on the merits.

Mr. Churence Rogers: As a follow-up question, Mr. Lindgren, your submission details the problems with timelines, as do others. We've heard from some other groups. How do we balance the importance of timely and efficient assessments with public and indigenous participation?

Mr. Richard Lindgren: The problem that I see in the current act is that it dictates a one-size-fits-all time frame for agency-led assessments and regional review panels, etc. I think it's far better for the parties themselves, in conjunction with the relevant authorities and jurisdictions, to work out their own case-specific or project-specific timelines. That has been done and done successfully. I just think that sticking to generic one-size-fits-all timelines is not the way to go about it. We need to have some more flexibility in the timelines.

I should also add that there is a myth out there that the environmental groups that I represent, for example, are really interested in bogging down the process—running out the clock and just bogging things down. I can tell you, that's not our interest. We don't have the time or resources or energy to do that. We want to see fast, timely, efficient processes as well. We want to get to the decision as quickly as we can.

I hope that nobody around this table thinks that we're in it just to slow things down. We want efficiency as well, but not at the expense of robust decision-making.

Mr. Churence Rogers: Thank you.

I have a question for Ms. Lepine.

Your submission talks about lack of consultation when the 2012 changes were introduced. Could you comment on the consultations for Bill C-69? Do you think they were adequate?

Ms. Melody Lepine: From what I recall, I was invited to participate in the review panel's work, and I provided a presentation. Now I'm here today. I don't know whether this is considered consultation on your part, but I don't believe it was adequate and the timelines are quite aggressive in terms of our....

To be honest, I don't even think most people in my community are fully aware of Bill C-69, and probably not in many other indigenous communities.

Mr. Mark Gustafson: I have a very quick response.

The Mikisew has sent in written submissions at every stage of the EA process, just as for the review of the Fisheries Act and the Navigable Waters Protection Act. No response has been received to any of those submissions.

Mr. Churence Rogers: Okay.

Thank you, Madam Chair.

The Chair: Just stop the clock for a second.

When you send in briefs, are you expecting that the committees get back to you concerning your briefs?

That doesn't—

Mr. Mark Gustafson: Just to be clear, that was in the EA review process—the expert panel.

The Chair: Okay, I understand. I just wanted to be clear on what that was.

Are you sharing your time?

Okay.

Mr. Amos.

Mr. William Amos: How much time is there left?

The Chair: You have about two minutes.

Mr. William Amos: Okay. I really wanted to go into that consultation issue and the "expectation of a response" issue, because I think it's an important one. I would simply say that it has to be very difficult in this kind of process for government and expert panels to respond to every single comment that is made. It's a Herculean task.

My question goes to Mr. Lindgren, because we've had an ongoing discussion with a number of witnesses on the issue of review, judicial or tribunal, of this process. Given that a quasi-judicial model has not been chosen for the impact assessment agency, is there a way in your estimation to craft a provision or set of provisions that would enable engaging that form of tribunal?

Also, is there language you might suggest that would enable that kind of process in such a way that it does not overload and overweigh the system, and in such a way that it might even help lighten the federal court system, which is ultimately also available?

● (1330)

Mr. Richard Lindgren: The short answer is yes, Mr. Amos, it is possible to construct an appellate body that can hear and resolve disputes arising from the impact assessment process at every stage, whether it's early planning, right in the middle, or at the tail end.

In my brief I have provided some drafting instructions concerning what such a tribunal might look like as an alternative, but I can undertake to provide more detailed language to this committee in the next day or two to flesh out what that appellate body might look like if it were to provide some meaningful oversight and accountability in the impact assessment process.

Mr. William Amos: Thank you.

The Chair: Monsieur Godin.

[*Translation*]

Mr. Joël Godin (Portneuf—Jacques-Cartier, CPC): Thank you, Madam Chair.

I would like to thank our esteemed witnesses for being here today. We all have the same objective, which is to enact laws that are more effective than the current legislation.

My first question is for Mr. Lindgren, from the Canadian Environmental Law Association.

Your comment that we are doing a good job is puzzling. You said —and I pretty much agree—that this bill does not restore confidence. I think that is very important as regards the environment. If I may summarize, you said that you find section 27 very simplistic. From what I understand, you think Bill C-69 is a shortcut.

I have a very specific question for you, since this kind of bill seems to be part of your daily work.

Can you please compare the current bill to the Canadian Environmental Assessment Act 2012 in terms of the process and the timelines for project certification?

[*English*]

Mr. Richard Lindgren: Thank you for the question.

I think it's fairly clear that the timelines now proposed in this act are shorter than what we currently have under CEAA 2012. The government's rationale for shortening the time frames is that they expect that the early planning phase will result in a scoping of the issues, a narrowing of the dispute, the proper and early engagement of affected communities and indigenous governing bodies, and so on.

That's kind of wishful thinking, based on how the act is drafted right now. I don't think the concerns and the problems we've had with timing will magically disappear with this early planning phase. I think it's because there's very little content prescribed in the act in terms of how the planning process is actually going to work. As drafted, the act only sets out a screening process for the agency to decide whether or not there's even going to be an environmental assessment of a designated project.

I would say to you, sir, that there's lots of room for improvement in terms of making this process work in the way the government says it should work.

[*Translation*]

Mr. Joël Godin: You said that a number of improvements should be made to the new act, but you also said that it needs to be rewritten. I would be inclined to choose the second option.

I will now turn to Chief Maureen Thomas.

I found your comments and philosophy very interesting. You said that we have to take action to protect our children. That has a very maternal ring to it. I am a father and I will be very paternalistic by adding that we must protect not only our children, but also our grandchildren. I think that is important. We need robust legislation that also balances economic development with sustainable development. We need to act to protect our children and for the sound financial management of our country.

You said that every small improvement counts. I agree, but we might as well do as much as possible to improve the situation. We could make small improvements, as a minimum, but I think we are able to make huge strides. It takes a lot of small steps to get anywhere.

I now have a question for your colleague, Mr. Konovsky.

Mr. Konovsky, you talked about a mechanism for recourse to a tribunal, with a right of appeal.

Can you elaborate on this suggested improvement?

● (1335)

[*English*]

Mr. John Konovsky: In our written testimony, as you will see when you get it, we recommend that there be a new section added to the bill, and that it be broadly construed to allow anyone who has an issue with decision-making, at any stage of the process, to appeal. In our conversations with the government, that has met with some resistance in terms of such a broad-based kind of mechanism.

Our bottom line is that in those lists of factors, constitutionally protected indigenous rights are unique. They need unique protection. In a new proposed section 62 or 63, perhaps, there should be a provision specifically for that kind of appeal should there be infringement or the threat of infringement. That's our bottom line. We agree with the idea of a tribunal as being the best solution, but if the committee doesn't want to go there, that's really the baseline we need in order to be satisfied with the bill.

[*Translation*]

Mr. Joël Godin: Thank you.

Ms. Lépine, you said that international organizations think Canada is not doing enough. I tend to agree with you. That is why the current government wants to make improvements, but I am not sure it can do that with this bill.

More specifically, you said in your presentation that this bill barely addresses the obstacles we are facing because it focuses primarily on physical obstacles. What other obstacles would you like to highlight?

[*English*]

The Chair: Mr. Godin, I hate to do this, but we are over time, so we don't have time for the answer, unfortunately. It was a good question.

We do have time for one more questioner, so maybe we can pick up on that. We'll see.

Mr. Bossio.

Mr. Mike Bossio: Thank you, Chair.

Mr. Lindgren, I'd like to expand a little bit further on the meaningful public participation piece, if I could, quickly because I have a question on UNDRIP that I want to get to as well.

Maybe you could explain the importance of ensuring the full breadth—not just a definition but the mechanisms—of meaningful public participation is written into the bill rather than the regulations.

Mr. Richard Lindgren: Thank you, Mr. Bossio.

My starting point would be referring once again to the sparse language we find in the act. Quite frankly, it's inadequate and unacceptable to simply say, "provide an opportunity to participate". We need further and better detail in the act in terms of the principles and the mechanisms to ensure meaningful public participation.

I fully anticipate that those basic public participation rights will be more fleshed out by regulation. In fact, I said that in my submission to the committee. There may well be a need for further and better guidance material as well, to ensure that we are all on the same page as to how you actually solicit and act upon public input.

The observation I would make is that we have lots of good guidance material from the agencies and others right now as to how to effect or implement meaningful public participation. It's not being done, and I invite you to look at the expert panel report on that very issue. Simply confining public participation requirements to a single sentence in the act was found to be utterly deficient by the expert panel. That's why we need to do better under this legislation.

Mr. Mike Bossio: Once again, though, does it suffice to have the words within the act "meaningful public participation" and then leave it to the courts to determine what that means based on previous arguments within the courts, or based on the regulations? I'm just tyring to figure out what is the best process in order to get at what "meaningful public participation" is.

● (1340)

Mr. Richard Lindgren: We should build as much of it as we can into the act. We should supplement it by more detailed regulations as to what it means and how these participation opportunities will be provided on the ground. That's including but not limited to participant funding.

I'd rather have that sorted out in the act through regulation and guidance materials than having us trot off to the Federal Court every two weeks. That is not going to be a timely and efficient process, as you may know.

Mr. Mike Bossio: Thank you very much.

Mr. Amos and I both sit on the indigenous committee as well, and right now we're studying Bill C-262 around UNDRIP—the implementation of UNDRIP and the framework around it. Of course, FPIC is a constant point of discussion around that. There seem to be three definitions of free, prior, and informed consent: good faith, without necessarily obtaining it; a type of process, a consensus-oriented process that is sometimes referred to as collaborative consent; or a veto.

I know Mr. Gustafson mentioned earlier that they had made a submission around Bill C-68, for example, and within Bill C-68 they actually have quite an extensive overview of recognizing indigenous rights without actually spelling out UNDRIP itself.

What is your view of FPIC, and what is your view of C-68 in how they've defined indigenous rights and consultation?

Mr. Mark Gustafson: Those are very good questions. For protocol reasons I would ask whether any of the indigenous participants want to jump in first, and then I can pick up second, if that's okay.

Mr. Mike Bossio: Yes, of course.

Chief Maureen Thomas: That's a really tough one. Again, we're saying we know we have jurisdiction. We know, and it's about building that relationship so we can work together. I don't like to get caught up in the words of reconciliation and all those things. The way I see it, we have to be one. Even though we're totally separate in our identities, as to who we are, we are part of Canada. We have to be part of you; you have to be part of us. You are connected to us.

When we get into all those words and all those things, we have to forget about those words and really focus on what it means, and not identify specific words as to how we relate to one another. In terms of our purpose here, we're not here to be totally separate all the time as indigenous people. Who I am as an indigenous person is who I am. I'm connected.

We always identify ourselves as to where we're from. That is our connection to the land and the water, and that's our jurisdiction. That's who we are. We're part of our ancestors. We're part of you, so you are part of us now, whether you want to be or not. I know a lot of people don't want to be, but we're here to look after one another. We're here to move in this world now as a unit, because without the ability to do that, we are going to have so much conflict and so much wasted time and energy and so many wasted dollars that we will be doing more harm than any good.

If we can always find this way, if you can respect me for who I am as an indigenous person, where my ancestors lie, from this country.... My connection to the Algonquin people is strong. I feel them here today. I feel them standing with me. That's how I am. I want to be part of all of you in order to have survival for our future generations. To me, it's that serious. We need to be a unit, not with just Canada but the other nations as well. I know that's a huge challenge, but we have to start here. We have to have that ability, your respect. Hear my voice and listen to it with meaning.

I'm not here telling you what to do or how to do it. I'm here to help you.

● (1345)

The Chair: Thank you very much for your wise words. You've all given us a lot to consider. We will see your briefs. You've all expressed a concern about the speed at which this is moving along. We are under tremendous pressure to hear everyone's recommendations and consider them. The reason we want to see that done in a speedy manner is that we all recognize that the legislation, as it stands today, is not meeting the needs of the country and that we need to change it. It does take quite a while to get through the process and come out the other side as legislation approved by both Houses.

What we want to do is to hear from all of you, as we have done. We really appreciate the time you've taken to come and do that face to face. We will read your briefs. We will get them in time to be able to bring forward recommended changes.

Thanks again. *Meegwetch*.

The meeting is adjourned.